

Judgment summary:

The Court unanimously dismissed the Government of Kenya's (GoK) objections and held that:

Pecuniary reparation

1. Orders GoK to pay Ogiek KES 57,850,000 tax free as compensation for material damages and KES 100,000,000 tax free as compensation for moral damages;

Non-pecuniary reparations

2. Orders GoK to take all necessary measures, legislative, administrative or otherwise, to identify in consultation with the Ogiek and all their representatives and delimit, demarcate and title Ogiek ancestral land, and to grant collective title to such land in order to ensure legal certainty in the Ogiek's use and enjoyment of the same;

3. Orders GoK, where concessions and/or leases have been granted over Ogiek ancestral land, to commence dialogue and consultations between the Ogiek and their representatives and other concerned parties, for purposes of reaching an agreement on whether or not they can be allowed to continue their operations by way of lease and/or royalty and benefit sharing with the Ogiek in line with all applicable laws. Where it proves impossible to reach a compromise, GoK is ordered to compensate the concerned parties and return such land to the Ogiek.

4. GoK must take all appropriate measures within 12 months, to guarantee full recognition to the Ogiek as an indigenous people of Kenya in an effective manner, including but not limited to according full recognition to the Ogiek language and the Ogiek cultural and religious practices.

5. Dismisses the Applicant's request for a public apology and the erection of a monument;

6. Orders GoK to take all necessary legislative, administrative or other measures to recognise, respect and protect the right of the Ogiek to be effectively consulted in accordance with their traditions and customs in respect of all development, conservation or investment projects on Ogiek ancestral land;

7. Orders GoK to ensure the full consultation and participation of the Ogiek in accordance with their traditions and customs, in the reparation process as ordered in this judgment;

8. Orders GoK to adopt legislative and administrative and/or any other measures to give full effect to the terms of this judgment as a means of guaranteeing the non-repetition of the violations identified.

9. Orders GoK to take necessary administrative, legislative and other measures within 12 months of the notification of this judgment, to establish a Community Development Fund for the Ogiek which should be a repository of all the funds awarded as compensation in this case;

10. Orders GoK within 12 months of the notification of this judgment, to take legislative, administrative and other measures to establish and operationalize the committee for the management for development fund ordered in this judgment;

On Implementation and Reporting

11. GoK must within 6 months of the notification of this judgment, publish the official English summaries developed by the registry of this court of this judgment, together with the operative parts of the judgment of the 26 of May 2017, once in the official government gazette and also in newspapers of wide national circulation;

12. GoK must also release within the 6 month period earlier referred, to the full text of the English merits and reparations judgments and the summaries produced by the registry of the court, on an official government website where it should remain available for a period of at least 12 months;

13. Orders GoK to submit within 12 months from the date of notification of this judgment, a report on the status of implementation of all the order herein; and

14. The Court holds that it shall conduct a hearing on the status of implementation of the orders made in this judgment on a date to be appointed by the Court 12 months from the date of this judgment.

15. The court decides that each party shall bear its own costs.