

**AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS****V.****REPUBLIC OF KENYA****APPLICATION No. 006/2012****ORDER****(COMPLIANCE)****4 DECEMBER 2025****A DECISION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS**

**Arusha, 4 December 2025:** The African Court on Human and Peoples' Rights (the Court) delivered an Order (compliance) in the case of *African Commission on Human and Peoples' Rights v. Republic of Kenya*. The Order was delivered following a compliance hearing held on 4 June 2025 which hearing was organised by the Court acting *suo motu* but also on the request of the African Commission on Human and Peoples' Rights ("the Applicant" or "the Commission") which had filed an initial Application before the Court against the Republic of Kenya ("the Respondent State") in 2012.

In its Judgment on the Merits delivered on 26 May 2017, the Court found that the Respondent State violated Articles 1, 2, 8, 14, 17(2), 17(3), 21 and 22 of the Charter.

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In the subsequent Judgment on Reparations (“Judgment on Reparations”), delivered on 23 June 2022, the Court ordered pecuniary and non-pecuniary reparations in favour of the Applicant. Among others, the Respondent State was ordered to pay KES 57,850,000 for material prejudice and KES 100,000,000 for the moral prejudice suffered by the Ogiek. The Respondent State was also ordered to consult with the Ogiek to identify their ancestral lands, delimit and demarcate these areas and grant them collective title; recognise the Ogiek as an indigenous people; establish a Community Development Fund; engage in meaningful consultation with the Ogiek in relation to matters affecting them including on the implementation of the Judgment on Reparations and to publish the Court’s decision.

The Court had also decided, in its Judgment on Reparations, that it would convene a public hearing at a date to be subsequently determined to assess compliance with its orders. The hearing leading to this Order thus aimed at assessing whether, and to what extent, the Respondent State had implemented the Court’s Judgment on the Merits and Judgment on Reparations and to delineate the legal consequences of non-compliance.

In its decision, the Court began by addressing its jurisdiction to conduct a status of implementation hearing. In this connection, it held that its jurisdiction to conduct such a hearing is grounded in Rule 81(3) of its Rules, Article 30 of the Protocol and Article 1 of the Charter. It further recalled its earlier jurisprudence in *Suy Bi Gohore v Côte d’Ivoire* to stress that its compliance monitoring complements rather than usurps the AU Executive Council’s role. On this basis, the Court held that it does have jurisdiction to determine whether a State has complied with its judgments within the time stipulated and to issue appropriate orders to ensure compliance.

The Court then assessed the Respondent State’s compliance with the terms of its Judgment on Merits. In doing this, it took due notice of the Respondent State’s submissions relating to the efforts that it had taken to deal with the violation of Articles

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1 and 2, as well as Article 14 of the Charter. The Court also took notice of the submissions by the Applicants relating to the state of implementation of its orders.

The Court, while acknowledging the effort undertaken by the Respondent State, including the adoption of legislation and the creation of consultative forums for the implementation of its Judgment, nevertheless found that these measures did not adequately resolve the core violations identified in the Judgment on Merits. It concluded, therefore, that the Respondent State's compliance with the Judgment on Merits was only partial. The Court, therefore, ordered the Respondent State to immediately take all necessary legislative, administrative or other measures to fully implement the Judgment on the Merits.

In terms of compliance with the Judgment on Reparations, the Court began by considering compliance with its order for compensation both in respect pecuniary and non-pecuniary reparations. The Court noted that the Respondent State had not indicated any steps taken to pay the KES 57,850,000 and KES 100,000,000 which it had ordered. It held, therefore, that there was non-compliance with its order and it thus ordered the Respondent State to immediately effect the payments that had been ordered.

In respect of the order for identification, delimitation, demarcation and titling of the land to which the Ogiek are entitled, the Respondent State informed the Court that Taskforces had been set up to facilitate the identification, delimitation, demarcation and titling of the land.

After assessing the Parties' submissions, the Court accepted that while the Respondent State had taken steps towards complying with the terms of its Judgment, these steps were insufficient. The Court emphasised that by the terms of its Judgment on Reparations, the process of identification, delimitation, demarcation and titling of Ogiek ancestral land must follow a clear, consultative process which leads to the

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granting of collective title to the Ogiek. The Court also found that the Respondent State had not set out a realistic, time-bound path for the implementation of this order. The Court thus held that the order on identification, demarcation and titling of Ogiek ancestral lands had not been complied with and directed the Respondent State to immediately take all necessary steps to remedy this.

The Court then examined the issue of the Ogiek ancestral land under concessions or leases. It noted that its Judgment on Reparations had required the Respondent State to identify concessions and leases over Ogiek lands and to initiate dialogue and consultation with third parties and the Ogiek, with compensation and restitution where agreements could not be reached. While agreeing that equitable processes were essential in resolving the question of leases and concession over Ogiek ancestral land, the Court found that, in practice, the Respondent State had not begun implementing its obligations and had thus not complied with this order.

On the order for recognition of the Ogiek as an indigenous population, the Respondent State argued that in its 2019 national census, as well as within its domestic case law, the Ogiek were already fully recognised. The Applicant, for its part, argued that symbolic recognition without concrete implementation of land and consultation rights was insufficient and pointed out the lack of meaningful legislative or institutional follow-up since 2022. The Court stressed that full and effective recognition requires that the Ogiek should exercise their rights on an equal basis with others. It found that this had not yet been achieved and concluded that the order on recognition had not been fully implemented, requiring the Respondent State to take further, concrete steps to comply with the terms of the Judgment.

Regarding the Court's order for the Respondent State to facilitate the right to consultation of the Ogiek, the Respondent state submitted that it had involved the Ogiek extensively through taskforces and an inter-ministerial committee, and it produced attendance lists to support that claim. The Applicant, however, submitted

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evidence suggesting that major decisions, including the lifting of restrictions on land transactions and enforcement actions, were taken without prior, meaningful consultation.

The Court reiterated that consultation, especially with indigenous peoples, must be meaningful, culturally appropriate and continuous, and it must respect their own decision-making structures. It found that, although some consultations had taken place, they did not meet the standard set in the Judgment on Reparations. The Court, therefore, held that the orders on consultation and non-repetition have not been fully implemented and ordered the Respondent State to take immediate and specific measures to implement the terms of its order.

Concerning the establishment of a community development fund and a committee to manage the fund, the Respondent State submitted that legislative and financial arrangements were complex and required time. The Applicant, however, highlighted that neither the fund nor the committee to manage it existed, and that no concrete steps toward their establishment had been taken. The Court held that there was no evidence of tangible progress and directed the Respondent State to immediately establish the fund and operationalise the management committee.

Regarding the publication of the judgment, the Respondent State cited political transition as the reason for its failure to publish the judgments and summaries as ordered; The Court found that the Respondent State had still not complied with its duty to publish the decisions and rejected political transition as a valid explanation as to why publication hadn't been done yet. It thus ordered the Respondent State immediately publish both its Judgment on the Merits as well as the Judgment on Reparations, together with their summaries, as ordered in paragraph xiv of the Judgment on Reparations.

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On reporting, the Court noted that by the terms of its Judgment on Reparations, the report on implementation, from the Respondent State, was due within twelve months of notification (by June 2023) but was only filed in May 2025, nearly two years later. While acknowledging that a report had been filed which contained details about steps being taken to comply with the Court's decision as well as the challenges being encountered by the Respondent State, the Court nonetheless held that its order on the filing of a report on implementation had not been complied with within the stipulated timeframe.

The Court then considered the Applicant's allegation of continuing violations and the request for provisional measures. The Applicant alleged ongoing violations, including evictions and the destruction of Ogiek homes and property. The Respondent State submitted that it was implementing reforms within a complex socio-political environment. The Court accepted the gravity of the Applicant's allegations but held that the need for provisional measures was directly tied to the State's failure to implement the Court's decisions. It, therefore, declined to issue additional provisional measures, noting that full compliance with its decisions would address the harms alleged by the Applicant.

On costs, the Court ordered that each party should bear its own costs.

Further information about this case, including the full text of the decision of the African Court, may be found on the website at: <https://www.african-court.org/cpmt/details-case/0062012>

For any other queries, please contact the Registry by email [registrar@african-court.org](mailto:registrar@african-court.org)

*The African Court on Human and Peoples' Rights is a continental court established by African Union Member States to ensure the protection of human and peoples' rights in Africa. The Court has jurisdiction over all cases and disputes submitted to it concerning*



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