AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
UNIÓN AFRICANA		UMOJA WA AFRIKA
AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES		

THE MATTER OF

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

V.

REPUBLIC OF KENYA

APPLICATION No. 006/2012

ORDER

(COMPLIANCE)

4 DECEMBER 2025

TABLE OF CONTENTS

The Court composed of: Modibo SACKO, President; Chafika BENSAOULA, Vice President; Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Blaise TCHIKAYA, Stella I. ANUKAM, Iman D. ABOUD, Dumisa B. NTSEBEZA, Dennis D. ADJEI, and Duncan GASWAGA – Judges; and Grace W. KAKAI, Deputy Registrar.

In the Matter of:

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

Represented by:

i. Mr. Bahame Tom NYANDUGA, Lead Counsel;
ii. Hon. Solomon DERSSO, Commissioner, African Commission on Human and Peoples' Rights, ACHPR;
iii. Mrs. Abiola IDOWU-OJO, Executive Secretary, ACHPR;
iv. Mr. Yassine DRIANNE, Deputy Executive Secretary, ACHPR;
v. Ms. Irene Desiree MBENGUE, ACHPR Secretariat;
vi. Mr. Pedro Rosa CO, ACHPR Secretariat; and
vii. Mr. Donald DEYA, Counsel.

Versus

REPUBLIC OF KENYA

Represented by:

i. Mr. Lawrence Muiruri NGUGI, Deputy Solicitor General;
ii. Mr. Charles MUTINDA, Deputy Solicitor General;
iii. Ms. Gracie MUTINDI, Principal State Counsel; and
iv. Mr. Christopher MARWA, Principal State Counsel.

For the *amici curiae*

Professor Rachel MURRAY, Human Rights Implementation Centre, University of Bristol.

After deliberation,

Issues this Order:

I. THE PARTIES

1. The African Commission on Human and Peoples' Rights ("hereinafter referred to as "the Applicant" or "the Commission") filed an Application before the Court, on 12 July 2012, pursuant to Article 5(1) of the Protocol to the African Charter on Human and Peoples Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol"). In the Application, the Commission alleged a violation of the rights of the Ogiek, an indigenous population from Kenya, under Articles 1, 2, 4, 8, 14, 17(2) and (3), 21 and 22 of the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter").

2. The Application was filed against the Republic of Kenya (hereinafter referred to as "the Respondent State"), which became a Party to the Charter on 25 July 2000 and to the Protocol on 4 February 2004. The Respondent State has not deposited the Declaration required under Article 34(6) of the Protocol (hereinafter referred to as "the Declaration") through which States accept the jurisdiction of the Court to receive cases directly from individuals and Non-Governmental Organisations (NGOs).

II. PRECIS OF THE MATERIAL FACTS

3. In this Application, the Court delivered its judgment on the merits (hereinafter referred to as "Judgment on the Merits") on 26 May 2017. In the said Judgment, the Court held as follows in the Operative Part:

i. *Declares* that the Respondent has violated Articles 1, 2, 8, 14, 17(2) and (3), 21 and 22 of the Charter;
ii. *Declares* that the Respondent has not violated Article 4 of the Charter;
iii. *Orders* the Respondent to take all appropriate measures within a reasonable time frame to remedy all the violations established and to inform the Court of the measures taken within six (6) months from the date of this Judgment;
iv. *Reserves* its ruling on reparations;
v. *Requests* the Applicant to file submissions on Reparations within 60 days from the date of this judgment and thereafter, the Respondent shall file its Response thereto within 60 days of receipt of the Applicant's submissions on Reparations and Costs.

4. Subsequently, the Court delivered its judgment on reparations (hereinafter referred to as "Judgment on Reparations") on 23 June 2022. In that Judgment, the Court held, in part, as follows in the Operative Part:

On pecuniary reparations

ii. *Orders* the Respondent State to pay the sum of KES 57 850 000 (Fifty-seven million, eight hundred and fifty thousand Kenya Shillings), free from any government tax, as compensation for the material prejudice suffered by the Ogiek;
iii. *Orders* the Respondent State to pay the sum of KES 100 000 000 (One hundred million Kenya Shillings), free from any government tax, as compensation for the moral prejudice suffered by the Ogiek.

On non-pecuniary reparations

iv. *Orders* the Respondent State to take all necessary measures, legislative, administrative or otherwise to identify, in consultation with the Ogiek and/or their representatives, and delimit, demarcate and title Ogiek ancestral land and to grant collective title to such

land in order to ensure, with legal certainty, the Ogiek's use and enjoyment of the same;

v. *Orders* the Respondent State, where concessions and/or leases have been granted over Ogiek ancestral land, to commence dialogue and consultations between the Ogiek and their representatives and the 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, the Respondent State is ordered to compensate the concerned third parties and return such land to the Ogiek;

vi. *Orders* that the Respondent State must take all appropriate measures, within one (1) year, to guarantee full recognition of 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 Ogiek cultural and religious practices;

ix. *Orders* the Respondent State 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 tradition/customs in respect of all development, conservation or investment projects on Ogiek ancestral land;

x. *Orders t*he Respondent State to ensure the full consultation and participation of the Ogiek, in accordance with their traditions/customs, in the reparation process as ordered in this judgment;

xi. *Orders* the Respondent State to adopt legislative, 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;

xii. *Orders* the Respondent State to take the necessary administrative, legislative and any other measures within twelve (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 ordered as compensation in this case;

xiii. *Orders* the Respondent State, within twelve (12) months of notification of this judgment, to take legislative, administrative or

any other measures to establish and operationalise the Committee for the management of the development fund ordered in this Judgment.

On implementation and reporting

xiv. *Orders* that the Respondent State must, within six (6) months of notification of this judgment, publish the official English summaries, developed by the Registry of the Court, of this judgment together with that of the judgment of 26 May 2017. These summaries must be published, once in the official Government Gazette and once in a newspaper with widespread national circulation. The Respondent State must also, within the six (6) months period earlier referred to, publish the full judgments on merits and on reparations together with the summaries provided by the Registry of the Court on an official government website where they should remain available for a period of at least one (1) year;

xv. *Orders* the Respondent State to submit, within twelve (12) months from the date of notification of this Judgment, a report on the status of implementation of all the Orders herein;

xvi. *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 twelve (12) months from the date of this judgment.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

5. Pursuant to paragraph xvi of the operative part of its Judgment on Reparations, on 14 August 2024, the Court notified the Parties and the *amici curiae*, that a public hearing, on the state of implementation of the Judgment on Reparations, would be held on 12 November 2024. The Parties were also invited to file their submissions in respect of the hearing.

6. Following the Court's notification, on divers dates, the Applicants filed various submissions and affidavits together with annexures.

7. The *amici curiae* filed two submissions: one on 23 November 2023 and the other on 29 April 2025.

8. On 12 November 2024, the Court adjourned, for 90 days, the public hearing at the request of the Respondent State.

9. On 20 February 2025, the Registry informed the Parties, and the *amici curiae,* that the public hearing would be held on 4 June 2025 at the seat of the Court in Arusha.

10. On 15 May 2025, the Respondent State filed its report on the implementation of the Court's decisions in this Application and on 3 June 2025 it filed a "digest and list of authorities".

11. On 4 June 2025, the Court held a public hearing on the implementation of the orders issued in this Application. Representatives of both Parties and the *amici curiae* participated in the hearing.

IV. JURISDICTION

12. The Applicant submits that "…Order (xvi) of the Reparation Judgment required the Court to conduct a status of Implementation hearing 12 months after the Judgment". During the public hearing, the Applicant buttressed this submission by arguing that non-implementation of the decisions of the Court is a violation of Articles 1 and 27 of the Protocol, which provisions should also be recognised as the basis upon which an implementation hearing is founded.

*

13. The Respondent State did not make any submissions addressing the Court's jurisdiction.

*

14. The *amici curiae*, for their part, submit that since the present proceedings represent the first of a type, it may be "necessary for the Court to expressly establish its competence to monitor compliance with its decisions." It was the *amici curiae's* further submission that given the provisions of Article 3(2) of the Protocol, it is the Court which has the "last say" on the question of its competence to conduct this type of proceedings. The *amici curiae* also submit that the Court's competence to hold compliance hearings follows from a purposive and holistic interpretation of both the Protocol and the Charter guided by Article 31(1) of the Vienna Convention on the Law of Treaties (hereinafter "the VCLT).

***

15. As earlier pointed out, in its Judgment on Reparations, specifically in paragraph xvi of the operative part, the Court held that it would hold a hearing to determine the status of implementation of its orders.

16. Rule 81 of the Rules, in so far as is material, provides as follows:

> i. State Parties concerned shall submit reports on compliance with the decisions of the Court and these reports shall, unless otherwise decided by the Court, be transmitted to the Applicant(s) for observations.
> ii. The Court may obtain relevant information from other credible sources in order to assess compliance with its decisions.
> iii. In case of a dispute as to compliance with its decisions, the Court may, among others, hold a hearing to assess the status of implementation of its decisions. At the end of the hearing, the Court shall make a finding and where necessary, issue an order to ensure compliance with its decisions.

17. As manifest from the above, the Court's competence to hold a hearing, aimed at assessing the status of implementation of its decisions, is provided for in Rule 81(3) of its Rules. Notwithstanding Rule 81(3), however, it is important that this competence must be understood within the broad architecture created by the Charter and the Protocol while bearing in mind applicable general principles of international law. In any event, as per Article 3(2) of the Protocol, should there be any question or doubt about the Court's jurisdiction it is the Court itself which has competence to resolve any such doubt.[1]

18. Article 27(1) of the Protocol requires the Court to "make appropriate orders to remedy the violation." The framing of Article 27(1) of the Protocol grants the Court latitude to determine the most fitting remedy to address the consequences of the violations established. The Court finds, in the circumstances, that its role in addressing the consequences of a violation extends to ensuring that the terms of its decisions are fully implemented.

19. Article 29 of the Protocol stipulates that the Executive Council shall "be notified of the judgment and shall monitor its execution on behalf of the Assembly." As pointed out later in this Order, useful notification, by the Court, to the Executive Council, of its judgments, for purposes of monitoring execution, can only be done upon the Court's own cognisance of the state of implementation of its decisions.

20. Article 30 of the Protocol provides that: "[t]he States parties to the present Protocol undertake to comply with the judgment in any case to which they are parties within the time stipulated by the Court and to guarantee its execution." This provision, the Court notes, simply emphasises the principle of *pacta sunt servanda* which requires parties to a treaty to implement its terms in good faith.[2] The implication is that the Charter, the Protocol and the

[1] *Femi Falana v. African Union* (jurisdiction) (26 June 2012) 1 AfCLR 118, §§ 56-57.
[2] Article 31(1) VCLT – "a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."

Rules, among other instruments, must be interpreted in a manner that furthers the realisation of human rights on the continent.

21. Article 31 of the Protocol requires the Court to "submit to each regular session of the Assembly, a report on its work during the previous year. The report shall specify, in particular, the cases in which a State has not complied with the Court's judgment." In the context of the present proceedings, a relevant question that arises is whether the Court can successfully fulfil its obligation under Article 31 of the Protocol, to report to the Assembly, if it cannot determine the status of compliance with its judgments before submitting the report. It follows, therefore, that the Court must necessarily conduct an assessment of the status of implementation of its decisions before submitting a meaningful report to the Executive Council.

22. It is also notable that Article 30 of the Protocol explicitly imposes an obligation on States to comply with its judgments. The Court considers that this obligation constitutes the *conditio sine qua non* of any international litigation. It is the existence of this duty that distinguishes international judicial mechanisms from quasi-judicial mechanisms that are not authorised to issue binding decisions.[3]

23. In so far as the relationship between the Court and the Executive Council is concerned, the Court reiterates its finding in *Suy Bi Gohore v. Côte d'Ivoire* that the holding of a hearing to follow up on implementation of its decisions does not amount to a usurpation of the role of the Executive Council. The roles of the Court and the Executive Council must, therefore, be understood to be complementary and in furtherance of the better realisation of human rights across the continent.[4]

24. Ultimately, the provisions of the Protocol and the Rules must also be understood against the obligation on all State parties in Article 1 of the

[3] *Suy Bi Gohore Emile & ors v. Republic of Côte d'Ivoire* (Judgment) (15 July 2020) 4 AfCLR 406, § 59.
[4] *Ibid*, § 54.

Charter.[5] Article 1 binds all State Parties to "recognise the rights, duties and freedoms enshrined in the Charter" and to "adopt legislative or other measures to give effect to them." This obligation extends to the duty of States to faithfully implement decisions of the Court.[6]

25. The Court finds, therefore, through a combined and holistic reading of the Charter, the Protocol and the Rules that it has jurisdiction, in a case or dispute submitted to it, or of its own volition, to establish whether a State has complied with its judgment or not within the time stipulated. This jurisdiction also permits the Court to make appropriate orders where necessary to ensure compliance with its decisions.

26. The Court, therefore, holds that it has jurisdiction to conduct the present proceedings.

V. ON THE RESPONDENT STATE'S COMPLIANCE WITH THE ORDERS IN THE DECISIONS ON THE MERITS AND REPARATIONS

27. The Court will now examine the Respondent State's compliance with its orders both in the Judgment on the Merits as well as the Judgment on Reparations beginning with the orders made in the Judgment on the Merits.

A. Respondent State's compliance with the orders in the Judgment on the Merits

28. In its Judgment on Merits, the Court established that the Respondent State had violated Articles 1, 2, 8, 14, 17(2) and (3), 21 and 22 of the Charter. The Respondent State was thus ordered to "take all appropriate measures within a reasonable time frame to remedy all the violations established and to

[5] *Ali Ben Hassen Ben Youcef Abdelhafid v. Republic of Tunisia* (admissibility) (25 June 2021) 5 AfCLR 193, §§ 45-47.
[6] *Sébastien Germain Marie Aïkoue Ajavon v. Republic of Benin* (judgment) (29 March 2021) 5 AfCLR 94, §§ 124-126.

inform the Court of the measures taken within six (6) months from the date of this Judgment."

*

29. In a letter dated 25 January 2022, the Respondent State informed the Court of the measures it had taken to comply with the orders issued by the Court in its Judgment on the Merits.

30. In relation to the violation of Article 1 of the Charter, the Respondent State reported that, subsequent to the Judgment on the Merits, it had taken steps to give practical effect to the Forest Conservation and Management Act, No. 34 of 2016 as well as the Community Land Act No. 27 of 2016. Among the specific steps alleged to have been taken was the conduct of "strategic consultations with key stakeholders" to fast track the process of registration of community land; the designation of Community Land Registrars; and the gazetting of adjudication officers. The Respondent State also pointed out that it had commenced issuance of community land titles.

31. As for the violation of the right to non-discrimination under Article 2 of the Charter, the Respondent State reported that in its 2019 Population and Housing Census, the Ogiek were "categorised as a distinct sub-tribe of the Kalenjin". According to the Respondent State, "the Government of Kenya has thus recognised the Ogiek as a distinct ethnic tribe in Kenya."

32. In connection with the violation of the Ogiek's right to property, the Respondent State drew the Court's attention to the fact that the Mau Forest Complex is a public forest which has been designated as such since 1954. It also pointed out that different groups of people live in the Mau Forest Complex, some of them legally and others illegally. Specifically with regard to the right to property of the Ogiek in the Mau Forest Complex, the Respondent State pointed out that its National Land Commission has allowed a claim for "historical land injustices against the Ogiek community and issued a recommendation that the Ogiek should forward the claim to

the Taskforce on the Implementation of the Decision of the African Court on Human and Peoples' Rights issued against the Government of Kenya …"

33. The Respondent State also pointed out that a Taskforce ("the Ogiek Taskforce") was appointed through Kenya Gazette No. 11215 of 2 November 2018 "to review existing relationships between indigenous communities and public institutions involved in the management of forests and to identify all community forests … and develop a policy framework for the better management, conservation and protection of community forests." The Ogiek Taskforce, the Respondent State also pointed out, "conducted extensive stakeholder consultations with the affected community and presented its recommendations and findings to the appointing authority in October 2019."

34. In its report filed on 15 May 2025, the Respondent State presented details of the consultations undertaken by the Ogiek Taskforce. It was averred that the Taskforce used print and radio media to notify the public of its public hearings as well as to invite submissions.

35. On the violation of the Ogiek's right to culture, under Article 17 of the Charter, the Respondent State averred that "culture is the foundation of the Kenyan nation." It also submitted that it has promoted all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, among other means. It further pointed out that in 2018 it adopted a draft National Policy on Culture which covers a broad range of issues related to culture such as "national development, national heritage, languages, cultural industries, the family, human rights, education, media, education and tourism."

36. Overall, the Respondent State submitted that it "remains committed to ensuring the human rights of its people are fully protected and realised."

*

37. The Applicant, for its part, submits that notwithstanding "considerable efforts" to engage with the Respondent State, and to seek the execution of the orders made in the Court's decisions, the Respondent State has failed to take any steps to implement these judgments. The Applicant further submits that the Respondent State has, instead, undertaken measures that constitute continuing and new violations of the rights of the Ogiek people.

***

38. The Court takes due notice of the report filed by the Respondent State, in relation to the measures taken to implement the Judgment on the Merits. While acknowledging the importance of the steps taken by the Respondent State it finds, however, that the measures do not sufficiently deal with the violations that the Court identified especially in terms of the means adopted for resolving the violations.

39. In the circumstances, the Court finds that while the Respondent State's report outlines some of the efforts undertaken to implement the Judgment on the Merits, it is evident that compliance with the Court's decision remains partial.

40. The Court, therefore, orders the Respondent State to immediately take all necessary steps, be they administrative, legislative and/or otherwise to comply fully with all the orders made in its Judgment on Merits.

B. Respondent State's compliance with the orders in the Judgment on Reparations

41. The Court recalls that its Judgment on Reparations outlined several orders that the Respondent State ought to have implemented. In the subsequent paragraphs the Court will interrogate the state of implementation of each of its orders in the Judgment on Reparations. As the Court considers the implementation of its orders, it further recalls that the Judgment on Reparations was delivered on 23 June 2022 while the Respondent State's

report on the implementation of the orders in this judgment was filed on 15 May 2025.

i. Payment of pecuniary reparations, KES 57 850 000 for material prejudice and KES 100 000 000 for moral prejudice

42. In its Judgment on Reparations, the Court ordered the Respondent State to pay the sum of KES 57 850 000, free from any government tax, as compensation for the material prejudice suffered by the Ogiek. It also ordered the Respondent State to pay the sum of KES 100 000 000, free from any government tax, as compensation for the moral prejudice suffered by the Ogiek.

*

43. The Respondent State did not provide any information as to the exact steps that it has taken to comply with this order by the Court.

*

44. The Applicant submits that the Respondent State has not paid any compensation to the Ogiek in respect of material or moral prejudice, as ordered by the Court under paragraphs (ii) and (iii) of the Judgment on Reparations. It further submits that the "Respondent State has not reported on whether or not the pecuniary compensation to remedy the material and moral prejudice has been paid."

***

45. Given the evidence before it, the Court concludes that the Respondent State has not complied with its order to pay KES 57 850 000 for material prejudice and KES 100 000 000 for moral prejudice which the Court ordered as remedies for the violation of the rights of the Ogiek.

46. The Court, therefore, orders the Respondent State to take steps immediately to effect the payments that were ordered in the Judgment on Reparations, as particularised in paragraphs ii and iii of the operative part of the Judgment.

ii. Delimitation, demarcation and titling of Ogiek ancestral lands

47. On non-pecuniary reparations, the Court ordered the Respondent State to take all necessary measures, legislative, administrative or otherwise to identify, in consultation with the Ogiek and/or their representatives, and delimit, demarcate and title Ogiek ancestral land and to grant collective title to such land in order to ensure, with legal certainty, the Ogiek's use and enjoyment of the same.

*

48. The Respondent State submits that during the public hearings of the Ogiek Taskforce it was informed that some members of the Ogiek community from the Mau Forest had previously been allocated land from 1963 to 2009. The Taskforce, it was further submitted, was also informed that "some members of the Ogiek community had later sold the land to other individuals who now occupy, use and claim ownership over the land."

49. The Respondent State also points out that its National Land Commission "set in motion steps to comply with the decisions of the African Court by (1) identifying and opening a register of members of the Ogiek Community; (2) identifying land for settlement of the Ogiek." During the public hearing, the Respondent State reiterated these submissions.

50. It was also pointed out that "in identifying and opening a register of members of the Ogiek Community, the Commission sought the assistance of the National and County Governments through public officials including area chiefs in consultation with the Ogiek Council of Elders." As a result of these consultations, it was submitted, "several claims to parcels of land in and

around the Mau Forest were made" by or on behalf of distinct Ogiek groups. According to the Respondent State, these consultations revealed that there are "many groups and persons speaking for the Ogiek on the issues before the African Court on Human and Peoples' Rights."

51. According to the Respondent State, from the validation exercise conducted by the National Land Commission, it was clear that there are splinter groups of the Ogiek within the Mau Forest who have separate claims and that some Ogiek who had previously benefitted from settlement schemes sold their land and have become landless again. Ultimately, the National Land Commission made the following recommendations, *inter alia*:

> The Ministry of Lands and the Ministry of Interior should verify and identify those in the register who have benefitted from any settlement scheme and come up with a list of those who have not benefitted so that they can be settled.
>
> The Ministry of lands to identify appropriate land to settle the Ogiek who have not benefitted in any settlement scheme in line with the decision of the African Court.
>
> The Kenya Forest Service to consider giving licenses or permits to the Ogiek Community for user rights or Community rights within the Mau Forest Complex.

52. According to the Respondent State the "Report of the National Land Commission is undergoing active consideration by the National Executive as it has significant political, economic and national implications."

53. During the public hearing, the Respondent State submitted that it was implementing the Court's orders but that in doing so it needed to balance many competing interests especially given that there are other groups/communities that also inhabit the Mau Forest.

*

54. The Applicant submits that, despite a clear legal route to the granting of collective title provided in the Community Land Act 2016, the Respondent State has not taken any steps to delimit, demarcate, and title Ogiek ancestral land and to grant collective title to such land, in violation of paragraph iv of the operative part of the Judgment on Reparations. The Applicant further submits that the Ogiek themselves have, among other things, reviewed and determined the boundaries of their land in order to comply with the requirements of the Community Land Act, 2016, which provides for the grant of collective title.

55. The Applicant also submits that the Ogiek communities have agreed to set up and comply with bylaws that seek to conserve the Mau Forest and its biodiversity and other resources. Further, the Applicant submits that the Ogiek communities have begun to map the boundaries of their land, for the purpose of eventual formal survey and registration. The Applicant also submits that 10 Ogiek communities have put together registers of community members, formed Community Land Management Committees and, in certain cases, have approached the Land Registry to seek registration of such committees.

56. The Applicant further submits that apart from the convening of multistakeholder meetings by the Committee on Administrative Justice; to discuss the implementation of the Judgment on Reparations, no concrete action has been taken to implement the Court's judgment.

57. Further, the Applicant submits that the Ogiek submitted claims of historical land injustice to the National Land Commission (hereinafter referred to as "the NLC"). In this connection, the Applicant submits that on 15 March 2024, the NLC issued recommendations that purported to give effect to the Judgment on Reparations, but which were "at variance and conflicting with the reasonings" and orders of the Court.

58. Further, the Applicant asserts that the recommendations of the NLC called for the Kenya Forest Service (hereinafter referred to as "the KFS") to consider providing licenses or permits to the Ogiek "for use rights or community rights within the Mau Forest Complex for the purposes of extracting medicinal properties, bee keeping and religious activities."

59. During the public hearing the Applicant, relying on the affidavits of Stephen Kotioko Ole Ngusilo, Wilson Memosi Ole Ngusilo, Daniel Mpoiko Kobei, and Veronica Naipanoi Ngusilo submitted that the Respondent State has actively undermined the Court's decisions in various ways including by excising 2500 hectares of the Mau Forest and allocating it to the Narok County.

***

60. In paragraph iv of the operative part of the Judgment on Reparations, the Court's order requires the Respondent State to take all necessary measures be they administrative, legislative or otherwise to identify, in consultation with the Ogiek, all Ogiek ancestral lands and to delimit, demarcate and title the same. The preceding must be done with the ultimate objective of granting collective title to the Ogiek.

61. While acknowledging the work done by the NLC, especially the recommendations it issued in respect of the claim by the Ogiek for historical injustices related to their lands, the Court observes that the Respondent State, based on its own submissions, has yet to fully comply with the Court's order. One of the challenges identified by the Respondent State is the alleged existence of splinter groups of the Ogiek with varying and competing interests to the land in the Mau Forest. In this connection, the Court emphasises that its order, in the Judgment on Reparations, required the Respondent State to proceed with the identification, delimitation, demarcation and titling of Ogiek ancestral land through a consultative process wherein the Ogiek were fully involved. The Court's emphasis on a

consultative process is meant to ensure equitable processes as well as outcomes.

62. It has not escaped the Court's notice that both Parties concede that the Community Land Act is a relevant piece of legislation in implementing its orders in relation to the identification, delimiting, demarcation and titling of Ogiek ancestral lands. The Applicants have, in their submissions, also outlined the initiatives they have taken to comply with the requirement under the Community Land Act for the registration of title. For example, the Applicants have submitted that Ogiek communities have agreed to set up and comply with bylaws that seek to conserve the Mau Forest and its biodiversity; Ogiek communities have begun to map the boundaries of their land, for the purpose of eventual formal survey and registration. It has also been pointed out that at least 10 Ogiek communities have put together registers of community members, formed Community Land Management Committees and, in certain cases, have approached the Land Registry to seek registration of such committees.

63. As against the very specific steps which the Ogiek themselves have initiated, in order to facilitate the implementation of the Court's orders, the Respondent State has not provided the Court with clear information on the steps it has taken to implement the Court's orders. While implementation of the order to identify, delimit, demarcate and title land necessary would require time, it is important that the Respondent State should establish a clear and realistic path towards the full implementation of the Court's order. This clear and realistic path, at the moment, cannot be deduced from the Respondent State's submissions be it from a legislative perspective or even administratively yet over three years have now lapsed since the Judgment on Reparations was delivered.

64. In the end, the Court finds that regardless of the efforts reported by the Respondent State, the order in paragraph iv of the operative part of its Judgment on Reparations has not been complied with.

65. The Court holds, therefore, that the Respondent State has not complied with the order to take all necessary measures, legislative, administrative or otherwise to identify, in consultation with the Ogiek and/or their representatives, and delimit, demarcate and title Ogiek ancestral land and to grant collective title to such land.

66. The Court thus orders the Respondent State to, immediately, take all necessary steps to comply with the order in paragraph iv of the operative part of the Judgment on Reparations.

iii. Procedures for occupied Ogiek ancestral land

67. The Court ordered the Respondent State, where concessions and/or leases have been granted over Ogiek ancestral land, to commence dialogue and consultations between the Ogiek and their representatives and the 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, the Respondent State was ordered to compensate the concerned third parties and return such land to the Ogiek.

*

68. The Respondent State submits that in the interests of equity and fairness, the procedures for dealing with occupied Ogiek ancestral land should be preceded by a process of identification and verification of the actual number of Ogiek who were previously already allocated land and whether they still retain the land or if they sold it to third parties. According to the Respondent State, once the number of Ogiek who were already allocated land is verified, these could be excluded from any other process meant to return Ogiek ancestral land as these individuals already had their right to ancestral land realised.

*

69. The Applicant submits that the Respondent State has "not taken steps or any measures to comply with Order (v) of the Reparations Judgment, that is, to identify concessions and/or leases grant over Ogiek ancestral lands and to initiate dialogue and consultation processes with the Ogiek and any concerned parties in relation to any concessions and/or leases granted over Ogiek lands." Further, the Applicant submits that it has not been able to obtain information relating to the grant of leases or concessions, as such information is with the Respondent State. The Applicant thus prays that the Respondent State provide the Court with information on the leases and/or concessions over Ogiek ancestral land.

70. It is also the Applicant's submission that the Respondent State has not reported on "whether or not the Tripartite consultations regarding third party occupants of Ogiek ancestral land have taken place, and if not, whether the leasing/benefit sharing or royalty-based arrangements had been discussed, failure of which compensation be paid by Government, so that the Ogiek ancestral land can be returned to them."

***

71. The Court confirms that it is indeed important to follow equitable processes for the resolution of claims pertaining to Ogiek ancestral land which is currently under occupation by third parties. It is for this reason that the Court's order, in the Judgment on Reparations, emphasised the importance of dialogue and consultation in relation to land occupied by third parties. The dialogue and consultation are particularly important given the possibility that third party rights may be affected by the implementation of the Court's order. It is thus important that equity and fairness should govern the resolution of all Ogiek claims affected by rights of third parties.

72. Based on the submissions filed by the Respondent State, as well as its arguments during the public hearing, the Court finds that the identification

of all leases and/or concessions granted over Ogiek lands has not commenced thus making it difficult to begin the processes of negotiation and dialogue on the best way to resolve the competing claims. The Court finds, therefore, that the Respondent State has not taken the necessary steps for resolving third party claims on Ogiek ancestral land as ordered by the Court.

73. To ensure compliance with the Court's order, the Respondent State is ordered to, immediately, initiate the necessary processes to ensure compliance with paragraph v of the operative part of its Judgment on Reparations.

iv. Recognition of the Ogiek as an indigenous population

74. The Court ordered that the Respondent State must take all appropriate measures, within one year, to guarantee full recognition of the Ogiek as an indigenous population of Kenya in an effective manner, including but not limited to according full recognition to the Ogiek language and Ogiek cultural and religious practices.

*

75. The Respondent State submits that it "has always given full recognition to the Ogiek as an indigenous people of Kenya." It further submits that it has "recognised the Ogiek language, culture and religious practices." The Court's attention was also drawn to the 2019 Kenya national population census in which the Ogiek were enumerated as a distinct group.

76. It was also the Respondent State's submission that there has been judicial recognition of the definition of an indigenous population as provided for under Article 1 of the ILO Convention No. 169 on the Rights of Indigenous and Tribal Peoples, 1989 as manifested by the decision in *Joseph Letuya & 21 others v. Attorney General & 5 others* [2014] eKLR. The Respondent

State concludes, therefore, that "the Ogiek has received full recognition in Kenya."

77. During the public hearing, the Respondent State reiterated its submission that it has accorded the Ogiek full recognition. It submitted that the Ogiek language, culture and religious practices had been formally recognised. The Respondent State, however, also submitted that its engagement and recognition of the Ogiek was hampered by the fact that there are various splinter groups of the Ogiek. According to the Respondent State, the Ogiek are not "a unique community but a community that has different representatives, different views, different visions…"

*

78. The Applicant submits that, notwithstanding a meeting hosted by the National Gender and Equality Commission (hereinafter referred to as "the NGEC"), during which the NGEC accepted that the provision of full and effective recognition of the Ogiek as an indigenous population of Kenya fell within its mandate, no positive results have emerged following the NGEC's written recommendation to the Public Service Commission, requesting that this issue be addressed. Furthermore, the Applicant submits that the time frame in which the Court ordered the Respondent State to comply with this order has lapsed.

79. It is also the Applicant's submission that although Kenya's Parliamentary Justice and Legal Affairs Committee has been briefed on the issue of establishing an indigenous peoples' directorate, which would include the Ogiek as one of Kenya's indigenous people, no results have emerged from this.

80. The Applicant argues "that full recognition of the Ogiek as an indigenous people in Kenya should be demonstrated through the effective implementation of the Court orders, such as through restitution of their ancestral land and all rights that the Court found had been violated." The

Applicant submits, therefore, that "the Respondent State has not taken any legislative, administrative, and/or other measures to grant full recognition of the Ogiek as an indigenous people of Kenya subsequent to the Reparations Judgment of 23 June 2022."

***

81. The Court acknowledges the efforts by the Respondent State in recognising the Ogiek, including through the 2019 census in which the Ogiek were enumerated as a distinct group. Nevertheless, it finds that full recognition of the Ogiek, which the Court had ordered to be done, within a year of the Judgment on Reparations, requires more than nominal recognition of the Ogiek.

82. It is notable that the order in the Judgment on Reparations grants the Respondent State latitude to undertake "appropriate measures" for the full recognition of the Ogiek as an indigenous population of Kenya in an effective manner. While efforts have been made by the Respondent State to comply with the order, the Court holds that full and effective recognition of the Ogiek requires that the Respondent State deliberately create conditions in which the Ogiek can exercise their full range of rights at par with all other citizens. The totality of the Parties' submissions in this matter, including the challenges relating to the implementation of the Court's orders, confirm that the Ogiek are yet to enjoy the exercise of the full range of their rights.

83. The Court holds, therefore, that its order directing the full recognition of the Ogiek has not been fully implemented. It thus orders the Respondent State to take appropriate steps, without any undue delay, to fully comply with the order in paragraph vi of the operative part of its Judgment on Reparations.

v. Right to consultation of the Ogiek

84. The Court recalls that it made two orders in relation to the right to consultation of the Ogiek. First, it ordered the Respondent State 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 tradition/customs in respect of all development, conservation or investment projects on Ogiek ancestral land. Second, the Court ordered the Respondent State to ensure the full consultation and participation of the Ogiek, in accordance with their traditions/customs, in the reparation process as ordered in the Judgment on Reparations.

*

85. The Respondent State submits that there was "extensive input from the Ogiek in the work of the Taskforce." In its report filed on 15 May 2025, the Respondent State also provided details of the consultations that it has undertaken with representatives of the Ogiek and filed attendance lists of the members of the Ogiek community that participated in the consultations. During the public hearing, the Respondent State also bid the Court to note that consultation with the Ogiek is an on-going activity.

86. The Respondent State also argues that two Task Forces were established to look into the implementation of the decisions of the Court. It points out that an Inter-ministerial committee was also set up for the same purpose. According to the Respondent State the Task Forces and the Inter-ministerial committee undertook consultations with the Ogiek on the implementation of the Court's decisions.

*

87. The Applicant submits that the Respondent State has failed to consult with the Ogiek and their representatives in respect of decisions it has taken which have affected the lives of the Ogiek. In particular, the Applicant

submits that the Ogiek and their representatives were not consulted in the decision to establish the Inter-Ministerial Committee; the decision, announced by His Excellency President William Ruto on 1 September 2023, to lift the restrictions on land transactions in the Mau Forest; and the decision taken by His Excellency President Ruto, on or around 30 September 2023, to fence off the Mau Forest Complex and its water towers. In respect of the last of these decisions, the Applicant points out that all persons living in the Mau Forest Complex were required to immediately leave the Forest. In relation to the Inter-Ministerial Committee, the Applicant insists that the Ogiek and their representatives were never consulted during either its establishment or constitution or in relation to its operations. The preceding, the Applicant avers, is in clear violation of the Judgment on Reparations especially paragraphs x and xi of the operative part.

88. In support of its submissions, the Applicant points out that in early October 2023, Ogiek elders were informed by the Rift Valley Regional Commissioner that the latter intended to evict the Ogiek from their lands in Maasai Mau, which would affect community members living in Sasimwani and Nkareta. The Applicant further points out that, on 4 October 2023, the County Commissioner of Narok also informed the Ogiek elders that the instructions to evict the Ogiek "came directly from the Minister of Environment through the Regional Commissioner."

89. According to the Applicant "the Respondent has not initiated any consultation or sought the participation of the Ogiek, in accordance with their traditions and customs … in relation to the reparations process as a whole and in implementing the Orders of the Court."

90. In relation to the two Task Forces established on 23 October 2017 and 25 October 2022, respectively, the Applicant submits that it is "unaware of any consultations or interaction between the Ogiek Community and the Task Force established by Gazette Notice No. 10944 of 10 November 2017." It further points out that given that the report of the Task Force has not been

submitted to the Court, it behoves the Respondent State to provide evidence of the work of the Task Force.

91. Overall, the Applicant submits that "since the Reparation judgment of 22 June 2022, the Ogiek or their representative(s) have not been consulted and/or had any interaction with any government agency of the Respondent State regarding implementation of the orders in the Reparations judgment." Contrarily, the Applicant points out that efforts to engage with the Respondent State have all been abortive given the "Respondent State has demonstrated a strong unwillingness to implement the orders of this Court or to even engage with the Ogiek…"

92. As to the inter-ministerial committee established to work on the implementation road map for the Court's judgments, the Applicant submits that the Ogiek only became aware of its existence through a Facebook post. The Applicant further states that the Ogiek have not interacted with the said inter-ministerial committee neither have they been consulted in the development of the so-called implementation road map.

***

93. In the context of the Court's findings in this matter, it is important to note that consultation with the Ogiek, especially if done in full cognisance and compliance with their traditions/customs, is necessary for the full realisation of the rights of the Ogiek. It is both a process as well as an outcome. In line with the Court's order, in its Judgment on Reparations, the Respondent State's duty is to ensure culturally appropriate consultation with the Ogiek, in respect of all development, conservation or investment projects on Ogiek ancestral land.

94. While the Respondent State's submissions suggest that attempts have been made to consult with the Ogiek, which is commendable, it is also clear that the Respondent State has not demonstrated the range of consultation

envisaged by the Judgment on Reparations, including its cultural appropriateness.

95. The Court finds, therefore, that the Respondent State has not demonstrated full compliance with its order for consultation with the Ogiek in accordance with their tradition/customs in respect of all development, conservation or investment projects on Ogiek ancestral land as ordered in paragraph ix of the operative part in its Judgment on Reparations.

96. The Court reiterates that the importance of consultations with the Ogiek, in the context of this matter, extends to all processes related to the implementation of the Court's decisions.

97. Given the evidence before it, the Court finds that while some attempts have been made, by the Respondent State, to consult the Ogiek on the implementation of the Court's decisions, these measures do not meet the threshold of meaningful and culturally appropriate consultation. The Court finds, therefore, that its order requiring consultation with the Ogiek in the implementation of its decisions has not been fully complied with.

98. Given the above, the Court orders the Respondent State to immediately implement necessary measures to ensure full compliance with the orders in paragraphs ix, x and xi of the operative part of its Judgment on Reparations.

vi. Measures to guarantee non-repetition

99. The Court ordered the Respondent State to adopt legislative, administrative and/or any other measures to give full effect to the terms of its judgment as a means of guaranteeing the non-repetition of the violations that it had established.

*

100. In addition to the establishment of the Ogiek Taskforce, the Respondent State submits that an interministerial committee "on implementation roadmap of the judgment of the African Court was appointed by the Principal Secretary, Ministry of Environment, Forestry and Climate Change, the Committee has not finalised its report for consideration."

101. The Respondent State also informed the Court that "whereas it is conceded that [it] may not have complied with all the orders of the African Court on Human and Peoples' Rights, there is no doubt that significant steps are being made towards giving effect to the orders of the Court with full involvement and consideration of the views of the Ogiek as directed by the African Court on Human and Peoples' Rights."

102. It is also the Respondent State's submission that "it is experiencing several challenges impeding the implementation processes" including "the historical and socially complex nature of some of the issues adjudicated on; the competing international law obligations on the Kenyan state; contradictory domestic legislation and judicial decisions which present complicated obstacles to overcome." According to the Respondent State, "the full compliance with the other orders of the Court require considerable financial outlay within a constrained fiscal space and may take time to be fulfilled."

*

103. In its "Observations on the Respondent State's Report on the Status of Implementation of the Merits and Reparations Judgment" filed on 4 June 2025, the Applicant surmises that the Respondent State's Report filed on 15 May 2025 demonstrates that "the Respondent State has not implemented its obligations under Articles 27(1) and 30 of the Court Protocol, which respectively provide that once the Court establishes a violation of a human and peoples' right and orders reparations, the Respondent State is mandatorily required to remedy the violation, including by payment of fair and appropriate compensation, and to implement the

judgment within the time stipulated by the Court and guarantee its execution."

***

104. The Court considers that to ensure its order requiring the Respondent State to guarantee the non-repetition of the violations that it established is complied with, the Respondent State must design and implement a range of measures which could be legislative and/or administrative. The Judgment on Reparations also directed the Respondent State to take such appropriate measures as would be necessary to guarantee the non-repetition of the violations. While the interventions required to implement the Court's order may require a range of activities, thus necessitating time before full implementation, it is important that the Ogiek be involved and kept abreast of all measures being taken to implement the Court's decision.

105. On the totality of its written submissions, as well as based on the oral submissions during the public hearing, the Court finds that while the Respondent State has expressed a commitment to taking measures to guarantee non-repetition of the violations identified by the Court, its submissions have lacked specificity, not only in terms of the steps already taken to implement the Court's orders but also of the interventions planned. The Applicant's uncontroverted submissions also indicate that the Respondent State has engaged in acts further undermining the Court's orders after the Judgment on Reparations was delivered. The Court finds, therefore, that its order requiring steps to guarantee the non-repetition of the violations against the Ogiek has thus not been fully implemented.

106. In the circumstances, the Court thus holds that the Respondent State has not complied with the order in paragraph xi of the operative part of the Judgment on Reparations, to immediately implement necessary measures be they legislative, administrative and/or any other measures to give full effect to the terms of the Court's decisions as a means of guaranteeing the non-repetition of the violations identified. The Court, therefore, orders the

Respondent State to immediately take steps to guarantee the non-repetition of the violation of the rights of the Ogiek.

vii. Establishment of a community development fund for the Ogiek and the operationalisation of a committee to manage the Fund

107. The Court ordered the Respondent State to take the necessary administrative, legislative and any other measures within 12 months of the notification of the Judgment on Reparations to establish a community development fund for the Ogiek which should be a repository of all the funds ordered as compensation in this case.

108. The Court also ordered the Respondent State, within 12 months of notification of the Judgment on Reparations, to take legislative, administrative or any other measures to establish and operationalise the Committee for the management of the development fund ordered in this Judgment.

*

109. The Respondent State submits that the establishment of a fund, as ordered by the Court, requires several processes to be undertaken. It points out that, primarily, the establishment of such a fund is a legislative matter governed by its Constitution and the Public Finance Management Act. It also submits that in the process of developing the necessary legal framework to support the establishment of the fund, prior consultations with the Ogiek and other affected people in the Mau Forest were necessary. It is also the Respondent State's submission that the establishment of the fund must follow from a careful process of identifying the beneficiaries of the fund, which process it had already embarked on, before finances could be channelled to the fund. The Respondent State thus submits that it needed more time to work on the logistics for the establishment of the Fund.

*

110. The Applicant submits that, to the best of its knowledge, the Respondent State neither established a Community Development Fund (hereinafter referred to as “the Fund”) nor appointed a management committee for the Fund.

111. The Applicant further submits that the Respondent State has not reported on whether or not the Ogiek Community Development Fund and its Management Committee have been established and operationalised.” According to the Applicant, the Respondent State had failed to provide a step-by-step explanation outlining the steps that it has undertaken to establish the Fund. The Applicant thus prayed that the Court issue an order with clear timelines for the establishment and operationalisation of the Fund.

***

112. The Court finds, on the basis of the evidence before it, that the Respondent State has not yet established the Fund nor set up the committee meant to manage the Fund. Admittedly, the establishment of the Fund must follow processes in the legal framework of the Respondent State. In the present matter, however, apart from providing general outlines of the procedures that precede the establishment of such a fund, the Respondent state has not given the Court any evidence to suggest that tangible steps have been commenced towards the establishment of the Fund that was ordered as well as the establishment of the committee to manage the same.

113. The Court holds, therefore, that its orders in respect of the establishment of a Fund and a committee to manage the same, as contained in paragraphs xii and xiii of the operative part of the Judgment on Reparations have not bee**n** implemented. The Court thus orders the Respondent State to immediately take steps to establish the Fund and operationalise a committee to manage the same in line with the Judgment on Reparations.

viii. Publication of judgments and their summaries

114. The Court ordered the Respondent State to, within six months of notification of the Judgment on Reparations, publish the official English summaries, developed by the Registry of the Court, of the judgment together with that of the Judgment on the Merits. The Court's order also directed that the summaries be published, once in the official Government Gazette and once in a newspaper with widespread national circulation. The Respondent State was also directed to, within the six months period earlier referred to, publish the full judgments on merits and on reparations, together with the summaries provided by the Registry of the Court, on an official government website where they should remain available for a period of at least one year.

*

115. During the public hearing, the Respondent State informed the Court that there was a political transition in its jurisdiction around the time the Court's Judgment on Reparations was delivered and this influenced its failure to comply with the order on publication of the decisions. It pointed out, however, that under the current dispensation a minorities and marginalised unit has been set up which, arguably, demonstrates the Respondent State's commitment to the plight of minorities and marginalised groups.

*

116. The Applicant submits that the Respondent State has not complied with the order of the Court to ensure the publication of the Court's Judgment on the Merits, the Judgment on Reparations, and the official summaries of both these judgments, within six months ordered by the Court. The Applicant further submits that the orders of the Court in the two judgments were, in fact, published in a newspaper, the Daily Nation, by the Kenya Human Rights Commission (a Non-Governmental Organisation) on 27 March 2024.

117. The Applicant also submits that the order for the publication of the judgments, and their summaries, is an example of the orders which do not require substantial financial implications for compliance. From this, the Applicant submits that the Respondent State's submission that compliance with the Court's orders would require considerable financial outlay is not factual. The Applicant also argued that the Court should note that three years after the Judgment on Reparations, the Respondent State still had not taken tangible steps to publish the decisions of the Court as ordered.

118. As to the Respondent State's submission about the impact of political transition within the Respondent State, the Applicant counter-submitted that the Court should take note that government institutions did not stop functioning due to the transition.

***

119. It is clear, from the Parties' submissions, that the Respondent State has not yet published the Judgment on the merits, the Judgment on Reparations and their summaries as ordered by the Court. The period within which the publication was to be done has also lapsed. The Respondent State has failed to demonstrate how a political transition in its jurisdiction could have prevented the publication of the decisions and their summaries especially given the continuity of state functions notwithstanding any political transition.

120. The Court holds, therefore, that its order for the publication of its judgments and their summaries, as stated in paragraph xiv of the operative part of the Judgment on Reparations, has not been complied with. The Court, therefore, orders the Respondent State to 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.

ix. Submission of report on implementation of the Court's orders

121. The Court ordered the Respondent State to submit, within 12 months from the date of notification of the Judgment on Reparations, a report on the status of implementation of all the Orders therein.

*

122. On 15 May 2025 the Respondent State filed a report on the steps it has taken to comply with the Court's decisions. Among other things, in its report, the Respondent State outlined the challenges that it has faced in implementing the Court's judgments.

*

123. In its submissions dated 25 October 2024, the Applicant submits that the Respondent State has failed to comply with the order to file a report on the implementation of the Court's decisions within 12 months of notification. It was also the Applicant's submission that the failure to file the report amounted to a violation of Article 30 of the Protocol as well as Article 1 of the Charter.

124. In its additional submissions dated 8 November 2024, the Applicant invited the Court to find that "failure by a Respondent State to report on the status of implementation of a Court Judgment, constitutes a violation of the African Charter, and the Protocol establishing the Court."

125. According to the Applicant, non-implementation of the Court's judgments "comprises two parts: (i) reporting on the measures taken or about to be taken to implement the Court's judgments; and (ii) the omissions or actions taken by the Respondent State that contravene the Court's orders."

***

126. The Parties' submissions in this matter confirm, unequivocally, that the Respondent State did not file a report on the status of implementation of the Court's decision within the time that was prescribed by the Judgment on Reparations. It is clear, therefore, that the Respondent State failed to comply with the Court's order.

127. The above notwithstanding, the Respondent State did file a report on the status of implementation of the Court's decisions on 15 May 2025. Given that the Judgment on Reparations was notified to the Respondent State on 25 June 2022, the time within which the report on implementation ought to have been filed lapsed on 25 June 2023. The Respondent State's report, therefore, while providing details about the steps that have been undertaken to comply with the Court's decisions, was filed after the period that the Court had prescribed – a delay of one year, ten months, 20 days.

128. The Court reiterates the obligation of State Parties to comply, in full, with all its orders as prescribed by Article 30 of the Protocol. In the present matter, it holds that its order, as outlined in paragraph xv of the operative part of the Judgment on Reparations, has not been complied with.

VI. ON THE APPLICANT'S REQUEST FOR PROVISIONAL MEASURES AND THE ALLEGED CONTINUING VIOLATION OF THE OGIEK'S RIGHTS

129. The Applicant's consistent submission, across the various documents that they have filed, and even during the public hearing, is that the Respondent State has not only failed to take steps to comply with the Court's decisions but it has also taken steps that "actively contravene both Judgments." Against this background, the Applicant prayed for an order for provisional measures to prevent further violations of the rights of the Ogiek.

130. To illustrate the alleged continuing violations, the Applicant submitted that in November 2023 "dozens of armed KFS and KWS guards invaded Ogiek ancestral lands at Sasimwani and Nkareta, in a violent campaign

characterised by burning of houses and schools, destruction of property and seizing of livestock, and forcefully evicting more than 700 Ogiek community members, rendering them homeless and destitute." It is the Applicant's submission that similar incidents have been reported in other parts of the Mau Forest. In the circumstances, the Applicant submits that the Respondent State's conduct amounts to a violation of paragraphs iv, ix, x and xi of the operative part in the Judgment on Reparations.

131. The Applicant further submits that the repeated violations "constitute a deliberate disregard of the Court's jurisdiction and its Judgments by the Respondent State which by analogy, under a domestic jurisdiction, would amount to grave contempt of court. Several affidavits were filed by the Applicant to demonstrate the alleged further violations of the Ogiek's rights.

132. The Applicant also invites the Court to specifically note that the Respondent State has failed to rebut the allegations relating to the continuing violations of the rights of the Ogiek in the Mau Forest.

*

133. During the public hearing, the Respondent State indicated that it was cognisant of the decisions of the Court, both on the merits and on reparations, and of the specific orders that the Court had issued for implementation. It argued that implementation of the Court's orders requires a myriad of institutions to cooperate and collaborate. Overall, the Respondent State submits that it has taken steps to implement the decisions of the Court even though it may not, yet, have fully implemented all the orders.

134. The Respondent State invited the Court to note "the historical complexity and the sensitivity of the land issue in Kenya". In so far as land within the Mau Forest is concerned, the Respondent State submits that the Mau Forest is part of land that it "seeks to protect for the benefit not only for Kenya but for Africa at large." In this connection, the Court was reminded

that Kenya is a signatory to many international treaties[7] which impose duties to protect and manage the environment not only for the benefit of the Ogiek but Africa at large.

135. The Respondent State also submits that its implementation of the decisions of the Court has been constrained by financial and political challenges. In relation to the financial challenges, the Respondent State pointed to the general resource constraints affecting the country. As for the political challenges, it pointed out that changes in the staffing of key ministries and departments as well as non-appointment of certain office bearers has had a key bearing on the implementation of the Court's decisions.

136. The Respondent State thus submits that while it is "doing its best" to implement the decisions of the Court, it requires more time to fully implement them. According to the Respondent State, the complex interplay between legal and institutional factors necessitates that more time be accorded to it to work on the implementation of the decisions.

*

137. The *amici curiae*, while invoking the practice of the Inter American Court of Human Rights, submit that the Court can adopt provisional measures even at the compliance stage to prevent irreparable harm to the Applicants. The *amici* also submit that under Article 31 of the Protocol, as well as Rule 81(3) of the Rules, the Court can hold "an urgent hearing to prevent irreparable harm and the state from reneging on its obligation to implement its Judgment on Reparations."

***

[7] The treaties specifically cited by the Respondent State were: The United Nations Framework Convention on Climate Change. Kenya has equally ratified the Paris Agreement; The Kyoto Protocol; The Montreal Protocol and; The Vienna Convention on the Protection of the Ozone Layer.

138. From the Court's assessment of the Parties' submissions, it emerges that the request for provisional measures arises, principally, from the non-implementation of the Court's orders. The full implementation of the orders that the Court made, both in its Judgment on Merits as well as Judgment on Reparations, therefore, would obviate the need for the issuance of a further order for provisional measures.[8]

139. Given the findings that the Court has made in these proceedings, and the orders that flow therefrom, the Court finds that an order for provisional measures is not warranted.

VII. ON IMPLEMENTATION AND REPORTING

140. The Court emphasises that it remains of utmost importance for the Respondent State to desist from engaging in any conduct that may undermine any of its orders in this matter. Specifically, the Court recalls and reaffirms the general principle of international law that a State cannot invoke its domestic laws to justify a breach of its international obligations.[9]

141. In the circumstances, and to ensure systematic follow up on the implementation of its orders,[10] the Court holds that the Respondent State shall file, within six months of notification of this Order, a report on the implementation of the Court's decisions to include a clear and specific indication of the steps being taken and/or planned for the full implementation of all the orders issued by the Court in this matter.

[8] On 15 March 2013 the Court issued an order for provisional measures in this Application, see - *African Commission on Human and Peoples' Rights v Kenya*, Order (provisional measures), (15 March 2013) 1 AfCLR 193.
[9] Article 27 VCLT – A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.
[10] See, *Suy Bi Gohore Emile & ors v Republic of Côte d'Ivoire* (judgment), *ibid*, §§ 55-56; *James Wanjara & ors v United Republic of Tanzania* (judgment) (25 September 2020) 4 AfCLR 673, §116 and *Wilfred Onyango Nganyi and others v United Republic of Tanzania* (reparations) (4 July 2019) 3 AfCLR 308, § 83.

VIII. COSTS

142. Neither of the Parties made any submissions on costs.

*

143. Pursuant to Rule 32(2) of the Rules, "unless otherwise decided by the Court, each party shall bear its own costs."

144. In the circumstances, the Court does not find any reason for departing from its established practice and thus orders that each Party will bear its own costs.

IX. OPERATIVE PART

145. For these reasons,

THE COURT,

Unanimously,

On jurisdiction

i. *Holds* that it has jurisdiction to conduct this hearing in order to determine compliance with its decisions.

In respect of compliance with the Court's orders:

On the Respondent State's obligation to take all necessary measures to remedy the violations established

In relation to the orders in the Judgment on the Merits

ii. *Orders* the Respondent State to immediately take all necessary steps, be they administrative, legislative or otherwise to remedy all the violations established in the Judgment on the Merits.

In relation to the orders in the Judgment on Reparations

On the payment of pecuniary reparations, KES 57 850 000 for material prejudice and KES 100 000 000 for moral prejudice

iii. *Orders* the Respondent State to, immediately, take steps to pay KES 57 850 000 for material prejudice and KES 100 000 000 for moral prejudice which the Court ordered as remedies for the violation of the rights of the Ogiek.

On the identification, delimitation, demarcation and titling of Ogiek ancestral lands

iv. *Orders* the Respondent State to, immediately, take all necessary measures be they legislative, administrative or otherwise to identify, in consultation with the Ogiek and/or their representatives, and delimit, demarcate and title Ogiek ancestral land and to grant collective title to such land.

On procedures for occupied Ogiek ancestral land

v. *Orders* the Respondent State to, immediately, initiate the necessary processes to ensure the resolution of claims relating to Ogiek ancestral lands occupied by third parties.

On recognition of the Ogiek as an indigenous population

vi. *Orders* the Respondent State to take appropriate steps to, immediately guarantee full recognition of 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 Ogiek cultural and religious practices.

In relation to the right to consultation of the Ogiek

vii. *Orders* the Respondent State to, immediately, 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 tradition/customs in respect of all development, conservation or investment projects on Ogiek ancestral land.

On consultation in the implementation of the Judgment on Reparations

viii. *Orders* the Respondent State to, immediately, implement necessary measures to ensure the full consultation and participation of the Ogiek, in accordance with their traditions/customs, in the reparation process as ordered in the Judgment on Reparations.

On measures to guarantee non-repetition

ix. *Orders* the Respondent State to, immediately, implement necessary measures be they legislative, administrative and/or any other measures to give full effect to the terms of the Court's decisions as a means of guaranteeing the non-repetition of the violations identified.

On the establishment of a community development fund for the Ogiek and the operationalisation of a committee to manage the Fund

x. *Orders* the Respondent State to, immediately, take all necessary steps to establish the Fund and the committee for the

management of the fund as ordered in the Judgment on Reparations.

On publication of judgments and their summaries

xi. *Orders* the Respondent State to, immediately, take steps to ensure publication of the Judgment on Merits and the Judgment on Reparations and their summaries as ordered in the Judgment on Reparations.

On submission of report on implementation of the Court's orders

xii. *Finds* that the Respondent State submitted a report on the implementation of the Court's decisions albeit out of the time frame prescribed by the Court.

On the Applicant's request for an order for provisional measures and allegations of further violations of the rights of the Ogiek

xiii. *Decides* not to order any provisional measures.

On implementation and reporting

xiv. *Orders* the Respondent State to stop and desist from any actions/conduct that may in any way undermine the terms of both the Judgment on the Merits as well as the Judgment on Reparations;

xv. *Orders* the Respondent State to file, within six months of notification of this Order, a report on the implementation of the Court's decisions to include a clear and specific indication of state of implementation of all the orders issued by the Court in this matter.

On costs

xvi. *Orders* that each Party shall bear its costs.

Signed:

Modibo SACKO, President;

Chafika BENSAOULA, Vice President;

Rafaâ BEN ACHOUR, Judge;

Suzanne MENGUE, Judge;

Tujilane R. CHIZUMILA, Judge;

Blaise TCHIKAYA, Judge;

Stella I. ANUKAM, Judge;

Imani D. ABOUD, Judge;

Dumisa B. NTSEBEZA, Judge;

Dennis D. ADJEI, Judge;

Duncan GASWAGA, Judge;

and Grace W. KAKAI, Deputy Registrar.

Done at Arusha, this 4th Day of December in the Year Two Thousand and Twenty-Five in English and French, the English text being authoritative.