

The workshop looked at examples of International and Regional Human Rights Mechanisms for Economic Social and Cultural Rights

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One of the outstanding characteristic of Kenya and indeed most African governments is that they conduct globalization affairs as if the countries were homogenous, despite the fact that they are made up of different nationalities, minorities, indigenous communities and cultural groups. This has had a debilitating effect on the whole scope of Minorities and Indigenous peoples lives which is one of the major causes of marginalization, impoverishment, exploitation, commercialization, neglect, abuse and disenfranchisement that continues to hamper the realization of their basic rights and fundamental freedoms as enshrined in the national constitutions and other regional and international instruments. In seeking their Social, Economic and Cultural Rights in Kenya, pastoralist and other minority communities such as Endorois, Ilchamus, Ogiek among other groups of peoples' with special needs and approach to life, have utilized their strong interconnectivity that defines them not as individuals but collectively as a single unit to mobilize, build synergies and consensus on the right course of action. This collectivity is the strength that has been used to ensure that indigenous and minority communities seek justice through local, regional and global human rights mechanisms since government and global forces have insatiable focus on their resources, cultures, intellectual property and their territories.

For the case of the 60,000 Endorois of Rift Valley, they were forcibly evicted without consultation or compensation, from their ancestral lands in the 1970s to pave way for the creation of the Hannington Game Reserve in 1973 and a subsequent re-gazetting of the Lake Bogoria Game Reserve in 1978 by the government of Kenya. The community formed the Endorois Welfare Council and approached the then President Daniel arap Moi (then their representative in parliament) and he directed that the local authority compensate the community and further directed that 25% of the annual income be allocated to the Endorois.

These directives came to naught and through the community moved to local courts and subsequently in 1998, the community moved to the High Court ¹where their case was dismissed although the High Court recognized that Lake Bogoria had been Trust Land for the Endorois but noted that the Endorois had effectively lost any legal claim as a result of the designation of the land as a Game Reserve in 1973 and in 1974. Through a partnership with the Minority Rights Group International and the Centre for Minority Rights Development, the community moved to the African² Commission on Human and Peoples Rights (ACHPR) seeking social, economic and cultural rights. In 2010 the ACHPR made a ruling in favour of the Endorois community noting that the government of Kenya bore the responsibility of creating conditions favourable to a people's development in accordance with Article 3 of the Declaration on the Right to Development of which Kenya is a signatory. Secondly, the Commission also held that the right of the Endorois to freely dispose of their wealth and natural resources in consultation with the government which right is secured by Article 21 of the African Charter had been violated. Further the Commission noted that by forcing the community to live in semi-arid areas without access to medicinal salt licks and other vital resources for the health of their livestock, the government created a major threat to the Endorois pastoralist way of life hence denying them the very essence of their right to culture and

¹ *Endorois Memorandum to the Truth Justice and Reconciliation Commission 2011*

² See www.minorityrights.org/%3Flid%3D9587

rendering that right to all intents and purposes illusory contrary to Article 17(2) and (3) of the Charter to which Kenya is a signatory.

The Commission therefore reached a conclusion that the government was in contravention of Articles 1, 8, 14, 17, 21 and 22 of the African Charter on Human and Peoples rights as against the Endorois and made the recommendations that:

1. The government recognizes the ownership of the Endorois and restitute their ancestral land.
2. The government ensures that the Endorois community has unrestricted access to Lake Bogoria and surrounding sites for religious and cultural rites and for grazing their cattle.
3. The government of Kenya pays adequate compensation to the community for the loss incurred.
4. The government pays royalties to the Endorois from the existing economic activities and ensure that they benefit from employment possibilities within the reserve.
5. The government grants registration of the Endorois Welfare Committee.
6. The government engages in dialogue with the Endorois for effective implementation of these recommendations.

The government tables a report on the implementation of the Commission's recommendations within three months from date of notification