AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA

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

(PROCEDURE)

25 JUNE 2021

The Court composed of: Imani D. ABOUD, President; Blaise TCHIKAYA, Vice-President, Rafaâ BEN ACHOUR, Suzanne MENGUE, M-Thérèse MUKAMULISA, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Modibo SACKO – Judges; and Robert ENO, Registrar.

In accordance with Article 22 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") and Rule 8(2) of the Rules of Court (hereinafter referred to as "the Rules), Justice Ben KIOKO, member of the Court and a national of Kenya, did not hear the Application.

In the Matter of:

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

Represented by:

i. Dr. Solomon Ayele DERSO, Commissioner
ii. Mr. Bahame Tom NYANDUGA, Counsel
iii. Mr. Donald DEYA, Counsel

Versus

REPUBLIC OF KENYA

Represented by:

i. Mr. Kennedy OGETO, Solicitor General
ii. Mr. Emmanuel BITIA, Principal Litigation Counsel
iii. Mr. Peter NGUMI, Litigation Counsel

After deliberation,

Issues the following Order:

I. THE PARTIES

1. The Applicant is the African Commission on Human and Peoples' Rights (hereinafter referred to as "the Applicant"). It filed this Application 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 "the Protocol").

2. The Application was filed against the Republic of Kenya (hereinafter referred to as "the Respondent State"). The Respondent State became a Party to the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") on 10 May 1992 and to the Protocol on 18 February 2005.

II. BRIEF BACKGROUND

3. On 26 May 2017, the Court delivered a Judgment on the merits in which it found the Respondent State to have violated Articles 1, 2, 8, 14, 17(2) and (3), 21 and 22 of the Charter with respect to the Ogiek Community of the Mau Forest Complex within the Respondent State. Simultaneously, the Court reserved its determination on reparations while permitting the parties to file submissions on reparations.

4. Subsequently, both Parties filed their submissions on reparations and these were duly exchanged between them.

5. During the 55th Ordinary Session of the Court, held between the 4th and 29th November 2019, the Court decided to hold a public hearing on reparations in this matter. The Parties were subsequently duly informed that the hearing was scheduled for 6 March 2020.

6. Due to the non-availability of the Parties, as well as the Court appointed experts, the hearing scheduled for 6 March 2020 was, on 3 March 2020, adjourned to 5 June 2020 and the Parties were informed accordingly.

7. On 18 May 2020, the Registry informed the Parties that the public hearing on reparations had been adjourned *sine die* due to the challenges brought about as a result of the COVID-19 Pandemic.

8. On 8 July 2020, the Registry informed the Parties of the Court's intention to hold a virtual hearing between 7 and 8 September 2020. The Parties were also invited to confirm their availability and capacity to participate in a virtual hearing.

9. On 6 August 2020, the Respondent State confirmed its general capacity to participate in a virtual hearing but also requested for an adjournment on the ground that it would be difficult for them to participate in the hearing due to the COVID-19 Pandemic.

10. On 28 August 2020, the Registry informed the Parties that the hearing had been adjourned on account of the persisting challenges due to the COVID-19 Pandemic.

11. On 17 February 2021, the Registry informed the Parties that the public hearing on reparations had been set down for 8 and 9 June 2021.

12. On 29 March 2021 the Registry requested the Parties to confirm their participation in the public hearing scheduled for 8 and 9 June 2021 and also to provide names of their representatives for the hearing.

13. On 19 May 2021, the Respondent State informed the Court that it was unable to confirm its attendance of the public hearing scheduled for 8 and 9 June 2021 due to, among others, "the prevailing situation occasioned by the COVID-19 Pandemic". It also expressed its "very strong reservations" to the holding of a virtual public hearing in a situation involving the examination of witnesses.

14. On 3 June 2021 the Registry informed the Parties of the adjournment of the hearing scheduled for 8 and 9 June 2021.

III. ON THE PROCEDURE FOR DISPOSAL OF THE CASE

15. The Court recalls that when this matter was first set down for a public hearing, scheduled for 6 March 2020, the Registry sent the Parties, and the *amici curiae,* a list of issues to clarify ahead of the public hearing.

16. The Court notes that both Parties and the *amici curiae* have now filed their Responses to the issues that were raised.

17. The Court also notes that efforts to hold the public hearing in this matter have, this far, not made meaningful progress largely due to the COVID-19 Pandemic.

18. Given the uncertainty engendered by the COVID-19 Pandemic, and the other challenges experienced by the Court in attempting to schedule the public hearing in this matter, the Court decides to invoke Rule 90 of the Rules of Court (hereinafter "the Rules") in determining the most suitable procedure for finalizing this matter.

19. The Court, noting that both Parties, and even the *amici curiae*, have filed their submissions on reparations as well as Responses to the List of Issues identified by the Court and also noting the prevailing situation, especially in relation to the COVID-19 Pandemic, decides to adjourn, *sine die*, the public hearing that was scheduled in this Application..

20. Further, and fully mindful of Rule 30 of the Rules, the Court decides that all the claims on reparations shall, unless otherwise determined, be resolved on the basis of the written pleadings and submissions filed by the Parties.

IV. OPERATIVE PART

21. For the above reasons

THE COURT

Unanimously:

i. *Decides* to adjourn *sine die* the public hearing that was scheduled in this matter;
ii. *Decides* that the reparations phase of this Application shall be disposed of on the basis of the Parties' written pleadings and submissions.

Signed:

Imani D. ABOUD, President;

Robert ENO, Registrar.

Done at Arusha, this Twenty-Fifth Day of the month of June in the year Two Thousand and Twenty One, in English and French, the English text being authoritative.