



International Network for Economic, Social & Cultural Rights
Red Internacional para los Derechos Económicos, Sociales y Culturales
Réseau international pour les droits économiques, sociaux et culturels
الشبكة العالمية للحقوق الاقتصادية والاجتماعية و الثقافية

Dr Mary Maboreke

African Commission on Human and Peoples' Rights

**31 Bijilo Annex Layout, Kombo North District
Western Region**

P.O Box 673, Banjul

The Gambia

19 August 2014

Dear Dr Maboreke:

Letter of Support to Communication no 276/2003: Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya

The Strategic Litigation Working Group of the International Network on Economic, Social and Cultural Rights (ESCR-Net) presents this letter of support for Minority Rights Group International (MRG) and Endorois Welfare Council (EWC)'s request for the application by this Honourable Commission of Rule 112(8) of the Rules of Procedure, regarding follow-up on the recommendations of the Commission in Communication n. 276/2003 on behalf of the Endorois Welfare Council v. Kenya.

The Strategic Litigation Working Group (please see the appendix for information on Group members) is part of ESCR-Net, a network of more than 200 member organizations based in 70 countries. ESCR-Net has as its mission to make human rights and social justice a reality for all. The Working Group has been involved in monitoring implementation of the Endorois case in recent years as we consider that the recommendations issued by this Honourable Commission in the case have great potential for the advancement of indigenous peoples' rights on the African continent.

However, in the four years following the Commission's recommendations regarding the Endorois case, the Kenyan government has not taken appropriate and necessary steps toward implementing those recommendations. Such reluctance has remained even in the face of ACHPR/Res. 257 of November 2013, which called upon the government to submit a Status Report and Roadmap for implementation of the case. Furthermore the government is yet to substantively respond to direct overtures for negotiations with the Endorois community, including: failure to honour an invitation to a joint forum with the Commission's Working Group on Indigenous Populations and the UN Special Rapporteur on the Rights of Indigenous Peoples, which was held in Nairobi on September 23, 2013, and a failure to substantively respond to requests for dialogue by Kenya's Commission on Administration of Justice, who were seized of the matter following a request by the Endorois community in light of ACHPR/Res. 257 of November 2013.

The lack of implementation of the Commission's recommendations in the Endorois case is representative of the challenge that the African System faces regarding implementation more generally. Non-implementation of Commission recommendations hurts human rights in the region and threatens the legitimacy and credibility of the Commission. We thus applaud the innovative implementation framework that the African System has adopted, including Rule 112(8) of the Rules of Procedures. This rule allows the Commission to draw the attention of the African Union (AU) Sub-Committee

of the Permanent Representatives Committee and the Executive Council toward situations of non-compliance with the Commission's rulings, with the aim of putting greater pressure on states to comply with Commission recommendations. By putting this new implementation framework into practice, the African Commission can provide the human rights field with an innovative and much needed tool of enforcement. Given the high profile nature of the Endorois Case, and its importance to indigenous rights in the region more generally, we consider that this case provides an excellent opportunity for the Commission to make use of Rule 112(8), thus demonstrating its commitment to and improving the likelihood of implementation of the decision.

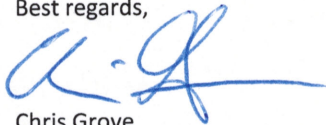
Based on our collective experience in strategic human rights litigation and implementation around the world, we understand that the key step for enhancing effective implementation of human rights decisions, especially as they affect large numbers of people, lies in ensuring that the government—in close and active consultation with affected communities, in this case the Endorois—develops, adopts and fulfils a detailed roadmap and concrete timeline specifying how it will implement each of the Commission's recommendations. In this case, the roadmap would cover the process for land restitution (from mapping of land to the suspension of any activities on Endorois land that they do not approve of); the guarantee of unrestricted access of the Endorois to Lake Bogoria and surrounding sites for religious and cultural rites as well as grazing; the process for assessment and payment of adequate compensation for material and immaterial losses; and the process for assessment and payment of royalties regarding all economic activities conducted on Endorois land during the last 40 years.

This dialogical process for implementation, to be adopted by the Kenyan government in conversation with the Endorois, needs ongoing monitoring from AU bodies. The Inter-American System of Human Rights, as well as national courts, including South Africa, Argentina, and Colombia, have embraced this type of dialogical approach to implementation. A dialogical approach with the involvement of AU bodies on this case will further strengthen the possibility of implementation in the African System and serve as an innovative model for implementation to be followed by other regional and national jurisdictions.

In light of Kenya's continuing non-compliance with the Commission's recommendations, ESCR-Net's Strategic Litigation Working Group therefore supports MRG and CEMIRIDE's letter for the application of Rule 112(8) of the Rules of Procedures to the Endorois case. In so doing, it also encourages the Commission to invite the African Union Sub-Committee of the Permanent Representatives Committee and the Executive Council, in exercising their oversight responsibilities, to specifically request that Kenya takes immediate steps to adopt a detailed roadmap and timeline, in close consultation with the Endorois, regarding how implementation of the Commission's rulings will take place, and in what reasonable timeframe. This roadmap and timeline should be sent directly to those African Union oversight bodies, as well as the Honourable Commission, within six months of the request for continued supervision, monitoring and oversight.

Thank you for considering this letter.

Best regards,



Chris Grove

Director of ESCR-Net

On behalf of ESCR-Net Strategic Litigation Working Group

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Appendix - Members of ESCR-Net's Strategic Litigation Working Group

Organizational Members	Country
Asociacion Civil por la Igualdad y la Justicia (ACIJ)	Argentina
Action Contre Impunitie Pour Les Droits Humains; Action against impunity for human rights (ACIDH)	DRC
Adalah	Israel
Amnesty International (AI)	UK
Bulgarian Helsinki Committee	Bulgaria
Citizen, Democracy and Accountability; Obcan, demokracia a zodpovednost (CDA)	Slovakia
Centro por la Justicia y el Derecho International, Center for Justice and International Law (CEJIL)	N/A
Center for Legal and Social Studies, Centro de Estudios Legales y Sociales (CELS)	Argentina
Centro Mexicano de Derecho Ambiental (CEMDA)	Mexico
Center for Minority Rights Development (CEMIRIDE)	Kenya
Center for Economic and Social Rights (CESR)	US
Child Rights International Network (CRIN)	N/A
Center for Human Rights and Development (CHRD)	Mongolia
Comisión Colombiana	Colombia
Community Law Centre (CLC)	South Africa
Conectas Human Rights	Brazil
Center for Reproductive Rights (CRR)	N/A
Dejusticia	Colombia
Egyptian Initiative for Personal Rights (EIPR)	Egypt
Equipo Pueblo	Mexico
Instituto de Liderazgo Simone de Beauvoir AC	Mexico
International Federation for Human Rights; La Fédération internationale des ligues des droits de l'Homme (FIDH)	N/A
Foro Ciudadano de Participación por la Justicia y los Derechos Humanos (FOCO)	Argentina
FUNDAR	Mexico
Global Initiative for Economic, Social and Cultural Rights (GI-ESCR)	US
Hakijamii	Kenya
Habitat International (HIC)	N/A
Human Rights Law Center (HRLC)	Australia
Human Rights Law Network (HRLN)	India
International Commission of Jurists (ICJ)	N/A
Instituto de Estudios Legales y Sociales del Uruguay (IELSUR)	Uruguay
Instituto Latino Americano De Servicio Legales Alternativos (ILSA)	Colombia
Interchurch Organisation for Development Cooperation (ICCO)	N/A

International Women's Rights Action Watch (IWRAW) Asia Pacific	N/A
Instituto de Políticas Públicas en Derechos Humanos del MERCOSUR (IPPDH)	Argentina
Judgment Watch	UK
Kenyan Human Rights Commission (KHRC)	Kenya
Kituo Cha Sheria	Kenya
Land Center for Human Rights (LCHR)	Egypt
Legal Resources Center (LRC)	South Africa
Movement for the Survival of the Ogoni People (MOSOP)	Nigeria
Minority Rights Group (MRG)	N/A
Observatori DESC	Spain
Program on Human Rights and the Global Economy at Northeastern University (PHRGE)	US
Proyecto de Derechos Economicos, Sociales y Culturales (PRODESC)	Mexico
Social and Economic Rights Action Center (SERAC)	Nigeria
Socio-Economic Rights Institute (SERI)	South Africa
Social Rights Advocacy Centre (SRAC)	Canada
Terra de Direitos (TDD)	Brazil
Tierraviva	Paraguay
Individual Members	Country
Andrea Dabizzi	Bosnia
Aoife Nolan	UK
Clara Padilla	Philippines
Geoff Budlender	South Africa
Juana Sotomayor	Peru
Julieta Rossi	Argentina
Lilian Chenwi	South Africa
Lucy Williams	US
Malcolm Langford	Norway
Marcos Olleana	US
Mario Gomez	Sri Lanka
Mario Melo	Ecuador
Raju Chapagai	Nepal
Sandra Liebenberg	South Africa
Sara Hossain	Bangladesh
Tara Melish	US