

Substance

Right to property – article 14

The right to property guaranteed in article 14 applies to both individuals and groups (*African Commission on Human and Peoples' Rights v Kenya*, application 006/2012, Judgement, 26 May 2017, para 123). The right to property has three defining elements –the right to use the property (*usus*), to enjoy the fruits of the property (*fuctus*), and capacity to transfer the property (*abusus*) (*African Commission on Human and Peoples' Rights v Kenya*, application 006/2012, Judgement, 26 May 2017, para 124). The Court will take into consideration applicable international principles, especially by the United Nations in interpreting the right to property of indigenous communities (*African Commission on Human and Peoples' Rights v Kenya*, application 006/2012, Judgement, 26 May 2017, para 125). Indigenous communities have the right to occupy, use and enjoy their ancestral lands (*African Commission on Human and Peoples' Rights v Kenya*, application 006/2012, Judgement, 26 May 2017, para 128). The right to property may however, be restricted if the restriction meets the requirements of necessity and proportionality (*African Commission on Human and Peoples' Rights v Kenya*, application 006/2012, Judgement, 26 May 2017, para 129). Evicting indigenous people from their lands without prior consultation and satisfying the public interest requirement amounts to a violation of the right to property (*African Commission on Human and Peoples' Rights v Kenya*, application 006/2012, Judgement, 26 May 2017, para 131). In the Ogiek case, the state's justification that the eviction was done to preserve the natural ecosystem of the disputed forest was rejected because no evidence was led to show that the continued presence of the Ogiek in the forest was 'the main cause of the depletion of the natural environment in the area (*African Commission on Human and Peoples' Rights v Kenya*, application 006/2012, Judgement, 26 May 2017, para 130).