

Substance

Freedom of conscience and religion - article 8

The right to freedom of worship offers protection to all forms of beliefs and includes the right of individuals to assemble in connection with their religion or belief and to establish and maintain places for this purpose (*African Commission on Human and Peoples' Rights v Kenya*, application 006/2012, Judgement, 26 May 2017, para 163). In the context of tradition societies which do not have formal religious institutions the practice of religion is 'usually inextricably linked with land and the environment' and as such 'any impediment to, or interference accessing the natural environment, including land, severely constrains their ability to conduct or engage in religious rituals', which impacts on their freedom of religion (*African Commission on Human and Peoples' Rights v Kenya*, application 006/2012, Judgement, 26 May 2017, para 164). Restrictions may however, be placed on the freedom of religion for the purpose of maintaining law and order but these restrictions must be necessary and reasonable. Consequently, in the case of the Ogiek community, the Court held that outright eviction which restricted their ability to practice their religion amounted to a violation of the right since there were less onerous measures which could have been adopted to ensure the enjoyment of the right while maintaining law and order (*African Commission on Human and Peoples' Rights v Kenya*, application 006/2012, Judgement, 26 May 2017, para 167). Similarly, the mere fact that some members of the indigenous community has converted to Christianity does not mean they have entirely abandoned their traditional spiritual values and rituals which justifies a denial of access to their cultural and religious lands (*African Commission on Human and Peoples' Rights v Kenya*, application 006/2012, Judgement, 26 May 2017, para 168).