April 30, 2026.

Human Rights Council Advisory Committee

Via electronic mail: OHCHR-hrcadvisorycommittee@un.org

Subject: ESCR-Net Submission to the call for inputs on legal enforcement of ESC rights.

Dear members of the United Nations Human Rights Council Advisory Committee,

On the occasion of the call for submissions made by the Human Rights Council Advisory Committee to identify trends in the use of courts for the enforcement of economic, social and cultural rights (ESCR), and obstacles and challenges associated with making these rights justiciable at the domestic level, we, the International Network for Economic, Social and Cultural Rights (ESCR-Net),[1] submit these contributions for the Committee's consideration. The submission was developed and endorsed collectively by members of the Strategic Litigation Working Group of the ESCR-Net, who have been working locally on the different cases we will present.[2]

In a global context marked by rising inequality, corporate cupture of public decision-making processes, climate crisis, external debt growth in Global South countries and, alongside it, the expansion of imposed structural adjustment programs -which lead to the deterioration of ESCR for a large part of the population-, the legal enforcement of economic, social and cultural rights has become critical for social movements, human rights and civil society organizations.

Since the 1980s, neoliberal economic policies and structural adjustment programs led to a marked decline in the effective realization of economic, social and cultural rights and

[1] ESCR-Net is a network consisting of more than 300 groups of social and feminist movements, Indigenous Peoples, NGOs, and environmental and human rights defenders spread across 80 countries. For 20 years and counting, the Network continues to work towards social justice through human rights including the right to self-determination, the right to development and ESCR.

[2] **Contributors**: Dejusticia; Environmental Defender Law Center; Minority Rights Group (MRG); Ogiek Peoples' Development Program (OPDP); and Project on Organizing, Development, Education, and Research (PODER); facilitated by ESCR-Net's Strategic Litigation Working Group Coordinator, Felipe Mesel. For further information on the submission, please contact him at fmesel@escr-net.org

contributed significantly to the formation of an unequal society with growing social exclusion. Legislative setbacks in the area of ESCR (particularly regarding the rights to health, education, labor rights, and social security rights) in many contexts have been key elements of this new landscape of weakened protection of ESCR and the expansion of poverty.

However, despite this legislative regression, the expansive recognition of collective rights and the broad standing granted for their defense in various countries seem to have enabled different social actors to find in the courts a meaningful avenue to seek the realization of ESCR.[3] In this sense, strategic litigation has represented an important step forward in the enforceability of ESCR, as a mechanism for access to justice for historically marginalized groups.

That said, the core challenge we identify is that when these groups historically excluded from access to justice -on the basis of their class, ethnicity, race, gender, or nationality- do reach the courts and obtain favorable decisions, implementation problems emerge that prevent real access to justice, producing a deep sense of frustration and discredit regarding the effectiveness of the legal system.

In this document, we will focus on concrete cases from different countries that present challenges in the legal enforcement and implementation of positive court decisions on ESCR, which we want to bring to the Committee's attention for its consideration. We decided to focus our analysis on the implementation stage of decisions, understanding that it is a critical point in strategic litigation on ESCR, where many of the structural shortcomings that hinder the effective realization of rights are concentrated. All the cases we will analyze take place in national contexts where ESC rights have been constitutionally recognized, the International Covenant on Economic, Social and Cultural Rights (ICESCR) has been ratified, and access to justice for the most vulnerable groups is formally guaranteed. However, even where favorable decisions have been obtained, we observe that the critical bottleneck preventing their practical realization lies in the enforcement stage of the judgments. This stage is central, as it is where judicial decisions are actually set in motion and translated into concrete improvements in the living conditions of their beneficiaries. When this does not occur, judicial decisions become a dead letter, and the living conditions that led communities to seek judicial remedies remain unchanged.

Many of the cases we will present relate to the right to land and environmental rights. All of the cases address the interdependence of these rights with other ESCR, as access to land and to a healthy and balanced environment are a necessary condition for the

[3] Centro de Estudios Legales y Sociales (CELS), 1999. "La justiciabilidad de los derechos económicos, sociales y culturales: un desafío impostergable." See: https://www.cels.org.ar/common/documentos/justiciabilidad_desc.pdf

realization of the full range of economic, social and cultural rights. For this reason, we consider it essential to affirm the importance of the right to access land, which is inseparable from the right to housing, the right to self-determination, the right to development, the right to a healthy environment, the right to water, the right to health, and other rights that are at issue in the cases covered.

Following a brief presentation of the cases and the identification of the specific challenges each entails, we will offer a concluding section identifying common patterns in judicial behavior and structural shortcomings in systems for the effective realization of ESCR.

1. National court cases.

1.1. Huancavelica and Sacsamarca community in Peru.

On December 13, 2023, a judgment was issued ordering the Peruvian State to carry out environmental remediation for contamination in the city of Huancavelica and the community of Sacsamarca. The court recognized that environmentally harmful human activities are degrading the environment and causing a public health crisis as a result of contamination of soil, household interiors, water, and sediments by the presence of mercury, arsenic, lead, and other pollutants. These contaminants are found largely within people's homes, but also in schools, disproportionately affecting children and adolescents, thus warranting urgent state action.[4]

The judgment also ordered the declaration of an environmental emergency due to the severe impacts on human health, life, and the surrounding environment, as well as the designation of the city of Huancavelica and the community of Sacsamarca as sites contaminated by polymetals, requiring the development and implementation of remediation plans. It further mandated the inclusion of both locations in the inventory of mining environmental liabilities, requiring the State to assume responsibility for remediating this mining legacy dating back to the colonial period. Finally, it ordered the implementation of environmental and reparatory measures in favor of the affected population.

More than a year later, on January 14, 2025, the Civil Court of Huancavelica required the Ministry of Energy and Mines to report on the concrete actions it had taken to regulate the management of contaminated sites in the mining sector, specifically to declare the city of Huancavelica and the community of Sacsamarca as contaminated sites.

The Ministry responded that the request lacked legal basis, arguing that the identification of contaminated sites falls exclusively on the holder of the productive and/or extractive

[4] See the Second Instance Judgment of the Civil Chamber of the Superior Court of Justice of Huancavelica (2023): https://drive.google.com/file/d/1rpbsf2SFGfETkpkBwHgrOMWMwEo1gMHL/view?usp=sharing

activity, which in this case is impossible to find, given that mercury extraction dates back to the colonial period and continued until the 1970s but is currently inactive, and is limited to the direct area of environmental influence. It further argued that the city of Huancavelica and the community of Sacsamarca cannot be classified in their entirety as mining environmental liabilities, and that there are technical limitations preventing compliance with the judgment. On these grounds, it requested that the appellate judgment be declared unenforceable.[5] This request was rejected by the court;[6] nevertheless, the Peruvian State continues to fail to comply with the judgment.

The State has declared an environmental emergency and delineated a contaminated area, but has not adopted adequate measures commensurate with the severity of the situation. This is despite the existence of residential soil assessment studies conducted in 2024 by the General Directorate of Environmental Health, which concluded that 23 out of the 25 sampled sites exceed legally and medically permissible levels of toxic metals. No meaningful progress has been made on a remediation plan, with the State justifying its non-compliance on the basis of the distribution of competencies and the allocation of responsibilities to private actors (which, in this case, do not exist, given that mining activities are no longer ongoing).

As a result, the Peruvian State is failing to meet its constitutional and judicial obligations, to the detriment of marginalized populations living in these highland areas. Factors such as neglect and lack of attention to the most impoverished communities, environmental racism, insufficient allocation of public resources for environmental remediation and improving living conditions, and the deprioritization of the issue[7] help explain the failures in implementing the judgment.

1.2. Public university funding in Argentina.

On March 31, 2026, the Federal Administrative Court of Appeals in Argentina upheld the interim decision ordering compliance with Articles 5 and 6 of Law 27,795 on University Financing. The provisions refer to the updating and restoration of salaries for teaching and non-teaching staff at national universities for the period from December 1, 2023 until the enactment of the law (which has been systematically disregarded by the Argentine government), as well as the restoration of all student scholarship programs (in the context of a highly inflationary economy).[8] This happens in a context in which the Argentine

[5] See the minutes of the 2025 special hearing: https://drive.google.com/file/d/1MJJmnshuOP2qbQ4m3N909MjhU1SUPSkd/view?usp=drive_link
[6] See the court ruling: https://drive.google.com/file/d/1BVIMSxlTd9pcCeMJ6NNJvspSleeqB_sK/view?usp=drive_link
[7] Despite the possibility of mobilizing resources through the financial mechanism established by the Minamata Convention.
[8] See: https://una.edu.ar/noticias/la-justicia-fallo-a-favor-de-las-universidades-y-el-gobierno-debera-implementar-la-ley-de_46982

government has publicly taken pride in carrying out the "largest budgetary adjustment in the history of humanity,"[9] which entails a significant reduction in funding for public education in the country.

The Court confirmed that the national government must immediately implement the University Education Financing Law and the restoration of teachers' salaries, deeming the State's objections to the interim measure "unserious." The judges emphasized that compliance with the law "did not affect the public interest; on the contrary, the failure to comply with the law affected the right to teach and learn under Article 14 of the National Constitution," as stated in the first-instance ruling. They also noted that, as argued by the lower court judge, "the fiscal impact of the measure had been estimated by the Congressional Budget Office at 0.23% of GDP," and that "this represents an insignificant saving in the overall public expenditure budget," thus contradicting the government's arguments.[10]

Accordingly, both judicial instances provisionally declared inapplicable the presidential decree that had suspended the implementation of the university financing law and made its enforcement conditional on the availability of budgetary funding. The Argentine government continues to fail to comply with the judicial decisions, arguing that no resources are available and that the rule of "zero fiscal deficit" must prevail over the enforcement of economic, social, and cultural rights, which the Argentine State is obliged to respect. Through this line, the Argentine government is echoing recommendations from the International Monetary Fund to drastically reduce the country's fiscal deficit.

1.3. Sonora and Bacanuchi Rivers in Mexico.

The Sonora River spill case originated on August 6, 2014, when the mining company Grupo México, through its subsidiary Buenavista del Cobre, discharged approximately 40 million liters of acidified copper sulfate into the Bacanuchi and Sonora rivers in the state of Sonora. The spill is one of the worst environmental disasters in the history of mining in Mexico, affecting at least seven municipalities and more than 20,000 people, many of whom depended on the river for water, agriculture, and livestock. The consequences were contamination of water and soil, impacts on health, loss of livelihoods, and environmental degradation.[11]

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[9] Página 12: "Milei y el ajuste más grande de la humanidad", 2025. See: https://www.pagina12.com.ar/2026/04/29/milei-y-el-ajuste-mas-grande-de-la-humanidad/

[10] See: https://www.palabrasdelderecho.com.ar/articulo/6651/Financiamiento-universitario-confirmaron-la-cautelar-para-actualizar-los-salarios-docentes-y-becas-estudiantiles

[11] ESCR-Net: "Community-Led Research on Loss and Damage in the Sonora and Bacanuchi Rivers: Report - Cumulative Impacts of Climate Change in the Sonora and Bacanuchi River Basin", 2025. See: https://www.escr-net.org/resources/community-led-research-on-loss-and-damage-in-the-sonora-and-bacanuchi-rivers/
https://drive.google.com/file/d/1RBJ7PUR7PRcagHq-hAkzt9kb8WsLePha/view?usp=sharing

More than a dozen judicial cases, primarily amparo proceedings, have arisen from the spill, addressing its implications and the multiplicity of damages and losses caused. None of these cases has succeeded in ensuring the construction of the infrastructure necessary to guarantee access to the rights to health, water, meaningful participation, implementation of obligations, and guarantees of non-repetition.

One of the most significant judicial milestones in this case was the decision of the Supreme Court of Justice of Mexico, issued in January 2020, which sought to give substantive content to the rights to information and participation of affected communities. In 2014, one month after the spill, the company responsible for the contamination signed an agreement with the Federal Attorney for Environmental Protection (PROFEPA), in which it assumed responsibility for the damages and committed to establishing a fund to remediate, repair, and compensate. As a result, a trust agreement called the "Sonora River Trust" (Fideicomiso Río Sonora) was created as a payment mechanism, and the company was required to propose a remediation program to be approved by the State. A remediation program was subsequently published, which included monitoring of water, the environment, and sediments (over a five-year period during which heavy metals were expected to subside), the construction of appropriate remediation infrastructure, the installation of 37 water treatment plants and laboratories, and the construction and operation of an epidemiological surveillance hospital. In addition to soil and environmental remediation, the trust was intended to provide financial compensation; however, this was the only aspect that was partially fulfilled, through minimal compensation payments to some members of the community.

The terms of the remediation program were systematically disregarded by the company, and at no stage did the program incorporate the views or participation of the affected communities. Moreover, the trust was closed in February 2017 when the communities brought the case to court. The Court ordered the reopening of the trust and indicated that the company and the State, at its different levels, had to explain the remediation, repair, and compensation measures they would implement so that, once informed, the communities could propose additional measures to ensure that contamination levels would be reduced to levels safe for their lives and the environment. In this way, the Court called for the development of a stable mechanism for participation and dialogue among the actors involved, capable of introducing dynamism into the remediation program, while allowing the community to present evidence. The company was therefore required to comply with measures developed jointly with the communities and was also obligated to pay for environmental damages.

Following the ruling, public authorities opened a channel of dialogue with the River Basin Committees representing the affected communities. However, beyond these formal instances, no concrete implementation mechanisms were established to comply with the

judicial decision. This has led to fatigue among communities, which are called upon to participate but do not see tangible progress in implementation.[12]

The company and public authorities subsequently agreed on a post-judgment arrangement, in theory to comply with the ruling, but the entire process was conducted with opacity in both legal and participatory terms. In fact, a voluntary mechanism, described as "solidarity-based", was adopted, allowing the company to provide funds to the State for the implementation of the plan. However, in the absence of an enforceable mechanism obliging the company to do so, and despite requests from the Court and public authorities, there are no real incentives for the company to comply with financing obligations. Meanwhile, the trust fund remains open but underfunded. At the same time, the company continued to expand without complying with environmental regulations, and even though communities have obtained judicial orders mandating non-repetition measures, the company invokes procedural formalities to hinder implementation, given that the necessary infrastructure measures are highly costly.

As a result of this non-compliance, the affected area continues to suffer from a lack of access to healthcare, remediation, and clean water. Precautionary measures have been granted in favor of the communities, classifying the situation as alarming due to the risk posed to people's lives and health by the high levels of heavy metals in the air, soil, and water bodies. Only six water treatment plants have been installed, none of which ensures the removal of heavy metals. Moreover, their insufficient number means they cannot prevent recontamination. There has also been no progress in identifying the exact number of people with high levels of heavy metals in their blood, nor in halting exposure or advancing chelation treatments for affected individuals.

The ruling binds the company and all three levels of government, yet in practice it has proven difficult for these levels to assume their respective responsibilities and coordinate joint action. Authorities remain uncoordinated, with overlapping competencies and conflicts of interest, and they have not used available mechanisms to enforce compliance by other authorities or by the company. Agreements with the company have been reached in a non-transparent and non-participatory manner, undermining their legal enforceability.

Furthermore, there is a cultural resistance among authorities to recognizing the effective participation of communities in decision-making processes, and partial remediation measures continue to be adopted without consultation or community awareness. This case is particularly noteworthy because it is the first time in Mexico that a non-Indigenous community has been recognized as having the right to be consulted. The implementation challenges also highlight the problems arising from the absence of specific monitoring mechanisms for compliance in complex cases of this kind, beyond sanction-based tools,

[12] See the site: "10 años de injusticia: Río Sonora": https://poderlatam.org/riosonora10/

which have proven ineffective in ensuring full compliance with the judgment. The case also highlights how the power asymmetries between communities and extractive companies result in failed remediation processes from a comprehensive reparations approach, and expresses multiple challenges in state regulation and oversight of large corporate actors.

1.4. Child malnutrition in La Guajira, Colombia

On May 8, 2017, the Colombian Constitutional Court declared an unconstitutional state of affairs in La Guajira due to the systematic and widespread violation of the constitutional rights of Wayuu children, particularly the rights to food, water, and health, which resulted in the deaths of more than 4,770 minors from causes associated with malnutrition. In Judgment T-302 of 2017, the Court issued 210 structural orders requiring 25 institutions to work toward protecting the rights of the Wayuu people.[13] It established eight minimum constitutional objectives, including increasing access to water, improving food security programs, implementing a comprehensive health policy, and ensuring genuine dialogue with legitimate Wayuu authorities. Additionally, it created a Special Oversight Mechanism (MESEPP) to monitor the implementation of public policies.

Since then, the unconstitutional state of affairs has persisted, as evidenced by two key facts: first, child mortality due to causes associated with malnutrition in La Guajira (34 cases per 1,000 children) is seven times higher than the national average (4.6 per 1,000), according to the 2022 citizen oversight report on the judgment. In the ruling, the Court established that the unconstitutional state of affairs would be considered resolved when the department's average reaches the national average. Second, the action plan required to define the roles and measures of the institutions involved has not yet been finalized. Although the Court gave the government six months to produce this tool, years later it remains in the stage of prior consultation.[14]

In La Guajira, 59 out of every 100 households cannot access sufficient food in either quality or quantity. This is reflected in the 2022 National Quality of Life Survey, which also notes that children under five have access to only 5 liters of water per day, rather than the 20 liters considered the minimum essential amount. Furthermore, 80% of the rural

[13] Dejusticia. "5 años del Estado de Cosas Inconstitucional en La Guajira: ¿qué ha cambiado?", May 9, 2022. See: https://www.dejusticia.org/5-anos-del-estado-de-cosas-inconstitucional-en-la-guajira-que-ha-cambiado/
[14] Ibid.

population does not have guaranteed access to safe drinking water. In 2022, according to the National Health Institute, 85 children died from malnutrition.[15]

Although some specific advances have been recognized, such as the dissemination of the judgment in Wayuunaiki, declared generally complied with in 2023, the substantive issues that led to the declaration of the unconstitutional state of affairs remain unresolved. For example, in assessing the right to water (Objective 1) in 2025, it was concluded that the information available was fragmented and insufficient to demonstrate improvements in the availability, accessibility, and quality of the service. Similarly, regarding the right to health (Objective 3), a medium level of compliance was identified in 2025, noting that current conditions do not substantially differ from those described in 2017.[16]

The creation and operationalization of the MESEPP, a central structural element of the ruling, has been a particular source of concern. In 2023 it was found to have low levels of compliance, and although some regulatory progress was recognized in 2025, the Court determined that genuine participation of the Wayuu people and effective management of the mechanism had not yet been ensured. At the same time, progress on the Provisional Action Plan, required since 2022 as a precautionary measure in response to the general non-compliance with the ruling, has been slow. Its first version was rejected due to the lack of indicators for the effective enjoyment of rights and the absence of genuine dialogue.[17]

Compliance with the minimum constitutional objectives shows a similar pattern. The Court reiterated in 2024 and 2025 the low levels of implementation in areas such as mobility, transparency in public contracting, and genuine dialogue. The set of indicators for the effective enjoyment of rights, defined as a key tool for monitoring progress, was deemed insufficient in 2024, which significantly limits the ability to verify the real impact of the measures adopted.[18] The process continues to face institutional bottlenecks, lack of intergovernmental coordination, and a persistent disconnect between official reports and the actual conditions on the ground.

Among the challenges that remain are: institutional fragmentation and the lack of coordination between national and local authorities; a persistent lack of reliable, updated information regarding the nutritional status (ENSIN) and a real census of the population; and a crisis in representation because the state has imposed administrative figures (like

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[15] Dejusticia. “Proponemos una fórmula constitucional para enfrentar la crisis en La Guajira”, August 16, 2023. See: https://www.dejusticia.org/litigation/crisis-la-guajira-decreto/

[16] Report submitted by Dejusticia to the UN Committee on Economic, Social and Cultural Rights (CESCR) in September 2025. See: https://drive.google.com/file/d/1Cwc-_GXVyim-iOyO6se4YMKKkRJGcGMM/view?usp=sharing

[17] Ibid.

[18] Ibid.

AATIS and traditional authorities) that are alien to the Wayuu's matrilineal social structure (E'iruku).

Moreover, there are sustainability issues. The infrastructure established for water, including desalination plants and the construction of public water points, is insufficient and frequently collapses due to lack of maintenance plans or energy supply. The Colombian State has not developed strategies to ensure the availability of at least 20 liters of water per person per day. Furthermore, there are reports of "mafias" and corruption in the management of water contracts. Communities are often forced to negotiate basic rights like water access with private companies involved in energy transition projects in the territory, creating new dependencies and undermining the state's role as the primary guarantor.

The Colombian State has failed to develop a strategy to include all Wayuu children in public food assistance programs.[19] This strategy must ensure that the quantities provided meet their health needs and are culturally appropriate. It must also promote food sovereignty programs that ensure communities can produce their own food. Likewise, to guarantee the right to health, it must organize outreach brigades with a focus on preventing malnutrition in order to provide timely care to children and expand health coverage using culturally appropriate methods.

State entities have frequently argued a lack of technical, administrative, and financial capacity, particularly at the local level, to justify delays. However, the Court has ruled that while economic precariousness may justify certain limits, it cannot justify discrimination or state inaction. Under the principle of progressivity, any regression in rights coverage requires a strict and powerful justification.

In legal terms there are other challenges associated with the cultural adaptation of procedures. Extreme rural dispersion combined with low educational levels and high illiteracy (over 50% in some areas) makes formal legal action nearly impossible for most in la Guajira. Most judicial and administrative procedures are not available in Wayuunaiki, and the state often fails to translate or orally communicate plans and rulings to the communities. In terms of the standing to sue, a vicious cycle exists where judges reject lawsuits (tutelas) from legitimate traditional leaders because they are not officially registered in the Ministry of Interior's database. This denies legal standing to the most vulnerable communities who refuse to adopt artificial state-imposed leadership structures, and violates their right to self-determination.

In conclusion, there is a big implementation gap between formal judicial orders and material reality. Institutional resistance, especially at the local level, limits access to

[19] Dejusticia. "Lo que no puede faltar en el informe de la CIDH sobre La Guajira", October 19, 2022. See: https://www.dejusticia.org/lo-que-no-puede-faltar-en-el-informe-de-la-cidh-sobre-la-guajira/

information needed for monitoring. Additionally, the state continues to use management indicators (e.g., the amount of food delivered) rather than Indicators of Effective Enjoyment of Rights (IGED), which measure real-life outcomes such as reductions in child mortality. This disconnect ensures that, while administrative tasks are reported as completed, the underlying humanitarian crisis remains intact.

2. Regional court cases: Endorois and Ogiek communities in Kenya.

In the Endorois case, an agro-pastoralist indigenous community in Kenya comprising about 60,000 members who live communally around Lake Bogoria, the African Commission on Human and Peoples' Rights issued a ruling on 25 November 2009 -adopted by the African Union Heads of States Summit on 2 February 2010- vindicating the rights of the Endorois people. In 1973, the Endorois were forcibly evicted from their ancestral land by the Kenyan government to pave the way for a game reserve for tourism, without proper consultation or compensation. The Commission directed the Kenya Government to: 1) recognize rights of ownership to the Endorois and restitute Endorois ancestral land; 2) ensure that the Endorois Community has unrestricted access to Lake Bogoria Game Reserve and surrounding sites for religious and cultural rites and for grazing their cattle; 3) pay adequate compensation to the Community for all the loss suffered; 4) pay royalties to the Endorois from existing economic activities and ensure that they benefit from employment possibilities within the Reserve; 5) grant registration to Endorois Welfare Committee; 6) engage in dialogue with the complainants for the effective implementation of the recommendations; 7) report on the implementation of these recommendations within three months from the date of notification.[20]

After more than 16 years, neither the return of their ancestral lands nor the respect of their rights to free, prior and informed consent and reparations for their forced eviction was accomplished. The only recommendation implemented is the one related to the formal registration of the Endorois Welfare Committee. Other recommendations saw little or no progress. In 2014, the Kenyan government formed a task force with a one-year tenure to engage in dialogue on implementing the decision. The task force only went to the community once without proper notice; there has been no report on what it achieved, and its term has never been renewed. The recommendations to pay royalties and grant unrestricted access to Lake Bogoria and surrounding areas have seen tokenistic implementation, since the community doesn't have sufficient information to determine the total profit generated by economic activities, and all the other recommendations see no implementation whatsoever.[21]

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[20] "ESCR-Net Stands with Endorois and Ogiek Communities: Urging Justice from the Kenyan Government", February 6, 2024: https://www.escr-net.org/news/2024/escr-net-stands-with-endorois-and-ogiek-communities-urging-justice-from-the-kenyan-government/

[21] Ibid.

Regarding the Ogiek case, in 2009 the community received a 30-days eviction notice from the Kenya Forest Service, to leave the Mau Forest. They filed a case at the African Commission, contesting the planned evictions and requesting for the ordering of provisional measures to prevent irreparable harm. Provisional measures were ordered, which the Government of Kenya illegally refused to comply with. The Commission, thereafter, referred the case to the African Court on Human and Peoples Rights, thereby, becoming the Applicant before the Court. On 26 May 2017, the Court delivered judgment on the merits of the case, ruling that the Ogiek are an Indigenous People of Kenya and that the evictions of the Ogiek from the Mau Forest violated their rights in terms of Article 2 (freedom from discrimination), Article 8 (freedom of religion), Article 14 (right to property), Article 17(2 & 3) (right to culture), Article 21 (the right to freely dispose of wealth and natural resources), Article 22 (right to development) and Article 1 (which obliges all member states of the Organization of African Unity to uphold the rights guaranteed by the African Charter on Human and Peoples' Rights).[22]

On 23 June 2022, the Court delivered judgment on reparations, ordering the Government of Kenya to: 1) pay the Ogiek KES. 157.85 million as collective compensation for material and moral damages suffered; 2) return the Ogiek's ancestral lands in the Mau Forest to collective title within two years through a delimiting, demarcation and titling exercise in consultation with the Ogiek; 3) commence a dialogue and consultation process with the Ogiek and any concerned parties in relation to any concessions and/or leases granted over Ogiek lands to reach an agreement on whether or not these operations will continue by way of lease or benefit sharing agreement and, where no agreement is reached, to return the lands to the Ogiek and compensate concerned third parties; 4) adopt all necessary measures to ensure the full recognition of the Ogiek as an Indigenous People of Kenya, including full recognition of their language and cultural and religious practices; 5) adopt all necessary measures to ensure the Ogiek are effectively consulted, in accordance with their traditions and/or their right to give or withhold their free, prior and informed consent, in relation to any development, conservation or investment projects on Ogiek lands; 6) ensure full consultation with the Ogiek, in accordance with their traditions and customs, in the reparations process as a whole; 7) adopt all necessary measures to give full effect to the judgment as a means of guaranteeing the non-repetition of violations; 8) establish a community development fund within one year of the judgment for the benefit of the Ogiek people as a repository for the compensation awarded; 9) coordinate the establishment of a committee to oversee the community development fund, which must include representatives chosen by the Ogiek and be operationalized within one year of the judgment; 10) publish, within six months, the official summaries of the merits and reparations judgments in the Official Gazette and in a newspaper of wide circulation, as well as the full merits and reparations judgments, together with their summaries, on an official government website for a period of at least one year; and 11)

[22] See African Court on Human and Peoples Rights' merits judgment: https://www.african-court.org/cpmt/storage/app/uploads

submit a report on the status of implementation of the reparations judgment within one year of the judgment. The Court also ruled that it shall conduct a hearing on the status of implementation of the judgment's orders on a date to be appointed by the Court, 12 months from the judgment's date.[23]

In November, 2023, the Kenyan government carried out forced evictions of the Ogiek at Sasimwani in the Mau Forest, in clear violation to the African Court's rulings. The forced evictions affected more than 700 families from the Ogiek community, half of whom are women and children. The government defends its decision based on the 'conservation' of the area. However, this defense does not consider that the evictions directly endanger the forest by undermining the Ogiek community's role as stewards of nature and exemplify a blatant disregard of the Court's orders and Kenya's obligations under international law. No alternative has been provided to the community, and irreparable damage has been caused.

Therefore, during a hearing in June 2025, the Ogiek (via the African Commission) drew the Court's attention to the recent forced evictions and burning of Ogiek homes, to the titling of Ogiek land to non-Ogiek, and to the lack of meaningful efforts towards implementation, including the failure to gazette and publish the judgments, the failure to recognise the Ogiek, the failure to adequately consult them in accordance with their traditions and customs and/or in accordance with the right to give or withhold their free, prior and informed consent, and the overall failure to implement the judgments, show lack of good faith on the part of the Kenyan government towards the Ogiek, and respect of their rights to lead a life of dignity.

On 4 December 2025, the African Court on Human and Peoples' Rights issued its first-ever compliance decision, formally holding that the Republic of Kenya had failed to comply with its 2017 merits judgment and its 2022 reparations judgment in the Ogiek case. Specifically, the Court ruled that the Kenyan government had failed to pay a single shilling of the material or moral damages ordered in 2022, and to establish the Community Development Fund; that it had failed to complete (or even properly begin) the process of identifying, delimiting, and collectively titling Ogiek ancestral lands, despite the establishment of several committees and task forces; and that such a process should be clear and consultative and following a realistic, time-bound path. Similarly, no dialogue had been initiated with third parties regarding leases or concessions on Ogiek ancestral land. As a result of the failure to comply with its previous judgments, the Court ordered that the government must take steps to immediately pay the compensation due, restitute Ogiek land (including resolving issues where Ogiek land is occupied by others), ensure full recognition and effective consultation of Ogiek in the reparations process as a whole, and immediately publish both judgments and their summaries. The Court also ordered the

[23] See African Court on Human and Peoples Rights' reparations judgment: https://www.african-court.org/cpmt/storage/app/uploads/public/62b/aba/fd8/62babafd8d467689318212.pdf

Kenyan government to submit a detailed implementation plan within six months, including timelines, responsible institutions, land-titling methodology, mechanisms for reparations and safeguards against further evictions.[24]

In conclusion, in both cases, Kenya has systematically disregarded the decisions and, through both actions and omissions, has continued to violate the rights of the Endorois and Ogiek communities, whether by carrying out evictions or by allowing extractive projects to occupy their ancestral lands and derive unlawful profits from their activities. Kenya is obliged under international human rights law, which has been incorporated in their Constitution, and the failure to implement both decisions has had harmful effects on the Endorois and Ogiek communities, ranging from poverty to environmental degradation and the loss of cultural practices.

3. Conclusions.

All the cases we have examined reveal the limitations courts face in giving effect to complex decisions involving economic, social, cultural and environmental rights, which require the mobilization of resources to build the necessary infrastructure for the realization of ESCER in contexts where national states choose to disinvest in social welfare systems.

In the case of Argentina, the country most indebted to the IMF,[25] we can clearly see how structural adjustment programs and the policies they impose negatively affect the state's capacity to comply with its judicial obligations regarding the right to education. The case of Kenya, another of the most indebted countries to the IMF,[26] also reflects (albeit more indirectly) the difficulties in implementing judicial decisions that ensure Indigenous rights and entail public expenditure.

In contexts marked by the dismantling of welfare and social protection systems, where priority is given to servicing external debt and adhering to fiscal adjustment programs at the expense of ESCER for large segments of the population -leading to increasingly regressive distributions of resources-, judicial decisions face significant obstacles in counteracting these trends, particularly in their implementation phases aimed at repairing or remedying environmental, human, material, and symbolic harm.

Moreover, the increasing appropriation of territories for extractivist purposes is shaping a structure in which rights to water, land, health, a healthy environment, and the ancestral territories of Indigenous communities are systematically violated. Corporate capture and

[24] Lucy Claridge, "The African Court's Ogiek Compliance Decision: A Turning Point for Indigenous Land Rights in Africa?", December 19, 2025. See: https://www.humanrightsincontext.be/post/the-african-court-s-ogiek-compliance-decision-a-turning-point-for-indigenous-land-rights-in-africa
[25] See: https://www.imf.org/external/np/fin/tad/extcred2.aspx?reportdate=2025-09-30&utm
[26] Ibid.

the complicity between states and private companies in the plunder of nature emerge as foundational causes of the failures in implementing judicial decisions recognizing ESCER, effectively undermining real access to justice.

At the same time, environmental racism, the lack of public attention to the most impoverished communities, and the absence of channels through which communities can participate and demand effective compliance with their human rights, along with greater transparency and increased allocation of public resources for environmental remediation and the improvement of living conditions, also contribute to this problem in the implementation of positive judgments.

The judicial decisions in question often require stronger regulation, monitoring, and oversight of large corporate actors, as well as the implementation of comprehensive reparations to guarantee access to these rights, that take into account not only the strictly legal concept of reparations but also the frameworks through which the impacted communities understand the notion of reparation, with their material and immaterial dimensions. Reparations should include structural remedies that entail the restitution of violated rights, as well as guarantees of non-repetition and structural reforms through public policies to enable the implementation of the decision and prevent similar cases from having to be litigated in the future. Decisions must be clear, establishing specific targets, indicators or compliance benchmarks, defined timelines, and a dialogic approach that continuously incorporates the perspectives of affected communities.

Formal arguments related to distribution of competences cannot be invoked as justification for violating human rights and maintaining an unjust and unlawful status quo that harms both nature and the quality of life of communities.

For all these reasons, we consider it important to strengthen the implementation of favorable ESCER judgments through:

- **Full participation of affected communities in implementation**: Ensure community participation in all the phases of the implementation process, bringing courts closer to affected territories, including in situ hearings, fact-finding missions, community participation in decision-making through negotiation platforms (that assemble States, affected communities and responsible private actors), task force or ad-hoc committees for decision implementation that are composed and supervised by community members, and community-led monitoring to ensure greater transparency and accountability. Participation includes adequate information and prior, free and informed consultation with the communities whose territories are affected by the impacts of judicial processes.
- **Non-discrimination approach:** The implementation stage of the judgment must at all times take into account power asymmetries and adapt procedures, language, remedies, timelines, and spatial considerations to the most disadvantaged party, in

line with equality standards and through a differentiated impact assessment. An intersectional and gender-sensitive approach should be used to address the disproportionate burden that the need to navigate justice systems places on certain identities. When Indigenous communities are involved, the entire process must be culturally appropriate and take into account their worldviews and an intercultural dialogic approach.

- **Follow-up mechanisms that secure continuous monitoring and expeditiousness in the legal response**: Expeditious and accessible legal avenues that enable the easy reporting of non-compliance and ensure prompt responses through adequate enforcement mechanisms. Create protocols for courts to handle cases involving complex compliance. Create enhanced judicial monitoring mechanisms, such as the "follow-up chambers" of the Colombian Constitutional Court,[27] in which a specific group of judges is tasked with overseeing the implementation of key judicial decisions involving large-scale human rights violations. On the other hand, create expedited judicial avenues that facilitate the domestic incorporation and immediate implementation of decisions issued by regional or international bodies.
- **Other notes to improve enforcement mechanisms:**
    - Judicial activism that reviews the reasonableness of budget allocations and requires states to justify public spending on the basis of the "maximum available resources" standard. The judiciary should assess the compatibility of the country's fiscal policy with its ESCER obligations.
    - Creation of specific funds (with progressively structured financing) that can be rapidly activated to support the execution of these types of judgments.
    - Strong systems of sanctions for non-compliance, such as identification of personal liability of public officials, fines, and other enforcement tools to compel states and officials to implement decisions. The funds collected can be directed to the affected community.
    - Clear identification of the institutional responsibilities of each government agency, as well as the development of plans and protocols for inter-institutional coordination required to ensure compliance with the judgments.
    - Legislative measures that compel States to prioritize their human rights obligations toward affected communities arising from these kinds of judicial decisions over external debts' obligations before multilateral financial institutions.
    - Set "Indicators of Effective Enjoyment of Rights" for the implementation of judgements as a human-rights based method for producing evidence and measuring the degree of compliance in structural litigation. Those indicators must be co-created with the affected communities.

[27] This was made in Colombia to secure the implementation of the decision on displacement (T-025/2004) and the right to food in La guajira (T-302/2017).