ENGAGING THE LEVIATHAN: NATIONAL DEVELOPMENT, CORPORATE GLOBALISATION AND THE ENDOROIS’ QUEST TO RECOVER THEIR HERDING GROUNDS

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1. INTRODUCTION

The socio-economic position of the Endorois, an indigenous minority group in Kenya’s Rift Valley region, is a function of their pastoralist culture interacting with a state whose developmental imperative is to modernise through markets. The marginal position occupied by pastoralism in the economic matrix of the state has led to its de-emphasis in favour of economic activities that respond to market demands, in this case, tourism, mining and energy extraction. But in order to achieve this national aspiration, the Endorois were forcefully evicted by the Kenyan state with the consequent loss of livelihood, culture and religion.

I begin by providing a contextual appraisal of the Endorois community and place their struggle within the framework of Kenyan law. I then analyse the proceedings of the Endorois case at the African Commission on Human and Peoples’ Rights, including an interrogation of the Commission’s decision from the perspective of comparative human rights. The last part of the article considers the impact of the Commission’s decision in Centre for Minority Rights Development (CEMIRIDE) and Minority Rights Group International (MRG) (on behalf of the Endorois) v. Kenya¹ in addressing the role of corporations in human rights violations/protection. Conversely, this part of the article will attempt to respond to Ayse Betul

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¹ Centre for Minority Rights Development (CEMIRIDE) and Minority Rights Group International (MRG) (on behalf of the Endorois) v. Kenya (Feb. 2010), African Commission on Human and Peoples’ Rights, Communication (decision on merits), Communication 276/2003, at <www.minorityrights.org/download.php?id=749>, visited on 1 June 2011 (hereinafter the “Endorois Decision”). The Complaint was filed on 29 August 2003 (hereinafter the “Complaint”). The Complainants’ submissions on merits were filed on 19 July 2005 (hereinafter the “Complainants’ Merits Submissions”) while the Kenya State Response to the complaint was filed on 31 July 2006 (hereinafter the “State Response”).
Celik’s question: “[T]o what extent [are] international mechanisms, norms and reconceptualizations influential in forcing states to comply, especially in areas that they consider sensitive or untouchable?” Given the near untouchability of corporate interests in Africa, this article assesses the possibility that decisions of international or regional human rights bodies could provide incentives for re-configuring the asymmetrical power relationship between corporate interests and indigenous peoples in the continent.

2. A People and Their Land

2.1. The Endorois “Peoples”

The Endorois are a distinct Kalenjin speaking community, and the original inhabitants of the Lake Bogoria area within Kenya’s Rift Valley region. The community numbers approximately 400 families (just over 10,000 people according to the 2009 Kenyan census). These families have been practitioners of the pastoralist lifestyle in this location since time immemorial. The Endorois depend upon their livestock for survival, grazing their animals near Lake Bogoria during the rainy seasons, while turning to the Mochongoi forest in the dry seasons. The land surrounding Lake Bogoria is extremely fertile, providing green pastures as well as medicinal saltlicks vital for their livestock’s health. Equally important, Lake Bogoria...