

# **THE ROLE OF COURTS IN PROTECTING INDIGENOUS PEOPLES' RIGHTS TO LAND AND RESOURCES IN KENYA AND SOUTH AFRICA**

By George Mukundi Wachira

## **ABSTRACT**

This article discusses the extent to which courts have been utilized and how they have fared in recognizing indigenous peoples rights to communal land ownership. Using Kenya and South Africa as case studies, the article traces the efforts and outcomes indigenous peoples have made in espousing their rights to land before domestic courts. The paper discusses the circumstances leading to lodgment of the cases in court and the reasons for the communities' reliance on the judiciary. It analyses the role of the different actors and the nature of the courts response to the indigenous peoples' claims and the status of the implementation of the decisions. While in South Africa, the courts recognized indigenous land claims, the Kenyan case study demonstrates that they have failed to do so. The paper analyses the factors and possible reasons the courts arrive at different verdicts despite the similarity in circumstances.