



Centre for
Minority Rights
Development

**JOINT SHADOW REPORT SUBMISSION BY THE COALITION OF INDIGENOUS
PEOPLES IN KENYA FOR THE REVIEW OF KENYA'S 8TH AND 9TH PERIODIC
REPORTS SUBMITTED TO THE COMMITTEE ON THE ELIMINATION OF
RACIAL DISCRIMINATION**

Submitted to the UNITED NATIONS COMMITTEE ON ELIMINATION OF RACIAL
DISCRIMINATION (CERD)

SEPTEMBER 2024

Submitted on behalf of the CERD Coalition for Indigenous Peoples in Kenya by:

Centre for Minority Rights Development (CEMIRIDE)

Next to Oloip Medical Centre, Kisamis Town, Magadi Road

P. O. Box 379-00511 Ongata Rongai

E-Mail: mail.admin@cemiride.org

Website: www.cemiride.org

ABBREVIATIONS AND ACRONYMS

ACHPR	African Commission on Human and Peoples Rights
ASAL	Arid and Semi-Arid Lands
CBC	Competency-Based Curriculum
CEMIRIDE	Centre for Minority Rights Development
CERD	Committee on Elimination of Racial Discrimination
COK 2010	Constitution of Kenya, 2010
CRRF	Comprehensive Refugee Response Framework
FY	Financial Year
GOK	Government of Kenya
ID	Identity Card
IDPs	Internally Displaced Persons
ILO	International Labour Organization
KFS	Kenya Forest Service
KNBS	Kenya National Bureau of Statistics
KNCHR	Kenya National Commission on Human Rights
KSHS	Kenya Shillings
MCAs	Members of County Assemblies
NCIC	National Cohesion and Integration Commission
NGEC	National Gender and Equality Commission
NLAS	National Legal Aid Service
NLC	National Land Commission
PWDs	People with Disabilities
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

A. INTRODUCTION

1. The CERD Coalition for Indigenous Peoples in Kenya convened by the Centre for Minority Rights Development (CEMIRIDE),¹ is pleased to present this shadow report in response to Kenya's eighth and ninth Combined Periodic Report under the Convention, covering the period from 2016 to 2024. This report is submitted in accordance with Article 9 of the Convention, following Kenya's submission on November 17, 2021.
2. In addition to addressing the issues outlined in the State report, this shadow report includes concerns that have emerged since November 2021. The information contained in this report has been compiled from primary and secondary sources by the contributing organisations. The process involved convening meetings to identify key substantive issues, as well as documenting, revising, and validating the report.
3. This shadow report highlights ongoing challenges related to racial discrimination against indigenous communities in Kenya, despite the country's strong constitutional and legislative frameworks prohibiting such discrimination. While Kenya has made strides in the adoption of legal and policy frameworks to address the rights of marginalised, minority and indigenous communities including disaggregating population data by ethnicity and creating national institutions to protect human rights, significant gaps remain in the challenges faced by indigenous communities.

B. DEFINITION OF RACIAL DISCRIMINATION

4. Kenya has a robust Constitutional and legislative frameworks that prohibit against discrimination. The Constitution of Kenya, (CoK) 2010 and National Cohesion and Integration (NCIC) Act provide a robust legal framework against discrimination, including on ethnic grounds. However, indigenous communities continue to experience discrimination on various economic, social and cultural rights, particularly in access to basic services such as right to access clean water, quality healthcare and education among other rights. As the Kenyan report notes:

“The Constitution bars the State or anyone from discriminating against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth. The National Cohesion and Integration

*Act prohibits both direct and indirect discrimination on ethnic grounds. The term “ethnic ground” in the Act is construed to mean any of the following grounds: colour, race, religion, nationality or ethnic or national origins”.*ⁱⁱ

C. STATISTICS

5. The 2019 Census was very progressive as it allowed for self-identification. The data approximately 19% of Kenya's population of 47,564,296ⁱⁱⁱ comprises of communities that identify themselves as minorities and or indigenous communities. However, challenges persist with government failing to ensure that the identified communities enjoy government services based on this. For example, the government was expected to provide each community with a distinct ethnic code after the census, however some communities e.g. the Yiaku have to date not received these distinct ethnic codes, leading to difficulties in accessing vital documents like ID cards and birth certificates.
6. Yiaku are mistakenly categorised under the Laikipia Maasai. Because of this, many face challenges accessing identification documents. A case in point is a 23-year-old Yiaku man from Kantana Village, Kurikuri Sublocation, Mukogodo East Ward, Laikipia North, Laikipia County. Despite starting his application process two years ago, he is yet to obtain his identity card. He has encountered several obstacles, including being asked to provide a letter from the chief confirming his Maasai identity (which is inaccurate as he is Yiaku), being solicited for a bribe during vetting by elders, and difficulties obtaining a birth certificate due to the requirement for chief approval—a process complicated by his home birth.
7. This issue is widespread among the Yiaku community and highlights the broader challenge faced by indigenous groups. The lack of unique ethnic codes for these communities exacerbates their struggles and perpetuates racial discrimination by forcing them to be identified as part of larger ethnic groups rather than their distinct communities. Unique ethnic codes are crucial to accurately represent these communities and address their specific needs. Currently, smaller groups within larger ethnic categories, such as the Kalenjin, are often misrepresented in government data, which hinders the ability to identify development indicators and design effective interventions for communities like the Endorois^{iv}. A recent report on the Audit of Ethnic

and Diversity Report 2023 by the government, there is completely no mention of Endorois and Ilchamus, who are grouped under the larger Kalenjin speaking group.^v Accurate ethnic classification is essential for fair representation and targeted development efforts. Ilchamus are not Kalenjin, but under the larger Maa speaking group along with the Maasai and Samburu.

8. Other communities have been merged yet according to them they are distinct from each other for example Aweer, Sanye and Waata. According to the communities, these are distinct ethnicities with different languages and cultures. Therefore, consider themselves as distinct from each other. The Aweer, Waata, and Sanye are three distinct groups in Kenya, each with unique linguistic, cultural, and historical characteristics. Aweer linguistically resemble the Garre community, but they are physically and culturally unlike and their language is believed to be threatened by extinction, The Aweer historically practised traditional faiths such as Waaqism, though most have today adopted Islam. The Waata, on the other hand, speak a language potentially connected to Orma or Southern Oromo and are predominantly Sunni Muslims. In comparison, the Sanye, who possess an ancient click language like those in Southern Africa, stand out as the second smallest sub-group in Kenya with a population of just five hundred. The Sanye has the longest history in Lamu District and traditionally practice hunter-gathering, depending on the natural world for their sustenance.

9. There are also situations where communities have two or more different codes which confuses and minimise the absolute numbers of their members. For instance, the Ilchamus have three different codes, one for Njemps one for Njems and another for Ilchamus, creating confusion among the population whether they are the same or different entities.

Proposed recommendations

We urge the committee to recommend to the Government of Kenya to Ensure that community/ ethnicity disaggregated data, is readily available to inform development policies and plans.

- a. Assign unique ethnic codes: Ensure that all distinct indigenous and minority communities, such as the Yiaku, Aweer, Waata, Ogiek and Sanye, are assigned unique ethnic code by the National Bureau of Statistics. This will accurately reflect

their distinct identities and prevent them from being grouped under broader ethnic categories.

- b. Clarify and issue the correct code for the Ilchamus community since they are already assigned three codes being; Ilchamus (23), Njemps (24) and Njems (19).
- c. Review and correct ethnic group mergers: Conduct a thorough review of the merging of ethnic groups, such as Aweer, Sanye, and Waata, to ensure that communities with distinct languages, cultures, and histories are not inaccurately combined. Reassess and, if necessary, rectify these classifications to align with the self-identified distinctions of these communities.
- d. Facilitate access to identification documents: Simplify and streamline the process for obtaining ID cards and birth certificates for indigenous communities. Ensure that individuals from these communities are not forced to provide documentation or letters that do not accurately reflect their ethnic identity, and address issues such as the requirement for bribes or unnecessary bureaucratic hurdles.
- e. Implement affirmative action measures for indigenous peoples: Use the unique ethnic codes not only for census purposes but also to inform and implement affirmative action policies. Ensure that these communities benefit from targeted development programs, resource allocation, and other forms of support designed to address their specific needs and challenges.
- f. Enhance data representation and analysis: Improve the representation of smaller and distinct ethnic groups in government data and statistics. Avoid generalising or grouping these communities under larger ethnic categories, and instead provide detailed data that reflects their unique characteristics. This will aid in the development of effective policies and interventions tailored to their needs.
- g. Promote community participation: Engage indigenous and minority communities in the development and implementation of policies and programs that affect them. Ensure their voices are heard in decision-making processes and incorporate their input into the creation of solutions that address their specific challenges.

- h. Increase awareness and training: Provide training for government officials and other relevant stakeholders on the importance of accurately identifying and addressing the needs of minority and indigenous communities. Increase awareness of the unique challenges faced by these communities and the need for sensitive and inclusive approaches.

D. NATIONAL HUMAN RIGHTS INSTITUTION

10. The National Human Rights Institution –NHRI (Kenya National Human Rights Commission KNCHR) established in accordance with Article 249 (3) needs to be fully funded by the government. As a Constitutional Commission, the NHRI plays a crucial role in monitoring and advising on human rights issues, including on racial discrimination. However, it is underfunded, hindering its ability to fulfil its mandate. For instance, in 2018/2019 FY, the KNCHR requested for 600M, and they were allocated 398M; 2019/2020 FY requested 729M and allocated 395M.^{vi} While the government argues that financial challenges resulted in reduced budgets for all government entities, and that the law allows government agencies to solicit funds from donors, as a state agency, however, KNCHR ought to be primarily funded by Government of Kenya to avoid the crippling of critical programmes especially those of indigenous peoples.

Proposed recommendations.

We urge the committee to recommend to the government to ensure adequate and consistent funding to the NHRI: The government should commit to providing full funding for KNCHR as per its budget requests. This will enable the Commission to effectively fulfil its mandate, including addressing critical human rights issues such as racial discrimination.

E. ACTS OF RACIAL DISCRIMINATION, RACIST HATE SPEECH AND INCITEMENT TO RACIAL HATRED.

11. The government has indicated that it has a strong constitutional and legislative framework to promote and protect human rights and punish racial discrimination. However, debates in Kenya on one man-one vote-one shilling debate in the country whips ethnic emotions, in some instances using derogatory language in reference to regions occupied by indigenous peoples in Kenya. This argument is fronted by the larger communities and negates the Kenya's Constitutional provisions of respecting and

protecting diversity as it focuses purely on population as a criterion for allocation of development resources, potentially increasing regionalism or tribalism and evoking racist undertones in sections of Kenyan society.^{vii} Hate speech is still prevalent among government officials and politicians. For example, Kenya Forest Service officers (KFS) have told the Ogiek, “Endeeni shamba yenu Arusha,” translated to mean ‘go for your land in Arusha’, alluding to the Arusha based African Court of Justice judgement that was issued in favour of the community. This incites tensions among communities in the Mau region, leading to fears that the Ogiek intend to seize land. Such rhetoric has fuelled ethnic clashes in areas within Mau Forest complex and Laikipia, where banditry is also common. Further to the recommendations on this issue, we urge the Committee to elaborate what one man-one vote-one shilling debate policy would mean for discrimination of minorities and indigenous peoples or provide a reference

12. Despite a robust legal framework, indigenous communities in Kenya continue to experience racial discrimination based on ethnic grounds. Official government statistics from 2019 reveal significant disparities in access to essential services in Baringo County. For instance, 90% of indigenous communities lack access to clean water, with 82.6% of Mogotio's population and 76.4% of Baringo South's population relying on untreated water. These communities also face ongoing issues such as land and resource tenure insecurity, inadequate service delivery, poor political representation, discrimination, and exclusion. Each year, their situation deteriorates further due to escalating competition for resources in their regions.

13. Cattle rustling continues to be a menace to several indigenous communities in Kenya. These have continued unabated without effective government intervention. Various indigenous communities such as the Endorois community has suffered displacement, loss of livelihoods and livestock, injuries and deaths because of cattle rustling. Over 3800 Endorois households, including women, children, elderly and people with disabilities continue to be displaced mercilessly, through cattle rustling, without government action in Arabal, Chebinyiny and Mochongoi locations.

Proposed recommendations

We urge the Committee to recommend to the government to:

- a. enact a specific law to operationalise Article 56 of the Constitution of Kenya, 2010. This law should focus on implementing affirmative action measures designed to address and rectify the discrimination faced by indigenous communities. Such measures should include targeted initiatives to improve access to essential services, such as clean water, and ensure equitable distribution of resources and opportunities.
- b. Establish a sensitisation programme among its state and public officers on the importance of recognising and respecting ethnic diversity in government planning and execution of projects, within the realm of the Constitution of Kenya, 2010
- c. Enhance the enforcement of existing anti-discrimination provisions, including Section 13 of the National Cohesion and Integration Act and the Code of Conduct for journalism. This involves implementing more rigorous monitoring mechanisms and ensuring that violations are addressed promptly.
- d. Implement robust measures to address hate speech, especially from government officials and public figures. This includes establishing clear guidelines for appropriate public discourse and imposing penalties for those who incite racial or ethnic hatred.
- e. Apprehend and prosecute the perpetrators of cattle rustling for their criminal acts. Additionally, the government should provide compensation to the victims of cattle rustling in Baringo, Elgeiyo Marakwet, Samburu, and Turkana counties.

F. ACCESS TO JUSTICE

14. The government has made good progress by establishing National Legal Aid Service (NLAS) with the mandate to, inter alia, facilitate the provision of legal aid services in a coordinated manner to the indigent, vulnerable and marginalized citizenry. However, while the government plans to locate the NLAS in 7 marginalised regions – Lamu, Mandera, Tana River, Garissa, Wajir, Isiolo and Marsabit this is a far cry because indigenous peoples are found in at least 18 counties of Baringo, Garissa, Isiolo,

Mandera, Marsabit, Samburu, Tana River, Turkana, Wajir. Kajiado, Kilifi, Laikipia, Lamu, Narok, West Pokot, Bungoma (Mt Elgon), Busia, and Nakuru.

15. Further, while the government argues that the Small Claims Courts now enhances access to justice in the country by moving the formal justice system to many of the marginalised areas of Kenya, these courts are still lacking in most areas inhabited by indigenous peoples.
16. While the government reports that in 2017, 39 High Courts were established in 38 of the 47 counties and plans are also ongoing to establish at least one Magistrates Court in each of the 290 sub-counties. The Judicial Service Report of 2023, however, does not give an update of these commitments, hence it is not possible to know if these were actualised^{viii}. Access to justice is hampered by lack of readily available judicial staff in indigenous areas. Further, in most of indigenous peoples' areas, distances travelled to access some of these institutions are still vast so using a sub county as a measure is not a proper yard stick for access to justice. The distance between Lokichar and Kapedo towns in Turkana South Sub County is 169 Kms, 3 to 4 hours travel by a private car, while the distance two farthest ends in Kiambu County, between Kilimambogo and Kijabe towns is 116kms. Turkana South Sub County, Turkana County, is bigger than in Kiambu County, which has 12 sub counties. Using this parameter it means Kiambu County, will have 12 magistrate's courts, and Turkana South, bigger in size and hence longer distance to access the judiciary office, only one magistrate. . This formula works against access for justice in indigenous peoples' areas especially considering Article 56 CoK on affirmative action.
17. Constitutional and Human Rights Division of the High Court that handles matters of human rights violations is not available in most parts inhabited by the indigenous peoples
18. Overall, it is still very expensive to access justice through the formal system in Kenya for most indigenous peoples. This is because, in addition to the costs of accessing the judiciary facilities, court fees and charges, the complexity of the judicial processes meaning that mostly communities will need to higher costly legal professionals, makes

access to justice out of reach to the majority of members of minorities and indigenous peoples.

19. Finally, implementation of court decisions is a critical component of access to justice. For indigenous peoples, however, even after surmounting many challenges to litigate their cases, and eventually getting positive judgements and decisions, implementation of these decisions has been a nightmare for them. This non implementation does not only negatively impact on their development, but more importantly, exacerbates their discrimination. Many cases have been decided in favour of the indigenous communities.^{ix}

Proposed recommendations.

We urge the committee to recommend to the government to

- a. institute special programmes to provide the judiciary infrastructure and staffing to indigenous peoples' areas, to reduce distance covered, and hence reduce the expenses incurred by members of indigenous communities to access justice.
- b. Set up a public interest litigation fund aimed at supporting vulnerable and marginalised communities, including indigenous peoples, in pursuing legal action on matters of public interest. This fund will enhance access to justice by alleviating financial barriers and empowering communities to address issues of discrimination and human rights violations.
- c. Expansion of Legal Aid Services and of NLAS offices to cover all 18 counties with significant indigenous populations, including Baringo, Garissa, Isiolo, Mandera, Marsabit, Samburu, Tana River, Turkana, Wajir, Kajiado, Kilifi, Laikipia, Lamu, Narok, West Pokot, Bungoma (Mt Elgon), Busia, and Nakuru. This expansion will ensure that legal aid services are available to a broader segment of the population.
- d. Enhanced Access to Small Claims Courts and increased number of Small Claims Courts in areas inhabited by indigenous peoples to ensure they are accessible in all relevant regions. This may involve setting up additional courts or mobile units to cover remote areas.

- e. Strengthening judicial presence in indigenous inhabited areas including through implementing a system of mobile courts or regular court sessions in remote regions.
- f. Equitable distribution of court resources by reviewing and adjusting the allocation of judicial resources. For instance, the number of magistrates' courts should be proportionate to the population and geographic challenges of indigenous regions, rather than being based solely on sub-county boundaries.
- g. Reduction of costs for accessing justice: Implement measures to reduce the cost of accessing justice for indigenous peoples, such as subsidising legal fees, providing free legal aid in specific cases, and improving transportation and accommodation for individuals traveling long distances to court.
- h. Full implementation of all cases touching on indigenous peoples: The GoK should implement all judgements and decisions on indigenous peoples to ensure that they do enjoy the protection and promotion of their rights.

G. SPECIAL MEASURES TO ADDRESS INEQUALITIES

20. Devolution in the Constitution of Kenya 2010, was provided for the objectives of among others:
- a. to recognise the right of communities to manage their own affairs and to further their development.
 - b. to protect and promote the interests and rights of minorities and marginalised communities;
 - c. to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya.
 - d. to ensure equitable sharing of national and local resources throughout Kenya;
21. Although the goal of devolution was to give marginalised populations more say in development planning and decision making, recent reports from the National Gender and Equality Commission (NGEC) have characterised marginalisation in a way that keeps Kenyan indigenous peoples out of important affirmative action initiatives. Devolution was the framework that allowed many marginalized communities, such as the indigenous peoples, to have more control over their affairs. Recent events,

nevertheless, appear to further marginalize them. For example, minorities are defined as groups of persons whose population is small relative to the county population by the National Gender and Equality Commission (NGEC), one of the Constitutional Commissions.^x This definition completely ignores both local and international jurisprudence^{xi} in identifying minorities and indigenous peoples, which uses:

- (a) Self-identification;
- (b) Shared historical and ancestral heritage;
- (c) Has been excluded from the integrated social and economic life of Kenya as a whole; and
- (d) And is generally poor because of marginalisation.

22. In the Kenyan context, this argument departs radically from the accepted human rights standards of marginalisation for minorities and indigenous communities, where non dominance of political, economic and cultural spaces is a critical factor, as well as self-identification. On this basis, the report does not clearly indicate how the self-identification criteria were met.

23. In the NGEC report, Arabs, Kikuyu, Meru, Luo, Kamba are listed as some of the minority communities in Wajir County.^{xii} Wajir is traditionally occupied by the Somali community, as having been part of the Northern Frontier District, the county has been underdeveloped and under-represented in public life when compared to the rest of the country. In Turkana and West Pokot Counties the Somali are listed^{xiii}, while in Samburu County the Kikuyu and Somali are listed^{xiv}. In Elgeyo Marakwet County the Kikuyu are listed, and in Baringo County the Kikuyu and Somali.

24. This re-definition of the marginalisation has led individuals who do not qualify as minorities to be nominated to represent the interests of ‘minorities’ at the expense of communities of who suffered decades of marginalisation. For instance, based on the NGEC report, Members of County Assemblies (MCAs) have been nominated in the County Assembly of Turkana to represent interest of “minorities” comprising the Kikuyus, Luos, Kalenjins and Meru. These are individuals who are either employed or running business in the County and therefore based on their economic muscles and ease with which they can access power and decision makers, cannot satisfy the objective and subjective criteria of being minorities. This means that they will thus benefit from ring

fenced affirmative action programmes, like tenders that would be ring fenced for minorities and indigenous peoples (Marginalised Communities) at the expense of the communities or groups within the indigenous communities who have suffered marginalisation for long.

25. The NGEK report, therefore, exacerbates inequalities for indigenous peoples, as it creates a false imagination that any community can be a minority merely on the evidence of small numbers in a county, while in fact, some of these communities are dominant politically and or economically as they are more economically and politically empowered than the natives (indigenous peoples).

26. One of the special measures that is provided for in the CoK, 2010 is the Equalisation Fund. This fund, championed by indigenous peoples during the constitution making process, is supposed to address the inequalities that these communities and their regions suffered especially after independence, through development policies that excluded them from the development discourse and plans. This fund was to be used to bring areas that had been neglected to them same level with the rest of the country. While on the one hand, the fund has been delayed in being disbursed, on the other hand, the definition of marginalising in Kenya's second marginalisation policy included areas that traditionally were part of the development agenda, further marginalising indigenous peoples' areas from benefitting from this fund. In Kajiado for instance, according to the current policy, marginalised areas have been identified in 34 counties, there is no evidence that the funds have been disbursed and infrastructural development has been affected. Sadly, the Commission for Revenue Allocation has taken same retrogressive argument that during dry months, marginalised communities in general and pastoralists in particular are forced to migrate with large herds of livestock to other wetter areas in search of water and pasture leaving behind established infrastructure for health and education^{xv}. Kenya has in place Sessional Paper number 8 of 2012 that clearly elaborates how to handle development in Arid and Semi-Arid Lands (ASAL areas, hence pastoralism should not be an excuse to deny these communities affirmative action funds

27. Implementation of affirmative action as envisaged under Article 56: In terms of employment, the Yaku community, comprising around 6,100 people, lacks sufficient

representation in Laikipia County Assembly, making it difficult for their issues to be addressed. Employment opportunities in the county are predominantly given to other communities, and the Yiaku often lack the academic qualifications required for available positions.

Proposed Recommendations

We urge the Committee to recommend to the GoK to:

- a. Based on the already established and accepted judicial jurisprudence for the identification of minorities and indigenous peoples in Kenya, we urge the committee to recommend to the Government of Kenya that NGEK report, “Unmasking Ethnic Minorities and Marginalized Communities in Kenya”, 2018, be withdrawn as a reference for identification for minorities and marginalised communities in Kenya for the purpose of affirmative action interventions for minorities in Counties in Kenya, as it plays to further marginalise minorities and indigenous peoples in their own counties.
- b. Decisions on equalisation funds affirmative actions should be left to county governments and cover all sub-counties and not a national government decision
- c. We recommend that the Government of Kenya should the use of equalisation fund to implement the Sessional Paper number 8 of 2012 policy recommendations including to strengthen mobile schools and boarding schools to improve on education access for indigenous peoples.

I. SITUATION OF INDIGENOUS PEOPLES

28. The government has affirmed that indigenous people are part of marginalised communities in Kenya and who need protection through affirmative action measures, there is further recognition further notes, that the Community Land Act 2016 is a progressive law that enables local communities to legally register and own their communal lands^{xvi}. The Constitution provides for Community Land Tenure, based on ancestral land claims by indigenous peoples in Kenya. However, it is notable that it took 6 years, and a further 4 years to have structures in place for registration of community land. However, even with this progress to date no single community land belonging to indigenous peoples has been registered. Some communities have

complained of losing their land.^{xvii} while others have complained that their lands have been converted into other use without their consultation and compensation. One of the most curious developments is the omission of community land belonging to the Endorois from the inventory of unregistered community land by the Baringo County government to the Ministry of Land.^{xviii} The Endorois people for instance, continue to be marginalised and discriminated by other mainstream communities, including tactically changing names on land documents like title deeds. For example, the title deeds for Maji Moto blocks which covers Kamar and Koibos Location, as well as Maji Moto Sub Location, have the name Chapchap added, opens up possibility of government and members from other communities to claim that this land did not belong to the Endorois because this is not an Endorois name/word. ^{xix}

29. One of the challenges that has been noted that has made it difficult for communities to have their lands registered as community lands, is the use of geographical demarcation of community lands following a sub county boundary system, or villages, as opposed to land use models, where the use and exploration of resources of community lands that traverse several sub counties and even counties. For indigenous peoples like pastoralists, this creates a potential conflict situation within communities over the use of pasture and water as they navigate different weather seasons.^{xx} This has created a stalemate amongst some communities delaying the registration processes. For example, in Turkana County, the Turkana pastoralists to access water and pasture, seasonally, from one end of the County to the other. For instance, in Turkana South pastoralists from East migrate to south the areas of Katilu, Nakwamoru and Kainuk during raining season and during dry season they migrate to East in areas of Lokori, Kapedo, Lopii and Lokichar. In Turkana central and Loima during dry season they migrate to Uganda at a place called Lotere in Kotido Uganda and during rainy season they come back to Kenya in places like Urum, Lokirama and Lorengikipi. The Community Land Regulations of 2017 recommends the use of small units for community lands registration and for Turkana the smallest unit is the village. In Turkana County therefore, the current registration process is being done based on village units not sub-counties or even the whole county. This will create conflicts and exacerbated by climate leading to great security challenges in places where some of the natural resources are shared by various communities.

30. Conflicts and insecurity are almost certain because Community land registration premised on a narrow village boundary construct will pose a challenge in livestock movements patterns and on access to other natural resources. This is because some rigid clauses in some communities' by-laws impose restrictions on free movements of livestock and this will create conflicts between the Turkana pastoralist communities, and among other nomadic communities. This will negatively impact on livelihoods of indigenous peoples who are used to commonly sustain themselves through free access to natural resources by all persons living in Turkana. The current Community Lands Act 2016 indeed conflicts with the CoK, 2010, in so far as it does not consider indigenous peoples' land use systems, like pastoralism. It is also contrary to Sessional Paper Number 8 of 2012.
31. On participation and inclusion of indigenous peoples in the management of natural resources, the government cites The Forest Conservation and Management Act 2016, that provides for community participation in forest management. It is acknowledged that Kenya Forestry Service (KFS) modified these provisions, and today works very productively with the Ogiek, who have been trained and retained as forest scouts, through successfully incorporating indigenous forest management knowledge of the Ogiek in part of the Mau Forest. This is a very good and progressive example where the government can design a co-management system of natural resources in indigenous peoples' lands. This model needs to be replicated among the Sengwer, the Endorois, the Ogiek and other indigenous peoples to own, develop, control and use their lands, resources and communal territories according to customary laws and traditional land-tenure systems and to participate in the exploitation, management and conservation of the associated natural resources. While the government for instance argues that it is implementing the Endorois judgement in collaboration with the county government, this is being done without the effective involvement of the community. For instance, the representative of the community on the Lake Bogoria National Reserve is an appointee of the county government who arguably cannot and has not been able to effectively represent the interests of the community on the committee.^{xxi}
32. The government has cited the Land Laws (Amendment Act) 2016 that introduced comprehensive procedures to govern evictions in Kenya. The government points out

that according to the existing law, evictions undertaken by the government must strictly conform to constitutional provisions, the law and must be conducted humanely. However, Kenya has witnessed continued evictions of indigenous peoples without due regard to the constitutional provisions, the law, court decisions barring evictions and the said evictions have been carried out in an inhuman and brutal manner. For example on November 2, 2023, the government demolished Ogiek houses and evicted several members of the Ogiek indigenous community in Sasimwani, part of the Maasai Mau, an area they had lived for over 8 decades. The government claims that these evictions will pave the way for conservation. It is important to note that these forceful evictions hit women and girls hardest and those with disabilities suffered more^{xxii}.

33. On representation especially at the political level, some indigenous peoples and minorities have small populations hence they cannot win political seats even at ward level, negatively impacting on their right to political representation affecting their representation. They don't get party nominations, county and national government appointments. Public participation as stipulated is controlled by politicians. The Constitution required the enactment of legislation to promote representation of marginalised groups which was to be done undertaken within 5 years of the promulgation of the constitution. It is now 14 years, and this legislation is not in place, depriving members of indigenous peoples their right to representation in political and decision-making processes. The government in its report notes that there is a bill named the Representation of Special Interest Groups Laws (Amendment) Bill 2019 that seeks to give effect to the government's obligation under Article 100 of the constitution, to promote the right of representation by marginalized communities in political processes. The fact that it is almost a decade after this law was to have been in place, is inarguable a serious disregard of the Constitution of Kenya 2010, and a serious violation of the right of minority indigenous peoples to self-representation, exacerbating racial discrimination by way of discrimination and exclusion of these populations from critical political and decision-making processes. We would like to note that Article 100 of the constitution provides of representation of "marginalised groups" and not special 'interest groups.' Further, we note that the proposed bill does not provide any specific representation quotes for indigenous peoples/ marginalised communities and or minorities and therefore even if enacted, will not bring into effect the provisions of Article 100 in so far as indigenous peoples are concerned.

34. Court decisions, local and regional, in favour of indigenous peoples on their land claims have remained in abeyance. These include the Judgement on the Ogiek Case by the African Court in 2017, the Mohamed Ali Baadi and Others v. Attorney General, High Court of Kenya at Nairobi (No. 22 of 2012) (April 2018), the Endorois Decision^{xxiii}, the Lake Turkana Window Power Project judgement^{xxiv}

Proposed recommendations

We urge the committee to recommend to the Government to:

- a. Amend the Community Land Act 2016 to include indigenous peoples' land use systems as a way of identifying and demarcating of community lands
- b. Fast-track the registration of Community lands by allocating financial resources to the exercise in collaboration with the respective county governments.
- c. Develop a comprehensive legislative framework, through either amending the existing relevant laws, or enacting a new law, that will ensure an effective co management system of natural resources in indigenous peoples' areas, to ensure that enables them to own, develop, control and use their lands, resources and communal territories according to customary laws and traditional land-tenure systems and to participate in the exploitation, management and conservation of the associated natural resources
- d. Enact a standalone law, to implement Article 100 of CoK, 2010, to provide very specific representation quotas for marginalised groups including minorities and indigenous peoples. We also recommend that the government in this law, drops the use of the phrase 'special interest groups' and instead use the constitutional term of 'marginalised groups' with reference to communities listed under 'a' to 'e' of Article 100
- e. Implementation in full the decisions of the judiciary, local and regional, relating to indigenous peoples' lands including the Ogiek African Court judgements including the one of reparations and other forms of compensation, the ACHPR Endorois decision, the Ali Badi Vs Attorney General judgement, and the Late Turkana Windpower Project Judgement.

H. HISTORICAL LAND INJUSTICES

35. Many indigenous communities have submitted claims of historical land injustices to the National Land Commission (NLC). However, while many of these claims have been admitted, only the Ogiek claim has been determined, and all the rest still pending determination. And even with the Ogiek, it has not been settled. The recommendations by the NLC should be fast tracked. Even though a lot of land claims were submitted to the National Land Commission during the window period allowed by law, many communities with claims did not submit them due to several reasons including technical and financial constraints. It is important that the law be amended to open the submission window to enable those communities that were locked out due to these reasons to submit their claims.
36. Many indigenous communities have sort judicial remedies against the government in some of their claims, with favourable decisions and or judgements. The Ogiek, the Rendille, the Bajuni, the Endorois, amongst other communities have sort judicial interventions both locally and regionally. After the Endorois Decision in 2009 by the African Commission on People and Human Rights (ACPHR), recognising their claim to their ancestral land around Lake Bogoria National Reserve, which was taken from the community more than 50 years ago. Only 172 individuals were officially listed and given false assurances of full compensation. This has led to ongoing litigation and a determination by the African Commission, which has yet to be implemented. the government formed a Task Force to study and advise on the implementation of this decision. However, this Task Force folded without ever writing a report. After the Judgement on the Ogiek Case by the African Court in 2017, the government again formed a Task Force, which did its work and compiled a report. This report has never been released to the public since it was completed. Later in the Mohamed Ali Baadi and Others v. Attorney General, High Court of Kenya at Nairobi (No. 22 of 2012) (April 2018), the High Court noted that the “local fishermen are entitled to full and prompt compensation and that the failure or delay to compensate them is unfair, discriminatory, and a gross violation of their traditional fishing rights and their right to earn a living,” and awarded the fisher community the amount of Kshs 1,760,424,000.00. The government was to also meet the obligations outlined in the compensation plan within one year. All these decisions have not been implemented.

37. We do applaud the government for finally addressing the Nubian historical land claim issue in Kibra by allocating the community a title of 288 acres under the Community Land Act 2016. While this is commendable, Nubians in other parts of the country also need to be accorded the same benefit on the lands that they occupy. Further it is inarguable that the initial land acreage that belonged to the Nubians measured more than 4000 acres in Kibra, which the community lost through encroachment of other communities and government compulsorily acquiring part of it. The community has never been compensated.
38. There are still a lot of undocumented claims since window for submission of claims by communities lapsed. This window, we submit, was very short and not clear to many. This resulted in many claims not being submitted because of the technical nature of drafting those claims.

Proposed recommendations.

We urge the Committee to recommend to the Government to:

- i. Accelerate the determination and implementation of land claims: Expedite processing: Prioritise the fast-tracking of pending land claims, including those submitted to the National Land Commission (NLC). Ensure that the NLC resolves these claims promptly and transparently.
- ii. Implement Judgements: Ensure that all favourable judicial decisions and recommendations, including those from the African Commission on Human and Peoples' Rights and the African Court, are fully implemented. This includes addressing the Ogiek and Endorois cases and fulfilling compensation commitments.
- iii. Amend Legal Framework: Amend relevant laws to reopen the submission window for historical land claims. This will allow communities that were previously unable to submit their claims due to technical or financial constraints to do so now.

- iv. **Provide Support:** Establish support mechanisms for indigenous communities to assist them in preparing and submitting their claims. This could include technical assistance, legal aid, and financial support to ensure equitable access to the claims process.
- v. **Broaden Benefits:** Extend the benefits of land allocation under the Community Land Act 2016 to other Nubian communities across the country. Ensure that similar benefits are provided to indigenous communities who have been historically disadvantaged or displaced.
- vi. **Address Land Losses:** Take comprehensive measures to compensate communities like the Nubians, Endorois, Ogiek, Turkana, Samburu, Yiaku, Waata, Rendille, Ilchamus, Sengwer, Bajuni amongst many other indigenous peoples, for land lost through encroachment or compulsory acquisition. Implement compensation plans that acknowledge historical losses and provide fair and adequate compensation for displaced communities.

I. INFORMAL SETTLEMENTS

39. One of the push factors for informal settlements in indigenous peoples' areas is climate change impacts. Due to various combination of factors, including land use change hence reduced lands for water and pasture, as well as fishing grounds and frequent evictions for forest peoples, many members of indigenous peoples are forced into informal settlements to survive. The Kenyan government, however, is yet to recognise the climate induced and forced evictions internally displaced people, who end up in informal settlements, many from indigenous communities, and who live in very degrading and inhuman conditions. Due to this, the government's slum upgrading programmes is mainly focused on urban centres away from indigenous peoples' areas that are normally far flung. There is not record or register of people internally displaced because of climate change in Kenya. The only data available is that of politically instigated IDPs.

Proposed recommendations.

We urge the Committee to recommend to the Government to:

- i. **Acknowledge climate-induced displacement:** Formally recognize and classify individuals displaced by climate change as internally displaced persons (IDPs). This includes those from indigenous communities who have been forced into informal

settlements due to the impacts of climate change, such as reduced land for water, pasture, and fishing grounds

- ii. Develop a comprehensive framework: Establish a framework for identifying, recording, and addressing climate-induced displacement. This should include creating a national register of climate-induced IDPs to accurately track and address their needs.
- iii. Inclusive upgrading initiatives: Ensure that slum upgrading programs include and target informal settlements in indigenous peoples' areas. Develop specific strategies to improve living conditions in these areas, considering the unique challenges faced by displaced indigenous communities.
- iv. Geographic equity: Expand slum upgrading efforts beyond urban centres to include remote and rural areas where indigenous peoples are located. Tailor interventions to address the specific needs of these communities and ensure equitable access to resources and services.
- v. Improve data collection: Develop and implement robust data collection systems to accurately capture information on climate-induced displacement. This should include regular assessments and surveys to understand the scope and impact of displacement on indigenous communities.

J. PERSONS WITH ALBINISM

40. The government has made great strides in protecting the persons living with albinism in Kenya including sensitisations and prosecution of perpetrators. Further the government through the PWD Act 2020 adopts a broader definition of PWD in Kenya to include people with albinism. Among some indigenous peoples however, like among the Samburu, the stigma on Albinism and hence their being hidden is still very high. While the National Council of PWDs visited Samburu in 2024 unearthed 8 known cases in Samburu County, there could be more^{xxv}. In Turkana County the publicly known case is one but could be more.^{xxvi} There is need therefore, to undertake more sensitizations among these communities, to enable those with Albinism among them be identified and hence benefit from the government support programmes.

41. Further certain indigenous communities like Elmollo, may not strictly fall into the traditional persons living with albinism definition. However, they do have a unique

medical condition that makes them eat only a special kind of food, as well need always pour water on their skins as they have no pores for sweating.

Proposed recommendations

We urge the Committee to recommend to the Government to:

- a. Intensify targeted sensitisation campaigns within indigenous communities, particularly among the Samburu, Turkana, and Elmollo, to reduce stigma and promote the identification and protection of persons with albinism and other unique medical conditions. The campaigns should include culturally sensitive education and engagement strategies that address local beliefs and practices contributing to the marginalisation of these individuals.
- b. Expand the current legal framework, such as the PWD Act 2020, to explicitly recognise and provide for the unique needs of individuals from indigenous communities with rare medical conditions, ensuring their access to appropriate healthcare and social support services. These measures will enhance the inclusion and protection of all persons with disabilities, in line with Kenya's commitment to human rights and equality.
- c. Enhanced Data Collection: Conduct thorough surveys and assessments in areas with suspected hidden cases of albinism, such as Samburu and Turkana Counties, to accurately identify and document individuals who may need support.
- d. Ensure that persons with albinism in remote and marginalised communities are aware of and can access government support programs. This includes healthcare, education, and social services.

K. REFUGEES AND ASYLUM SEEKERS

42. Kenya has largely complied with the international treaties on how to handle refugees. In 2020, Kenya developed its Comprehensive Refugee Response Framework (CRRF) and in 2024 enacted the Refugee Act. However, in all these processes, the host communities around the refugee camps, who are the Turkana and Somali indigenous peoples, must be part of these conversations. The population of refugees in these two camps, currently at approximately 525,671 refugees and asylum seekers as of 31st July 2021^{xxvii}. The huge part of this population is found in Dadaab and Kakuma refugee camps, containing the resources that would otherwise have been available to the host communities. With depletion of their resources, including land for pasture and water,

the host communities have rarely been considered for development programmes. It is also important to note that the government applies a very minimalist definition of host communities, not putting into consideration that Turkana and Somali communities being pastoralists, always used the land available to them across the county for their livelihoods.

Proposed recommendations.

We urge the Committee to recommend to the Government to ensure:

- i. Engage host communities: Ensure that Turkana and Somali communities are actively involved in the development and implementation of refugee policies and programs, including the Comprehensive Refugee Response Framework (CRRF) and the Refugee Act. This engagement should include consultations, feedback mechanisms, and representation in decision-making processes.
- ii. Adopt an expanded definition of host communities: Broaden the definition of host communities to include indigenous pastoralist groups whose resources and livelihoods are directly impacted by the presence of refugee camps. This expanded definition should recognize the specific challenges faced by these communities.
- iii. Equitable resource distribution: Develop and implement strategies to ensure that resources are equitably distributed between refugee camps and host communities. This includes allocating funding and resources to support the development needs of Turkana and Somali communities
- iv. Support for livelihoods: Implement programs that support the livelihoods of host communities, particularly those that address the depletion of resources such as land, water, and pasture. This could include sustainable development projects, community-driven infrastructure, and support for pastoralist practices.
- v. Community development programs: Create targeted development programs for host communities that address their unique needs and challenges. This includes initiatives focused on infrastructure, health, education, and economic development to improve their quality of life and resilience.
- vi. Conflict resolution and social cohesion: Implement programs that promote social cohesion and conflict resolution between refugees and host communities. This can help mitigate tensions and foster positive relationships, ensuring a harmonious coexistence.

PARAGRAPH 8 OF THE CONCLUDING OBSERVATIONS

L. Education

43. The Indigenous Peoples' regions of the country (Samburu, Turkana, West Pokot, Marsabit, Baringo, Wajir, Mandera, Garissa, Narok, Isiolo, Laikipia and Kajiado Counties) continue to be disenfranchised and struggle to access quality education. For instance, in Baringo, an area frequently plagued by banditry, 19 schools with around 1,000 pupils, including Ngelecha Primary and Naasukuro Primary, have been closed, leading to the displacement of 3,800 families in Arabal, Chebinyiny and Mochongoi, who live as IDPs, and causing a significant number of young Endorois, approximately 500 boys and girls, to drop out of school. Those who remain in school often struggle with accessing quality education. For instance, Kapindasum Primary School, which has absorbed many students from the affected schools, is hampered by inadequate infrastructure and facilities that are not conducive to learning. Additionally, regarding employment, the Endorois indigenous people need an ethnic code that is not tied or seen as a Kalenjin clan/ subtribe as it is currently, because this hampers their chances of securing various opportunities. Their current classification as Kalenjins puts them at a disadvantage and affects their ability to compete fairly in the job market and other opportunities.
44. Among the Endorois of Baringo, Kaibos Location^{xxviii} which stretches for 25 kilometres has only four primary schools, about eight kilometres apart and only one secondary school^{xxix} There is only one polytechnic at Maji Moto, which sometimes is not in use due to lack of students. Primary school children walk up to 10 kilometres^{xxx}. Many schools are not equipped to provide high quality education.^{xxxi} They lack basic teaching resources such as textbooks while most of them have no water supply.
45. The Yiaku indigenous youth on the other hand face higher levels of illiteracy and dropout rates. In Kantana Village, Kurikuri Sublocation, Mukogodo East Ward, Laikipia North, Laikipia County, the Yiaku indigenous community faces severe challenges in education, employment, and healthcare. In July 2023, bandit activity in Mukogodo Forest, Laikipia, disrupted education for the Yiaku community, who were also displaced from their land. Kurikuri Primary School, the only school in the region, is severely under-resourced with just six teachers for all grade levels, and enrolment

dropped from 400 to 200 following their eviction in June 2023.^{xxxii} Approximately 34 pupils, many in primary and junior secondary school are yet to go to school because after eviction many moved to different places where they couldn't access the school and couldn't afford the nearby school at Dol Dol centre. Additionally, the community has only two distant nursery schools, hence long and hazardous journeys for young children, which often results in lower enrolment and higher dropout rates. Factors like sand harvesting, intensified drought, and long distances contribute to a significant number of pupils dropping out to work or due to age differences with their peers. For example, a bright student named Titilai Matunge from Kantana Village struggled academically, eventually turning to drugs and dropped out of GG Kariuki School while in Form 3.

46. The Ogiek and Sengwer communities were evicted from Sasimwani and Embombut respectively, and the government did not take steps to ensure that the victims of these evictions could continue their education. In the Sasimwani case of Narok county, over 200 families were evicted and displaced by KFS officers. This led to disruption of education of about 10 students in secondary education, 60 pupils in primary school and unknown number in early childhood education (ECDE). As of July 2024, 32 Ogiek students had dropped out of primary school. This affects the future of the affected young people with Ogiek girls being at risk of early marriage and other social problems. The families of have now being homeless for almost one year find it difficult to take their children to schools at the same time provide shelter.
47. Additionally, there is no secondary school available for the Dasanach community in Marsabit or in Chepkitale of Mt. Elgon. The Competency Based Curriculum (CBC) remains inaccessible to regions inhabited by indigenous communities due to a lack of power and internet connectivity. Furthermore, schools in Marigat, Baringo County, were submerged by lakes and floodwaters, significantly affecting education in the area.
48. The lack of an ethnic code, as well as where such codes exist, the failure to list marginalised indigenous communities as requiring affirmative action promotes discrimination, contrary to Article 56 of the CoK. IPs like the Yiaku who are yet to be given ethnic codes cannot benefit from affirmative action interventions currently being implemented. On the other hand, communities like the Endorois among others, who are

identified as a subgroup among bigger groups miss out on such opportunities. In 2023, for instance, a young man from the Endorois community presented himself for the military recruitment process in Baringo County. He ended up being identified as a Tugen, Kalenjin subgroup, since Endorois was missing from the country ethnic list meaning Endorois people were neither identified as minority or marginalised. After explaining about ACHPR Decision on the Endorois, he was told that the decision was best implemented at the county level.

Proposed recommendations

We urge the committee to recommend to the government to:

- i. Improve school facilities: Invest in upgrading and building new schools in indigenous regions to ensure that they are equipped with adequate infrastructure, teaching resources, and basic necessities like water supply. Prioritize schools that have been closed or are functioning poorly due to inadequate facilities.
- ii. Increase educational access: Develop strategies to increase access to education for remote and displaced communities. This includes building more schools closer to communities, providing mobile or temporary learning centres, and improving transportation options for students who must travel long distances.
- iii. Support displaced students: Implement programs to support students who have been displaced due to conflict or environmental factors. This includes providing educational materials, ensuring continuity of education, and offering psychological support to help students cope with displacement and trauma.
- iv. Specialised support for indigenous communities: Address the specific educational needs of indigenous communities by integrating culturally relevant curricula and providing targeted support for students facing higher dropout rates due to unique challenges such as illiteracy, long distances, and economic constraints.
- v. Unique ethnic codes: Establish unique ethnic codes for indigenous communities like the Endorois and others to ensure accurate representation and fair access to employment opportunities. This will help eliminate the disadvantages caused by being classified under larger ethnic groups and provide more equitable chances in the job market.
- vi. Skill development and training: Create programs focused on skill development and vocational training for indigenous youth. These programs should be tailored

to the specific needs and opportunities within their communities and provide pathways to employment and economic empowerment.

M. Health

49. The government in its report has not addressed the health challenges that indigenous peoples are facing because of mining, extraction of resources, and or dumping. For a long time now, many communities have been exposed to toxic waste, impacting on their health, either because of mining and or dumping. For example, nuclear and toxic waste deposited in Chalbi desert is allegedly causing cancer cases among Waayu community in Marsabit. In a sample of 50 households, approximately one in two individuals is suffering from cancer. Most, if not all, of these Cancer cases are as a result of poor decommissioning of an Oil drilling exploration in the area.^{xxxiii} Amoco Petroleum, which conducted oil exploration in the 1980s and subsequently abandoned the project after drilling wells in Kargi and Dukana, failed to properly decommission the wells.^{xxxiv} In Kargi, Marsabit County, over 300 cancer cases have been reported among a population of approximately 7,000 people, with the majority of the affected individuals being women.^{xxxv} Other affected regions include Bubisa, Maikona, Kalacha, and North Horr, all situated in the northern part of the desert.^{xxxvi}
50. Further, among many of indigenous peoples, health facilities are far in between making it a challenge for most of the communities to access health facilities. For instance, among Waayu of Marsabit, and Ogiek of Mau Forest complex ie Nkareta lack health centres hence travel or walk long distance to access health. Many Ogiek community members live in areas without local health centres. In Nkareta, located in Narok County's Narok North Subcounty, residents must travel approximately 10km to reach the nearest dispensary, Nkareta dispensary or travel 25 km to reach a better equipped health facility in Narok town, Narok County Referral Hospital. In Sasimwani, also in Narok North Subcounty, the nearest health centre is about 15km away, Einabelbel dispensary. Similarly, in Kiptunga, Nakuru County's Molo Subcounty, the Mariashoni Dispensary is approximately 8 km from the community.
51. Also, among the Endorois of Laikipia, a hospital in Loboï was inundated by the rising water levels of Lake Bogoria, and to this day, the government has not provided an

alternative solution. As a result, patients and pregnant women are forced to travel 20 kilometres to Marigat to receive medical care.

52. In 2023, Turkana, Kenya faced groundwater contamination from hazardous chemicals due to oil exploration, leading to health issues and livestock deaths. Although a government report confirmed the contamination, it failed to address these ongoing problems. Asegis, supported by Zero Tolerance Initiative's Urgent Response and Prevention Fund, held forums with affected communities to discuss the water safety report and seek solutions. Local pastoralist Rhoda Awesit Lokoledukon called on leaders to address the severe water crisis. Asegis is demanding a transparent and comprehensive investigation to safeguard the communities and environment from the harmful effects of oil extraction.

Proposed recommendations

We urge the Committee to recommend to the Government to:

- i. Conduct environmental health assessments: Initiate comprehensive health impact assessments in areas affected by mining, resource extraction, and waste dumping. Focus on regions like Chalbi Desert and Marsabit, where toxic waste has led to increased cancer cases and other health issues. Use the findings to develop targeted interventions and remediation strategies.
- ii. Implement cleanup and remediation: Ensure that companies involved in mining and resource extraction adhere to strict environmental regulations and conduct proper decommissioning of their sites. Implement cleanup and remediation measures in areas affected by past activities, such as the Amoco Petroleum sites in Marsabit, to mitigate ongoing health risks.
- iii. Establish and Upgrade Health Facilities: Build new health centres and upgrade existing ones in remote and underserved indigenous areas, including Waayu and Ogiek communities. Ensure these facilities are well-equipped and staffed to provide comprehensive healthcare services.
- iv. Enhance mobile health services: Implement mobile health units and outreach programs to provide regular medical care and preventive services to remote communities. This can help bridge the gap for those living far from health facilities, such as in Nkareta and Kiptunga.

- v. Develop targeted health interventions: Improve Emergency Response and Accessibility: Enhance emergency response services and transportation options for communities affected by environmental disasters or health crises. For example, address the issue of the Lobo hospital inundation by providing alternative healthcare solutions and improving transportation access to Marigat.

N. RATIFICATION OF INSTRUMENTS

53. The Government of Kenya has severally admitted to the recognition of indigenous peoples in the Kenyan Constitution 2010 and other policy frameworks. In the present report, the GoK states that Constitution recognises that indigenous peoples form part of marginalised communities who must be protected through specific affirmative action designed to ensure that they enjoy their human rights and fundamental freedoms on an equal footing with others.^{xxxvii} In its Sessional Paper number 3 of 2021, National Action Plan on Business and Human Rights 2020-25, the government makes a strong reference to Indigenous Peoples' ownership and access rights to natural resources, and especially protection against displacements from their lands. In this Sessional Paper, the government references the ILO Convention one 169 on Indigenous and Tribal Peoples, and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
54. The Government thus has an obligation to all these communities to ensure inclusion and non-discrimination. And while Kenya has argued that constitution recognises that indigenous people form part of marginalized communities who must be protected through specific affirmative action designed to ensure that they enjoy their human rights and fundamental freedoms on an equal footing with others, hence no basis for it to ratify ILO Convention 169 on Indigenous and Tribal Peoples, we submit that on the contrary, ratifying it will provide a strong expression of solidarity for the protection of indigenous peoples' rights. Further since the Constitution does not explicitly mention Indigenous Peoples, and the only recognition thus far is through policy pronouncements which can easily be vacated by any government in future, it would be important to strengthen the protection of indigenous peoples in a binding provision through ratification of ILO 169, which vide Article 2 of the Constitution then becomes embedded in the Kenya legal framework.

Proposed recommendation

We urge the Committee to recommend to the GOK to consider ratifying the ILO Convention 169 on Indigenous and Tribal Peoples to enhance the general protection accorded to indigenous peoples by the CoK 2010

CONCLUSION

55. This shadow report underscores the persistent challenges and systemic barriers that indigenous peoples and other marginalised communities in Kenya continue to face, despite the government's recognition of their rights under the constitution and various policy frameworks. While the government has made notable strides in addressing issues related to indigenous communities, significant gaps remain, particularly in the areas of health, environmental justice, and legal recognition of indigenous peoples' rights.
56. The report highlights the urgent need for the government to intensify efforts in ensuring access to healthcare, addressing environmental health risks, and strengthening the legal framework for the protection of indigenous peoples. Ratifying international instruments like ILO Convention 169 would provide stronger legal backing for the rights of these communities, ensuring that their human rights and fundamental freedoms are protected on an equal footing with others.
57. In conclusion, while the progress made by the government is commendable, a more robust and inclusive approach is required to fully realise the rights and freedoms of Kenya's indigenous and marginalised communities. The recommendations outlined in this report are intended to guide the government in addressing these critical issues and ensuring that no one is left behind in the pursuit of equality and justice in Kenya.

ⁱ Centre for Minority Rights Development (CEMIRIDE) Convenor; Endorois Welfare Council (EWC), Article 43, Indigenous Peoples for Peace and Climate Justice (IPPCJ); Baringo Women and Youth Organization (BWYO); Ogiek Peoples Development Program (OPDP); Narasha Community and Development Group (NCDG); Yiaku Laikipiak Trust (YLT); Ogiek Sisters Empowerment Network (OSEN); Endorois Indigenous Women Empowerment Network (EIWEN), Community Land Action Now (CLAN); Nareto Latia Indigenous Peoples' Program, Chepkitale indigenous peoples development project (CIPDP), Network Empowering Samburu Transformation-NEST, ILEPA (indigenous Livelihoods Enhancement Partners), indigenous Women Council (IWC)

ⁱⁱ GoK, Combined eighth and ninth periodic reports submitted by Kenya under article 9 of the Convention, due in 2020, Committee on the Elimination of Racial Discrimination, CERD/C/KEN/8-9, 16 February 2022

ⁱⁱⁱTotal derived from addition of population of the different communities that identify as minorities and or Indigenous Peoples, who had ethnic codes in the 2019 census. 219 Kenya Population and Housing Census- distribution of population by socio economic characteristics, Vol IV Pp423

^{iv} In the 2019 Census Report, communities like the Endorois, and Ilchamus are grouped under the larger Kalenjin community. In this classification, they are seen as subtribes, rather as unique tribes/ communities.

^v National Cohesion and Integration Commission, *Ethnic and Diversity Audit of County Public Service 2023* (2023), <https://cohesion.go.ke/index.php/downloads/465-ethnic-diversity-audit-of-the-county-public-service-2023>

^{vi} Report to the United Nations Committee on The Elimination of Racial Discrimination on the Implementation of the Provisions of the International Convention on the Elimination of all Forms of Racial Discrimination Page 6

- ^{vii} A. I. Roba, ‘**The folly of Gachagua’s ‘one man, one shilling’ campaign**’, *Nation*, Wednesday, May 29, 2024 <https://nation.africa/kenya/blogs-opinion/blogs/the-folly-of-gachagua-s-one-man-one-shilling-campaign-4639596> (Accessed 19th August 2024)
- ^{viii} Judicial Service Commission. (2023). *Annual Report for the Financial Year 2022-2023*.
- ^{ix} Some of these cases include not limited to the 2009 Endorois Decision by the African Commission on Peoples and Human Rights, the 2017 Ogiek Judgement by the African Court on Peoples and Human Rights, the Mohamed Ali Baadi and Others v. Attorney General, High Court of Kenya at Nairobi (No. 22 of 2012), Petition 466 of 2006. Charles Lekuyen Nabori and others vs AG and Miscelleneou civil application 305 of 2004. Rangal Lemeiguran & others vs AG
- ^x National Gender and quality Commission (NGEC), *Unmasking Ethnic Minorities and Marginalized Communities in Kenya Who and Where?* Pge 16
- ^{xi} A number of judicial decisions, in Kenya and regionally, have provided key guides on identification of indigenous peoples in Africa. These include but not limited to the 2009 Endorois Decision by the African Commission on Peoples and Human Rights, the 2017 Ogiek Judgement by the African Court on Peoples and Human Rights, the Mohamed Ali Baadi and Others v. Attorney General, High Court of Kenya at Nairobi (No. 22 of 2012), and in RANGAL LEMEIGURAN & OTHERS v ATTORNEY GENERAL & OTHERS [2006]eKLR
- ^{xii} *Op Cite note 9* pp 16
- ^{xiii} *Op Cite Note 9* pp 50
- ^{xiv} *Op Cite Note PP 50*
- ^{xv} 2nd Marginalisation policy chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://countytoolkit.devolution.go.ke/sites/default/files/resources/Second-Policy-on-Marginalised-Areas_CRA_2018.pdf page 26
- ^{xvi} GoK, Combined eighth and ninth periodic reports submitted by Kenya under article 9 of the Convention, due in 2020, Committee on the Elimination of Racial Discrimination, CERD/C/KEN/8-9, 16 February 2022. Para 49
- ^{xvii} The Endorois claim that some of their lands were not inventoried (cite letter to lands)
- ^{xviii} In a letter dated 27 August 2020, from the Baringo County to the Ministry of Lands, it listed unregistered community lands for other communities excluding the Endorois ones, according ro the Endorois Welfare Council. Consequently, EWC wrote to the County Government to clarify this, as at the time of this report that letter is yet to be acted on.
- ^{xix} Sentiments expressed by members of the Endorois community during the CERD consultation meeting in Naivasha on 2nd to 5th July 2024
- ^{xx} Sentiments expressed by members of Turkana community during a UPR workshop held in Lodwar on 07th to 11th August 2023
- ^{xxi} E-Mail and WhatsApp communications between CEMIRIDEE and Endorois Welfare Council (EWC) in the month of August 2024 in preparation of this report
- ^{xxii} Caroline Chebet, ‘Memories and scars of forced eviction and the struggle for land rights’, *The Standard*, 9th July 2024, <https://www.standardmedia.co.ke/health/rift-valley/article/2001498592/memories-and-scars-of-forced-eviction-and-the-struggle-for-land-rights> accessed 20th August 2024
- ^{xxiii} 276 / 2003 – Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya
- ^{xxiv} Mohamad Iltarakwa Kochale & 4 others v Lake Turkana Wind Power Ltd & 4 others; Aaraon Iletele Lesiantam & 4 others (As representatives of the residents of Loiyangalani District, Marsabit County) (Interested Parties) [2022] eKLR
- ^{xxv} Information shared by Josephine Ntisai, of Samburu during the Indigenous Peoples CERD Shadow Report community consultations workshop, Naivasha on 2nd to 5th of July 2024.
- ^{xxvi} Information shared by Ekai Nabenyoo, of Turkana during the Indigenous Peoples CERD Shadow Report community consultations workshop, Naivasha on 2nd to 5th of July 2024.
- ^{xxvii} UNHCR, “Kenya Statistical Package”, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.unhcr.org/ke/wp-content/uploads/sites/2/2021/08/Kenya-Statistics-Package-31-July-2021.pdf. (Accessed 19th June 2024)
- ^{xxviii} A location is the third lowest Administrative Unit, after the Village and Sub Location.
- ^{xxix} CEMIRIDE (2022) Implement Endorois Decision 276/03: Report on the impact of non-implementation of the African Commission’s Endorois decision, <https://minorityrights.org/resources/implement-endorois-decision-276-03-report-on-the-impact-of-non-implementation-of-the-african-commissions-endorois-decision/> accessed 20th August 2024
- ^{xxx} *Ibid*
- ^{xxxi} *Ibid*
- ^{xxxii} Yiaku Peoples Trust representatives during the community consultations for this report on 2nd to 5th July 2024 in Naivasha
- ^{xxxiii} Information from community members during the CERD Shadow Report community consultations workshop, Naivasha on 2nd to 5th of July 2024.
- ^{xxxiv} *Ibid*
- ^{xxxv} *Ibid*
- ^{xxxvi} *Ibid*
- ^{xxxvii} GoK, Combined eighth and ninth periodic reports submitted by Kenya under article 9 of the Convention, due in 2020, Committee on the Elimination of Racial Discrimination, CERD/C/KEN/8-9, 16 February 2022. Para 48