

THE UNIVERSAL PERIODIC REVIEW (UPR) FACTSHEET - KENYA / 2019



Kakuma Refugees during a UPR training session in 2019. hostility that exists between host communities and refugees in these areas is often based on land



SUMMARY OF KEY ISSUES FROM PREVIOUS UPR CYCLES

During the second Universal Periodic Review cycle, most of the recommendations given to Kenya touching on issues of ethnic minorities and indigenous peoples focused on public participation and land rights. The indigenous peoples' land rights has been an issue of concern for years now with the challenges being felt by virtually all indigenous and ethnic minority communities in Kenya. Even with clear provisions in the Constitution and statute law, the lack of commitment by the Kenyan government to implement the legal provisions and judicial decisions is a major point of concern; a factor that continues to further violation of fundamental land rights of these communities. On the other hand, Kenya was also recommended to uphold the principle of non-discrimination and in particular on grounds of gender, personal status and citizenship. A number of ethnic minority communities in Kenya remain undocumented up to date. Among these communities are the Nubians, the Shona, Pemba, Barundi and Nyarwanda Communities. Citizenship is fundamental right and once denied leaves such people invisible to the state. Such stateless persons are unable to apply for vital and subsequent documents such as a passport, national identity card. Consequently, they are unable to access their voting rights, access basic health and education, own property or acquire formal education or secure jobs within the civil service.

NATIONAL FRAMEWORK

Kenya has one of the most progressive constitutional framework and jurisprudence regarding minorities and indigenous peoples' rights. The Constitution of Kenya 2010's Article 260 defines marginalised communities as communities that have suffered political, social, economic and cultural discrimination and exploitation. The common thread of indigenous peoples in Kenya

is that their rights to their ancestral lands, and hence natural resources, as well as the right to spiritual well-being have been consistently violated. It is against this reality that the Constitution of Kenya 2010 provides for a number of protections including Article 56, 69, 100, 174 and 204. Art 56 provides for affirmative action for these communities in economic, social and cultural rights, Art 69 for sustainable exploitation and management of resources while ensuring equitable sharing of accruing benefits, while Article 174 to protect and promote interests and rights of minorities and marginalised communities. Art 204 on the Equalisation Fund provides for the setting aside of monies by the State from its budget to provide basic services including water, roads, health facilities and electricity to marginalised areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation. Kenya has also developed policy and legislative framework that speaks to protection and promotion of the rights of minorities and indigenous peoples, including Community Land Act (2016) though not yet operational, Forest Conservation and Management Act 2016, the Climate Change Act 2016, the National Land Policy, the Marginalisation Policy. The Mining Act 2016 has provisions on how mining relates to communities including MIPs. Additionally, the Petroleum Bill 2017 provides the percentages for benefits sharing between national government, county government and local community. Through various court decisions, Kenya has been found to be in violation of the rights of indigenous peoples. One such decision, the judgement on the Ogiek Case, has prompted the government to constitute a task force to advise the government on how best to implement the ruling.

Organizations:

Centre for Minority Rights Development (CEMIRIDE), Northern Voice Trust, Nubian Rights Forum, Pastoralist Development Network (PDNK), Isiolo Gender Watch, Centre for Minority Rights Development (CEMIRIDE), Endorois Welfare Council (EWC), Northern Nomadic Organisation (NONDO)

Challenges	Impacts
1. Mega development projects and extractive industries are converting indigenous peoples' lands into either private or public use without free prior informed consent and proper compensation. These projects include but are not limited to the Lamu Port and Southern Sudan-Ethiopia Corridor Project (LAPSSET), GEOTHERMAL plants (GDC) in Olkaria Naivasha, Tullow Oil exploration in Turkana county and Crocodile Jaw Dam in Laikipia/Isiolo.	1. Some of the major problems with respect to mega projects are the disregard of the rights of Indigenous Peoples traditional livelihoods by the Kenyan government when designing and implementing mega projects and lack of an Act of Parliament on Public Participation. have been known to encroach on land belonging to indigenous peoples; tearing it, degrading it and ultimately causing adverse impacts in various parts of the world and continuous displacement of indigenous peoples from their territories
2. Citizenship: A number of ethnic minority communities in Kenya remain undocumented up to date. Among these communities are the Nubians, the Shona, Pemba, Kenyan Somalis, Boni, Maasai and Aweer Communities. Members of these communities are at risk of missing out of the National Identification Integration Management System (NIIMS) and National Education Management Identification System (NEMIS) registration process	2. The subjection of the vetting process in getting citizenship documents is discriminatory, dehumanizing and torturous to these communities. The burden of proof of citizenship, which includes too many documents, required arbitrarily during application processes makes an already marginalized community overburdened. A lot of work is yet to be done on the issue of stateless persons, administrative bottlenecks and identification of Kenyans in the face of the constitutional rights and international legal framework.
3. Climate Change: In the drought period, just before the 2018 March April May long rains season, Kajiado County recorded 232,400 livestock deaths, most of them while searching for pasture an equivalent of approx Sh13.94 billion. There has clearly been lack of government investment in pastoralism, despite it being a key contributor to the country's economy, and in effect many pastoralists as well as other indigenous peoples, have lost livelihoods to impacts of climate change and been unable to effectively recover. Indigenous communities in Kenya are not yet effectively involved and included in relevant climate change actions in the country, hence continue losing to the increasingly negative climate change impacts.	3. The impact of unfavourable climate changes on indigenous and minority communities is fairly recognized. Despite their unique relationship with their environment and their geographical placement, there is lack of a clear engagement framework in existing legislations to ensure their inclusion in the climate change discourse in Kenya. This has led to situations where indigenous communities have lost their livelihoods due to aggravated impacts of climate change without effective resilience mechanisms in place
4. Land Rights:Continued evictions of minorities and indigenous peoples from their ancestral land and the delays in the implementation of the Ogiek, Endorois and Sengwer court rulings. There is a lack of political goodwill from the government, lack of policy document guiding the implementation of historical land injustices to guide implementation of the case rulings. The government has made little effort to attempt to implement the Ogiek and the Endorois rulings but while the Ogiek taskforce is still operational, the Endorois taskforce completed its term without making any significant developments thus far. The issue of community land appropriation extends to land upon which refugee camps are set up on. The land upon which Kakuma Refugee Camps and Dadaab Refugee Camps was predominantly community land appropriated without compensating the local communities living around these areas; usually indigenous communities.	4. The process for reclaiming these lands has been full of challenges because the government remains unwilling to cooperate. The Endorois have lost one location (Arabal) to cattle raiders from a neighbouring Pokot community while two other locations are partly occupied; Chebinyiny and Mochongoi Location. More than 30,000 people have been displaced. This situation worsened in 2019 with 7 school going children and 5 women killed, Seven Public Primary schools and three public secondary schools closed. For the last four years, 34 people have been killed.

RECOMMENDATIONS:

1. Government should enact the Public Participation Act.

2. The government, working with relevant stakeholders, should implement a comprehensive capacity building programme for all its staff both national and county governments on minority and indigenous peoples issues and rights in Kenya.

3. Government of Kenya should implement a comprehensive registration of citizens framework at birth of all children to address the problem of violation of the rights of citizenship of a section of Kenyan minority communities in line with recommendation number 3 of the Nubian decision of the African Committee of Experts on the Rights and Welfare of the Child of 2014 (Communication: No. Com/002/2009).

4. Compensation to communities where appropriation of community land has been acquired compulsorily and otherwise ought to be done.
5. Land use policy should be revised to specifically recognize traditional livelihoods like pastoralism as land use systems and hence protect those lands from arbitrary demarcation and allocations to other uses.

6. Land Value Index Bill should be reviewed to ensure proper contextualization of community lands for minorities and indigenous peoples and consequent valuation and compensation mechanisms in case of compulsory acquisition

7. Government should amend the Climate Change Act, 2016 and the Draft Public Finance Management (Climate Change Fund) Regulations 2018 to provide clear affirmative action for minorities and marginalised communities in line with Article 56 of the Constitution of Kenya, 2010