

MINORITY AND INDIGENOUS PEOPLES HUMAN RIGHTS IN KENYA

UPR Info Pre-sessions

Issue 1: Mega development projects and extractive industries

- Kenya has developed Indigenous Peoples Plans in line with World Bank rules
- Converting Indigenous Peoples' lands into private or public use without Free Prior Informed Consent (FPIC) or proper compensation:
 - Lamu Port and Southern Sudan-Ethiopia Corridor (LAPSSET)
 - Geothermal (GDC) in Olkaria
 - Tullow Oil in Turkana county
 - Crocodile Jaw Dam in Laikipia/Isiolo.
- Human rights impacts include:
 - Destruction of traditional livelihoods and cultures
 - Displacement
 - Degradation of indigenous lands

Past recommendations not yet acted upon



- Ratify ILO Convention 169 , made by Denmark & Norway (2010) and Chile (2015)
- Implementation of domestic and ACHPR decisions re. Indigenous Peoples, made by Bolivia (2010)
- Implement recommendations of Special Rapporteur on IP rights, Denmark (2010)

Recommendations: Mega development projects and extractive industries

1. Pass the Public Participation Bill (2018)
2. Develop guidelines, through National Land Commission to ensure infrastructure and extractives projects on the lands of minorities, marginalised and/or indigenous peoples meet the highest international standards of FPIC on land use, ownership, access and control; & deliver highest levels of benefit sharing to those communities in cases where they consent to the projects
3. Support the UN DRIP & ratify ILO 169
4. Implement domestic and ACHPR decisions re. Indigenous Peoples
5. Implement recommendations of Special Rapporteur on Indigenous Peoples' rights

Issue 2: Citizenship

- There have been efforts towards recognition of stateless communities like Makonde and Nubians, mainly in the census
- However, there are still structural challenges in accessing key identity documents for members of some communities, including:
 - Required to travel to Nairobi
 - Required to provide more documentation than other citizens
 - Required to sit before a 'vetting committee'
- Though access to ID cards has improved, these measures are discriminatory and unconstitutional
- Affected communities include Nubians, Shona, Pemba, Kenyan Somalis, Boni, Maasai, Aweera and others
- Human rights impacts include:
 - Exclusion from basic services like education that are now being managed by a National Identification Integration Management System (NIIMS) & National Education Management Identification System (NEMIS)
 - Discrimination
 - Limitations on freedom of movement within and outside of Kenya

Past recommendations not yet acted upon



- Enact non-discrimination laws, recommended by Czech Republic (2010)
- Ratify statelessness conventions, recommended by Portugal (2015)

Recommendations: Citizenship

1. Establish an independent minorities and marginalised communities' task force to implement a national dialogue with civil society groups and communities on framework towards identifying 'marginalised' and 'minority' communities human rights issues, which will afford special human rights protections, and move toward self-definition of communities within the framework. The task force should be comprised of minority and indigenous peoples' experts
2. Amend the Registration of Persons Act to explicitly prohibit discrimination on the basis of ethnicity. The law should also be clear on timelines within which registration documents once applied for, should be availed, and clearly stipulate that no member of any community will require extra proof of citizenship on the basis of belonging to a particular community.
3. Ratify statelessness conventions

Issue 3: Climate Change

- Climate Change Act 2016 provides for representation of marginalised communities on a national Climate Change Council. However, this is not reflected in the rest of the Act, or the recently formulated Climate Change Fund Regulations.
- National Climate Change Action Plan 2018-22 captures the issues of marginalised communities, including the need for effective engagement. It needs more effective involvement of marginalised communities in implementation
- Climate change adversely affects Indigenous People and many of Kenya's minorities and marginalised people more than the rest of the population. Support for mitigation and adaptation measures is needed.

Recommendation: Climate Change

- Establish a comprehensive Climate Change engagement framework that takes into account the special needs of Indigenous Peoples, minorities and marginalised communities
- 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
- Establish a special fund for mitigation and adaptation efforts in Indigenous, minority and marginalized communities

Issue 4 – Land Rights

- Existing laws and proposed Bills fail to adequately protect the land rights of minorities, marginalised groups and Indigenous Peoples, including:
 - Community Land Act 2016
 - Forest Conservation and Management Act 2016
 - The Mining Act 2016
 - The Petroleum Bill 2017
- Implementation of court rulings protecting Indigenous Peoples' land rights has been slow, despite in one case (the Ogiek) the establishment of a Task Force
- Significant contributors to loss of land rights for Indigenous People include:
 - Hosting refugees in mass camps (Kakuma & Dadaab) on lands of pastoralist peoples
 - Environments of insecurity and conflict (e.g. Endorois loss of land to neighbouring Pokot community, and loss of life and of government services associated with the conflict)
 - Mega industrial and infrastructure projects and extractives industries (discussed above)

Past recommendations not yet acted upon



- Enact legislation to protect Indigenous Peoples' land and resource rights (Norway 2010; Holy See & Cabo Verde 2015)

Recommendations: Land Rights

- Implement the rulings of the African Commission on Human and Peoples' Rights on the Endorois & Nubian communities; and African Court on the Ogiek community, particularly their land rights
- Establish a policy/ legislative framework, through National Land Commission, to ensure infrastructure and extractive projects taking place on the lands of minorities, marginalized and/or indigenous groups meet the highest international standards regarding free, prior and informed consent regarding land use, ownership, access and control; and deliver the highest levels of benefit sharing to those communities in cases where they consent to the projects
- Land use policy should be revised to specifically recognize traditional livelihoods like pastoralism add 'hunter gathering, fishing and other culturally significant land or water based practices as land use systems and hence protect those lands from arbitrary demarcation and allocations to other uses

Generic recommendation



- Establish an institutional mechanism for shepherding legislation to enact the constitutional provisions for minorities and marginalized groups' human rights, particularly Article 56 (on affirmative action); Article 100 (on political representation); and Article 203 (on equalization fund to redress historical inequality)

Thank you

From all the members of our coalition:

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

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