

## Joint submission to the Human Rights Council at the 35<sup>th</sup> Session of the Universal Periodic Review (UPR) 3<sup>rd</sup> Cycle Jan 2020

### Background

1. **A minority community is any ethnic, linguistic or religious group** within a state, which is in a non-dominant position in that state. It is a group consisting of individuals who possess a sense of belonging to that group, and who are determined to preserve and develop their distinct ethnic identity likely to be discriminated against or marginalized on the grounds of its ethnicity, language or religion. **For indigenous peoples/communities, the definition of indigenous peoples given by the International Labour Organization (ILO) Convention No. 169 is adopted.** Article 1 provides that the Convention applies to:
  - a. Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
  - b. Peoples in independent countries who are regarded indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest for colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their social, economic, cultural and political institutions’.
2. Whether indigenous or minority, these peoples suffer when it comes to political, social, economic and cultural discrimination, and exploitation. Thus, minority and/or indigenous communities are what the Constitution of Kenya 2010 refers to in Article 260 as a ‘marginalised community’. The Article defines this to mean:
  - a. A community that, because of its relatively small population or for any other reason, has been unable to fully participate in the integrated social and economic life of Kenya as a whole;
  - b. A traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole;
  - c. An indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or
  - d. Pastoral persons and communities, whether they are—

nomadic; or settled community that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole.

This report gives an appraisal of the rights of indigenous peoples<sup>i</sup> in Kenya today with a focus on seven key areas that we feel are still wanting:

- 1) **Mega Projects;**
- 2) **Citizenship;**
- 3) **Public participation and representation;**
- 4) **Land rights;**
- 5) **Climate change;**
- 6) **Ethnic conflicts; and**
- 7) **Multiple discrimination and intersectionality.**

3. 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 (**Recommendations 142.177, 142. 178**) and land rights (**Recommendation 142. 179**). This report asserts that while a few efforts have been made to realise implementation of the above accepted recommendations; the issue of land rights is yet to be fully resolved, with the same challenges still being felt among other emerging land concerns. On the other hand, participation and representation of marginalised (indigenous) communities is yet to be fully achieved. Despite the domestication of various international laws and provisions in the Kenyan law requiring inclusion of marginalized communities in politics and governance, the reality is that these communities are still under- represented. Under representation or exclusion in common leads to discrimination, furthers marginalization and violates their right to development. The indigenous peoples' land rights has been an issue of concern for years now with the challenges being felt by virtually all ethnic minority communities in Kenya. Even with clear provisions in the Constitution and statute law, the lack of commitment of 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.<sup>ii</sup>

4. This report discusses the challenges ethnic minority communities face in regard to citizenship. We note that one of the accepted recommendations given to Kenya (**Recommendation 101.40**) in the second cycle required the government 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 subsequent documents such as a passport, they are unable to access their voting rights, access basic health and education, own property or acquire formal education. For thousands, this is still the reality.<sup>iii</sup>

#### **A. Mega Projects**

5. Mega development projects and extractive industries have been known to encroach on land belonging, tearing it, degrading it and ultimately causing adverse impacts in various parts of the world and continuous displacement of indigenous peoples from their territories without free prior informed consent and proper compensation such as the Lamu Port and Southern Sudan-Ethiopia Corridor Project (LAPSSET), GEOTHERMAL plants (GDC) in Olkaria Naivasha, Tullow Oil exploration in Turkana county. We also note that the government has made significant progressive changes in legislation in respect to extractive industries. The enactment of the Mining Act 2016 for example has several provisions on how mining relates to communities including minorities and indigenous peoples. Additionally, the Petroleum Bill 2017 provides the percentages for benefits sharing between national government, county government and local community.
6. The Crocodile Jaw Dam project, designed to be built on Ewaso Ng'iro River has received resistance from pastoralist communities who have complained that they were not involved in decision making despite public participation being a national value enshrined under Article 10 of the Constitution. The Crocodile Jaw Project is part of the LAPSSET Corridor Projects (LCPs) that have affected the livelihoods of majority minority communities who have raised concerns about public participation. The government has continued to implement this and other projects across the country without engaging communities who are left to suffer the consequences.

7. Some of the major problems with respect to mega projects are the disregard of the rights Indigenous Peoples traditional livelihoods by the Kenyan government when designing and implementing mega projects and lack of an Act of Parliament on Public Participation.

**Laws being violated;**

8. Constitution of Kenya 2010; Article 10 that provides for public participation as one of the national values, Article 56 that provides for affirmative action of minorities and marginalized groups, Article 63 that seeks to protect community land, Article 66 that provides for the regulation of land use and property. Article 69 on the obligations in respect of the environment which includes sustainable exploitation and management of resources while ensuring equitable sharing of accruing benefits and Article 174 that provides for the objects of devolution such as protecting the rights and interests of minorities and marginalized communities and ensuring equitable sharing of national and county resources. Mining Act, 2016; Section 152 on the right to graze livestock and cultivate land and Section 153 that provides for the principles of compensation. Petroleum Exploration and Production Act 2019 that provides for a legal framework on exploration of petroleum such as the use of land for petroleum operations. Community Land Act 2016 part 2 on the recognition, protection and registration of the community lands.

9. **Recommendations;**

- 9.1 Enact a Public Participation Act;**

- 9.2 Prior to any implementation of mega projects that have a direct impact on indigenous peoples' rights and their livelihoods, the government ensure prior and informed consent is sought. This ultimately needs the government to develop a policy on policy on Free Prior and Informed Consent of IPs in Kenya on development;**

- 9.3 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.**

**B. Citizenship**

10. 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 Awer 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 due to lack of these documentations.

11. The subjection of the vetting process in getting citizenship documents is discriminatory, dehumanizing and torture to these communities. The burden of proof of citizenship which includes too many documents required during application processes makes an already marginalized community overburdened. The process is long and tedious. Kenya's practises and vetting processes of stateless minority communities subjects them to discrimination. The processes the Nubians for example have to undergo to have their national identity cards processed is cumbersome, unfair and have caused many to miss opportunities owing to such delays. 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. The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on reduction of statelessness are the key international conventions addressing the issues of stateless persons although complemented by other conventions. Article 7 of the 1954 Convention on exemption from reciprocity requires that a contracting state shall accord to stateless persons the same treatment as is accorded to other aliens generally.
12. Some of the progressive changes in law with respect to citizenship in Kenya include the enactment of the Kenya Citizenship and Immigration Act 2011. Section 15 provides for stateless persons and registration requirements as citizens. Application for registration of stateless persons was required to be made within a period of seven years with an extension period that ended in August 2018. Additionally, Section 9 of the Registration of persons Act, 2015 provides that upon application to receive an identity card that shall be issued within thirty days. The Caveat that child birth certificate is not proof of citizenship has also been removed following the decision of African Commission of Experts on the rights and welfare of the child. Article 14 (5) further provides that a child found in Kenya who is or appears to be less than eight years of age, and whose nationality and parents are not known, is presumed to be a citizen by birth. However, Kenya still disregards of the citizenship laws, stereotyping, profiling and stigmatization of certain ethnic minority communities.
13. **Recommendations**

**13.1 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)**

**13.2 Government of Kenya should fully and partially implementation the Nubian decision of the African Committee of Experts on the Rights and Welfare of the Child of 2014 (Communication: No. Com/002/2009) on its laws on registration of persons, in line with recommendation number 1**

**C. Climate Change**

14. 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 but there is lack of a clear engagement framework in existing legislations to ensure inclusion in the climate change discourse in Kenya. In the last 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. With a healthy cow costing about KES 60,000, this was about Sh13.94 billion lost!<sup>iv</sup> This is happening despite the fact that all over the world, appropriate policies are a key component of stabilising the livelihoods of indigenous systems especially those that are geared towards climate change mitigation and adaptation. Policies that are well formulated and are adaptive to the needs of minorities and indigenous communities, incorporating indigenous knowledge and recognising the role of customary institutions will foster a conducive environment that supports robust businesses and investments in indigenous systems resulting in communities with enhanced ability to cope with climate change. Kenya's legal and regulatory framework is fairly robust with Climate Change laws and institutional frameworks newly established to build economic, social and environmental resilience of communities and individuals to climate change shocks. The policy frameworks are however is devoid of a strong minority and indigenous peoples' agenda which leaves them and their mainstay socio-economic system vulnerable resulting in ineffective solutions for these communities' resilience.

15. The UNDRIP is the foundational comprehensive legal framework on the rights of indigenous peoples. The convention recognizes that respect for indigenous knowledge, cultures and

traditional practices contribute to sustainable development. Article 29 in particular recognizes these peoples' environmental rights and places an obligation on the State to implement assistance programmes for indigenous peoples for such conservation and protection without discrimination.

16. In an effort to step up immediate climate actions by states, the environmental treaty, **United Nations Framework Convention on Climate Change (UNFCCC)**, was developed and adopted by various countries across the globe. It is the foundational climatic agreement from where principles and differentiated responsibilities to the climate context are drawn. Kenya having ratified this treaty is bound by its provisions. As a developing country, Kenya is expected to contribute to climate mitigation. In the preamble, the treaty acknowledges that climate change is a common concern of human kind and requires states when taking actions to address to climate change to recognize the rights of indigenous people. Further, under Article 7 on adaptation action, states should follow among one of the systems knowledge of indigenous people with a view to integrating adaptation into relevant socioeconomic and environmental policies and actions. The UNFCCC is currently in the process of establishing a Local Communities and Indigenous Peoples Platform (LCIPP) with an aim to strengthen the knowledge, efforts and practices local communities and indigenous people related to addressing climate change.
17. Being a party to this agreement, Kenya is bound by these provisions to recognize the rights of indigenous people when addressing climate change impacts. Article 7 suggests participation of indigenous people a factor that is still lacking. There is little if any inclusivity of indigenous people to participate in mechanisms established to address the impacts of climate change.
18. Although the **Convention on Biological diversity (CBD)** was developed without participation of indigenous people, the position has since changed. Indigenous people representatives were involved in inter- developmental working group on Article 8J in May 2000 as well as other related provisions. Since, the CBD has recognized the participation of indigenous people in discussions and decisions and included specific references to indigenous peoples. It has also acknowledged the vulnerabilities of indigenous people to climate change, their traditional knowledge and related impacts. The CBD has issued a number of reports and recommendations on climate change, its impacts but giving a special attention to indigenous people in general.

19. In 2008 on one of the proposals for integration of climate change activities in the programme work of the convention, there was developed an Ad Hoc Technical Expert Group (AHTEG) on biodiversity and climate change with a notable inclusion of indigenous and local communities' representatives. In light of such progressional changes made by the CBD, Kenya could borrow a few notes. We cannot turn a blind eye to the centrality indigenous people could play in climate change redress.
20. **The United Nations Development Programme (UNDP)** has noted with certainty that indigenous people are largely missing from national and sometimes international climate plans. In their context of work, the UNDP has further highlighted more than once that indigenous people are very vulnerable to unfavourable climatic changes. It has also been bold on pressing that indigenous people are key to 2030 Agenda for Sustainable Development.
21. In the UN Climate Summit, Conference for Parties (COP 21), UNDP in partnership with other forums saw to it that indigenous peoples' priorities and perspectives were included in the countries' negotiating positions. The two weeks conference recognized with certainty the crucial role indigenous peoples play in climate change mitigation, natural resources rights and their land rights.
22. In various proposals to UN Summits, the **International Indigenous Peoples Forum on Climate Change (IIPFCC)** has called to the attention of states the injustice occasioned on indigenous people as a result of climatic change impacts. The key features for their proposal often revolves around three measures;
- (i) Respecting the rights of indigenous peoples within a broader human rights framework in climate change policies and actions
  - (ii) Recognizing indigenous peoples' traditional knowledge, innovations and practices and positive contributions to climate adaptation, mitigation while respecting indigenous peoples' traditional livelihoods
  - (iii) Ensuring full and effective participation of indigenous peoples in climate change related processes and programs at local, national, regional and international levels.
23. Back home the government has made significant change in respect to climate change. The enactment of the Climate Change Act 2016 which provides for representation of marginalized communities and indigenous peoples in the Climate Change Council is one of these.



Additionally, the government has developed a National Climate Change Action Plan 2018-22 (NCCAP) which clearly recognizes the role of marginalized and indigenous peoples in climate change adaptation and provides for their inclusion in the implementation and monitoring of the plan. The NCCAP recognises the important role of minorities and indigenous communities like pastoralists, hunter gatherers and fisher communities in achieving Kenya's development goals by providing mechanisms to realise low carbon climate resilient development. It further emphasizes sustainability, while prioritising adaptation and enhanced climate resilience for vulnerable groups, including women, youth, persons with disabilities, and marginalised and minority communities. There is also a Protection of Traditional Knowledge Act which supports the protection and promotion of traditional knowledge on climate change adaptation.

24. While we have progressive legislation there is currently a lack of a clearly defined engagement framework of indigenous peoples at all levels of climate change discourse. Additionally, while the Climate Change Act provides for representation at the Climate Change Council (Chaired by the President) it does not have provisions of inclusion and consultations of minorities and marginalised communities across all levels therefore violating Article 56 of the Constitution. The Draft Public Finance Management (Climate Change Fund) Regulations 2018 also do not adhere to the provisions of Article 56 of the Constitution on affirmative action of minorities and indigenous peoples.

25. **Recommendations;**

**25.1 Amend Climate Change Act 2016 and the Draft Public Finance Management (Climate Change Fund) Regulations 2018 to provide for clear affirmative action for minorities and marginalised communities as provided for under Article 56 of Constitution of Kenya 2010;**

**25.2 We recommend that the government develops a strong representation in climate change platforms for minorities and indigenous peoples (marginalised communities) at both national and county levels. We also urge the two governments to develop and implement resilience strategies in ASAL areas in an effort to stabilize the livelihoods of the communities during adverse climatic conditions and protect food security.**

D. **Land Rights**

26. Continued evictions of minorities and indigenous peoples from their ancestral land and the delays in the implementation of the Ogiek , Endorois and Sengwer court ruling. 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 process for reclaiming these lands has been full of challenges because the government remains unwilling to cooperate with us in implementing this decision. 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 from this menace. This situation has worsened in 2019 with 7 school going Children killed, 5 Women killed, Seven Public Primary schools and three public secondary schools having been closed. For the last four years, a total of 34 people have been killed. There is lack of political goodwill from the government, lack of policy document guiding the implementation of historical land injustices to guide implementation of these cases.

27. The ancestral land rights and community land rights of indigenous communities in Kenya have been at the heart of the dynamic land tenure and land policy system.<sup>v</sup> To give effect to the Article 63, the country has made progress by enacting the Community Land Act of 2016 which provides a strong basis for indigenous communities. However, the Community Land Act remains unoperational up to date. Three years have passed with no community land titles having been issued and as such, many communities continue to suffer involuntary land losses. Section 46 of the Community Land Act required the government to develop a special adjudication programme for community land and to ensure that this will be concluded in September 2019. This time is about to lapse and the special programme is yet to be developed. The delayed process has caused and continues to put community land at risk of appropriation without compensation by the government and private entities. The deal between Kenya and Uganda to build an inland port on Kedong ranch, a 78,000 acre piece of land owned by Maasai community is one such example of appropriation of community land under conflict. The Kedong ranch, like Narasha community land conflict<sup>vi</sup> has left many Maasai communities at the mercy of the courts to determine their community land tenure which would be eased by implementation of the Community Land Act and issuance of title deeds. Misconceptualization of the community land ownership by county governments, forceful evictions in the name of conservation has seen 3,000 people evicted from the **Maasai Mau Forest**.<sup>vii</sup>

28. 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 ethnic minorities. The hostility that exists between host communities and refugees in these areas is often based on land. The fact that host communities feel that refugees get to ‘benefit’ from their land enhances tension. These camps sit on hundreds of thousands of acres of land that is predominantly community land; land that although in good use left communities uncompensated. In 2015 UNHCR and the Ministry for Interior and Coordination of National Government agreed with Turkana County Government to develop a settlement scheme that would provide self- reliance to both refugees and host communities’ livelihood and enhanced service delivery. Kaloboyei Settlement was then born after land was handed over to UNHCR by the County Government. Article 63 (3) of the Constitution of Kenya provides that unregistered community land shall be held in trust by the County Government on behalf of the communities which it is held. The danger of this position is that communities such as the Turkana cannot manage their community land and their involvement and participation in making decisions such as the development of Kaloboyei scheme is wanting. There is a danger of mismanagement of community land if they remain unregistered. There are plenty of cases where land has already been acquire without compensation being done.
29. There have been a few progressive changes in the attempt to address land issues among ethnic minorities and indigenous peoples. The Ndung’u Commission identified the Ogiek Community as an indigenous community that is dependent on forest habitats but whose land has been taken away from them because of protectionist policies by the government. Further, the enactment of Community Land Act 2016 and Community Land Regulations<sup>viii</sup> pursuant to Article 63 of the Constitution is a progressive step in safeguarding community land often owned by ethnic minority communities.
30. We now have a foundational judicial jurisprudence on the land and natural resource rights of indigenous peoples<sup>ix</sup> owing to the number of cases decided in our own courts and the African Court on Human and People’s Rights creating a precedence for the protection of land rights in respect of indigenous communities.

31. We also note that the formation of a task force to fast track the implementation of Ogiek court ruling is a progressive effort by government.

**Laws that have been violated;**

1. Community land act, 2016- Protection of the community land rights enshrined under Section 5.
2. Constitution- Article 40 on the protection of the right to property and Article 61 and 63 on classification of land and Community land respectively.

**32. Recommendations**

**32.1 The Community Land Act be implemented to avoid further injustice of communities and loss of land.**

**32.2 The government under the Community Land Act provision should immediately appoint the Registrar of Community Land Act to start the implementation of the Act and protection of community lands. The person appointed should also be an expert in minorities and indigenous peoples land rights.**

**32.3 Awareness of the land rights and ownership of community lands provisions need to be created as well as facilitating community land registration.**

**32.4 Compensation to communities where appropriation of community land has been acquired ought to be done.**

**32.5 Land use policy should be revised to specifically recognize traditional livelihoods like pastoralism as land use system and hence protect those lands from arbitrary demarcation and allocations to other uses.**

**32.6 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.**

**E. Public Participation and Representation**

33. Under representation among minority and indigenous peoples in Kenya remains a true reality causing underdevelopment and discrimination. The effect of a lack of representation is lack of political muscle to address a community concerns such as land rights. Minority communities remain helpless spectators because they are left out of law and policy making processes. Even though the country is currently governed through a devolved system, community land governance structures have been devolved, participation and representation

of minority communities is still wanting. Representation in County Land Boards, and County National Lands Commission structure is crucial in ensuring the integration of the voices and concerns of minorities and indigenous peoples into decisions related to land. We also note that in the constitution of the Ogiek task force developed in 2014, the Ogiek community was not consulted despite them being at the center of the issue.

34. We note that the Constitution under Article 56 imposes a duty on the state to implement affirmative action programmes to ensure marginalized and indigenous peoples are represented in governance and other spheres of life. The County Public Participation Guidelines, 2016 also recognizes the need for inclusivity for minorities at county levels and in the mainstream public participation processes. Implementation of this provision and the **Recommendation 142.177, 142.178** remains a challenge despite the law. The status quo that is under-representation in politics and governance leads to discrimination and underdevelopment among these marginalized communities. A baseline study done in Nakuru County has shown that among the Ogiek, Maasai and Endorois; among the Ogiek are two nominated Members of County Assembly and one Nominated Senator. Among the Maasais is only one member of the Nakuru County Referral Hospital Board.<sup>x</sup> This status of representation of minority communities is replicated across the country, a clear indication that under-representation remains a reality. It is necessary that the government make efforts to implement Article 56 and ensure effective representation of these communities on the decision making table to ensure that their voices and concerns are heard and addressed.

35. **Recommendations;**

**35.1 We urge the government to issue segregated data in this census year, recognize the specific indigenous and minority communities and implement representation in key government institutions of marginalized communities**

**35.2 An intentional policy implementation checklist that checks and tracks public participation of marginalized peoples at all levels; both county and national governments.**

F. **Ethnic Conflicts**

36. There are a lot of continued escalating tensions and animosity experienced in the areas within Turkana South and Turkana West in the north leading to loss of lives and property. Various

towns have been marked as extremely insecure owing to prevalent attacks such as Kainuk, Kalemngorok marked by animal raids. These attacks have been fueled by proliferation of small arms smuggled into the county through perforated borders and particularly from South Sudan and Somalia. The violence has caused displacement of people who have in turn been impoverished, and children's schooling disrupted. Some schools have been closed down because of the state of insecurity threatens both the children and the teachers. Additionally, cattle raids have led to prolonged and bloody clashes between communities as aggrieved villagers often try to retake their livestock. Attributes of these tensions and raids are border expansions, scramble for natural resources, specifically water and pasture.<sup>xi</sup>

37. We note that as part of positive development, the government has enacted the Land Act and the Community Land Act which allows communities such as pastoralists to own land as a community<sup>xii</sup>. However, a number of laws have been violated with respect to ethnic conflicts. These are;

1. Constitution, 2010 under the Bill of Rights on human dignity, provision of economic and social rights as well Chapter Fourteen on national security.
2. Universal Declaration on Human Rights- under the preamble on the recognition of the right to inherent dignity, Article 3 on the right to security of persons and Article 22 on the right to social security;
3. ICESCR under Article 9 which recognizes the right to social security;
4. Article 1 of the Charter of the United Nations which provides for the purposes and principles of the United Nations.

38. **Recommendations**

**38.1 There needs to be a boundary review in the north particularly along the borders of the counties of Baringo, West Pokot and Turkana.**

**38.2 The government should strengthen traditional dispute resolution mechanisms and linking them with police, courts and other government agencies.**

G. **Multiple Discrimination and intersectionality**

39. Multiple discrimination can be simply defined as discrimination against someone on the basis of more than one ground.<sup>xiii</sup> The intersection of multiple inequalities remains an issue yet to be addressed globally and especially in Kenya. A girl child who is physically disabled from one of the ethnic minority communities' experiences discrimination on the grounds of her

gender, age, disability and her tribe or community. The beliefs in some of these communities views such victims as a curse who are cast out of the community or face various forms of abuse. Generally, people are multi-dimensional and cannot be classified or defined by a single characteristic. Youths, women, children, elderly persons and persons with disabilities form multi-dimensional levels of discrimination in ethnic minority communities and indigenous peoples. In spite of truism, many models of anti-discrimination and particularly legislations deal with each ground of discrimination separately. The inadequacy of the law can be elaborated where it perceives potential claimants as bearers of single characteristics and assumes that discriminators are creatures who will base their discrimination singly based on individual grounds.

40. The law continually fails to address these undesirable realities fostering inequality in a different form of positive discrimination. It has endangered and furthered an oversimplified, single- ground constructions of laws and policies which has resulted to a dearth of moral and practical support of victims of multiple discrimination. There is need to address this form of inequality.

#### 41. **Recommendations:**

**41.1 Amend the Children Act, Persons with Disabilities Act, the Mental Health Act and other relevant laws to reflect multi- ground dimension of multiple discrimination.**

**41.2 Allocate sufficient funds and provide sufficient support to victims of multiple discrimination especially at county level.**

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<sup>i</sup> In this report, indigenous and marginalised communities will be interchangeably used to mean the same

<sup>ii</sup> Nyang'ori Ohenjo, Madiha Majid (2019): Baseline Study on Indigenous People's Land Rights in Nakuru County.

<sup>iii</sup> Medika Medi, 'KHRC - A Call To Action To End Statelessness In Kenya' (*Khrc.or.ke*, 2019) <<https://www.khrc.or.ke/2015-03-04-10-37-01/blog/675-a-call-to-action-to-end-statelessness-in-kenya.html>> accessed 25 April 2019

<sup>iv</sup> Remarks by the Governor of Kajiado Joseph ole Lenku while officially opening Kenya Pastoralists Week 2018 at the Masai Technical Training Institute on 10<sup>th</sup> April 2018

<sup>v</sup> Nyang'ori Ohenjo, Madiha Majid (2019): Baseline Study on Indigenous People's Land Rights in Nakuru County

<sup>vii</sup> Narok County Commissioner **George Natembeya** addressing Journalists at his office on July 9, 2018. [ROBERT KIPLAGAT, STANDARD] More than 300 families have been evicted from the **Maasai Mau** Forest as the Government aims to repossess 23,000 hectares from illegal settlers. Jul 10, 2018

<sup>viii</sup> Legal Notice 279 , Kenya Gazette Supplement No. 78

<sup>ix</sup> Endorois Case, Ogiek Case, Nubian Case

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<sup>xi</sup> 'Insecurity in Turkana' A publication of the Catholic Diocese of Lodwar March- April Edition 2019, Vol 49, Issue No. 1

<sup>xii</sup> Conflict, Security and the Extractive Industries in Turkana: Emerging Issues in 2012- 2015, USUI-Africa and KSG (2016)

