

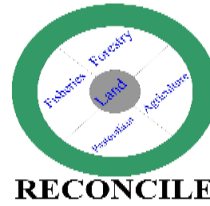


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## **Parallel Report for the Review of Kenya by the UN Committee on the Elimination of Racial Discrimination**

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### **The Rights of Indigenous Peoples Impacted by Protected Areas and Conservation Measures**

114th session  
Geneva, 25 November–13 December 2024

Submission Date: 24 October 2024

## **Table of Contents**

I.	Reporting Organizations	3
II.	Summary	3
III.	Committee Observations and Recommendations on Indigenous Peoples Rights	3
IV.	Kenyan Law on Indigenous Peoples on Conservation	4
V.	Human Rights Violations Occurring During the Reporting Period	4
VI.	Conclusions and Recommendations	10

## **I. Reporting Organizations**

1. This alternative report is submitted to the Committee on the Elimination of Racial Discrimination by the University of Arizona Indigenous Peoples Law and Policy Program (IPLP)<sup>1</sup>, Reconcile –Kenya<sup>2</sup> and Jamii Asilia Centre.<sup>3</sup>

2. On 29 July 2016 and 19 July 2022, the Special Rapporteur on the Rights of Indigenous Peoples submitted two thematic reports to the General Assembly on the issue of conservation and protected areas.<sup>4</sup> To follow up on the implementation of the recommendations by the mandate, IPLP launched the Initiative on Indigenous Peoples Affected by Protected Areas and Other Conservation Measures. As part of this initiative, IPLP conducted a mapping exercise documenting human rights violations of Indigenous Peoples in 95 protected areas across 40 countries, including Kenya.<sup>5</sup>

## **II. Summary**

3. The case studies show how the Indigenous Peoples of Kenya have lost land through annexation to create protected areas. The Kenya Forest Service (KFS) and the Kenya Wildlife Service (KWS) manage these areas through fortress conservation methods with force and violence, targeting Indigenous Peoples. Similarly, private ecotourism ventures are negatively impacting Indigenous Peoples' rights in Kenya.

4. Our research highlights that Indigenous Peoples in Kenya, living in or near the Boni and Doodori National Reserves, Chepkitale Nature Reserve & Kiptugot Forest Reserve, the Embobut Forest, Mau Forest Complex, Lake Bogoria National Reserve and Samburu National Reserve continue to suffer from allegedly forced evictions, arbitrary arrests, detentions, killings, intimidation, torture, dispossession of their lands and territories, loss of culture and spiritual sites, loss of homes and livelihoods, confiscation of livestock, and the denial of the right to development. Furthermore, our findings indicate that nearly all protected areas and wildlife conservancies established within Indigenous Peoples' lands and territories in Kenya were created without their consultation and their free, prior, and informed consent (FPIC) or adequate compensation, a pattern that has persisted since the colonial era and that continues with the creation of new protected areas.

## **III. Committee Observations and Recommendations on Indigenous Peoples' Rights**

5. In its last review of Kenya (CERD/C/KEN/CO/5-7 para. 20) in 2017, CERD urgently called upon the State party to:

(a) Prevent, investigate, prosecute and sanction acts threatening the physical security and property of the Sengwer, the Endorois, the Ogiek and other Indigenous peoples, (in line with its general recommendation No. 23 (1997) on the rights of Indigenous peoples);

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<sup>1</sup> <https://law.arizona.edu/academics/programs/indigenous-peoples-law-policy>

<sup>2</sup> <https://www.reconcile-ea.org/>

<sup>3</sup> <https://jamiiasilia.org/>

<sup>4</sup> A/77/238, A/71/229

<sup>5</sup> <https://indigenous.arizona.edu/databases/human-rights-violations-database>

(b) Ensure legal acknowledgement of the collective rights of 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; and

(c) Carry out effective consultations between relevant actors and communities likely to be affected by projects to develop, conserve or exploit Indigenous ancestral land or its natural resources and obtain the free, prior and informed consent of Indigenous communities before implementing such projects.

#### **IV. Kenyan Law on Indigenous Peoples and Conservation**

6. The Kenyan legal system does not adequately protect Indigenous Peoples' collective rights to land. Although Article 63(2)(d)(i) of the Constitution<sup>6</sup> recognizes community ownership of ancestral lands and traditionally occupied territories, including those of hunter-gatherer communities, the implementation has been weak.

7. The National Land Commission (NLC) is mandated to address historical land injustices, but significant limitations exist. The NLC's authority to revoke irregular land titles has been restricted by court rulings, such as *Robert Mutiso Lelli v. National Land Commission* (2017),<sup>7</sup> that placed this power with the Ministry of Lands. Additionally, a narrow timeframe to file historical land claims—originally ending in 2017 and extended to 2022—has left many cases unresolved.

8. Kenyan courts have issued conflicting rulings on Indigenous land claims, following the 2017 African Court of Human and Peoples' Rights judgment affirming the Ogiek Indigenous Peoples' land rights. In *Joseph Letuya v. Attorney General* (2014) and *Wilson Ole Ngosilo v. CS Environment* (2024)<sup>8</sup>, the courts allowed forced evictions from protected areas where lands were gazetted as public forests. In *John K. Keny v. Ministry of Lands* (2018), the Court supported Indigenous resettlement.

9. Kenya's actions in evicting Indigenous Peoples from their lands, particularly in protected areas, contravenes Article 40 of the Constitution of Kenya (2010), which guards against arbitrary deprivation of land rights and mandates fair compensation and resettlement.

#### **V. Human Rights Violations Occurring during the Reporting Period**

10. This report responds to paragraphs 9-11 of the Committee's List of Issues, concerning the situation of Indigenous Peoples (arts. 2, 5 and 7) in Kenya (CERD/C/KEN/8-9).

#### **ISSUE 9 – Measures taken to protect the rights of Indigenous Peoples, in particular to**

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<sup>6</sup> <https://kenyalaw.org/kl/index.php?id=398>.

<sup>7</sup> <https://kenyalaw.org/caselaw/cases/view/135737/>.

<sup>8</sup> *Ngusilo (Suing as the Chairman of the Ogiek Council of Elders) & 2 others v Attorney General & 5 others* (Petition 1 of 2023) [2024] KEELC 4427 (KLR) (30 May 2024) (Judgment). <https://kenyalaw.org/caselaw/cases/view/290885/>

**ensure legal protection of their collective rights to own, develop, control and use their lands and resources. Measures taken to ensure prior consultation with Indigenous Peoples and their participation in decision-making processes on issues that affect them.**

**ISSUE 10 -Measures taken to address the alleged continuing forced evictions of Indigenous communities, including Ogiek, Endorois and Sengwer peoples, from their traditional lands. Information on compensation granted to Indigenous communities affected by forced evictions and to ensure the protection of their rights. Measures taken to prevent, investigate, prosecute and sanction acts threatening the physical security and property of Indigenous peoples**

11. During the period under review, the State continued to forcefully remove the Ogiek and Sengwer Indigenous Peoples from their traditional lands in the Sasumwani and Nkareta areas of Mau Forest and the Kapkok Glade of Embobut Forest. The ongoing evictions deny affected communities of Indigenous Peoples the right to own, develop, control, and use their lands. The KFS has burned down Indigenous Peoples' homes and livestock has been confiscated by rangers during evictions.

12. At the time of writing this report, over 700 households of Ogieks from the Sasumwani area<sup>9</sup> have been displaced and have not returned to their homes. Approximately 600 Sengwer households from Kapkok Glade<sup>10</sup> were forcefully evicted by the KFS. Prosecution of individual security officers accused of using excessive force during forced evictions has not been documented anywhere. Yet, Indigenous land rights defenders have been criminalised, intimidated and threatened with arrests<sup>11</sup>.

### **Mount Elgon and the Ogiek Peoples**

13. Mt Elgon Ecosystem includes a 73,705 Ha mountain forest reserve managed by the KFS, a 16,916 Ha National Park managed by the KWS, and the 17,200 Ha Chepkitale Nature Reserve under the authority of the Bungoma County Government. Approximately 6,000 Ogiek Indigenous Peoples organised into 33 clans consider Mt Elgon their ancestral land. Ogiek are hunter-gatherers of honey, mushrooms, vegetables, and medicinal plants. They also rear cattle and sheep on the high Chepkitale moorland and into the forest during the dry season.

14. As early as the 1890s, the lower eastern lands of the Ogiek were occupied by colonial settlers as the highlands were deforested to create farms. Evictions of the Ogiek began in the 1920s. In 1932, the forest lands were gazetted as a Crown Land Forest Reserve by the colonial administration, in 1938 they were categorized as an untitled Tribal Reserve, and in 1942, a Native Reserve. A mass eviction took place in 1968 to establish Mt Elgon National Park. The Ogiek's movement around Mt. Elgon was restricted and they were confined to the moorland. In 2000, Chepkitale Nature Reserve was gazetted on the advice of the International Union for the Conservation of Nature (IUCN). The Ogiek were considered trespassers but resisted the forced eviction and returned to Chepkitale.

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<sup>9</sup> <https://news.mongabay.com/2023/12/violent-evictions-are-latest-ordeal-for-kenyas-ogiek-seeking-land-rights/>.

<sup>10</sup> <https://www.forestpeoples.org/en/lands-forests-territories-rights-based-conservation-rights-land-natural-resources/news-article/2024>.

<sup>11</sup> <https://minorityrights.org/boot-camp-re-energises-kenyas-indigenous-activists/>.

15. The Ogiek were evicted at gunpoint and many of their houses and other structures were destroyed. They suffered from starvation since hunting and access to the forest to gather honey was banned. Political interference upset a government plan to resettle the Ogiek who became squatters on their own lands. Around 2006, the Sabaot Land Defense Force (SLDF) guerilla group began to terrorize residents of Mt Elgon. The government deployed the Kenya Defense Forces to deal with the SLDF. By 2008, an estimated 2,000 Ogiek had been displaced.

16. In 2022 the Ogiek of Chepkitale moorland won a 20-year legal battle in the High Court of Kenya, Bungoma in *Peter Kitelo v County Government of Bungoma*.<sup>12</sup> The Court ruled that the conversion of the land into a National Reserve was unconstitutional and that it should revert back to the Ogiek. The Ogiek, through this judgment, regained part of Mt Elgon and have remained at Chepkitale Moorland.<sup>13</sup>

### **Mau Forest Complex and the Ogiek Peoples**

17. The Mau Forest was declared Crown Land in the 1930s, made a National Reserve in 1945, and was officially gazetted as a Forest Reserve under the Forest Act in 1954.<sup>14</sup> The Mau Forest Complex is managed by the KFS, except Maasai Mau Forest block which is trust land managed by Narok County.

18. The Ogiek consider the Mau Forest their ancestral home and have occupied the forest since time immemorial. The KFS ordered the first forceful eviction of the Ogiek in 2009 providing only 30 days' notice to leave the forest reserve. The Ogiek sought an injunction from the High Court of Kenya, Nakuru but the forced eviction proceeded. A petition was then filed to the African Commission on Human and Peoples Rights and in 2012, the Commission referred the case to the African Court on Human and Peoples Rights. The African Court ruled in favour of the Ogiek in a 2017 judgment. The Court found that the government of Kenya violated the Ogiek's right to property, right to dispose of wealth and natural resources, right to religion, and right to culture. The Court further held that Kenya had failed to recognize the Ogiek as Indigenous Peoples requiring special protection from the State.

19. By July 2020, the KFS evicted over 1,000 Ogiek members from their homes in the Mariashoni, Logoman, Kiptunga, and Nessuit Forests in Eastern Mau, Nakuru County. An additional 150 Ogiek individuals were evicted or are at risk of eviction in Nkareta, Maasai Mau, Narok County.<sup>15</sup> During the evictions, over 300 houses were demolished, along with fences surrounding homesteads, farms, and livestock enclosures. The evictions reportedly occurred without prior notice and during the COVID-19 lockdown, exacerbating the community's vulnerabilities during the pandemic.<sup>16</sup> Between 27 July and 2 August 2020, inter-ethnic violence erupted in Narok and Nakuru counties following the KFS evictions and the African Court ruling,

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<sup>12</sup> ELC Case No. 10 of 2020 (formerly Kitale ELC Case No. 109 of 2008) [ELC 10 OF 2020 JUDGMENT.pdf](#).

<sup>13</sup> <https://rightsandresources.org/blog/in-kenya-the-ogiek-of-mt-elgon-are-a-community-on-the-frontlines-of-forest-conservation/>.

<sup>14</sup> <https://ke.chm-cbd.net/protected-areas/mau-forest-complex#:~:text=While%20the%20forest%20was%20declared,largest%20closed%2Dcanopy%20forest%20ecosystem.>

<sup>15</sup> AL KEN 3/2020

<sup>16</sup> AL KEN 3/2020

heightening tensions over land rights. The clashes resulted in three Ogiek deaths, injuries to twenty, and the arrest of fourteen community members. Ogiek leaders faced harassment and intimidation and were accused of inciting violence despite a lack of evidence.<sup>17</sup>

20. The African Court ruled on reparations in June 2022, ordering monetary compensation and non-monetary reparations, including restitution of the Ogiek's ancestral lands. The Government of Kenya was ordered to undertake delimitation, demarcation, and titling of Ogiek lands and to consult with the Ogiek when planning development, conservation, or investment projects on their ancestral lands.

21. In September 2023, the KFS evicted the Ogiek from Sasumwani and the government of Kenya indicated that it was going to fence off Mau Forest Complex<sup>18</sup>. The KFS arrested and shot at Ogiek members attempting to access parts of the Mau Forest to gather firewood, herbs, or honey.<sup>19</sup> On 2 November 2023, the Kenyan government, through a multi-agency security team, forcibly evicted at least 1,000 Ogiek from Sasimwani in the Mau Forest Complex, violently destroying and burning Ogiek homes, schools, and places of worship in the process.<sup>20</sup> The evictions left many Ogiek displaced, homeless, and vulnerable to harsh weather conditions, with no source of livelihood.<sup>21</sup>

### **The Embobut Forest and the Sengwer Indigenous Peoples**

22. The Embobut Forest, in Elgeyo Marakwet County, part of the Cherangany Water Tower, is the ancestral territory of the Sengwer Indigenous Peoples. The Forest, covering 1,638 sq km, was gazetted by the Kenyan government in 1954 without consulting or obtaining the Sengwer's free prior and informed consent or providing compensation. Despite this, the Sengwer have continued living in the forest, maintaining a hunter-gatherer lifestyle. In the 2000s, deforestation from farming and timber harvesting became widespread, prompting the government to implement Kenya Vision 2030 to restore forest cover to 10% by 2030.

23. In 2009, KFS after the government claimed that 16,000 ha of the forest had been excised, the KFS evicted 12,000 households in Embobut and relocated them to temporary settlements in Sinen, Kewabus, Kapkok, Kaomologon/Kabusien, Kessom, Koropkwen/Moyokwo, and Kaptirbai.<sup>22</sup> The government formed a resettlement task force and recommended that the Sengwer/Kimala be included among the “squatters” to be resettled. The Sengwer were provided Ksh. 410,000 (\$4,100 USD) compensation instead of alternative lands for injustices suffered during the evictions.<sup>23</sup>

24. From 2009 to 2018, the KFS forcefully evicted the Sengwer 67 times.<sup>24</sup> Reports indicate

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<sup>17</sup> AL KEN 3/2020

<sup>18</sup> <https://www.iwgia.org/en/news/5298-700-ogiek-made-homeless-kenyan-authorities-destroy-dozens-homes.html>.

<sup>19</sup> <https://ajws.org/blog/a-13-year-legal-battle-culminates-in-an-historic-victory-for-the-ogiek-people/>

<sup>20</sup> Kenyan National Commission on Human Rights, Press Release, Halt the Ongoing Forced Evictions of the Ogiek Community, 6 November, 2023 <https://www.knchr.org/Articles/ArtMID/2432/ArticleID/1174/HALT-THE-ONGOING-FORCED-EVICTIONS-OF-THE-OGIEK-COMMUNITY>

<sup>21</sup> UA KEN 4/2023

<sup>22</sup> <https://khrc.or.ke/storage/2024/02/DAYS-IN-THE-COLD-KHRCs-Report-into-the-Embobut-Forest-Eviction.pdf>.

<sup>23</sup> <https://www.standardmedia.co.ke/rift-valley/article/2001376818/resolve-eviction-stand-off-or-lose-sh36b-eu-warns-state>.

<sup>24</sup> [https://www.knchr.org/portals/0/grouprightsreports/KNCHR-Fact\\_Finding\\_Mission\\_to\\_Embobut\\_Forest.pdf](https://www.knchr.org/portals/0/grouprightsreports/KNCHR-Fact_Finding_Mission_to_Embobut_Forest.pdf); UA KEN 7/2017

that the evictions involved killings, gunshot injuries, burning of homes, harassment and intimidation, arbitrary arrests, and killing and confiscation of livestock.<sup>25</sup> Of those arrested, 35 Sengwer individuals were detained and released, allegedly upon payment of bribes. Others were taken to court, where bail was set at an unreasonably high amount, and trials were exceedingly prolonged.<sup>26</sup>

25. KFS guards also injured Sengwer journalists documenting the evictions and seized or damaged equipment.<sup>27</sup>

26. After the KFS shot and killed a Sengwer member and injured another on 16 January 2018, the European Union suspended conservation funds under its Water Towers Protection and Climate Change Mitigation and Adaptation Programme.<sup>28</sup>

27. On 10 July 2020, KFS guards allegedly burned down 28 Sengwer houses in the Kapkok Glade of Embobut Forest. The operation reportedly occurred while residents were away searching for food, leaving them unable to salvage their belongings.<sup>29</sup>

28. The Sengwer filed complaints with the National Land Commission and Eldoret Land and Environment Court (ELC Petition No.5 of 2013), ultimately obtaining a conservatory order restraining KFS from conducting further evictions. On 19 March 2021, the Court of Appeal in Kisumu in *David Kiptum Yator and 23 others versus the Attorney General of Kenya*, ordered that,

*a conservatory order is issued that pending the hearing and determination of the appeal, the status quo in Embobut forest as of today do remain in force which means those who are in occupation of the forest lands of today should not be evicted, but no new persons should be allowed to occupy forest land.*

29. Evictions ceased until May 2024 when KFS forcefully removed 600 Sengwar households at Kapkok Glade, following government pronouncements that all water towers within Mau, Charangany and Aberdare would be fenced off.<sup>30</sup>

### **Lake Bogoria and the Endorois Indigenous Peoples**

30. Lake Bogoria, the ancestral land of the Endorois people, was designated a National Reserve by the Kenyan government in 1973. For centuries, the Endorois used this land for their livelihood, religious practices, and grazing livestock. Lake Bogoria, with its hot geysers, holds special religious significance for the Endorois. In the 1970s, the Endorois were forcibly evicted from their land without free, prior, and informed consent, or adequate compensation. The Endorois lost access to critical resources including grazing lands, salt licks, honey production

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<sup>25</sup> UA KEN 1/2018

<sup>26</sup> UA KEN 7/2017

<sup>27</sup> UA KEN 7/2017; <https://minorityrights.org/boot-camp-re-energises-kenyas-indigenous-activists/>

<sup>28</sup> [https://www.eeas.europa.eu/node/38343\\_en](https://www.eeas.europa.eu/node/38343_en); <https://rightsindvelopment.org/wp-content/uploads/2019/05/CASE-16-Natural-Resource-Management-Program-and-Water-Tower-Protection-and-Climate-Change-Programme-ENG.pdf>

<sup>29</sup> AL KEN 3/2020

<sup>30</sup> <https://www.citizen.digital/news/ruto-tells-those-who-have-encroached-mau-forest-to-leave-immediately-n328462>



areas, and a religious site. The alienation of the land led to extreme poverty and threatened the Endorois' survival as Indigenous Peoples, whose population is estimated to range from 60,000 to 90,000.

31. In 2009, the African Commission on Human and Peoples' Rights delivered a landmark decision recognizing the Endorois as Indigenous Peoples and affirming their right to restitution of their ancestral lands. To date, the Kenyan government has not fully implemented the Commission's recommendations calling for land restitution, compensation, and benefit sharing of tourism revenues. A task force established by the Kenyan government achieved little in addressing the Endorois' grievances. While a portion of tourism revenues from Lake Bogoria is allocated to the Endorois, payments are minimal and managed by the Baringo County Government, instead of going to the community directly.<sup>31</sup>

32. Furthermore, efforts by the Endorois Welfare Council to establish a biocultural protocol for benefit-sharing under the Convention on Biological Diversity Nagoya Protocol on Access and Benefit Sharing remain unresolved, leaving the community without a clear mechanism for sharing commercial benefits derived from their lands and resources.

### **Other Protected Areas**

33. In other protected areas, Kenya has initiated mega development projects threatening to damage the natural resources and livelihoods of Indigenous Peoples such as the LAPPSET project in Bono Dodori Forest,<sup>32</sup> Kengen in Hells Gate National Reserve in Naivasha,<sup>33</sup> Lake Turkana Wind Power Project in Lonyangalani Samburu<sup>34</sup>, gazettement of Mukutani Forest in Baringo and Itare Dam in Mau Forest.<sup>35</sup> The state does not engage Indigenous Peoples in decision-making nor does it obtain their FPIC before initiating development projects on their lands.

34. The Boni Dodori Forest Complex is home to the Aweer Indigenous People, also known as the Boni or Sanye, a Cushitic ethnic group that traditionally follows a hunter-gatherer lifestyle. While some Aweer have adopted farming, they still rely on the forest for resources like wild honey, medicinal plants, bush meat, and building materials. In 1975, without securing the Aweer's FPIC, the Kenyan government gazetted the Boni and Dodori forests as National Reserves and banned game hunting. These actions severely impacted the Aweer's way of life, forcing them to settle in villages such as Bothai Junction, on the edge of the forest, during the politically charged Shifta War between Kenya and Somalia (1963-1967).<sup>36</sup>

35. For the Aweer, the forest holds cultural significance and encompasses spiritual sites that are central to their identity, including Pate Town, Takwa Ruins, and Siyo Fort. The forest has also become a hideout for the Somali Al-Shabaab terrorist group that uses the complex as a base

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<sup>31</sup> <https://minorityrights.org/resources/implement-endorois-decision-276-03-report-on-the-impact-of-non-implementation-of-the-african-commissions-endorois-decision/>

<sup>32</sup> <https://khrc.or.ke/press-release/forgotten-in-the-scramble-for-lamu/>

<sup>33</sup> <https://intercontinentalcry.org/maasai-protest-against-new-land-concessions-geothermal-extraction-kenya-24504/>

<sup>34</sup> <https://old.danwatch.dk/undersogelseskapitel/indigenous-peoples-or-not/>

<sup>35</sup> [https://www.businessdailyafrica.com/bd/news/cj-appoints-bench-to-hear-case-against-sh38bn-itare-dam-2172996#google\\_vignette](https://www.businessdailyafrica.com/bd/news/cj-appoints-bench-to-hear-case-against-sh38bn-itare-dam-2172996#google_vignette)

<sup>36</sup> [https://www.forestpeoples.org/sites/default/files/documents/Transforming%20conservation\\_02.pdf](https://www.forestpeoples.org/sites/default/files/documents/Transforming%20conservation_02.pdf)

for cross-border raids into Kenya.<sup>37</sup> The Kenyan government views the area as a strategic resource and plans to develop it for tourism and strategic infrastructure, as outlined in its 2013-2023<sup>38</sup> management plan. This includes building eco-lodges, dams, and a superhighway under the Lamu Port-South Sudan-Ethiopia Transport Corridor (LAPSSET) project.<sup>39</sup>

36. The Lake Turkana Wind Power Project Limited was established through the seizure of about 150,000 Ha of Rendile Indigenous Peoples' lands. The Rendile successfully challenged the land confiscation in the High Court and the Court of Appeal.<sup>40</sup> However, the government delayed implementation of the judgment and sought an extension through judicial review. As the situation currently stands, the Rendile stand to lose their land. With the complicity of the government, private environmental groups such, as the Northern Rangelands Trust, are creating conservancies on Indigenous Peoples' lands in Baringo, Samburu, and West Pokot and indirectly contributing to escalating inter-communal conflict. Armed raiders are targeting the Endorois, and Ilchamus Indigenous Peoples, leading to the loss of lives, property destruction, and displacement. Indigenous Peoples have been forced to flee their ancestral lands in Mukutani, and Arabal and abandon their grazing fields, causing food insecurity.<sup>41</sup>

**ISSUE 11 – Measures taken towards redistribution of land, including measures to promote multi-ethnic settings and operationalize the mechanisms for addressing land problems in the State party. Information on the Minimum and Maximum Land Holding Acreage Bill of 2015.**

37. Kenya has not passed the Minimum and Maximum Land Holding Acreage Bill which would have addressed land redistribution. The Bill was replaced by a version that empowers the Lands Cabinet Secretary to prescribe land acreages at will through a gazette notice. The government of Kenya has failed to address the historical land injustices experienced by Indigenous Peoples through the National Land Commission. Partial implementation of the Legal Aid Act (2016) and the National Legal Aid Policy, intended to ensure access to affordable legal aid services for all Kenyans, Indigenous Peoples in particular, has resulted in unequal access to justice for victims of racial discrimination.

**VI. Conclusions and Recommendations**

38. The current report highlights the negative impacts of protected areas on the enjoyment of Indigenous Peoples' rights in Kenya through government-led forced evictions and land encroachments. These violations have far-reaching implications on social rights, hindering access to food, housing, education, and healthcare and impeding civil and political rights to life, freedom from torture, and protection from gender-based and other forms of violence.

39. Kenya must comply with its international obligations to uphold Indigenous Peoples' human rights in law, policy, and practice. The Government of Kenya continues to expropriate

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<sup>37</sup> <https://www.the-star.co.ke/news/realtime/2023-09-17-two-al-shabaab-terrorists-killed-in-lamu-operation/>

<sup>38</sup> <https://www.kws.go.ke/file/1467/download?token=2Uy7CjLA#:~:text=Five%20natural%20resource%20use%20zones,Use%20Zone%2C%20and%20Influence%20Zone>

<sup>39</sup> *Supra*, note 32.

<sup>40</sup> <https://www.iwgia.org/en/news/5342-indigenous-communities-kenya-court-proceedings-lake-turkana-wind-project.html>

<sup>41</sup> <https://www.oaklandinstitute.org/stealth-game-community-conservancies-devastate-northern-kenya>.

land and extract natural resources within protected areas despite long-standing and evidence-based proof of harmonious coexistence between Indigenous Peoples and nature.

40. In light of the State's failure to fully act on the Committee's previous concluding observations and fully implement the Convention, we request that the Committee urge Kenya to:

- a) Implement the Committee's 2017 recommendations CERD/C/KEN/CO/5-7 para. 20;
- b) Immediately halt all forced evictions of the Ogiek, Sengwer, Endorois and other Indigenous Peoples of Kenya and return their lands in national reserves, parks and forests including Lake Bogoria National Reserve, Boni Dodori National Reserve, Mau Forest Complex, Hells Gate National Reserve, Chepkitale/Kiptugot Forests and Embobut Forest. Provide compensation and reparations for the losses they suffered;
- c) Adopt the necessary legal, policy and administrative measures for the full recognition and protection of the collective rights of Indigenous Peoples to own, develop, control and use their lands, territories, and resources in accordance with their customary laws and traditional land-tenure systems and existing international human rights standards on Indigenous Peoples;
- d) Stop the intimidation and arrests of Indigenous and environmental human rights defenders and recognize their role in championing the protection and promotion of human rights;
- e) Fully implement, in good faith the African Court on Human and Peoples Rights' judgment in the Ogiek case and the decision of the African Commission on Human and Peoples' Rights in the Endorois case.
- f) Prevent, investigate, and prosecute crimes of murder, assault, and other illegal actions against the Ogiek, Sengwer, Endorois, and other Indigenous Peoples;
- g) Carry out good faith consultations and obtain the free prior and informed consent of Indigenous Peoples affected by wildlife conservancies in the Northern, North Rift and Coastal regions. In accordance with the United Nations Declaration on the Rights of Indigenous Peoples, protect the rights of Indigenous Peoples to develop and conserve their lands and resources and obtain their free, prior, and informed before implementing projects on their land;
- h) Address historical land injustices and challenges affecting the National Land Commission, such as the competing mandates with the Ministry of Lands that have slowed the execution of its constitutional mandate;
- i) Reintroduce the Minimum and Maximum Land Holding Acreage Bill to ensure land access and redistribution benefits to dispossessed Indigenous Peoples in Kenya;
- j) Provide fundamental social services such as water, sanitation, health care, education, and other infrastructure to Indigenous Peoples, especially within protected areas;
- k) Remove barriers that prevent Indigenous Peoples from accessing sacred sites within protected areas to enable them to freely practice their right to culture and religion; and
- l) Ratify ILO Indigenous and Tribal Peoples Convention No. 169.