

Statement on the UPR Pre-session on Kenya
of the
Centre for Minority Rights Development (CEMIRIDE)
18th February 2025, United Nations, Geneva

This statement is provided by the Centre for Minority Rights Development (CEMIRIDE) and Act for Change Trust. CEMIRIDE supports Kenya's minorities and indigenous peoples, including pastoralists, forest communities, and fisher peoples, in advocating for their rights. Act for Change Trust works on promoting sustainable food systems and climate resilience in rural communities across East Africa. The Submission was developed through a comprehensive consultation process involving peasant communities¹ (indigenous peoples who include pastoralists, hunter gatherers and fisher peoples, and small-scale farmers) across various regions in Kenya. The communities in the consultations for the development of the Kenyan government report.

Our Joint NGO submission discusses the right to food and natural resources, focusing on the challenges faced by smallholder farmers and indigenous communities. It references the International Covenant on Economic, Social, and Cultural Rights, United Nations Declaration on the Rights of Peasants and other Rural Workers (UNDROP) and United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), Kenya's Constitution of 2010, and relevant domestic policies and legislative frameworks, including the Seeds and Plants Act and Livestock Bill 2024.

ISSUE 1: Land Rights and the Right to Food

Along the different UPR cycles, Norway, Holy See, and Cabo Verde have recommended to Kenya ratifying ILO Convention 169 and implementing UNDRIP to protect indigenous peoples' lands. When families lose their land, they also lose their means of producing food. The Right to food, and therefore, hunger and poverty in Kenya must be understood from the perspective of land rights violations and climate justice. Access to land is crucial for peasants (who include indigenous peoples and smallholder farmers), to achieve the right to food. The Kenyan Constitution protects the right to food and land, but the government has not fully implemented judgments in favour of land rights claims. These include the Endorois Decision by African Commission on Peoples and Human Rights (ACPHR), and the Ogiek judgements by the African Court on Peoples and Human Rights (African Court). Others are the decisions on the Lake Turkana Windpower Project and the Lamu Port case (Petition 22 of 2012 Mohamed Ali Baadi and Others vs the AG and others). Communities continue to be evicted, and fisher communities lose access to traditional waters due to nationalisation of resources.

Therefore, we recommended that the Kenyan government:

1. Enhances the attainment of the right to food by securing land access through the enforcement of existing land laws. This should ensure the protection of land rights for peasants as set out in the UN Declaration on the Rights of Peasants and other People working in Rural Areas (UNDROP), with particular attention to women,

¹ For purposes of this report, the term peasants will be used in the meaning of the United Nations Declaration on the Rights of Peasants and Other Rural Workers UNDROP (Article 1). In Kenya, these include indigenous peoples like pastoralists, forest dwellers (hunter gatherers), and fisher communities, as well as small scale farmers

youth, and individuals with disabilities. Additionally, it is crucial to implement safeguards against arbitrary evictions as outlined in the Sessional Paper Number 3 of 2021 on the National Action Plan on Business and Human Rights.

2. Fully implements all court decisions favouring indigenous peoples and local communities' claims. This includes publicizing and executing the Ogiek Judgement Task Force Report and the 2009 Endorois Decision of the African Commission on Human and Peoples' Rights (ACHPR).
3. Develops and implements co-management frameworks which includes resource benefits sharing with the affected communities, to effectively implement their right to food. This includes ancestral pastoralists and hunter gatherer lands, fish landing sites, fishing grounds, and lands for other affected communities. This should include the right to access and sustainably utilise natural resources as well as

ISSUE 2: Community Land

The Community Land Act 2016, that provides for the identification and registration of all community land in Kenya, has not been fully implemented, with only a few community land parcels registered due to insufficient budget for effective community engagement and involvement. By fully giving the ownership of the land to the local communities, this registration secures the use of the lands for food production including protection against evictions and forced displacements. By 2024, only 11 community lands have been registered, out of a possible more than 2000 parcels still unregistered community lands. Delayed registration has led to lands being lost: the Endorois for instance, have raised issues about some of their lands not being inventoried; on the other hand fisher communities face challenges as traditional water bodies are converted into government resources, limiting land availability for food production.

Therefore, we recommended that the Kenyan government to:

1. Fully implement the Community Land Act of 2016 in line with Article 17 of the Indigenous and Tribal Peoples Convention, 1989 (No. 169) by establishing clear timelines and allocation of budgets to facilitate the communities to effectively engage in the land registration process.
2. In consultation with peasants, and in compliance with the Sessional Paper number 3 of 2021 on the National Action Plan on Business and Human Rights, review all the land use frameworks already developed to ensure that they protect community land meant for food production (crops, livestock, fishing), including against evictions and arbitrary conversion of agricultural production land to other use, like mining and or housing.

ISSUE 3: Indigenous seeds/breeds and indigenous farming practices

In the previous UPRs, Barbados and Bangladesh recommended enhancing food security and reducing hunger and poverty respectively. Kenya has adopted the National Agroecology Strategy for Food System Transformation (2024-2033) to improve food security for indigenous communities and smallholder farmers. The Climate Smart Agriculture Strategy 2022-2026 also aims to include indigenous peoples in climate action in agriculture. However, retrogressive laws like the Seeds and Plants Act (CAP 326) and

Livestock Bill 2024 negate these achievements. Indigenous seed/breed systems provide 80-90% of seeds/breeds, so outlawing them leads to food insecurity for peasants. Displacing indigenous knowledge and technologies in agriculture in favour of contemporary techniques has also contributed to negative environmental impacts that have exacerbated the food insecurity. For instance, artificial fertilizers and herbicides, have been proven unsustainable as they have degraded soil, and decreased food production. Contemporary fish rearing techniques, such as cage aquaculture, interfere with indigenous food production ecosystems, limits access to species and cultural identity, and cause financial hardship for local communities.

Therefore, we recommended that the Kenyan government:

1. Amend the Seed and Plant Varieties Act of 2012 and review the Livestock Bill 2024 to protect peasants' rights in compliance with Articles a16, 19 and 20 of UNDROP, to share and use indigenous seeds and animal genetic resources, while promoting organic and agroecological farming practices to enhance food security and address environmental impacts.
2. Enhance sustainable agricultural practices to attain food security and the right to food by developing and adopting an implementation framework for the recently launched Agroecology Strategy to stimulate sustainable production, including agroecological and organic production.
3. Document and incorporate indigenous knowledge and technologies to enhance environmental conservation and protect traditional resources and habitats in compliance with Articles a16 and 20 of UNDROP.

ISSUE 4: Participation in Climate Change Participation in Decision-Making

In previous UPRs, the Philippines recommended Kenya to take measures to increase indigenous peoples' participation in all issues that impact them. Kenya has taken steps to include marginalized communities, including indigenous peoples, in decision-making and in the government institutions. To increase minority and indigenous populations' involvement in climate change adaptation and mitigation initiatives, the National Climate Change Action Plan (NCCAP) 2023–2027 acknowledges their involvement. Participation is also encouraged by UNDROP Articles 2 and 10 as well as Article 10 of the Kenyan Constitution. The efforts to include the opinions of indigenous peoples and other marginalized groups in the development of the National Climate Change Action Plan are particularly noteworthy. The establishment of Minorities and Marginalized Communities Unit in the Office of the President by the government further emphasizes how crucial it is that indigenous peoples participate in decision-making. However, the majority of initiatives to guarantee indigenous peoples' involvement in decision-making are not institutionalized. Concerns are raised about the inefficiency of public involvement in the management and use of natural resources in indigenous communities, especially when it comes to forced land acquisition or mineral exploitation. The rights of indigenous peoples are impacted by current legislation that lack clear safeguards such as the Mining Act of 2016 and the Petroleum Act of 2019. A comprehensive engagement framework is necessary to guarantee the effective inclusion and participation of the most vulnerable, such as smallholder farmers and indigenous peoples, in the design of right to food interventions.

Therefore, we recommended that the Kenyan government:

1. Implements the Climate Change Indigenous Peoples Engagement Framework
2. Develops and adopt a mandatory framework for involving indigenous peoples and local communities in the decision-making processes related to the management and utilization of natural resources within their areas, ensuring that traditional and indigenous knowledge is protected, in compliance of Articles 2, 10 and 27 of UNDROP.
3. Enact the natural (including genetic) resource benefits sharing framework to ensure that the benefits from natural resource exploration/exploitation will be equitably shared with the local communities.
4. Take measures to enhance the resilience of livestock and food systems to climate change. This should include strengthening the capacities of communities and counties to handle climate-induced disasters, such as by establishing warehouses for food and fodder, and providing training programs for dealing with livestock emergencies, such as those promoted by LEGS (Livestock Emergency Guidelines and Standards).

We hope the mentioned recommendations will be adopted and implemented in accordance with the Kenyan Government's mandate to uphold the rights of the Kenyan indigenous Peoples