

Right to food, Right to land, Climate Justice, Indigenous Peoples and Small Holder Farmers



This summary is based on a joint submission by The Centre for Minority Rights Development (CEMIRIDE) and Act for Change Trust, members of the Kenyan Universal Periodic Review (UPR) CSO Coalition. The Submission was made under the Minorities and Indigenous Peoples Rights Thematic Group, focusing access to land, rights of indigenous peoples, right to food, climate change. The submission highlights key issues concerning the right to food and natural resources, with a focus on the challenges faced by Kenya's smallholder farmers and indigenous communities. The focus of this submission is the right to food, enshrined in the International Covenant on Economic, Social and Cultural Rights ratified by Kenya, the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP, which Kenya voted for in 2018), the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the Constitution of Kenya, 2010, Sessional Paper number 3 of 2021 on the National Action Plan on Business and Human Rights, the Seeds and Plants Act CAP 326, the Climate Smart Agriculture Strategy 2017-2026, the Livestock Bill 2021 among other relevant policies and legislative frameworks.

SUMMARY OF KEY ISSUES FROM PREVIOUS CYCLES

The Right to Food, and consequently, hunger and poverty in Kenya should be understood from the perspective of land rights violations and climate justice. Access to land is crucial for peasants, who include indigenous peoples and small holder farmers, to achieve the right to food. Kenya has made several recommendations over the past three Universal Periodic Review cycles, including those regarding the land rights of indigenous peoples. These include fair distribution of water and food (Spain), ratifying ILO 169 and implementing UNDRIP (Norway), strengthening efforts to eradicate poverty and hunger (Bangladesh), protecting indigenous peoples' lands (Holly See and Carbo Verde), and enhancing food security (Barbados). The government has made efforts to implement recommendations in the 3rd Cycle, including the 'Big Four' Agenda, food security, nutrition strategy, and promoting the right to food. They also planned to implement the Community Land Act and County Government Act and Finalize legislation to actualise Article 100 of the Constitution of Kenya 2010. However, these plans have not been fully implemented, with only less than five community lands registered and no evidence of protecting land for food production in county land use plans that have been finalised.

NATIONAL FRAMEWORK

Kenya has developed policies and legislative frameworks to safeguard the land rights of indigenous communities and smallholder farmers although human rights are not yet central to the food systems. The Constitution of Kenya 2010 protects the right to community land and food, with legislations like the Community Land Act 2016 in place. The National Climate Change Action Plan 2023-27 focuses on climate security, in recognition of the wider impact of climate change on food and livelihoods, incorporating indigenous knowledge. The government launched the National Agroecology Strategy for Food System Transformation (2024-2033) to enhance food security for smallholder farmers and indigenous communities. It targets the mapping and profiling of indigenous seed and livestock breeds and protecting the ownership of indigenous seeds and livestock breeds and their use by communities. The Climate Smart Agriculture Strategy 2022-2026 aims to include indigenous peoples in climate action in agriculture. Sessional Paper No. 3 of 2021 outlines the National Action Plan on Business and Human Rights, recognizing the importance of safeguarding rights of indigenous peoples, and local communities especially the right to their land, in investments. This is crucial for their ability to attain the right to food.

CHALLENGES

1. Land Rights and and the Right to Food	Impacts
<p>The progress towards food security, poverty reduction, and sustainable development is at risk for peasants, who include indigenous communities and smallholder farmers, due to land tenure insecurity. For example:</p> <ol style="list-style-type: none"> The Ogiek of Mau Forest and Yiaku of Mukogodo Forest suffer evictions and land encroachments. In the Mau Forest, recent evictions displaced 700 Ogiek families, despite favourable court rulings. Yiaku community members have been displaced by banditry; Further, Mukogodo forest, spanning 30,189 hectares, gazetted under Notice LN.174 of 1964, has seen over 700 community members affected by forced evictions since July 2023. Fisher communities at the Kenya coastline and Lake Victoria have lost access to their traditional waters due to nationalisation without consultation; the commercialized management of fisheries lacks a fair benefits-sharing framework. Succession issues continue to also contribute to the loss of land for agriculture for many smallholder farmers, especially women headed families. These displacements are exacerbated by Climate change impacts affecting food production through extreme droughts and floods. Additionally, insecurity in regions like Laikipia and Baringo has displaced households, increased food insecurity, and stalled critical projects like dams, affecting tens of thousands of residents. 	<ul style="list-style-type: none"> This challenge compromises the attainment of food and nutrition security, and the global Sustainable Development Goal 2 (SDG2) on the right to food. When families lose their land, they also lose their means of producing food. Nutritional levels among these communities have declined drastically, leading to food deprivation. Kenya's hunger situation as per the Global Hunger Index is serious. According to the National Drought Management Authority (NDMA), in Kajiado, over 600,000 people in 2022 faced starvation, with 110,000 households and 400,000 livestock affected. Lower Eastern Kenya (Machakos, Makueni, and Kitui Counties), 70% of the population is facing famine, with 39% living below the poverty line, as prolonged drought and four consecutive failed rain seasons in 2022-2023 have worsened food insecurity and malnutrition. Farmers in these areas, along with Kajiado, were forced to sell their cattle at throwaway prices—less than KES 10,000 (approx. \$75), far below the usual market rate of KES 50,000 to 70,000 (approx. \$375 to \$525)—or move their livestock to distant areas in search of pasture and water, resulting in significant livestock losses. Deforestation and forest degradation over the past drought witnessed in the consecutive four years 2018-22 led to depletion of forest resources negatively impacting on access to food and nutrition in both Ogiek and Yiaku hunter gatherer communities. The costs of succession are very high, and in many cases, families have had to part with parts of their land as a way of paying for succession. Many such cases have been reported in Kajiado, Narok and Western Kenya. has severely impacted on the ability of indigenous peoples and small holder farmers to produce their own food

2. Community Land	Impacts
The Community Land Act 2016 has not been fully implemented. Only a few community land parcels have been registered since there is not enough budget to facilitate the registration processes of community lands, including effective community engagement, sensitisation and involvement.	Delayed registration of community lands has resulted in the loss of some lands, with some communities like the Endorois community in Baringo County complaining about omissions from the community land inventory. Additionally, fisher communities face challenges as traditional water bodies are converted into government resources, hindering access to landing sites and water bodies, and limiting land availability for food production.
3. Indigenous seeds/breeds and indigenous farming practices	Impacts
Kenyan peasants face challenges due to restrictive seed policies, high input costs, and unsustainable farming practices. The Seed and Plant Varieties Act restricts indigenous seed access, forcing farmers to rely on hybrid seeds and poor-quality products.	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.
4. Participation in Climate Change Participation in Decision-Making	Impacts
The lack of an elaborate engagement framework for indigenous peoples and other marginalised communities. Several policies and legislation recognise the importance of ensuring that indigenous peoples and other marginalised communities and groups are involved in governance and decision making. To ensure effective inclusion and participation of the most vulnerable who include the indigenous peoples and small holder farmers, in designing right to food interventions, a comprehensive engagement framework is required.	Ineffective public participation in managing and utilizing natural resources in indigenous communities is a concern, particularly in cases of compulsory land acquisition or mineral extraction. Existing laws, such as the Mining Act 2016 and Petroleum Act 2019, lack clear safeguards and implementation, affecting the rights of indigenous communities. The Sessional Paper number 3 of 2021 provides protection against human rights violations by businesses and investments, requiring consultation with affected groups. The National Climate Change Action Plan (NCCAP) 2023-27 recognizes the participation of marginalized communities in climate change mitigation and adaptation strategies, aiming to strengthen participation by minority and indigenous communities. Articles 2 and 10 of UNDROP and Article 10 of Kenya's Constitution also support participation.

RECOMMENDATIONS

Kenya should

- Enhance 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, with particular attention to women, 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.
- Fully implement 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).
- Develop and implement 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
- Fully implement the Community Land Act of 2016 by establishing clear timelines and allocation of budgets to facilitate the communities to effectively engage in the land registration process.
- 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.
- Amend the Seed and Plant Varieties Act of 2012 and review the Livestock Bill 2024 to protect peasants' rights 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.
- Enhance sustainable agricultural practices to attain food security and the right to food by implementing the recently launched Agroecology Strategy to stimulate sustainable production, including agroecological and organic production.
- Document and incorporate indigenous knowledge and technologies to enhance environmental conservation and protect traditional resources and habitats.
- Implement the Climate Change Indigenous Peoples Engagement Framework
- Develop 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.
- 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.
- 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).

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Other organisations in the joint CEMIRIDE/Act for Change included Endorois Welfare Council (EWC), Dupoto E maa, Network Empowering Samburu Transformation (NEST), Emparnat, Baringo Women and Youth Organization (BWYO), Yaku Laikipia Trust (YLT), Koimugul Indigenous Women Network (KIWN), Ogiek Sisters for Sisters, Northern Indigenous People Organization (NIPO), Shella Beach Management Unit (BMU), Tuangazie Jamii, Power, Lamu Minority People and Development (LMPD), Ilaramatiak Community Concerns, Kimati Farmers Association, Ajomi Farmers, ASEGIS Community Network, Initiative for Nature Volition and Environmental Development (INVOLVED), Article 43 Human Rights, SOET CBO, Bunyala Development Forum (BUDEF), Indigenous Livelihood Enhancement Partners (ILEPA), Chepkitala Indigenous Peoples Development Programme (CIPDP), Indigenous Women Council (IWC), Catholic Dioceses of Machakos, Utooni Development Organization, Caritas Kakamega, Catholic Dioceses of Kitui, Caritas Nyahururu, Indigenous Peoples for Peace and Climate Justice (IPPCJ)