**Statement by the Centre for Minority Rights Development (CEMIRIDE)**

**to the**

African Commission on Human and Peoples Rights

On

Human Rights Situation in Africa

during the

**75th Ordinary Session of the African Commission on Human and Peoples’ Rights**

Presented by

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**Background**

The Centre for Minority Rights Development (CEMIRIDE) welcomes this opportunity to address the African Commission under this item

CEMIRIDE is presenting this statement also as a member of Global civil society alliance CIVICUS as well as a part of an International Consortium on the Rights-based and Agroecological Initiatives for Sustainability and Equity in Peasant Communities (RAISE) funded by the Swiss Development Corporation (SDC)

Honourable Chairperson

I would like to start by noting that Kenya is finally keen on implementing the orders of the African Court on Human and People’s Rights (AfCHPR) on the Ogiek, which includes returning them to their ancestral land. Several government meetings have been held, including most recently on the 3rd of May 2023 led by the Commission on Administration of Justice (Ombudsman). Honouring and implementing the African Court judgement on the Ogiek will be a milestone in the quest for the promotion of the rights of indigenous peoples not only in Kenya, but on the continent. We note that this move significantly contributes to protecting the civic space for human rights defenders.

Honourable Chairperson,

Kenya has significant progress in recognition of indigenous peoples’ rights. For instance, Kenya recently passed Sessional Paper number 3 of 2022 being on National Action Plan on Business and Human Rights. To minorities, indigenous peoples, and local communities (IPLCs) this is a great milestone in protecting their rights. Land and natural resources are critical to indigenous peoples in managing climate change impacts, including mitigation measures such as carbon sequestration through conservation and agroforestry. Kenya, through this Sessional Paper, recognises protections for indigenous peoples’ lands based on the unique importance that they attach to their lands, territories, and natural resources[[1]](#footnote-2). It states: “These (read protections) guarantee land rights for indigenous peoples and provide protections against displacement from their lands. They also provide for consultation and consent to development projects.

Honourable Chairperson

Through the Universal Periodic Review (UPR) and its recommendations, as well as in its 4th Report on International Covenant on Civil and Political Rights (ICCPR), including its concluding observations, the Kenyan government affirms the existence of indigenous peoples in Kenya and the need to protect and promote their rights. This includes setting up a specific mechanism or framework to promote and protect the rights of indigenous peoples. And in its 6th Sixth periodic report to the UN **Committee on Economic, Social and Cultural Rights**, Kenya affirms that “that indigenous people form part of marginalized communities who must be protected through the development of specific affirmative actions designed to ensure that they enjoy their human rights and fundamental freedoms on an equal footing with others. The National Climate Change Action Plan (NCCAP) 2018-2022 acknowledges the need to engage indigenous peoples (marginalised communities) to ensure they effectively participate in climate action. These is because these communities are key stakeholders in climate change discourse.

We do note that the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP), adopted in 2018, provides for right to land, for members of indigenous communities, …, including the right to have access to, sustainably use and manage land and the water bodies, coastal seas, fisheries, pastures and forests therein, to achieve an adequate standard of living, to have a place to live in security, peace and dignity and to develop their cultures.

Honourable Chairperson

Despite the progress made in recognition and provisions for protections of indigenous peoples’ rights, we are deeply concerned over hu­man rights violations and abuses indigenous peoples of Kenya continue to face due to forced evictions ostensibly pursued in the pretext of conservation. These forceful displacements impact their ability to adapt to climate change and negatively affects their livelihoods, particularly food security, as well as human dignity. The Endorois still find it hard to access their ancestral lands without restriction, and are continually facing evictions now manifest through conflicts, as a result of lack of protection by the government. Kenya, through Climate Change Amendment Bill 2023 is preparing heavy investments in Carbon Offset projects. The national carbon credits programme will have a direct bearing on the lands and natural resources in areas occupied by indigenous peoples. At the COP 27, the Joint work on implementation of climate action on Agriculture and Food Security emphasised need for promoting a comprehensive approach to addressing issues related to agriculture and food security, recognizing that adaptation is a priority for vulnerable groups, including women, indigenous peoples’, and small-scale farmers.

Recommendations

Honourable Chairperson

1. The development of the NAP-BHR was necessitated to address the risk of unmitigated violations of Human Rights that investments by government, private sectors and other development actors may lead to[[2]](#footnote-3). To align, therefore, with the NAP-BHR policy options, the Climate Change Amendment Bill 2023, should therefore have indigenous peoples as a key stakeholder, who deserve a specific recognition and engagement in climate action and discourse. CEMIRIDE is happy to provide expert technical support if called upon by the government to ensure that indigenous peoples rights are properly secured in the Bill.
2. We also call upon the Kenyan government to institute a specific Task Force that will
3. Assess the progress already made in the implementation of the rights of minorities and indigenous peoples’ as provided for in the Constitution of Kenya 2010, as well as review relevant implementation of Court decisions
4. Identify the challenges that hinder the full implementation of the rights of minorities and indigenous peoples in Kenya
5. Recommend to government and other stakeholders actions and or strategies that should be implemented, including but not limited to, design of a framework that will be used in implementing the protection and promotion of the rights of minorities and indigenous peoples in Kenya.
6. On the Endorois, we call upon the commission to compel the government to provide an official status report on the implementation of the decision.
7. We also call upon donors to fund programmes and actions that will support indigenous peoples organisations and civil society organizations that work with them to make use of existing civic space to strengthen their engagement and involvement with government secure their rights.
8. Finally we call upon the Government of Kenya to ensure legislation on Article 100 of the Constitution of Kenya is passed to enhance the representation of minorities and indigenous peoples.

Thank you for the opportunity to address this honourable commission

1. NAP-BHR [↑](#footnote-ref-2)
2. Forward to the Sessional Paper number 3 on the National Action Plan on Business and Human Rights [↑](#footnote-ref-3)