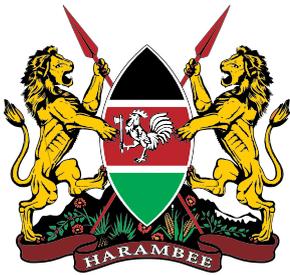




NGEC
National Gender and
Equality Commission



**A SCOPING REVIEW:
A NATIONAL INCLUSIVE
DEVELOPMENT FRAMEWORK FOR
MARGINALIZED COMMUNITIES
IN KENYA**



WORLD BANK GROUP



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FOREWORD

It is with great honour that I present to you a scoping review undertaken to inform a national inclusive development framework for marginalized communities in Kenya. The National Gender and Equality Commission (NGEC) is a Constitutional Commission established by the National Gender and Equality Commission Act. No.15 of 2011 pursuant to Article 59 (4) & (5) of the Constitution of Kenya, 2010. The Commission's mandate is to promote gender equality and freedom from discrimination for all people in Kenya with a focus on Special Interest Groups, (SIG) which include: women, children, youth, Persons with Disabilities, older Members of Society, Minority and Marginalized Groups. Function 8 (d) mandates the Commission to coordinate and facilitate the mainstreaming of issues of gender, persons with disability and other marginalized groups in national development and to advise the Government on all aspects thereof.

Marginalized communities are defined by the Constitution of Kenya, 2010 Article 260 as small populations, traditional communities seeking to preserve their unique culture, indigenous communities practising a hunter-gatherer economy, and pastoral communities with limited integration due to geographic isolation, face significant barriers that hinder their full participation in social, political, and economic life. The Constitution of Kenya, 2010 provides a framework for ensuring the promotion, participation, and representation, of marginalized communities in governance, education, employment, cultural, and other spheres of development. In addition, the Government of Kenya has various policies and legislative and programmatic interventions that directly address the issues affecting marginalized communities in Kenya. Despite these efforts, these communities continue to face discrimination, exclusion, and limited access to opportunities, which hinder their development and perpetuate cycles of poverty and marginalization.

This scoping review serves as a comprehensive and evidence-based exploration of the historical and systemic disparities, as well as the specific needs and challenges faced by marginalized communities in Kenya. The review examines the existing body of knowledge on existing policy and legal frameworks and provides a synthesis of the lessons learned from various experiences and initiatives when addressing issues of marginalized communities. This review will inform the design of the minimum requirements for an inclusive development that is responsive to the needs of the Marginalized Communities in Kenya.

I hope that this report will provide the necessary technical resources and information required in the formulation of the national inclusion development framework.



Dr. Joyce M. Mutinda, **PhD, EBS**
Chairperson
National Gender and Equality Commission

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The National Gender and Equality Commission (NGEC) recognizes all institutions, individuals and stakeholders who played a crucial role in making this systematic scoping review possible.

I wish to express my deep appreciation to the World Bank Group for their technical and financial support. Their partnership has been instrumental in driving the momentum necessary for this project. Special thanks to Mr. Stanley Riamit Kimaren of the Indigenous Livelihoods Enhancement Partners of Kenya for his technical support in this activity.

A special acknowledgement goes to the NGEC technical team whose expertise, diligence, and hard work have been the backbone of this study. Specifically, I wish to commend the efforts of Carolyn Munyua, Shanta Odera, and Isacko Salesa for their critical role in developing the initial and subsequent fair draft of this scoping study. I also extend my gratitude to Mr. Paul Kuria, OGW, the Director of Programmes and Research, and Winfred Wambua, the Assistant Director of Programmes, for their invaluable technical guidance and contributions which have significantly shaped this report.

I appreciate the policy direction and guidance provided by the Chairperson, Dr. Joyce Mwikali Mutinda, PhD, EBS, and Commissioners led by the convener of Minority and Marginalized Division Commissioner Caroline N. Lentupuru, MBS, HSC.

Lastly, I want to acknowledge the sampled marginalized communities, whose resilience and perseverance inspire us to work tirelessly toward creating a more equitable and inclusive society for all.

This scoping review represents a milestone in our collective pursuit of a society free from gender inequality and all forms of discrimination. As we move forward, I am confident that the insights gathered here will inform the design of the minimum requirements for an inclusive development framework that is responsive to the needs of Marginalized Communities in Kenya.



Betty Sungura, **MBS**
Commission Secretary/Chief Executive Officer

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List of Abbreviation

ACHPRs	Africa Commission on Human and Peoples Rights
CEMIRIDE	Centre for Minority Rights Development
CIDP	County Integrated Development Plan
CRA	Commission on Revenue Allocation
CT-OVC	Cash transfer-orphaned and vulnerable children
FAO	Food and Agricultural Organizations
FPIC	Free, Prior and Informed Consent
ESS	Environment Social Standards
GCF	Green Climate Fund
GoK	Government of Kenya
IFAD	International Fund for Agricultural Development
IPLCs	Indigenous Peoples and Local Communities
IFPs	Indigenous Forest Peoples
IWGIA	International working group for indigenous affairs
KNBS	Kenya National Bureau of Statistics
KNCHR	Kenya National Commission on Human Rights
KSEIP	Kenya Social and Economic Inclusion Project
M&E	Monitoring and Evaluation
NDMA	National Drought Management Authority
NGEC	National Gender and Equality Commission
NLC	National Land Commission
NSNP	National Safety Net Program
PLRs	Policies, Legislations, and Regulations
SDGs	Sustainable Development Goals
SID	Society for International Development
REDD+	Reducing Emissions from Deforestation and forest Degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries.
UNDP	United Nations Development Program
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UN-CBD	United Nations Convention on Biological Diversity
UNFCCC	United Nations Framework Convention on Climate Change
VMG	Vulnerable and Marginalized Groups
WB	World Bank

Definition of Key Terms:

Self-determination: Refers to the right for indigenous peoples/marginalized communities as distinct peoples to decide how economic, social, and cultural development should happen in their territories. It provides an opportunity for right-holders/marginalized communities to share their interests, concerns and perspectives before development actions that have impacts on them are implemented in their localities¹.

Self-Identification (Self-ascription): This is a claim to difference, a claim to rights, to self-identify as belonging to a given indigenous heritage, culture and or ethnic group. It includes the right to self-identify (or not) with certain names/references ascribed to one e.g. the Ogiek have resisted the terms Iltorobo/Ndorobo, while the Awerr have resisted the term Boni. It is therefore about a self-expressed identity. This is an important strategy for marginalized groups to gain recognition and resources from their nation state, by exercising agency in defining who they are and their relative state of development in comparison to others.

Free Prior Informed Consent (FPIC): This is an iterative process undertaken in good faith to ensure mutual respect and meaningful participation of indigenous peoples/marginalized communities in policy and decision-making processes, and development actions on matters that concern or affect them. It is a substantive mechanism that provides opportunities for establishing conditions for exercising the fundamental rights to the respect of their cultural integrity, self-determination, and grounds for negotiation with external actors.

Marginalized Communities

Article 260 of the Constitution of Kenya 2010, provides for the interpretations of the Marginalised Community as:-

- 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 hunter or gatherer economy; or
- d) Pastoral persons and communities, whether they are:
 - i. nomadic; or
 - ii. a settled community that, because of its relative geographic isolation, has experience only marginal participation in the integrated social and economic life of Kenya as a whole.

¹CoK, art. 33(1) & art. 28; ACHPRS art. 20 and Article 3, UNDRIP,

1.0 INTRODUCTION

1.1 Marginalization: Role of the National Gender and Equality Commission

The National Gender and Equality Commission (NGEC) is a Constitutional Commission established by the National Gender and Equality Commission Act. No.15 of 2011 pursuant to Article 59 (4) & (5) of the Constitution of Kenya, 2010. The Commission's mandate is to promote gender equality and freedom from discrimination for all people in Kenya with a focus on special interest groups, which include women, children, youth, Persons with Disabilities (PWDs), older members of society, marginalized communities, and groups.

The National Gender and Equality Commission Act, 2011 in Section 8(d) mandates the Commission to coordinate and facilitate mainstreaming of issues of gender, persons with disability and other marginalized communities and groups in national development and to advise the Government on all aspects thereof; section 8(g) emphasizes that the Commission shall work with other relevant institutions in the development of standards for the implementation of policies for the progressive realization of the economic and social rights specified in Article 43 of the Constitution and other written laws.

The Constitution of Kenya, 2010 and enabling legislations, the National Development Plan-Vision 2030, and the Government's Priority Action Plans, particularly those covering land and natural resources, environmental and biodiversity conservation, climate change response measures promotion of respect for human rights and food security, provides place holders for addressing concerns of marginalized communities in the country. The Constitution of Kenya, 2010 grants juridical recognition and acknowledgement to marginalized communities. It is also a progressive document which includes provisions that have the potential to secure the rights of marginalized communities in Kenya.

The CoK, 2010, is a big break and departure from the colonial legacy whose main agenda was to expand imperialism by maximizing the exploitation of natural resources and dispossession of land supported and facilitated by a legal and policy framework focused on allocation, exploitation, appropriation and expropriation of natural resources and disregard of Indigenous knowledge and traditional governance value systems and practices.

The Constitution is premised on the need for good governance to be realized through enhanced citizen participation and social justice. The Constitution entrenches a wide range of social, political, economic, and cultural rights and revolutionizes the entire system of political governance by devolving authority to county governments and decreeing the need for citizen participation in decision-making. It enshrines the right to information and makes principles of international law and treaties ratified by Kenya to be part of the country's municipal law.

Other progressive Constitutional provisions on marginalized communities include clarification on the concept of marginalization and indigeneity, which is premised on traditional livelihood systems, predominantly pastoralism, nomadism, Hunter-gathering and fisher folks. Additionally, intellectual

property rights on culture, language and indigenous knowledge, including affirmative action in political representations (all of which inform Indigenous people’s traditional governance practices) and affirmative action in the allocation of resources have been provided for.

The County Governments Act No. 17 of 2012 provides that, the rights and interests of minorities and marginalized groups and communities are to be protected and integrated with county planning and development. In addition, the national values as provided in the Constitution of Kenya 2010 including citizen participation, equity, information sharing, good governance and sustainable development are equally applicable and binding to the County governments

1.2 Marginalized Communities in Respect to Inclusive Development

While a broadly agreed definition of inclusive development is yet to be realized, the relevance of inclusive development approaches/frameworks is increasingly recognized. Frameworks that focus exclusively on growth, poverty or human development indicators are increasingly situated in a broader framework encompassing the inequality dimensions of poverty and deprivation.

Despite the impressive progress humanity has made on many fronts over the decades, the world remains deeply unequal. On average—income inequality increased by 11 percent in developing countries between 1990 and 2010.² Inequality is on the rise and the detrimental effect this has on economic growth and social and political stability are increasingly being recognized. Inequality harms growth and poverty reduction, the quality of relations in the public and political spheres of life and individuals’ sense of fulfilment and self-worth.³

The trickle-down effect proposed in traditional economic models does not hold. In Africa, for example, poverty reduction has been limited and the distribution of improved well-being is uneven among marginalized and minority groups despite significant and prolonged economic growth. Marginalized communities have been bypassed in the access to benefits of development.

This is evidenced in the poor performance under the Millennium Development Goals (MDGs), necessitating a shift towards inclusive development embodied in the aspirations of the Sustainable Development Goals (SDGs) and the slogan of ‘Leaving No One Behind’. The current focus of engagement with the Agenda 2030 has shifted to the national level. States and other actors are developing their specific plans for SDG implementation and reporting.⁴ Kenya is actively engaged in the promotion of SDGs.



“

The County Governments Act No. 17 of 2012 provides that, the rights and interests of minorities and marginalized groups and communities are to be protected and integrated with county planning and development.

”

²Humanity Divided: Confronting Inequality in Developing Countries November 1, 2015 - This report was prepared by the Poverty Practice in the Bureau for Development Policy, UNDP

³INCLUDE) March 2019. The Knowledge Platform on Inclusive Development Policies. Inclusive Development in Africa Synthesis report series. Simone Reinders · Marleen Dekker · Frank van Kesteren · Loes Oudenhuijsen

⁴KNCHR July 2021. Kenya’s Second National Voluntary Review Process – Commission’s role, Experiences, Lessons and Opportunities

⁵Talmage, C., & Knopf, R. C. (2017). Rethinking diversity, inclusion, and inclusiveness: The quest to better understand indicators of community enrichment and well-being. In P. Kraeger, S. Cloutier, & C. Talmage (Eds.), *New dimensions in community well-being* (pp. 7–27).



Inclusive development approaches ensure that all people are included and can participate fully in and benefit from development efforts. Government efforts to improve sustainable human development and promote inclusion and stability are complemented and strengthened with the participation of minorities and marginalized communities and groups in such efforts. In Kenya, the marginalization of these communities has a significant detrimental impact on poverty reduction, democratic governance, environmental sustainability, and conflict prevention. Overcoming the marginalization of marginalized communities and groups has direct benefits for national development processes and the achievement of inclusive growth.

1.3 The value of Inclusive Development

Scott and Talmage (2017)⁵ define inclusiveness as a “community outcome that results from methods of inclusion that utilize diversity as a resource.” This therefore means that inclusion targets all individuals and groups, specifically individuals or groups who were previously not included or excluded. Inclusive development is a value addition to redistributive economic approaches as it makes efforts to address marginalization and reduce inequalities. Reduced inequality has a positive correlation with the promotion of human rights and justice and is essential for success in other global priority areas, such as environmental sustainability, conflict resolution and migration⁶.

Some of the envisioned outcomes of inclusive development frameworks include improved incomes, increased wellbeing, reduced vulnerability, improved food security and enhanced sustainable utilization of natural resources. Inclusive development is the only way to lift the poorest out of poverty and to deliver sustainable conflict-free development.

1.4 The place and role of Government in Inclusive Development approaches

Governments are key actors for inclusive development. It is generally acknowledged that addressing inequality is within the reach of most governments. Government has a leading role and their legitimacy and credibility are crucial to social stability. They play an essential role in ensuring policy coherence and in avoiding parallel development systems across levels. The government’s active role is also essential in monitoring the inclusion process and setting standards for equitable private-sector partnerships to regulate power imbalances among the economic and commercial elite and local needs.

And, while there are mechanisms for advancing the rights of marginalized communities internationally, they are accessible contingent upon the exhaustion of domestic remedies. Ultimately, even when remedies sought at the international level are granted implementation of such decisions happens within the respective national spaces based on national sovereignty. The proposed framework is grounded on these international, regional and particularly local realities in responding to inequalities.

⁵Talmage, C., & Knopf, R. C. (2017). Rethinking diversity, inclusion, and inclusiveness: The quest to better understand indicators of community enrichment and well-being. In P. Kraeger, S. Cloutier, & C. Talmage (Eds.), *New dimensions in community well-being* (pp. 7–27).

⁶UNDP/UN-FAO, UNEP, Indigenous Peoples policies.

World Bank Environmental and Social Standard no. 7 on Indigenous Peoples/ Indigenous Peoples/Sub-Saharan African

1.5 Kenya's Development Partners' Safeguards Policies related to marginalized communities

Kenya's national development agenda benefits from, and is informed by UN agencies⁷, multilateral financing Institutions⁸, bilateral⁹ development agencies and partners who have entrenched policies for the inclusion of, and safeguarding of the interests of, and rights of marginalized or indigenous peoples in their funding modalities.

The safeguards policies aspire to ensure social justice for marginalized communities by articulating measures aimed at preventing, mitigating, and managing adverse impacts of development actions and/or pro-actively address marginalization (do good). In implementing development projects supported by such partners, the country has often triggered the application of the respective policies whenever communities that fit the profile stipulated in the policies are present within project sites. Consequently, the country has often commissioned the elaboration of the Indigenous people's planning instruments as operational tools for promoting the respect of rights and interests of marginalized communities, as well as for ensuring the overall environmental and social sustainability of such development initiatives.

⁷Historically Underserved Traditional Local Communities; The Green Climate FUND Policy on Indigenous Peoples. The European Union Policy on Indigenous Peoples

⁸World Bank Environmental and Social Standard no. 7 on Indigenous Peoples/ Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities; The Green Climate FUND Policy on Indigenous Peoples.

⁹ The European Union Policy on Indigenous Peoples

2.0 Context Analysis

2.1 Social, Economic, and political history of marginalization in Kenya

Colonial policies and practices, and inadequate post-colonial corrective redistributive policies are the two foremost factors attributable to entrenched marginalization and inequality in Kenya. These factors limited access to services by some communities/areas. In effect, marginalization in Kenya is largely a matter of exclusion of sections of societies from participation in the integrated social and economic development of the country.¹⁰

The Postcolonial leaders sought to retain (and strengthen) the unitary governments bequeathed by the colonialists. In so doing the postcolonial state pursued a policy of assimilation and integration of numerically smaller tribes into some dominant ones. This resulted in highly centralized political systems. In effect, sections of the Kenyan Society were excluded from participation and sharing of the benefits of social and economic development of the country.

The expectation during the struggle for independence was that the land would for example be freely distributed to the people since it had in the first place, been forcefully taken from them. However, this was not to be the case as the lands expropriated by the colonial regime never reverted to the indigenous occupiers and owners. Consequently, landlessness and historical injustices related to land were entrenched.

Kenya has therefore been grappling with the persistent problem of unbalanced regional development since 1963 when it acquired independence. Through various policies and interventions, the government has tried to reverse the discriminative effects of colonial policies that had created wide disparities and imbalances between communities and regions.

Over time, marginalized communities have endured the pains of historical and contemporary injustices associated with lack of recognition and identity, discrimination of citizenship rights, unequal employment opportunities, lack of inclusiveness in decision-making and leadership, and high levels of poverty, among others. In a nutshell, ethnic minorities and marginalized populations have been largely relegated to the periphery of socio-economic development and socio-political/governance structures.

Interaction between marginalized communities and large-scale infrastructural development-related interventions is poised to intensify with the identification of Oil, Gas and Minerals and the Blue Economy sectors as emerging priority sectors for development in the Country.¹¹ Regions occupied by marginalized communities such as the northern frontier counties are expansive and generally less exploited. Given the history of exclusion and the absence of a well-thought-out framework to facilitate engagement with marginalized communities resident in these regions, to enable their contribution, safeguard their interests and mitigate against negative impacts; the potentially beneficial opportunity for enhanced local and national development could be constrained/threatened.

¹⁰Commission On Revenue Allocation Promoting An Equitable Society Second Policy And Criteria For Sharing Revenue Among Marginalized Areas, 2018

¹¹GoK, Third Medium Term Plan 2018 – 2022 Vision 2030

2.2 Overview of marginalized Communities in Kenya

Kenya's latest national census (2019) estimates the population of the country to be around 47,564,296. The population is multiethnic with at least 45 different ethnic groups (tribes) and many more subgroups identified. About 69% of the population lives in rural areas and the rest live in urban areas.

More than 25 ethnic groups - which are predominantly hunter-gatherers and pastoralists - self-identify as indigenous, based on their lifestyle and their sociopolitical and economic marginalization and exclusion,¹² . They also include marginalized and minority groups who are not pastoralists and hunter-gatherers but small fishing communities living near rivers and lakes (fisher folks) and blacksmiths.

These peoples are diverse in terms of livelihood practices, location, population size, culture, and identity as well as origin. Despite administrative efforts to assimilate some of them within larger ethnic groups, they have to a large extent kept their distinct identity and culture.¹³ Devolution has presented an interesting positive twist to the issues of marginalized communities in the country, including for example cases in which nationally and historically marginalized communities such as pastoralists in the north who occupy distinct counties receive devolved resources. Yet, most of the Country's resources are still centralized.

All marginalized communities in Kenya have a long history of land dispossession that continues to this day. This dispossession has happened in the name of agriculture, nature conservation, military priorities/national security, and development. This is the genesis of marginalization and the marginalized communities missed the boat of socio-political and economic inclusion in development planning and practice in the country.

Marginalized communities are among the poorest of the poor in the country, with little to show in terms of development benefits, a situation which arises from historical and contemporary exclusion in public employment opportunities, displacement from their lands, minimal access to basic services (discrimination in education, health, water infrastructure, information), negative perceptions and stereotypes, underrepresentation in all sectors and spheres of life, insecurity as they live in border-lines and overall violation of human rights.¹⁴ In addition, the apparent national policy emphasis on large

¹² The ACHPR (in Indigenous Peoples in Africa: The Forgotten Peoples?, 2006:15) lists 14 as a non-exhaustive list. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people mentions 25 (Human Rights Council, Report Mission to Kenya, 2007) but other sources mention more groups (see, e.g., WB IPP451, 2010b:5; and WB IPP534, 2010c:4-5).

¹³ IFAD. Country Technical Notes on Indigenous Peoples' Issues The Republic of Kenya Submitted by: IWGIA, April 2012. <https://www.ifad.org/documents/38714170/40224460/Kenya.pdf/7f70d9b6-5e5c-4628-942c-7ae749a2f262?t=1521027250000>

¹⁴Flares Of Marginalization Among Selected Minority Communities of Kenya', NGECC,2014 –case study of 8 Counties

infrastructural projects and mineral exploitation rather than addressing the socio-economic needs of marginalized communities has often reproduced the marginalization.¹⁵

Most hunter-gatherer communities live in the forested areas of the highlands and the coast or near rivers and lakes. The livelihoods of these peoples have historically depended on their possibility of moving freely around their territory, using different zones according to the seasons, subsisting on hunting and gathering honey as well as plants, herbs and berries (or fishing like the El Molo on Lake Turkana and the Munyoyaya on the River Tana).

Most of the hunter-gatherer communities have been evicted from their ancestral forestlands during gazettement of these forests. These include the Ogiek in Mau Forest and the Endorois in Mochongoi Forest; the Sengwer of the Cherangany hills and Kapolet Forest; and the Watta in the precincts of the Tsavo National Park compromising their traditional livelihoods, cultures, and languages.¹⁶

For hunter-gatherers, the ban on hunting and their eviction from their ancestral forests has meant that they now live on the edges of these forests, without any legal access to land or reliable sources of livelihood. Some of their members have partly or entirely given up their original lifestyles but remain marginalized and excluded from the more dominant segments of the population.

Often, hunter-gatherer communities have been ascribed negative/derogatory labels/names by their dominant neighbours. The Ogiek and Awerr are good examples, ascribed names that mean cattle-less people¹⁷ and property-less¹⁸ people respectively. The use of derogatory names such as Iltorobo and Boni – reflects the marginalization status experienced by these communities. Increasingly, names self-determined by these groups are being used in the national census.¹⁹

Pastoralist groups are found on the arid and semi-arid lands (ASALs), which constitute at least 75% of the country's landmass. While there are notable trends towards semi-sedentarization and agro-pastoralism, most pastoralist groups in the country still predominantly rely upon nomadic pastoralism (movement of livestock and people in search of pasture and water) for their basic survival. The ASALs are home to at least 10 million people and approximately 70% of the national livestock herd.

These communities, that self-identity, as Indigenous persons in the country have found the use of the term 'indigenous Peoples' to be in align with the globally agreed principles of indigeneity. These communities have also been recognized by the African Commission on Human and Peoples' Rights (ACHPR)²⁰ as indigenous²¹.

¹⁵GoK 2018. Vulnerable and Marginalized Group Framework Kenya Social and Economic Inclusion Project (KSEIP). Accessible from: https://socialprotection.or.ke/images/downloads/FINAL%20KSEIP_VMGF_Version_13072018.pdf

¹⁶Stavenhagen Roldofo. Report of the Special Rapporteur on the "Situation of human rights and fundamental freedoms of Indigenous people, – Mission to Kenya" (A/HRC/4/32/Add.3)., presented to the UN-HRC, 26th February 2007

¹⁷Torobbo, Dorobo, Ndorobo or Wandorobo, Iltorobo by their Waswahili and Maasai neighbours

¹⁸Boni by their Somali neighbors

¹⁹Aweer, Dahalo, Waata, Ogiek, Sengwer, El Molo and Munyoyaya

²⁰ACHPR, Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities, (2005), 14-19, 106-115.

²¹IFAD. Country Technical Notes on Indigenous Peoples' Issues The Republic of Kenya Submitted by: IWGIA, April 2012. <https://www.ifad.org/documents/38714170/40224460/Kenya.pdf/7f70d9b6-5e5c-4628-942c-7ae749a2f262?t=1521027250000>

2.3 Drivers of Exclusion: Dimensions of Marginalization

2.3.1 Historical underpinnings:

The District Ordinance Act of 1902 and the Sessional Paper No. 10 of 1965 for example established a flawed and inequitable foundation for equity and inclusiveness in development practice in the Country. The District Ordinance act adopted a policy of closed districts²². The Sessional paper directed investment resources in areas of “high economic potential” areas (premised on rainfed agriculture) to attain rapid economic growth and redistribute the proceeds to “medium potential” and “low potential areas”.

Consequently, areas perceived to be insecure, marginal and low potential were condemned to a perpetual game of catch-up to access to investment and government services.²³ In this context, marginalization is a consequence of legislated discrimination. And, the areas deemed low potential then remain areas disproportionately occupied by marginalized communities.

2.3.2 Land and livelihoods security

Land-related injustices are one of the key reasons for under-development among marginalized communities particularly at the Coast, rift valley and northern Kenya regions. Subsequent post-independence government regimes failed to address these injustices²⁴.

Pastoralists and hunter-gatherer communities are peoples of the land, yet since the advent of colonialism in the late 1890s, have experienced a continuing process of land dispossession and mobility restriction, putting their traditional livelihood at risk.

For hunter-gatherers, white settlers took over large tracts of their land in the Central Highlands. The Ogiek from the Mau Forest Complex and Mount Elgon, the Yaaku on Mount Kenya and the Sengwer in Kapoet Forest have all seen their livelihoods undermined because of land alienation for farming purposes, illegal logging and conservation. Gazettement of the Boni forests in Lamu County saw the displacement of the Aweer.²⁵

With support from the international donor community, pastoralists’ vast and open rangelands held under customary tenure arrangements, were transformed into group ranches. The collective ownership of land under group ranches (especially in the south) was soon transformed through land subdivision, and privatization, to non-pastoralism viable economic units, and lost through land sales (willing seller, willing buyer) increasingly leading to landlessness.

In the southern rangelands (Kajiado and Narok) land was mostly lost through treaty²⁶ registration,²⁷ nationalization in the creation of national parks²⁸ and game reserves.²⁹ Large tracts of the

²²Northern Frontier District - present day Turkana, Marsabit, Wajir, Mandera, Garissa, Isiolo, and Samburu counties and Vagrancy Act, Northern Frontier Province Poll Tax, and the Special Districts (Administration) Act,

²³Commission on Revenue Allocation: Policy On The Criteria For Identifying Marginalized Areas And Sharing Of The Equalization Fund (2011 – 2014)

²⁴ especially the Mijikenda, Taita and Pokomos

²⁵ IFAD. Country Technical Notes on Indigenous Peoples’ Issues The Republic of Kenya Submitted by: IWGIA, April 2012

²⁶The Treaty concluded between Chief Laibon Lenana on behalf of the Maasai community and the British Crown in 1904 and the Agreement signed by local leaders in 1911 pushed the Maasai south of the newly completed Mombasa-Uganda railroad onto a single reserve in southern Kenya (later Kajiado and Narok districts), thereby reducing their traditional area from 155,000 sq. km to 40,000 sq. km. See Albert K. Barume, Land Rights of Indigenous Peoples in Africa (2010), 112.

²⁷ See Simel, –The Century Long Displacement|| (2004), 44-45. It is estimated that the Maasai lost 1.5 million acres of land between 1978 and 1998.

rangelands were lost in the more northern and northeastern ASALs for nature conservation,³⁰ commercial farming and military training camps.

In addition, private sector investors and large infrastructural development projects such as the Lamu Port and Lamu Southern Sudan Ethiopia Transport Corridor (LAPSSET), have also affected these communities.³¹ The Magadi Soda Company, for example —has, since 1911, occupied 225,000 acres of former Maasai land in Kajiado near the Magadi Lake. Contestation over ownership and access to this land remains active to-date. By 2012, thirteen oil companies were undertaking oil exploratory activities in the north and northeast, leading to the discovery of oil in Turkana.

The unsettled historical land claims are often stirred by politicians during the electioneering period leading to ethnic tensions, violence, disruption of livelihoods, displacement and loss of life as witnessed in the 1992, 1997, and 2007 general elections.³²

The Land and Conflict chapter of the Truth Justice and Reconciliation Commission (TJRC) report acknowledges and details historical land injustices in the colonial and post-independence eras. The colonialists used illegal and irregular land acquisition approaches such as forced eviction, taxation and forced military service; land alienation by multinational corporations to displace and displace natives.

Implementation of recommendations on historical land-related injustices contained in the TJRC report, submitted to parliament in July 2013 remains a pipedream, despite a Presidential directive for the country to establish a Kenya Shillings 10 Billion Restorative Justice Fund to provide relief to victims of past human rights violations.³³



“
The Magadi Soda Company, for example —has, since 1911, occupied 225,000 acres of former Maasai land in Kajiado near the Magadi Lake. Contestation over ownership and access to this land remains active to-date.
 ”

²⁸Northern Kenya has some of the largest national parks in Kenya These include the Lake Turkana, the Samburu and the Marsabit National Parks. Mount Kulal is one of Kenya’s six Man and the Biosphere (MAB) reserves in Kenya. Located in Marsabit County, the reserve covers approx. 7,000 sq. km extending from the eastern side of Lake Turkana. The Turkana, Samburu, Rendille, El Molo and Gabra all live in the area. No farming or pastoral activities are allowed within these protected areas.

²⁹ These reserves include, among others, Nairobi National Park, Tsavo National Park and Amboseli Game Reserve, all created between 1948 and 1964.

³⁰

³¹ The Lamu corridor will become the country’s second transport corridor—after the Mombasa - Nairobi - Uganda transport corridor. LAPSSET includes building a port, a railway line to Juba (South Sudan), road networks, oil pipelines, an oil refinery, 3 airports and 3 resort cities (Lamu, Isiolo and Lake Turkana shores), at an estimated cost of USD 22-23 billion.

³²KNCHR. Redress for Historical Land Injustices in Kenya. A Brief on Proposed Legislation for Historical Land Injustices

³³President Uhuru Kenyatta in his State of the Nation Address of March 2015 urged the National Assembly



Kenya's Constitution 2010 and its institutions provide an opportunity to fully address land-related injustices. Equitable access to land; security of land rights, and settling land disputes through recognized local community initiatives are some of the key constitutional principles of land policy.

The National Land Commission (NLC) is granted the constitutional mandate to facilitate a process towards conclusive redress of historical land injustices.³⁴ In its attempt to fulfil this mandate, the NLC instituted a task force on the Formulation of Legislation on the Investigation and Adjudication of Complaints Arising out of Historical Land Injustices in 2014. The provisions of draft legislation produced by the Taskforce were ultimately reduced into a singular clause (44) in the now-proposed Land Laws (Amendments) Bill, 2015.

2.3.3 Respect for Human rights in the Context of Marginalized communities

The biggest obstacle in Kenya to the enjoyment of human rights is given rise by poverty. Poverty is a rubric for marginalization, hopelessness, isolation and disempowerment. Marginalized communities are vulnerable to rights abuses; they lack the means to access justice through the normal processes.

The foundational document encapsulating the community of nations' aspirations towards peaceful co-existence and respect for human beings is the Universal Declaration of Human Rights (UDHR). Overtime, the principles of human rights articulated in UDHR, have found their way into a wide array of international and regional treaties and ultimately national constitutions which are binding to state parties and enforceable through international, regional, and national mechanisms such as the Judiciary and others. In addition, the scope of human rights itself has expanded to address the problems of marginalized communities.³⁵

Human rights is a central theme of the Constitution of Kenya, 2010. Democracy, participation of the people, human dignity, equity, social justice, equality, human rights, non-discrimination, and protection of marginalized communities (Art. 10), are some of the underlying values and principles of the Constitution. The reasons for the recognition of rights are given as; to preserve the dignity of individuals and communities, to promote social justice and the realization of the potential of all human beings.

The constitution goes beyond recognition of familiar rights, to protect rights to food and water, education, and health. The Constitution in Article 56 provides a legal framework for the recognition and protection of the rights of minority and marginalized communities. The Constitution introduces a rights-based approach to development in the context of basic human rights.

The constitution 2010, has provided for mechanisms for addressing issues of exclusion and marginalized communities. The right of every person (including marginalized communities) to equality and freedom from discrimination is recognized (art. 27). State organs and officers are obligated to address the needs of marginalized communities (Article 21(3) and affirmative action measures to ensure that marginalized communities among other groups participate in the political, economic, social and cultural sphere of the nation. The national assembly should enact

³⁴Section 15 of the National Land Commission Act, 2012

³⁵Yash Ghai and Jill Cottrell Ghai. January 8, 2019 (uncategorized) The state of human rights and freedoms in Kenya

legislation to promote the representation of hitherto excluded groups, inter alia marginalized communities (art.100).

In addition, the constitution establishes and secures independent implementation institutions such as Kenya National Human Rights and Equality Commissions; and places an obligation on the state to respect, protect and fulfil human rights, especially the socio-economic rights article 21(2) – which relate to access to quality and affordable healthcare, food security, water, healthy environment, Social Security and education (art.43).

The constitution obligates the Judiciary in its settling of disputes brought before it, to interpret the law in a manner “that advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights” (Article 259).

In his reflections on the country’s performance on advancing respect and protection of human rights in close to a decade (2010 – 2019) since the adoption of the 2010 constitution, Prof. Ghai concludes that the performance has been dismal’- This is particularly so in securing the rights of marginalized communities, which are either ignored or even actively trampled – ultimately making the country one of the ‘most unequal country’.

2.3.4 Regional Disparities

Marginalized areas are characterized by high levels of poverty,³⁶ food insecurity, insufficient infrastructure, poor state of basic services and a non-responsive policy environment. Only a small percentage of the population in marginalized areas has access to primary healthcare, basic education, good nutrition, drinking water, basic shelter, and reproductive health. Consequently, areas occupied by marginalized communities exhibit high levels of illiteracy, low life expectancy, low retention and transition and poor performance in education. This sorry situation arises from insufficient physical infrastructure for such services.³⁷

The lack of legal access to land and natural resources nor to any other reliable means to a livelihood, the Ogiek and the Sengwer often leaves these communities dependent on the support of their non-marginalized neighbours,³⁸

Strong disparities exist between the ASAL counties in the north and in the south with the rest of the countries. These areas are characterized by a lack of or poor road infrastructure, poor access to markets and market information, few towns of importance and few economic activities, all negatively affect the returns they get on their livestock production.³⁹

The challenges experienced by marginalized communities earning a living within the ASALs are compounded by unfavourable climatic conditions (low and unreliable rainfall, frequent droughts, poor soils, and high temperatures), pressure on natural resources due to population increase;

³⁶

³⁷ Commission on Revenue Allocation: Policy On The Criteria For Identifying Marginalized Areas And Sharing Of The Equalization Fund (2011 – 2014)

³⁸ See Human Rights Council, – Report of the Special Rapporteur on the human rights of internally displaced persons. Mission to Kenya|| (2012), 17. See also Annex 2, on Hunter-Gatherers (Ogiek).

³⁹IFAD. Country Technical Notes on Indigenous Peoples’ Issues The Republic of Kenya Submitted by: IWGIA, April 2012. <https://www.ifad.org/documents/38714170/40224460/Kenya.pdf/7f70d9b6-5e5c-4628-942c-7ae749a2f262?t=1521027250000>

incidences of insecurity, including human and wildlife conflict, relative distance from the capital city and impact of large infrastructural development projects. The country's third MTP proposes the development of an integrated Regional Development Programme (dealing with access to energy, water, food security, and environmental conservation), including those targeted at marginalized communities' areas.⁴⁰

2.3.5 Access to Justice

Marginalized communities' areas have often been associated with conflicts directly or indirectly related to the exploitation of natural resources. Predominantly, the said conflicts have their roots in the unresolved historical land and natural resources related injustices, such as forceful evictions, involuntary resettlement and relocation, and overall lack of recognition of customary tenure.⁴¹ Conflicts also arise out of contestation related to competition over scarce pastoral resources such as water and pastures, exacerbated by weak infrastructure and the provision of basic services by the state.

In endeavours to seek justice, affected communities have sought court intervention at the national and regional levels. Examples in this elusive quest for justice, include the 1912 Maasai Case on the Anglo-Maasai Treaties of 1904/11; Ogiek of Chepkitale⁴², Endorois⁴³, Ogiek of Mau.⁴⁴ The 2010 ACHPR's decision on the Endorois case was the first ruling to determine who indigenous peoples in Africa are, and what their rights to land are.⁴⁵

Despite favourable Courts' and regional human rights mechanism's decisions on marginalized communities' claims, including the recommendation of national Taskforces reports (Endorois of Mochongoi forest, Ilchamus on the impacts of weed & the Ogiek of Mau).⁴⁶ , the government's efforts towards and respect of such decisions have been slow and inconclusive.⁴⁷



(e.g. Mathenge implementation

⁴⁰ Tana Delta Irrigation Project, Cherangany Catchment Conservation and Lake Chala Integrated Project.

⁴¹The "Colloquium On Deepening Dialogue With Stakeholders In The Forest Sector In Kenya" March 3rd - 6th March 2015

⁴²Petition 1 of 2017 at the High Court in Bungoma (Peter Kitelo & Others v AG & Others)

⁴³276/03 Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya case:

⁴⁴Application No. 006/2012 African Commission on Human and Peoples' Rights V Republic of Kenya

⁴⁵This is the first ruling to determine who indigenous peoples in Africa are, and what their rights to land are. It is considered to be a victory for all indigenous peoples across Africa. See MRG Web site:<http://www.minorityrights.org> and Annex 3 under Endorois.

Efforts to seek justice by marginalized communities is compounded by poverty, which creates a big drawback to the access to existing social justice mechanism, especially through the State judicial system - which is often distant from local communities and associated with inhibited court fees and logistical costs.

Marginalized communities have therefore called for permanent cessation of any such forceful evictions, displacement, and dispossession of their ancestral lands, redress of the underlying historical land injustices and full implementations of relevant Taskforces reports.⁴⁸ The Country's provisions for legal aid under the Legal Aid Act, 2016 are yet to be operationalized through funding.

2.3.6 Unequal distribution of resources:

The historically highly centralized political systems in the country saw national resource allocation more generally skewed towards those groups in power. This discriminatory approach to resource allocation in the country has been a primary source of conflicts. The conflicts are a result of the non-fulfilment of basic human needs – needs of group(ethnic) identity, participation, recognition, security and, of course, poverty.

Marginalized communities experience minimal access to benefits accruing from natural resources within their territories, especially in the forestry sector.⁴⁹ Bioprospecting and piracy of indigenous medicines within marginalized communities (e.g. Saddle wood, Ololesiai), is rampant despite unequivocal constitutional protection. The Constitution of Kenya 2010, safeguards the rights of communities to receive compensation or royalties for the use of their cultures and cultural heritage; and calls for recognition and protection of ownership of such genetic material used by communities {art. 3(a)}

Social protection has gained popularity as a policy tool for inclusive development, and different types and combinations of social protection measures are seen as valuable from both a rights-based perspective and as a 'business case' to promote economic growth; hence, it is seen as a 'win-win' tool for inclusive development.⁵⁰ Current national protection measures are marginalized communities-blind as there is no disaggregated data on this aspect.

2.3.7 Access to Employment in the Public Sector

There is little evidence to show the extent to which the country's largest employer—the Public Service—is providing employment opportunities for marginalized communities. It's increasingly noticeable that public services job advertisements, incorporate a requirement to the effect that 'members of marginalized communities or Kenyans from ASALs areas are particularly encouraged

⁴⁶ Taskforce on Implementation of the Decision of the African Court on Human and Peoples Rights Issued against the Government of Kenya in Respect of the Rights of the Ogiek Community of the Mau (Gazette Notice No 10944 of 23rd October 2017) available at http://kenyalaw.org/kenya_gazette/gazette/download/Vol.CXIX-No_.167_.pdf

⁴⁷ KNCHR. Kenya @ 10: A Decade After: The State Of Human Rights Post The 2010 Promulgation Of The Constitution. A Human Rights Scorecard

⁴⁸ The "Colloquium On Deepening Dialogue With Stakeholders In The Forest Sector In Kenya" March 3rd - 6th March 2015, including that on the Endorois of Mochongoi forest, Ilchamus on the impacts of Mathenge weed & the Ogiek of Ma

⁴⁹ The "Colloquium On Deepening Dialogue With Stakeholders In The Forest Sector In Kenya" March 3rd - 6th March 2015

⁵⁰ INCLUDE) March 2019. The Knowledge Platform on Inclusive Development Policies. Inclusive Development in Africa Synthesis report series. Simone Reinders · Marleen Dekker · Frank van Kesteren · Loes Oudenhuisen

to apply'.⁵¹ At the County level, County Public Service Boards are yet to streamline their respective recruitment requirements to ensure adherence to national values including inclusivity, national unity integrity and protection of the marginalized.

2.3.8 Access to Information

Insufficient knowledge and low level of awareness on matters related to inclusive development among marginalized communities, state officials and other development actors is one of the major obstacles to the realization of aspirations of national inclusive development.

Access to information is critical in citizen-driven demand for good governance. Access to information is recognized as fundamental in a society that is governed by the rule of law, as it provides individuals with the knowledge required to participate effectively in the democratic processes. Knowing what the government is doing is key to providing oversight, enriching service outputs, and ensuring accountability in the long run. It's critical in citizen-demand-driven inclusive development.

The history of access to information by the public in Kenya has evolved from a highly repressive and secretive colonial and post-independence regime in which access to information by the citizenry was more of a privilege than a right; to the present in which the State and development actors must provide such information.

The Constitution in Article 232 outlines transparency and timely provision to the public of accurate information as one of the values and principles of public service, going further to bind all state agencies at both national and county government levels and state corporations to these values and principles.

The Access to Information Act 2016, aspires to facilitate access to information held by Government Ministries and other public authorities based on the realization that access to information held by State institutions is crucial for the promotion of democracy and good governance. It recognizes access to information as a right bestowed on the Kenyan people and seeks to promote proactive publication, dissemination, and access to information by the Kenyan public in the furtherance of this right.

2.3.9 Lack of disaggregated data on marginalized communities

Persistence inequality among marginalized communities is partly attributable to its invisibility -in terms of official (and unofficial) data disaggregated by ethnicity and marginalization.⁵² While reports are unanimous in denouncing the level of poverty among hunter-gatherers and pastoralists as one of the highest in the country – little concrete data is available to meaningfully inform development planning and actions.

While the country has committed to the aspirations of the SDGs, has mapped the SDGs indicators within the Vision 2030 Medium Term Planning, has designated the State Department of Planning the role of coordinating SDGs reporting, has committed to producing voluntary National Reports (VNR) bi-annually; the challenge remains the availability of disaggregated data on marginalized

⁵¹The NCIC's ethnic audit reveals that members of the five dominant ethnic communities occupy 70% of all jobs in the civil service. See NCIC –Towards National Cohesion and Unity in Kenya. Ethnic Diversity and Audit of the Civil Service|| (2011), 34.

⁵² Kenya: Minorities, Indigenous Peoples and Ethnic Diversity. By Maurice Odhiambo Makolo excerpts

communities.⁵³ The lack of disaggregated data does not allow for an objective evidence-based assessment of the situation among marginalized communities.

2.3.10 Lack of consultation, effective representation, and participation

Marginalized communities are often left out of decision-making because of illiteracy and lack of knowledge of their rights, decision-making processes, and external actors' interests. Most development interventions follow a top-down approach, thus often failing to incorporate local communities' concerns, least of all address problems faced by these communities. Where information is disseminated at the community level, local dialects are rarely used in official engagements.

Overall participation of marginalized communities in the decision-making process, governance and development initiatives within their territories has remained insufficient. The minimal participation in development practice has numerous dimensions. This includes insignificant direct political representation (especially of hunter-gatherers and minority community groups) in the country's political/elective leadership system and negligible access to the State's employment opportunities across national and county governments.

This is also true in sectors such as natural resources and forestry, on which these communities not only depend for livelihoods but equally contribute immensely. The problem of lack of participation is compounded by minimal effective consultation and a lack of access to relevant information on interventions with potential impacts on local communities' livelihoods.⁵⁴

Such consultation with marginalized communities should be undertaken in good faith, transparently and inclusively, and must be culturally sensitive.

2.3.11 Culture and Lifestyle

A distinct culture, knowledge, belief, and language systems different from the mainstream and dominant cultures, is one prominent characteristic of marginalized communities. The distinct cultural identity and value systems are reflected in the communities' indigenous knowledge systems, own customary law, traditions and institutions governing their internal relations,



Marginalized communities are often left out of decision-making because of illiteracy and lack of knowledge of their rights, decision-making processes, and external actors' interests.



⁵³KNCHR July 2021. Kenya's Second National Voluntary Review Process – Commission's role, Experiences, Lessons and Opportunities

⁵⁴The "Colloquium On Deepening Dialogue With Stakeholders In The Forest Sector In Kenya" March 3rd - 6th March 2015

and cultural, economic, social and political order.⁵⁵ Marginalized communities have often demonstrated an inclination to remain distinct culturally, geographically, and institutionally rather than assimilate fully into national society. They have to a large extent kept their distinct cultural identity.⁵⁶

This distinctiveness has often made them an easy target in the context and the practice of multiparty party politics associated with negative ethnicity and ethnic violence. Consequently, communities are often denied an atmosphere of peace and tranquillity within which investment can thrive.

Their desire and intention to promote and continue practising their traditions creates a perception among mainstream dominant communities that they are not willing to be part of modern socio-economic development. They are thus misunderstood and ultimately, their culture is denigrated. They end up being marginalized on account of self-determination to preserve their unique culture and identity – including based on their traditional livelihood production systems. Inequalities exhibited by marginalized communities occur despite constitutional recognition of culture as the foundation of the nation (Kenya) and as the cumulative civilization of the Kenyan people and nation. The state is obligated to promote all forms of cultural expression, recognize the role of indigenous technologies, and promote the intellectual property rights of the people of Kenya.⁵⁷ The biggest challenge therefore remains the absence of a well-thought-out, consulted and agreed marginalized communities mainstreaming framework for translating the constitutional and policy gains into practical actions on the ground.

2.3.12 Minority Status

Minority status is one of the dimensions acknowledged under the definition of marginalized communities within art. 260 of the constitution. Ethnic minorities are groups that share a sense of common historical origins, common identity, cultural traits and institutions, such as dress, food, language, and family patterns. Most hunter-gatherer communities fall under this category, and some examples include, Endorois, Ilchamus, Sengwer, Waata, Elmolo, Aweer-Boni, Makonde, Yaaku and Ndorobo-Salet among others.⁵⁸

Because of their small numbers, they are often unable to influence legislative and administrative policy to reflect their interests. Their weak voice in governance restricts their ability to address their grievances thereby increasing their vulnerability in the face of environmental, economic and political problems.

The two social forces at the core of Kenyan politics are ethnic identity and political parties. The numbers of the different constituency groups ultimately determine their stake as ethnic groups or party supporters. Since the political impact of minority groups in the country is negligible, successive governments have made little effort to solve their grievances, including calls for equitable and inclusive development.

⁵⁵Office of the DP Depart. of marginalized communities. Towards Seamless Integration Of Indigenous Ethnic Minorities And Marginalized Communities Into The Rest Of Kenya's Socio-Economic Life,

⁵⁶IFAD. Country Technical Notes on Indigenous Peoples' Issues The Republic of Kenya Submitted by: IWGIA, April 2012. <https://www.ifad.org/documents/38714170/40224460/Kenya.pdf/7f70d9b6-5e5c-4628-942c-7ae749a2f262?t=1521027250000>

⁵⁷ The Constitution of Kenya, 2010 art. 11 (1) and (2)

⁵⁸Commission On Revenue Allocation (CRA) Promoting An Equitable Society Second Policy And Criteria For Sharing Revenue Among Marginalised Areas

2.3.13 Marginalized Communities-Specific Policies

So far attempts to comply with constitutional imperatives on enacting legislation to promote representation of marginalized communities have hit a cropper. The proposed Representation of Special Interest Groups Bill 2019 which sought to give effect to Article 100 of the Constitution is yet to see the light of day.⁵⁹

The MTP III points at a range of marginalized communities' relevant guidelines⁶⁰, strategies⁶¹, and policies⁶² which it calls the government to harmonize, review and finalize to facilitate the realization of equitable, sustainable inclusive development in the country.

In addition, it calls for the development and enactment of requisite laws⁶³ to provide the requisite legal framework for the country's national inclusive development aspirations. Specifically, the MTP, III calls for the establishment of a legal framework and institutional structure, and development centres for accelerating the development of ASALs and streamlining humanitarian responses.

2.3. Legal, Policy and Institutional Framework

The National Inclusive Development Framework for Marginalized Communities is aligned to existing policies, legislations, and regulations (PLRs) which respect, protect, fulfil, and promote (civil-political, socio-economic, and environmental) rights.

2.3.1 The Constitutional of Kenya, 2010

The Constitution of Kenya (CoK) 2010 has entrenched rights, which not only recognizes the plight of certain communities as historically marginalized and disadvantaged but has established a legal framework for robust affirmative action interventions for both political representation and equity in resource allocation.

In addition to providing guidance on the principal identifiers for marginalized communities and marginalized groups in the country (targeted for affirmative actions), the CoK 2010, also provides for the institutional framework and legal mechanism through which the constitutional aspirations of equity and justice for all Kenyans, could meaningfully be addressed.

Specific constitutional principles aimed at addressing the historical injustices, respect for rights including opportunities for special educational and economic opportunities, access to employment, programmes to develop their cultural values, languages and practices and ensuring effective participation and representation of marginalized communities in governance and other spheres of life, are provided for.

Specifically, Article 260 of the constitution provides an elaborate definition of marginalized communities in a way that recognizes their uniqueness and disadvantaged position. Further,

⁵⁹The National Assembly Bill No. 52 of 2019 dated 3rd July 2019 sought to amend the Persons with Disabilities Act No. 14 of 2003; the Independent Electoral and Boundaries Commission Act No. 9 of 2011; the Political Parties Act No. 11 of 2011; the National Gender and Equality Commission Act No. 15 of 2011; the Elections Act No. 24 of 2011; the Election Campaign Financing Act No. 42 of 2013 and the Election Offences Act No. 37 of 2016.

⁶⁰ National Government Affirmative Action Fund Access Guidelines and Community Development Guidelines; p.94

⁶¹ National Community Mobilization Strategy; Social Protection Investment Plan and Strategy p.94

⁶² National Equality Policy; Community Development Policy; Family Promotion and Protection Policy

⁶³ National Equality Bill, Women Enterprise Fund Bill, Social Protection Bill, Social Development Bill, and Family Promotion and Protection Bill- which are to be developed and enacted

Article 21(3) directs state organs to address the needs of vulnerable groups within society, including members of minority and marginalized communities.

Article 56 provides for affirmative action to remedy the situation and provide opportunities for these groups to among other things enable them to participate in all aspects of development and governance and access opportunities which were hitherto lacking. Notably, devolution provides an opportunity for these communities to access basic social services and participate in decision-making processes on issues that affect them.

As such, the spirit behind the devolved governance structure is spelt out under art. 174 of the CoK 2010 is a determined effort to ensure enhanced citizen participation in governance and decision-making and equitable resource distribution within and across the country and sector groups. The aim is to address historical inequities in service delivery and skewed knowledge systems, which have exemplified the failure of the state to equalize opportunities for all Kenyans.

Most importantly, the CoK 2010 now underscores measures for mitigating social exclusion, vulnerability, and marginalization by specifically providing for affirmative action as a strategy for facilitating and fast-tracking the inclusion of groups that hitherto felt excluded from the mainstream economic and political processes of the country.

To give effect to equity through affirmative action, the government is required to legislate measures to redress any disadvantage suffered by individuals or groups due to marginalization. Specifically, article 204 establishes the equalization fund (0.5% of audited national revenue)⁶⁴ that shall be used to provide basic services to marginalized areas to the extent necessary to bring the quality of those services to the levels generally enjoyed by citizens in the rest of the country.

Furthermore, citizen participation⁶⁵ in governance and decision-making, including in policies and programme formulation, development planning and practice, is constitutionally guaranteed. These principles of inclusivity and equity are not only provided as rights but the necessary enabling legislation and guidelines are in place. The guidelines related to stakeholder engagement and Free Prior and Informed consent (FPIC) and those related to cost distribution and benefit-sharing arrangements with particular focus on marginalized communities are a case in point.⁶⁶




Notably, devolution provides an opportunity for these communities to access basic social services and participate in decision-making processes on issues that affect them.


⁶⁴ Constitution of Kenya 2010, art. 204

⁶⁵ Ibid art. 118

⁶⁶



Increasingly, the stated constitutional gains in addressing challenges faced by marginalized communities in the Country are being translated into enabling legislations⁶⁷, policy⁶⁸, programmatic and action plans⁶⁹. In addition, the stated constitutional and policy gains are increasingly being cemented through emerging progressive jurisprudence recognizing and re-affirming the internationally recognized rights of marginalized communities at the national level, as exemplified by several Court decisions in the recent past.⁷⁰

2.3.2 Laws, Polices & Regulations

Overall, significant policy, legislative and institutional changes have occurred over the decade that support marginalized communities' related concerns in the country (See Annex I for a comprehensive PLR analysis). Following the PLRs review and analysis, several overarching principles relevant to National Inclusive Development frameworks for marginalized communities have emerged:

- Acknowledgement of historical injustices⁷¹, including social, economic, and political marginalization; and subsequent calls for inclusive sustainable development including through the provision of affirmative action measures⁷² (funds, social protection, cash transfers, programs and projects) and regional development⁷³ to alleviate the anomaly.
- Rights to direct representation, participation, and consultation including through Free Prior and Informed Consent (FPIC) and legally binding agreements for marginalized communities,⁷⁴
- Right of access to benefits such as employment, investment, corporate social responsibility, and royalties from investments in their land.⁷⁵
- Respect to, the protection and promotion of cultural diversity⁷⁶ and Indigenous knowledge systems especially in the context of natural resource management and the right of access to benefits associated with genetic resources founded.⁷⁷
- Right to the security of land tenure, including Customary communal tenure and recognition of historical land related Injustices and establishment of mechanisms for redress

⁶⁷ The County Governments Act, 2012; Constituency Development Fund Act 2013; Climate change Act 2016; The Forest Conservation and Management Act of 2016; The community Land Act 2016; The Protection of Traditional Knowledge and Cultural Expressions Act, 2016; Basic education Act of 2013; Arid and semi-arid Lands policy

⁶⁸ Policy on the Criteria for Identifying Marginalized Areas and Sharing of the Equalization Fund 2011; The National Land policy (NLP) 2009; The National Policy on Culture and Heritage (2009); Ministry of Education's Sessional Paper No. I of 2005; Policy Framework for Nomadic Education in Kenya (GoK, 2010):

⁶⁹ The National Climate Change Action Plan (NCCAP) 2018-2022

⁷⁰ Joseph Letuya & 21 others v Attorney General & 5 others [2014] eKLR; Republic of Kenya N The Environment and Land Court At Nairobi, Elc Civil Suit No. 821 Of 2012 (Os), 17th March 2014 - ruling by the Environment and Land Court on the Ogiek claims over their ancestral domains at the Mau

⁷¹ The National Land policy (NLP) 2009

⁷² The National Government Constituencies Development Fund (NG-CDF) Act, 2015 (amended in 2016); Policy on the Criteria for Identifying Marginalized Areas and Sharing of the Equalization Fund 2011 and Second Policy and Criteria For Sharing Revenue Among Marginalized Areas; Third Medium Term Plan 2018 – 2022 (MTP III)

⁷³ The National policy framework for nomadic education 2010; National Policy for the Sustainable Development of Northern Kenya and other Arid Lands, 2012

⁷⁴ Climate change Act 2016,

⁷⁵ The Mining Act No. 12 of 2016; National Land Commission Act No. 5 Of 2012; Wildlife Conservation And Management Act No. 47 Of 2013

⁷⁶ The National Policy on Culture and Heritage (2009):

⁷⁷ The Forest Conservation and Management Act of 2016; Climate change Act 2016; The Protection of Traditional

- Right to grievance redress mechanism including alternate Dispute Resolution mechanisms
- Devolution of decision-making and resources emphasizes equity, efficiency, accessibility, non-discrimination, transparency, accountability, participation, and information sharing alongside a focus on basic needs.⁷⁸

2.3.3 International & Regional commitments related marginalized Communities

Kenya has signed and ratified a wide range of international and regional human rights instruments relevant to the country's aspiration to address the plight of marginalized communities.

Article 2 (a) of the Constitution (2010), provides that every treaty and convention that Kenya is a party forms part of the laws of Kenya.⁷⁹ The MTP III reaffirms and calls for ratification and domestication of several international and regional instruments by establishing a clear vision for the delivery of its services.

The United Nations Framework Convention on Climate Change (UNFCCC) decisions and agreements calls for the recognition and respect for human rights, including the rights of Indigenous Peoples provides for full and effective participation of Indigenous peoples, underscores the value of Indigenous Knowledge systems in climate change related actions, establishes a platform for the exchange of local Communities and Indigenous Peoples knowledge.

At the continental level, Kenya is a member of the African Union. The African Commission on Human and Peoples Rights (ACHPR), a sub-body of the African Union, adopted in 2005 the "Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities".⁸⁰ The report recognizes the existence of populations who self-define as Indigenous Peoples, who are distinctly different from other groups within a state, have a special attachment to and use of their traditional land, and who experience subjugation, marginalization, dispossession, exclusion or discrimination because of their cultures, ways of life or modes of production different from those of the dominant society. Since some of the natural resources that marginalized communities rely on are transboundary, the country is a signatory to regional agreements on forest conservation.⁸¹

2.3.4 Sustainable Development Goals (SDGs) and Inclusive Development in Kenya

Domestically, the Country has mapped each of the 17 SDGs on its national development blueprint - the Vision 2030, reflected under the Medium-Term Planning Frameworks (national government) & and the five-yearly County Integrated Development Plans (CIDP) within its devolved units.

The Kenya National Bureau of Statistics (KNBS) has undertaken an indicator mapping and has identified 128 indicators out of the 230 global indicators that can be measured with the available data. The Country's Policy Gap analysis⁸² on SDGs identified marginalized communities as one of the critical areas with a minimal focus on the ongoing country interventions on SDGs. This scenario arises out of inadequate disaggregated data on marginalized communities, low level of

⁷⁸Knowledge and Cultural Expressions Act, 2016.

County government Act 2012

⁷⁹See for international instruments and treaties - [://lib.ohchr.org/HRBodies/UPR/Documents/Session8/KE/KSC_UPR_KEN_So8_2010_KenyaStakeholdersCoalitionforUPR_Annex3.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/KE/KSC_UPR_KEN_So8_2010_KenyaStakeholdersCoalitionforUPR_Annex3.pdf)

⁸⁰See ACHPR, Report of the African Commission's Working Group of Experts on Indigenous Populations East African Community (EAC) forest policy and strategy; the East African treaty on biodiversity; forest policy and strategy for the Intergovernmental Authority on Development (IGAD) region

⁸² The National Treasury and Planning, State Department for Planning Sustainable Development Goals (SDGs) Policy Gap Analysis Study, Draft (22nd September 2018)

awareness of SDGs and inadequate resources allocated to facilitate realization of the aspiration of the Agenda 2030 of Leaving No One Behind.⁸³

While the SDGs principles such as universality (applies to nations, contexts & sectors) and integration (all goals are interconnected), imply that the proposed framework will seek to promote most goals, it specifically speaks to #10(reduced inequality) and #16(peace and justice) and the overall aspiration of Leaving No One Behind (inclusivity).

2.3.5 Institutional Arrangements

The Country’s governance and institutional landscape reflects a wide array of institutions with varied mandates touching on all dimensions of marginalization - social, economic, and political – relevant for marginalized communities. The institutional landscape for coordination of marginalized communities’ related interests and concerns in the country is characterized by overlaps, disconnects and weak coordination (See Annex II Summary of Institutions with mandates).

All these institutions, devolved units, constitutional commissions, sector-specific Ministries and their relevant agencies and departments need to be creatively engaged, to institutionalize, cement constitutional gains on the rights of marginalized communities and ensure coherent and effective coordination of the envisioned National Inclusive Development framework for marginalized communities in the country.

Citizen consultation and participation in planning and decision-making processes is at the heart of the Kenyan constitution, 2010.

The Constitution vests all sovereign power on the people of Kenya. ⁸⁴“Participation of the people”⁸⁵ is one of the country’s values and principles of governance, while the object of devolution (County governments) is to “enhance the participation of the people in the exercise of the powers of the state and in making decisions affecting them”.⁸⁶ County governments are also obligate to ensure real and meaningful participation of the citizens in governance and development planning and actions.

In addition to constitutional and other legislative gains in citizen participation, several instruments/ tools related to citizen engagement in policy formulation, programme design, implementation and access to benefits have been developed across national and county governments. The said guidelines define public participation as the deliberative process by which citizens, civil society



The institutional landscape for coordination of marginalized communities’ related interests and concerns in the country is characterized by overlaps, disconnects and weak coordination

⁸³Exploring Kenya’s inequality: Pulling apart or pooling together - 2013 Kenya National Bureau of Statistics (KNBS) and Society for International Development (SID)

⁸⁴Republic of Kenya (2010), Constitution of Kenya 2010

⁸⁵Constitution of Kenya Art. 10(2)

⁸⁶Constitution of Kenya, Art. 174(c)

organizations and government actors are involved in policy-making and implementation before decisions are made. The guidelines recognize the pluralism of aims and values and enable collaborative problem-solving designed to achieve more legitimate policies.

The second policy on the equalization fund, calls for the establishment of a comprehensive framework for engaging the beneficiary communities and implementing agencies through strengthening public participation to foster ownership, sustainability of projects and proper use of public resources (par. 97).⁸⁷

Increasingly, project-specific engagement frameworks, founded on constitutionally guaranteed rights and International Financing Institutions' (IFIs) specific safeguards⁸⁸ related to social, environmental, and indigenous peoples' rights are emerging and being applied in the country.⁸⁹

Efforts to coordinate effective consultation with marginalized community groups in development planning and actions by the state and other development actors have been constrained by the absence of a representative decision-making arrangement for these communities.

2.4. Problem Analysis & Justification for the Framework

2.4.1 Efforts to address Marginalization

The Country has rolled out ambitious plans, strategies, and programs towards the operationalization of the constitutional principles related to marginalized communities and aspirations towards national inclusive development. Of significance in this endeavour is the establishment of devolved governance units with the accompanying resources

2.4.2 Devolved Units - The Place of Counties in Addressing Marginalization.

Centralized political power and resources gave rise to a country characterized by significant levels of disparities in economic development among different regions and communities. To address the historical concerns on inequality occasioned by a highly centralized governance system, devolved units are established.

The Constitution of Kenya 2010 creates a devolved governance structure that promises to bring equitable development to all parts of the country. Its main objective is to promote and advance democracy, local interests, self-development and service delivery, equity and inclusiveness, representation, sharing and devolution of power and resources. In part, devolution seeks to ensure service delivery to marginalized communities, grants the powers of self-governance to the people and the attainment of their rights and improves their livelihoods.⁹⁰

Devolution responds to discriminatory policies which have hitherto contributed to the underdevelopment of certain regions and communities in the Country, including safeguarding and enabling citizens' voice in development planning and actions through enhanced citizen participation and oversight arrangements. Furthermore, Counties have the responsibility to

⁸⁷Commission On Revenue Allocation (CRA) Promoting An Equitable Society Second Policy And Criteria For Sharing Revenue Among Marginalised Areas

⁸⁸The World Bank Environmental and Social Safeguards, The European Commission policy on IPs; the GCF Indigenous Peoples e

⁸⁹Gok, The National Treasury. Vulnerable and Marginalized Groups Framework (VMGF). Infrastructure Finance and Public, Private Partnership (IFPP) Project Additional Finance (AF). Dec. 2016

⁹⁰Constitution of Kenya art, 174

protect the historical and cultural heritage, artefacts and sites within the county.⁹¹

County's proximity to local communities at the grassroots level within their territories makes County governments more strategically placed to monitor and respond to the concerns, interests, and rights of marginalized communities. In this way, the interests of minority and marginalized groups would be better addressed, as active inclusion and active participation of marginalized communities is more feasible.

Although devolution can go a long way and has indeed made notable strides in addressing long-standing grievances associated with the unequal distribution of power and resources, it is not a panacea. It is therefore important to develop a broader national inclusive development framework for marginalized communities, which robustly considers and integrates the role and contribution of the county governments.

The Country's Third Medium Term Plan (MTP), 2018 – 2022, under Vision 2030, calls for a collaborative framework between the National and County Governments to give the country a chance in its quest for inclusive and Sustainable development.

Specifically, county governments must (art. 196), embrace a policy of equal participation and self-representation for protected groups through nomination of members to the county assembly, recruitment to serve the county government including amongst the executive members, ensure participation and access to economic opportunities and activities by setting specific targets on employment, procurement and skills development for groups that are consistently excluded such as the youth, women, PWDs, persons from minority and marginalized communities, and the elderly.⁹² The County is also expected to take account of cultural constraints that prevent the participation of certain groups and to put in place mitigation mechanisms.

Additionally, the second policy on the Equalization Fund places communities and counties at the centre of implementation of funded projects - the involvement of county governments, local administration and beneficiary communities in the selection and implementation of projects is highly recommended.⁹³

2.4.3 Affirmative Action Resources and Programmatic Efforts

The Country has established a wide range of affirmative action funds and social protection measures aimed at addressing exclusion, and marginalization and ensuring equity and respect for constitutionally guaranteed social and economic rights. The funds are targeted at a wide range of groups including marginalized communities⁹⁴, regional focus⁹⁵, Women⁹⁶, Youth⁹⁷, and Persons with Disabilities (PWDs).⁹⁸ In addition, to the affirmative action funds, special interest programs with a bearing on marginalized communities have also been initiated. These include programs

⁹¹GoK, County Governments Act No. 17 of 2012

⁹²A Guide For County Government Leadership: Integration of Gender Equality and Inclusion in County Dev. NGEC 2013

⁹³Commission On Revenue Allocation (CRA) Promoting An Equitable Society Second Policy And Criteria For Sharing Revenue Among Marginalised Areas

⁹⁴National Government Affirmative Action Fund (NGAAF), UWEZO Fund,

⁹⁵Youth Enterprise Development Fund (YEDF):

⁹⁶Women Enterprise Fund:

⁹⁷Youth Enterprise Development Fund (YEDF):

⁹⁸Access to Government Procurement Opportunities (AGPO)

targeted at vulnerable groups in society⁹⁹, education bursaries¹⁰⁰ and geographical regions.¹⁰¹

2.4.4 Equalization fund

Kenya has set up an Equalization Fund to respond to uplifting marginalized areas caused by previously legislated discrimination; geographical location; culture and lifestyles; external domination; land legislation and administration; recognition of minority groups; ineffectual political participation; and inequitable government policies. These marginalized areas exhibit high levels of absolute and relative poverty, food insecurity, poor infrastructure, poor state of basic social services and poor governance.

The Constitution of Kenya, art. 216 (4) and Article 204 (4) mandates the Commission on Revenue Allocation (CRA) to establish a criterion to identify the marginalized areas for purposes of Article 204 (2) and rights of the Commission to be consulted in efforts to operationalize the Equalization Fund.

The Commission is required to determine, publish and regularly review a policy in which it sets out the criteria by which to identify marginalized areas for the Equalization Fund. And the commission has so far developed two iterations of the said policy.¹⁰²

The first policy used the county as the unit of focus for the disbursement of the Equalization fund resources, with fourteen (14)¹⁰³ counties identified as beneficiaries. Several shortcomings of the first policy approach were observed, namely, the county approach masked significant intra-county differences, weak and narrow participation of target communities, projects spanned too many sectors, were not well targeted and suffered from slow disbursement of funds.¹⁰⁴

Based on the identified shortcomings of the first policy, the second iteration of the policy determined specific areas at the sub-locational level where marginalized communities live to ensure equalization funds are properly targeted for the realization of maximum impact. The Commission used indicators on access to education, water, sanitation, and electricity to construct an index of deprivation. A total of 1,424 sub-locations (out of 7,131 sub-locations), representing the



The Commission is required to determine, publish and regularly review a policy in which it sets out the criteria by which to identify marginalized areas for the Equalization Fund.



⁹⁹National Safety Net Programme (Inua Jamii), which includes Cash transfers to Orphans, and Vulnerable Children (CT-OVC) and the Hunger Safety Net Programme (HSNP)

¹⁰⁰The Presidential Bursary Scheme to Orphans and Vulnerable Children (OVCs),

¹⁰¹Special Programmes for Development of Northern Kenya and other Arid Lands

¹⁰²Commission on Revenue Allocation: Policy On The Criteria For Identifying Marginalized Areas And Sharing Of The Equalization Fund (2011 – 2014)

¹⁰³Turkana, Mandera, Wajir, Marsabit, Samburu, West Pokot, Tana River, Narok, Kwale, Garissa, Kilifi, Taita, Taveta, Isiolo, Lamu

¹⁰⁴Commission on Revenue Allocation: Policy On The Criteria For Identifying Marginalized Areas And Sharing Of The Equalization Fund (2011 – 2014)

bottom 20 percent (about 5 million Kenyans), were identified for funding from the Equalization Fund.¹⁰⁵

2.4.5 Direct Engagement with Marginalized Communities:

The Government of Kenya (GoK) has initiated several marginalized communities' dedicated dialogue spaces, processes, and programs in efforts to respond to a history gone wrong to concerns over the inclusion of marginalized communities. This includes the dialogue under the National Forest Program¹⁰⁶ and the International Colloquium.

The Colloquium process - which was supported by the World Bank - explored Indigenous Forest Peoples' (IFPs) concerns related to effective consultation, participation, and free, prior, and informed consent (FPIC), conflict resolution mechanisms, equitable and fair sharing of benefits within the natural resources sector, especially forests. The Colloquium concluded with a matrix of issues to be addressed by respective state departments and agencies, while the conclusions arrived at during the Colloquium were comprehensive and forward-looking, no follow-up actions were taken to implement them.

Further, the National Land Commission (NLC) in partnership with Reconcile conducted a dialogue with Indigenous Forest peoples to explore pathways to a broad-based sustainable solution to address their grievances on land and forest rights. The goal arrived at the dialogue was, "Resolving the tenure conflict by formalizing as community lands current forest areas that are recognized by the Constitution as "the ancestral lands and lands traditionally occupied by hunter-gatherer communities' (in line with Article 63 2(d) ii of the Constitution of Kenya)" through "community tenure on conservation conditions". The dialogue called for relationship-building between traditional forest communities and government bodies and agencies.¹⁰⁷

The proposed framework, therefore, provides a golden opportunity to revisit conclusions and action points generated from the above dialogue processes, including useful source materials to inform the proposed framework.

2.4.6 Development in the Natural Resources Sector:

Marginalized communities – pastoralists and hunter-gatherers' livelihoods are overly reliant on natural ecosystem services such as forests and savannah landscapes.¹⁰⁸ One of the objectives of the REDD+ Country strategy is to enhance the livelihoods of the Indigenous Peoples and Local Communities (IPLCs). The strategy recognizes marginalized/indigenous communities as strategic rights holders (on public and communal land) who must be proactively engaged in forest conservation, management and access to benefits.¹⁰⁹

The envisioned governance arrangements of REDD+ in the country, place indigenous communities and local communities at the centre of decision-making. At the national level, Indigenous People and Local Communities (IPLCs) are represented in the proposed National REDD+ Supervisory Board /Steering Committee. This is an apex multisector body to guide the implementation of

¹⁰⁵Commission On Revenue Allocation (CRA) Promoting An Equitable Society Second Policy And Criteria For Sharing Revenue Among Marginalised Areas

¹⁰⁶the National Forum for Forest Dependent Communities, organized by the Kenya Ministry of Environment, Water and Natural Resources (MoEWNR) from January 19-21, 2015 in Nakuru

¹⁰⁷Nanyuki National Forum Report - Roadmap to securing forest dweller land & Resource Rights in Forest Conservation 13-15 July 2016. NLC & Reconcile

¹⁰⁸Ministry of Environment and Forestry. The National REDD+ Strategy December 2021

¹⁰⁹Ministry of Environment and Forestry. The National REDD+ Strategy December 2021

the REDD+ programme ensuring multi-stakeholder involvement in the designing of policy, standards and instruments proposed for REDD+ implementation in Kenya

The National REDD+ strategy incorporates a Country Safeguard Information System (SIS) anchored on the Cancun Safeguards¹¹⁰ which references the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and protects indigenous communities' full and effective participation, need for sustainable livelihoods, land tenure security and Indigenous knowledge systems.

2.4.7 Rationale for the Framework: Marginalization Persists

After decades of Kenya's experimenting with different economic and social policies, regional disparities and imbalances in economic, social and political development persist. Regional inequalities and imbalances have increasingly become a source of political and social conflict.

Evidence abounds that despite progressive constitutional provision to enhance citizen participation in the devolved system, and mechanism for redress of marginalization and disparities, the country still suffers from traditional power imbalances arising from inequity resource distribution, access to public service and employment opportunities which often follows regional, ethnic/marginalized communities, political affiliation, and class fault lines.

The MTP III acknowledges that extreme poverty in ASAL areas, regional and gender disparities in access, completion and transition in education persist and unemployment, under-employment, and skills mismatch. Severe drought is estimated to affect 3-4 million people in a given drought cycle in the country and even in 'good' years, many families in Arid and Semi-Arid Lands (ASALs) live with hunger or the fear of potential hunger.

Marginalized communities and groups are faced with various challenges in terms of their participation in social and economic development as well as representation in politics among other spheres of development.

One of the greatest challenges to ensuring the representation and participation of marginalized communities and groups is a lack of awareness of their legally guarded socio-cultural, political, and economic rights amongst other rights. Central to the Constitutional provisions on marginalized communities is the need to enable equitable and inclusive development where these communities are mainstreamed in the development agenda.

There is a need to actualize the constitutional gains through the formulation of a national framework that addresses issues of marginalized communities sustainably. State and non-state actors need to all understand their role in addressing equality and inclusion issues especially as it relates to marginalized communities.

While some literature and data exist in Kenya on marginalized communities (also known as Indigenous Peoples by the Africa Commission on Human and Peoples Rights – ACHPR - the UN, World Bank (new World Bank Environmental and Social Standard 7 refers to “Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities”) and other international organizations, Kenya lacks an agreed common name/reference acceptable

¹¹⁰paragraphs 70 and 72 of this decision, Cancun Safeguards

across the marginalized communities themselves, the government, private sector and non-state actors, and the development partners.

This is despite the definition of the term ‘Marginalized Communities’ in Article 260 of the Constitution of Kenya, 2010. There is therefore a need to formulate an inventory of marginalized communities that meet squarely and wholly the definition of Article 260 of the Constitution of Kenya, 2010. This requires a refined identification and mapping of communities and groups against the standards and criteria provided in the Constitution.

The inventory of marginalized communities shall be useful to inform interventions designed to address historical injustices against them and other barriers to inclusion and participation in the development agenda of the country. There is therefore a need to develop an inventory and facilitate gazettelement of marginalized communities in Kenya to gain national acceptance to guide policy implementation.

In addition, the planning, targeting, delivery and accounting for existing affirmative action resources, and special programs, including the equalization fund, remains inoptimal and associated with corruption. Equalization fund-related challenges, for example, included a low level of awareness of the administration of the fund as well as weak/minimal participation of the marginalized communities in the identification, implementation, monitoring, and evaluation of the projects to be implemented through the fund.

There is therefore need for proper identification and targeting to reach all those who are still marginalized and discriminated against. The State needs to ensure that funds allocated to these programs are properly utilized and cases of corruption are conclusively dealt with.¹¹¹ Marginalized Communities have themselves called for the development of a comprehensive policy and programmes to guide the country’s efforts in responding to their often-intergenerational concerns.

Overarching challenges in efforts to address concerns of marginalized communities in development planning and actions include lack of clear framework for engagement across scales; slow implementation of relevant legislations; weak coordination approaches leading to disjointed efforts; inadequate dialogue and lack of clear and functional engagement mechanism; lack of comprehensive policy and legal framework on marginalized communities, insufficient political



“
The inventory of marginalized communities shall be useful to inform interventions designed to address historical injustices against them and other barriers to inclusion and participation in the development agenda of the country.
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¹¹¹KNCHR. Kenya @ 10: A Decade After: The State Of Human Rights Post The 2010 Promulgation Of The Constitution A Human Rights Scorecard.

<https://www.knchr.org/Portals/0/THE%20STATE%20OF%20HUMAN%20RIGHTS%20POST%20THE%202010%20PROMULGATION%20OF%20THE%20CONSTITUTION.pdf>

goodwill at both national and county Level; and lack of disaggregated data on marginalized communities.¹¹²

It is therefore evident that addressing concerns of marginalized communities and regional disparities in the Country calls for a fresh approach that provides a multifaceted and multi-sectoral framework that fosters more balanced economic development in the country, founded on 'equity-oriented policies'.¹¹³ A national inclusive framework specific to marginalized communities that addresses their opportunities and challenges at national and county levels of government is necessary to ensure their full participation in the development agenda. The disparities in development records indicate marginalized communities are disadvantaged in socio-economic and social-cultural fields. A policy framework for the equitable and inclusive development of marginalized communities is proposed to respond to these challenges.

Such a framework should be cohesive, implementable, and incorporate a robust monitoring framework to ensure the achievement of tangible results based on key indicators and milestones. The framework should map out critical actors and their respective roles, and thereby spell out a responsive institutional framework for effective coordination. The framework will be informed by the existing PLRs, relevant reports from constitutional commissions, state departments¹¹⁴, international good practices, policies and standards, relevant to the aspirations of the framework in the country.

¹¹²Towards Seamless Integration Of Indigenous Ethnic Minorities And Marginalized Communities Into The Rest Of Kenya's Socio-Economic Life, office of the DP depart of marginalized communities

¹¹³The Equalization Fund Audit of the Status of Water, Health and Road Sectors in 8 Marginalized Counties, NGECC 2017

¹¹⁴Towards Seamless Integration Of Indigenous Ethnic Minorities And Marginalized Communities Into The Rest Of Kenya's Socio-Economic Life, office of the DP depart of marginalized communities

3.0 Goal and Objectives of the Framework

3.1 The Goal

The overall goal for developing a National Inclusive Development Framework for Marginalized Communities (NIDF for MCs) in Kenya is to provide a mechanism for sustainably mainstreaming the inclusion issues of marginalized communities in all spheres of the Country's development.

3.2 Specific Objectives of the Framework

- a) To identify and map out communities that meet the definition of Article 260 of the Constitution of Kenya, 2010.
- b) To facilitate the development of a framework that will enhance and accelerate the realization of an inclusive development of marginalized communities at all levels in compliance with national, regional, and international legal instruments that Kenya is party to.
- c) To establish criteria on an agreed common name or reference acceptable across the marginalized communities themselves, the government, private sector and non-state actors, and the development partners.
- d) To provide a mechanism for the establishment of a sustainable representative common platform for marginalized communities in the country for purposes of coordinating their knowledge and experiences sharing among themselves and structured engagement with state and none state actors in collaboration with NGECE
- e) To facilitate the establishment of an Advisory Committee as a Reference Group that would advise NGECE, as well as State and non-State actors on issues affecting marginalized communities and groups in Kenya and articulate how such a Committee would sustain itself.

3.3 Methodology

Phase I of the assignment has mostly been desktop-based work of literature review - laws, policies, programmes, regulations, plans, studies, and reports – and inputs from mandate holder institutions, with limited opportunities for broader stakeholder consultation. Yet, Stakeholder involvement, inputs, and ultimate ownership in all the assignment's deliverables are at the heart of its long-term success. Phase II will therefore focus on robust stakeholder consultation, leading to validation, launch, gazettelement and awareness creation of the framework.

4.0 Framework Principles, and Strategies

The key pillars of the Framework include economic growth with and through structural transformation, increasing productive employment, providing social protection for all, providing basic services, promoting territorial development and spatial equality, and improving the quality of governance. All these pillars ought to be promoted in an integrated manner to ensure it is a solid foundation for the promotion of inclusive development for marginalized communities.

The proposed principles, procedures and strategies are aimed at ensuring the sustainable mainstreaming of the inclusion of marginalized communities in all spheres of Kenya's socio-political, cultural and economic life.

4.1 Promote Territorial Development and Spatial Equality

The territorial development approach is a useful strategy in efforts aimed at overcoming spatial blindness in addressing regional dimensions of inequality in development practice. The centralized practice of focusing on connecting the national economy to global economies from the capital cities often exacerbates inequality between globalizing cities and the rest of the country.

The Framework will promote investment in areas and sectors where poor people and marginalized communities live and work. The Country, the Framework should avoid spatial and sectoral blindness by investing in the informal sector on which marginalized communities rely, addressing infrastructural constraints (health, education, markets, and veterinary services) and improving institutional effectiveness within marginalized communities' areas. While for example, maternal healthcare and primary education are free in the country, members of marginalized communities still experience constraints related to hidden costs, such as distances to such facilities, insecurity and transport/ accessibility.

Activities supported under the Framework should be targeted at strengthening institutional capacities at the county and community level to ensure optimal uptake and outcomes of the numerous affirmative action measures and protection programmes already in place in the country.

Interventions must acknowledge and respond to the diverse constraints of the various subgroups of marginalized communities and tailor policies to their specific needs - avoid the one-size-fits-all approaches and seek to address inherent multiple constraints. Deliberately targets to relieve constraints that prevent marginalized communities from taking advantage of affirmative action opportunities presented and enhance their capabilities to do so.

4.2 Enhance Efficiency of Existing Policies and Programmes

The national inclusive development framework for marginalized communities will promote the maximization of the impacts and efficiency of existing policies and programmes. Existing affirmative action programmes and social protection measures should be improved by addressing identified constraints, integrated and upscaled.

While exploring the necessity for new interventions, the framework will promote strategies that identify opportunities to link, scale up and merge existing programmes. Any additional interventions should be aligned with existing programmes and institutions. It is acknowledged that programmes can have complementary effects on each other and, therefore, investment in joint interventions to improve effectiveness and impact will be promoted.

The positive impact and cost-effectiveness of cash transfer programmes, for example, should be enhanced by aligning it with other social policies such as increasing agricultural productivity, access to healthcare and infrastructure development. Interventions often have interaction effects (substitutive, complementary, and hindering). For example, integrating water harvesting methods and road-side tree planting to diversify economic activities can increase the impact of feeder roads



4.3 Prioritize Investments with Positive-spill-over Effects

Activities to be promoted under the national inclusive development framework for marginalized communities will prioritize interventions and investments that trigger and maximize spill-over effects in the local economy.

These are interventions with the potential to raise local incomes to increase the demand for products and jobs in the local economy and to move away from the dependence syndrome to self-determination/reliance. Examples here include local sourcing of raw materials at national and county levels, and establishing adequate infrastructure (e.g. mobile phone networks, access to markets and quality roads) among others.



4.4 Engaging Multiple Strategic Actors

The national Inclusive development framework for marginalized communities will endeavour to include strategic actors at national, county and community levels in the design, implementation and monitoring of policies and programmes that address marginalization. This calls for context-specific actor analyses, to appreciate power imbalances to optimize implementation. It means going the extra mile to include the excluded to enhance both programmes' effectiveness and ensure inclusivity.

Interventions promoted under the national inclusive development framework for marginalized communities will therefore ensure the participation of technocrats at the national and county level, non-state and private sector actors, and traditional authorities in the design and decision-making of development policies and actions. Measures will be instituted to go beyond gatekeepers and elite capture by incentivizing otherwise excluded groups.

The framework will ensure meaningful representation of diverse actors, including providing the necessary conditions for actors' participation by ensuring equality in opportunity and access, facilitating the linkage of strategic actors who can (and want to) make a difference with marginalized communities



by forming strategic alliances; critically assess the extent to which these alliances truly or sufficiently represent marginalized communities.

Marginalized Communities' participation in social protection programmes is essential to improve the implementation of such programmes. Non-inclusion of certain actors can induce conflict between excluded communities and beneficiary communities or the state. Inclusion needs to occur in the planning, implementation, and evaluation of the programme, with equitable representation of actors in each stage of the programme.

The government will play a lead role in safeguarding social stability in the promotion of inclusive development, ensuring policy coherence and avoiding parallel development systems across levels.

4.5 Ensuring Inclusive Processes and Inclusive Outcomes

There is a strong correlation between inclusive processes and inclusive outcomes. Participation in the design and implementation of policy is necessary for inclusive development to take place.

Granting a more equal voice and representation of marginalized communities in decision-making processes would inspire inclusive policy innovation, allow for multiple visions in development planning and actions, minimize further harm and promote their empowerment in the long run.

The framework will ensure robust linkage to grassroots including through traditional institutions to enhance the likelihood of achieving inclusive outcomes. Such an approach will ensure access to relevant information taking into account knowledge and experience that is taken seriously at the policy table.

4.6 Private Sector and Inclusive Business

Inclusive business is an integral part of Inclusive development. The for-profit private sector is an important partner in promoting and supporting inclusive development. Inclusive businesses are defined as businesses that “integrate low-income individuals into value chains in various capacities, be it as consumers, producers, employees and entrepreneurs”.

A ‘business as usual’ scenario will not automatically result in trickle-down and knowledge, employment, and technological spill-over effects (Adeleye, 2015). Under the framework, the for-profit private sector actors will be encouraged and incentivized to adopt inclusive business strategies that go beyond the principle of ‘no harm’ (mere compliance with regulations) towards one of ‘doing good’, and, beyond the inclusion of marginalized communities as mere consumers only.

The for-profit private sector in the country should position itself as an important partner in promoting and supporting inclusive development, by engaging in ‘corporate citizenship’ and adhering to the accompanying rights and responsibilities (Kolk, 2016).

The framework will promote consumer awareness among marginalized communities. An informed consumer population is a useful catalyst in positively influencing the private sector towards inclusive development processes and outcomes as they possess the agency to publicize the negative effect of non-inclusive business on the environment and social life. And, on the business side, social embeddedness and a sense of communal belonging are important motivations for social innovation and co-creation. The for-profit private sector will be required to comprehensively link the aim of making a profit with that of having a social, transformative impact.

The framework will promote local entrepreneurship as a means of integrating marginalized communities into the market value chains. The approach is expected that it will create local spill-over effects. The for-profit private sector will be obligated to adopt human rights approaches (HRBs), including ensuring compliance with the Kenya National Action Plan On Business and Human Rights.

4.7 The Place of Non-Governmental Organizations (NGOs) in inclusive development:

Many NGOs are primarily focused on poverty reduction (pro-poor approaches) and political inclusion, often addressing the needs of specific groups in society such as marginalized communities. Overall, NGOs work centers on supporting and promoting inclusive processes in development planning, implementation, and monitoring, which in turn would enhance outcomes, transparency, and accountability. This focus is in tandem with aspirations of inclusive development, especially in the context of marginalized communities.

Non-governmental organizations play a critical role as facilitators of processes at the community level through awareness raising and capacity building, information dissemination and on-the-ground monitoring.

The framework will seek to build strategic partnerships with NGOs to enhance strong and direct connections with local communities, encourage expanded reach to ensure inclusion of historically marginalized areas and communities and tap from NGOs' unique perspective on gaps in policy and advocacy skills to increase impacts of programs.

NGOs' supported interventions undertaken within marginalized community areas will also be monitored for transparency, accountability, and meaningful impact on marginalized communities.

Under the national inclusive development framework for marginalized communities non-state actors operating within marginalized communities' areas will be mapped. The mapping should include identifying their thematic focus, interventions being undertaken, durations of intervention and structures of decision-making at the community level. An annual reporting tool on their performance will be generated by NGECC for monitoring and reporting and to ensure synergetic actions and optimal use of resources.

4.8 Academia

Academia is critical in the realization of the aspirations of the national inclusive development framework for marginalized communities. Lack of scientific, credible, reliable, consistent and disaggregated data on marginalized communities in the country, is one of the key contributors of marginalization. Academics can help to provide context-specific data and solutions based on targeted research.¹¹⁶

¹¹⁶The Knowledge Platform on Inclusive Development Policies. Inclusive Development in Africa Synthesis report series. Simone Reinders · Marleen Dekker · Frank van Kesteren · Loes Oudenhuisen (INCLUDE) March 2019

5.0 Implementation Framework

5.1 Identifying and Mapping Marginalized Communities in Kenya

The constitution of Kenya 2010 now underscores measures for mitigating social exclusion, vulnerability, and marginalization by specifically providing for affirmative action as a strategy for facilitating and fast-tracking the inclusion of groups that hitherto felt excluded from the mainstream economic and political processes of the country. Under art. 260 the constitution has clarified the broad categories of marginalized communities concerning livelihood practices (pastoralist, hunter-gatherers), lifestyles/culture, minority status and geographical remoteness. To give effect to equity through affirmative action, the government is required to legislate measures to redress any disadvantage suffered by individuals or groups due to marginalization.

Specifically, article 204 establishes the equalization fund (0.5% of audited national revenue).¹¹⁷ The Constitution of Kenya, art. 216 (4) and art. 204 (4) mandates the Commission on Revenue Allocation (CRA) to establish a criterion to identify marginalized areas for purposes of Article 204 (2). The Constitution requires the CRA to determine, publish and regularly review a policy in which it sets out the criteria by which to identify marginalized areas for the Equalization Fund.¹¹⁸

The constitution has therefore identified marginalization based on regional/geographical disparities (art. 204) and based on specific community groups (art. 260). The first one defines marginalized communities for purposes of affirmative action while the second targets affirmative action resources to marginalized areas. The two fronts of marginalization ought to be addressed in a collaborative and unified manner.

Further, tensions have often been generated in development planning and actions, between the state and development actors (Non-State Actors, development partners) on one hand and communities which self-identify as indigenous peoples (or marginalized communities according to the Kenyan constitution) on the other, hence are entitled to safeguards provisions under national and international law, often complicating development aspirations and state of peaceful co-existence.

Examples of these experiences of tensions are exemplified in the geothermal developments in the Greater Olkaria Geothermal Area in Nakuru County, funded by the World Bank, in which community complaints were presented before the World Bank Inspection Panel.¹¹⁹ The Water Towers Protection and Climate Change Mitigation and Adaptation Programme, in the Mount Elgon and the Cherangani Hills areas of Kenya, supported by the European Union (EU) was also associated with tensions and violence between government forest officials and Sengwer community members. Evictions of the community from Embobut Forest and loss of life and property were also reported.¹²⁰

¹¹⁷Constitution of Kenya 2010, art. 204

¹¹⁸Policy On The Criteria For Identifying Marginalized Areas And Sharing Of The Equalization Fund – Financial Years 2011-2014

¹¹⁹Report No. 97705-KE KENYA Electricity Expansion Project (P103037) - Investigation Report July 2, 2015

¹²⁰See Report: EU Statement on the killing of a member of the Sengwer community of Kenya. Accessible from: <https://www.frontlinedefenders.org/en/statement-report/eu-statement-killing-member-sengwer-community-kenya#:~:text=The%20European%20Union%20announced%20on%2017%20January%202018,others%2C%20and%20ongoing%20attacks%20against%20human%20rights%20defenders>

Over time, several World Bank-supported projects in the Country have triggered the application of the World Bank’s (WB) safeguard policy Operational Policy (OP) 4.10 on Indigenous peoples and subsequent development of the associated Marginalized Communities Framework to guide the implementation where project interventions were to be implemented in areas where Indigenous Peoples reside. The OP 4.10 is triggered when it is likely that groups that meet the criteria expounded in the policy “are present in, or have collective attachment to, the project area.”

The World Bank’s Policy on Indigenous Peoples (previously OP 4.10 now Environment Social Standard 7) for example considers “Indigenous Peoples” any distinct, vulnerable, social and cultural group possessing the following characteristics “in varying degrees”: (i) self-identification as a distinct indigenous cultural group with recognition of this identity by others, (ii) collective attachment to geographically distinct habitats or ancestral territories in the project area, (iii) separate customary cultural, economic, social, or political institutions, and (iv) an indigenous language.¹²¹

According to the World Bank’s OP4.10, marginalized communities include nomadic pastoralists, hunter-gatherers, and other nomadic communities for example, traditional fishing communities. The Marginalized Communities Framework is an increasingly familiar tool in safeguarding the rights and interests of marginalized communities in World Bank-supported projects.¹²²

It’s evident from the foregoing that acknowledgement of the sorry state of and need for targeted actions on marginalized communities and areas in the country is a constitutionally settled one. The challenge remains, given the diversity of Kenya’s ethnic groups (about 45 as per the 2019 Population and Housing, Census), a large population size of about 47,067,376, in the context of scarcity of national resources - which specific communities fit the description provided for under art. 260 of the Constitution and other relevant laws, policies, and programmes in the country. Hence, the objective to identify and compile a comprehensive list of marginalized communities to establish a clear and solid base for targeted policy actions under the proposed NIDF for MCs becomes critical.



5.1.1 Indicative Criteria for identification of marginalized communities in Kenya:

a) Constitutional Underpinnings:

The overarching consideration in determining who marginalized communities in the country are is founded under art. 260 of the constitution. The article elaborates on marginalized communities as:–

¹²¹OP 4.10, para. 4.

¹²²The Government Of Kenya The National Treasury Infrastructure Finance And Public, Private Partnership (IFPPP) Project Additional Finance (AF) Draft Version Vulnerable And Marginalized Groups Framework (VMGF), December 2016

- (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–
 - (i) nomadic; or
 - (ii) a 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;

b) Regional Treaties/Charters that Kenya is Signatory to:

Regional conventions and mechanisms that Kenya is committed to such as the Africa Commission on Human and Peoples Rights (ACHPRs), particularly the “Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities, which resonates with provisions of art. 260 of the constitution.

c) Communities to whom Development Actor’s Safeguards related to marginalized communities have been applied:

Emerging practice on community groups on which relevant international safeguards policies and instruments related to marginalized communities have been triggered, including World Bank’s Environmental Social Standards no. ESS7); International Fund for Agricultural Development (IFAD)¹²³, the Green Climate Fund (GCF) Indigenous Peoples policy¹²⁴ and others.

d) Emerging regional and national jurisprudence on Indigenous communities:

Increasingly, regional, and national courts in determining Cases brought by community groups that self-identify as indigenous peoples, have reaffirmed exclusion and marginalization claims of marginalized communities. Examples include the Environment and Land Court ruling on the Ogiek claims over their ancestral domains at the Mau¹²⁵; the Ogiek in 1997¹²⁶ and submission to ACHPR; the May 26, 2022, African Court on Human and Peoples’ Rights judgement on the

¹²¹OP 4.10, para. 4.

¹²²The Government Of Kenya The National Treasury Infrastructure Finance And Public, Private Partnership (IFPPP) Project Additional Finance (AF) Draft Version Vulnerable And Marginalized Groups Framework (VMGF), December 2016

¹²³IFAD, 2009. Engagement with Indigenous Peoples, Policy. Accessible from: https://ioe.ifad.org/documents/38711624/39417924/ip_policy_e.pdf/a7cd3bc3-8622-4302-afdf-6db216ad5feb?t=1507215253000

¹²⁴<https://www.greenclimate.fund/sites/default/files/document/ip-policy.pdf>

¹²⁵Joseph Letuya & 21 others v Attorney General & 5 others [2014] eKLR; Republic of Kenya N The Environment and Land Court At Nairobi, Elc Civil Suit No. 821 Of 2012 (Os), 17th March 2014

¹²⁶Commission on Revenue Allocation (CRA). Promoting An Equitable Society Second Policy And Criteria For Sharing Revenue Among Marginalised Areas; Role of Minority and Marginalized Communities in Kenya in Reduction of Emerging Exclusion and Inequalities in Land and Natural Resources Management, NGECC, 2015.

expulsion of Ogiek from the Mau forest¹²⁷, the Endorois in 2003¹²⁸ and the subsequent ruling, delivered by ACHPR in 2010.¹²⁹ The High Court decision in 2006 on the Ilchamus right to influence the formulation and implementation of public policy, and to be represented.¹³⁰

e) Reports on Marginalized Communities in the Country: Reports and studies on Indigenous Peoples and/or marginalized communities by international agencies¹³¹, independent constitutional commissions¹³² and state agencies¹³³ and departments with constitutional and administrative¹³⁴ mandates touching on marginalized communities.

f) Self-identification and self-determination of marginalized communities:

a) Members of marginalized communities, self-identifying as Indigenous Peoples have engaged in regional and international mechanisms and generated enormous reports. Representatives of these communities participate in relevant international mechanisms such as ACHPRs, and the United Nations Permanent Forum on Indigenous Issues (UNPFII) Expert Mechanism on Rights of Indigenous Peoples (EMRIP).¹³⁵ The government of Kenya has engaged with marginalized community groups that self-identify as Indigenous peoples in several dialogue processes.¹³⁶ The NLC and Ministry of Environment have coordinated and hosted a few such dialogues, in which communities expressed aspirations for the Indigenous Peoples' identity as opposed to marginalized communities.¹³⁷, ¹³⁸ Minority Status/Population Size

Under Art, 260 of the Constitution, population relative population size (minority status) is a subset of marginalized communities. The National Population and Housing Census (though not conclusive and consistent in listing communities by ethnicity) will be another identifier factor in deriving an Inventory of marginalized communities in the Country.

¹²⁷See: <https://www.ejiltalk.org/the-ogiek-case-of-the-african-court-on-human-and-peoples-rights-not-so-much-news-after-all/>

¹²⁸Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya. African Commission on Human and Peoples' Rights (ACHPR),

¹²⁹This is the first ruling to determine who indigenous peoples in Africa are, and what their rights to land are. It is a victory for all indigenous peoples across Africa. See MRG Web site:<http://www.minorityrights.org> and Annex 3 under Endorois.

¹³⁰Joseph Lemaiguran and Others on behalf of the Ilchamus community v. Electoral Commission of Kenya and Attorney General of Kenya (judgment of 18 December 2006), Nairobi High Court Miscellaneous Civil Application no. 305, 2004

¹³¹IFAD. Country Technical Notes on Indigenous Peoples' Issues The Republic of Kenya Submitted by: IW-GIA, April 2012. <https://www.ifad.org/documents/38714170/40224460/Kenya.pdf/7f70d9b6-5e5c-4628-942c-7ae749a2f262?t=1521027250000>; Makoloo, Maurice Odhiambo. Kenya at 50: unrealized rights of minorities and indigenous peoples. Minority Rights Group International (MRG). 2012. Pg. 10.

¹³²NGEC, 2018. Unmasking Ethnic Minorities and Marginalized Communities in Kenya Who and Where?; Commission On Revenue Allocation (CRA). Promoting An Equitable Society Second Policy And Criteria For Sharing Revenue Among Marginalized Areas; Role of Minority and Marginalized Communities in Kenya in Reduction of Emerging Exclusion and Inequalities in Land and Natural Resources Management, NGENC, 2015

¹³³Desk of Minorities and Marginalized- Office of the Deputy President (DP). Towards Seamless Integration Of Indigenous Ethnic Minorities and Marginalized Communities Into The Rest Of Kenya's Socio-Economic Life

¹³⁴Department Of Minority And Marginalized Communities Office of the Deputy, President Towards Seamless Integration Of Indigenous Ethnic Minorities And Marginalized Communities Into The Rest Of Kenya's Socio-Economic Life - Strategy,

¹³⁵The ACHPR (in Indigenous Peoples in Africa: The Forgotten Peoples?, 2006:15) lists 14 as a non-exhaustive list. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people mentions 25 (Human Rights Council, Report Mission to Kenya, 2007) but other sources mention more groups (see, e.g., WB IPP451, 2010b:5; and WB IPP534, 2010c:4-5).

¹³⁶The "Colloquium on Deepening Dialogue With Stakeholders In The Forest Sector In Kenya" March 3rd - 6th March 2015;

¹³⁷The "Colloquium On Deepening Dialogue With Stakeholders In The Forest Sector In Kenya" March 3rd - 6th March 2015;

¹³⁸Ministry of Environment, Water and Natural Resources, 2015. Report on the National Forum for Dependent Communities – January 18th – 21st 2015, Nakuru

Following an extensive literature review on marginalized communities, a total of 38. Community groups were identified as marginalized in tandem with elaboration under art. 260 of the constitution. The developed list of marginalized communities is only indicative. It is based on a literature review, but unconfirmed and unverified by the communities and other stakeholders. Stakeholders' verification and perhaps field-based authentication are advisable in readiness towards a comprehensive validated list for gazettelement.

Some communities appear in the literature review as self-identified as Indigenous and marginalized but do not appear as distinct community groups in the national population and housing census. There is notable inconsistency, in the national census listing and enumeration of ethnic groups, as some appear and reappear, while the population of others radically reduce in size (See Annex III for an Indicative Inventory of Marginalized communities in Kenya, derived from the reviewed literature).



5.2 Exploring and Building Consensus on a Broadly Acceptable Name applicable for marginalized communities in Kenya

Kenya has an equivocally acknowledged existence of ethnic community groups within the country who have experienced social, economic, and political marginalization over time, The Constitution has broadly defined marginalized communities in terms of their ways of life (nomadic pastoralism, hunter-gatherers. including fisherfolks), minority status, and geographical allocations.

The constitution of Kenya, 2010, calls on the legislative arm of government (at national and County levels) to establish laws to operationalize the constitutional provision on marginalized communities. Such a policy would necessitate a framing or titling that speaks to the full spectrum of issues to be addressed.

In efforts to respond to the stated constitutional imperatives, a few laws, policies, regulations/ guidelines, strategies, programmes, projects and reports have been developed – most of which reflect a wide array of names about marginalized communities – ranging from ethnic minorities, vulnerable and marginalized, Indigenous communities to Indigenous Peoples (See Annex IV, List of presently applied names).

Marginalized communities on their part are struggling with this question, seeking unification and harmonization of all these references, some centred on the respective collective traditional livelihoods' practices (pastoralism, hunter-gatherers, fisherfolks, blacksmith). Predominantly, marginalized communities have leaned towards the term Indigenous Peoples, and less on vulnerable and marginalized. The communities contend that the term 'marginalized communities' only speaks to the shortcomings of national socio-economic and political development processes in the country while remaining weak

Some communities appear in the literature review as self-identified as Indigenous and marginalized but do not appear as distinct community groups in the national population and housing census.



in incorporating issues related to the contribution of indigenous communities through their indigenous knowledge systems.¹³⁹ In addition, communities hold that the ACHPRs' commissioned reports on Indigenous peoples in Africa have gained momentum its the acceptability and promotion of the term Indigenous Peoples in Africa.

Kenya's Development Partners including the United Nations agencies, multilateral institutions such as the World Bank and European Union, and Non-State Actors such as Environmental non-governmental organizations all have their policy documents with distinct names about marginalized communities.

This lack of clarity and consistency in a commonly applicable name about marginalized communities in the country has often bred confusion, misunderstanding among and within state, private sector and non-state, and development partner actors leading to the rise of tensions, including violent encounters resulting in loss of life, property, and wastage of development resources. The said tensions arise out of failure to trigger and apply the relevant social and environmental safeguards associated with the presence of groups that self-identify as Indigenous Peoples.

It is in this context that the National Gender and Equality Commission (NGEC) seeks to explore ideas towards the formulation of a broadly acceptable joint reference for marginalized communities in the country as informed by the art. 260 and other relevant provisions of the constitution and aspirations of marginalized communities.

An extensive literature analysis of currently applicable names of marginalized communities was undertaken. The analysis drew insights from:

- Constitutional provisions under art. 260 on definition of marginalized communities – inter alia Minority Status, exclusion from decision-making arrangements; cultural distinctness and uniqueness; traditional livelihoods practices; geographical isolation
- Regional conventions and mechanisms that Kenya is committed to or signatory to such as the Africa Commission on Human and Peoples Rights (ACHPRs)¹⁴⁰
- Emerging practice on community groups on which relevant safeguards policies related to marginalized or Indigenous peoples have been triggered in the country ¹⁴¹
- Emerging regional and national jurisprudence on marginalized communities that self-identify as Indigenous Peoples in the Country.
- Studies and reports on marginalized communities by the Country's independent commissions and state agencies with mandates touching on marginalized communities.
- Self-identification and self-determination of marginalized communities. The principle of self-determination is entrenched in the country's Constitution.

¹³⁹CoK, 2010, art. 260; Definition of Marginalized communities: traditional, indigenous community e.g Pastoral, nomadic and Hunter gatherers

¹⁴⁰ACHPR, Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities, (2005), 14-19, 106-115.

¹⁴¹

5.2.1 Proposed Criteria for Consideration in Deriving & Agreeing on a Common Reference

It is critical that an objective, legally sound and politically acceptable joint reference name for marginalized communities be considered. While the analysis revealed a rich bouquet of names¹⁴², it is proposed that the names to be adopted should embody the following principles:

In recognition of the need to safeguard against self-determination and based on the literature review undertaken, and the distilled parameters defining marginalized communities; the principles to be embodied in the anticipated name are preferred. The basic principles include:

- Consistency to the letter and spirit of art. 260 of the Constitution, as the overarching consideration
- Robustness and forward-looking in advancing the rights of marginalized communities, as contemplated under Art. 21 (2) and Art, 259 of the Constitution of Kenya
- Encompassing enough to accommodate/reflect the diversity of marginalized communities based on their traditional livelihoods, cultures, minorities, and geographies
- Sufficiently robust to go beyond economic marginalization to embody all the facets of social, economic, and political exclusion
- Sufficiently robust to go beyond marginalization, and the prevailing notions of marginalized communities as hapless and helpless victims, with little to bring to the thinking and practice of development. Broad enough to ensure marginalized communities' contribution through their indigenous/Traditional knowledge systems and practices and the associated customary law and institutions.
- Sensitivity to and respect for self-determination, collective agency of marginalized communities in arriving at a broadly acceptable common reference/name – to be achieved through robust stakeholder consultation.
- Takes account of Kenya's International commitment and obligations under international law/conventions

5.3 Joint Coordination Platform for Marginalized Communities

One of the contributing factors to the inequalities experienced by marginalized communities in the country is the lack of or weak consultation in development planning and actions. Marginalized communities in the Country are diverse in terms of livelihood practices, location, population size, culture, and identity as well as origin.

An in-depth analysis of the current state of play, to the representation arrangement of marginalized communities in the context of development planning and actions was undertaken. The analysis looked at both formal and informal (traditional institutions) (See Annex V for a Summary of Formal and Informal Organizations and Networks).

¹⁴²Minority and marginalized groups; Ethnic Minorities and Marginalized Communities; Indigenous Communities; Indigenous Peoples and Local Communities; Vulnerable Indigenous/Ethnic Minority Groups; Traditional forest-dwelling groups; Indigenous Ethnic Minorities & Marginalized Communities; Indigenous Forest Peoples (IFPs); Forest-dependent Communities; Indigenous Peoples

Overall, most of the marginalized communities have community structures comprising councils of elders, age-set-based intergenerational leadership, community-based organizations (CSOs), community associations and faith-based organizations which are generally utilized for mobilizing community members around development initiatives.¹⁴³ In matters of land culture and more remote areas, traditional decision-making is still strong.¹⁴⁴

Communities are organized both formally (formally registered organizations) and through their Indigenous/Traditional structures of decision-making. Through these organizations, members of marginalized communities are actively engaging and influencing processes at community, regional, and international levels. Based on the above analysis the following elements are proposed to be considered in the establishment of a Joint coordination platform for marginalized communities:



5.3.1 Objectives of the Joint Coordination Structure

The structure is a platform for engagement, partnerships, and networking among marginalized communities and with government and other stakeholders to contribute towards the realization of the aspirations of the proposed National Inclusive Development framework for marginalized communities in the country.

- To facilitate engagement with national, regional and global processes to ensure positive outcomes for marginalized communities
- To create opportunities for sharing and learning across and within marginalized community groups and other actors in the context of the proposed National Inclusive Development Framework for marginalized communities in the Country.
- To spearhead the participation of marginalized communities in the implementation and monitoring of activities envisioned under the proposed NIDF for MCs in the Country.

Communities are organized both formally (formally registered organizations) and through their Indigenous/Traditional structures of decision-making.

5.3.2 Key Considerations in establishment of the Joint Coordination structure

- Representativeness and Inclusivity to - the diverse marginalized communities' ethnic groupings, Intergeneration and gender inclusivity
- Demonstrated legitimate representation and voice of the marginalized communities of interest. This is essential to guard against elite capture and go beyond community gatekeepers

¹⁴³GoK 2018. Vulnerable and Marginalised Group Framework Kenya Social and Economic Inclusion Project (KSEIP). Accessible from: https://socialprotection.or.ke/images/downloads/FINAL%20KSEIP_VMGF_Version_13072018.pdf

¹⁴⁴Mainiyoto Pastoralists Integrated Organization (MPIDO) and National Indigenous Peoples Steering Committee on Climate Change (NIPSCCC), Kenya and Traditional Institutions, Forest Governance And Redd+: An Indigenous Peoples' Perspective In Kenya, Jan. 2015



to secure truly community-driven and oriented representations and ultimate actions. Representation should therefore be based on the verifiable active community presence of Institutions/representatives in question. The proposed regional-level consultation to be undertaken by NGEK under Phase II of the assignment should help in realizing these aspirations.

- Ensure geographical representativeness of landscapes and traditional livelihoods of marginalized communities inter alia rangelands and pastoralists, forests and hunter-gatherers, fisher folks, Blacksmith.
- Competencies, exposure, experience – representatives should have requisite capabilities to engage with other actors meaningfully and effectively on behalf of their communities and networks
- Functionality and logistical dynamics – the structure should be pragmatic enough to enable knowledge and experience sharing among marginalized communities including in articulation of their aspirations in their engagement with state and other non-state actors on matters affecting them
- Efficiency to costs associated with the running of the structure and in communicating decisions and general sharing of information
- Accountability and Transparency of actions
- The envisioned structure would be strongly linked to and collaboratively work with the NGEK & and the contemplated National Advisory Committee on Marginalized communities

5.4 Exploring Approaches towards the Establishment of an Advisory Reference Group on Marginalized Communities

Kenya has come a long way to legal recognition of the peculiar state of marginalized communities in the country and has made significant progress in providing an institutional framework towards addressing the plight of such communities.

A comprehensive review and analysis of the institutional framework and decision-making arrangements touching on issues of marginalized communities in the Country was undertaken. The review exercise looked at stated institutional mandates, associated practices, and their bearing on the proposed national inclusive development framework for marginalized communities.

The analysis endeavoured to reflect inherent opportunities for synergetic actions, resource mobilization, implementation, monitoring, and reporting on the proposed national inclusive development framework for marginalized communities.

The overall aim is to facilitate the establishment of an Advisory Committee serving as a reference group that would advise NGEK, as well as other State and non-State actors on strategies for the mainstreaming of marginalized communities in the country.

The proposed arrangement aims to ensure that effective institutional arrangements exist for long-term sustainable, robust, structured and inclusive engagement between marginalized communities, State agencies, Independent Commissions and other development actors; to move away from reactive and erratic engagement to more proactive and deliberate ones, and ensure meaningful sustainable operationalization of the national inclusive development framework for marginalized communities.

The analysis revealed that the Country's governance and institutional landscape reflects a wide array of institutions with varied mandates touching on all dimensions of marginalization - social, economic, and political – relevant for marginalized communities. The institutional landscape for the coordination of marginalized communities' related interests and concerns in the country is characterized by overlaps, disconnects and weak coordination.

All these institutions, devolved units, constitutional commissions, sector-specific Ministries and their relevant agencies and departments need to be creatively engaged, to institutionalize, cement constitutional gains on the rights of marginalized communities and ensure coherent and effective coordination of the envisioned National Inclusive Development framework for marginalized communities in the country.

5.4.1 Proposed Key considerations/elements for the establishment of a National Advisory Committee on marginalized communities:

- The proposed name for the advisory structure: National Interagency Advisory Committee (NIAC) on Marginalized Communities in Kenya
- The Committee will have an oversight role on the operationalization and monitoring of the National Inclusive Development Framework for marginalized communities
- The Committee should be preferably hosted/anchored in an institution with a clear constitutional mandate to safeguard and advance the rights of marginalized communities –primarily the National Gender and Equalization Commission (NGEC). The NGEC is proposed to serve as the Convener of the Committee.
- The proposed structure should provide a nexus for the interaction of policymakers, funders, implementers and ultimate beneficiaries of the National Inclusive Development Framework for marginalized communities.
- The structure should provide a nexus between human rights and safeguards institutions, and administrative and judicial justice system institutions to monitor and promote compliance with constitutionally guaranteed rights for marginalized communities.
- Institutions with mandates touching on marginalized communities are proposed to have a focal point/Contact persons dedicated to coordinating issues related to marginalized communities within the respective institutions - especially related to the national inclusive development framework for marginalized communities.
- The designated Focal Points from the respective key institutions with mandates touching on marginalized communities constitute membership to the National Advisory Committee.
- A third of the membership of the Advisory Committee shall be drawn from the separately proposed Joint National Coordination Platform for Marginalized communities. The anticipated marginalized representatives are to be nominated by members of the Joint coordination platform considering gender and intergenerational inclusivity
- Funding: Possible approaches include: i) Activities of the proposed structure should be integrated within the NGEC's annual budgets ii) Review/adjustment of the Equalization fund in terms of percentage allocation and extension of the window of opportunity (beyond the current 20 years), as informed by the national inclusive development framework; iii)

establishing a dedicated budget line towards support for marginalized communities related issues as elaborated in the national inclusive development for marginalized communities, subsequently integrated with County Integrated Development Plans (CIDPs).

- It is proposed that each of the 47 Counties designates a Focal point/Desk for the promotion of rights and interests of marginalized communities within the County, with clear mechanisms of communicating with the National Advisory Committee

5.4.2 Indicative composition of the proposed Committee:

At the minimum, the Committee should comprise the National Gender and Equality Commission (NGEC); the Commission on Revenue Allocation (CRA), the Kenya National Commission on Human Rights (KNCHR), the National Land Commission (NLC), National Public Service Commission, Strategic ministry/state agencies such as National Treasury, Ministry in charge of Environment, Land and Natural Resources, Ministry in charge of Culture, Council of Governors and Representatives of Marginalized communities

A multisectoral, multi-actor and cross-level (national and county) approach will be adopted in the implementation of the frameworks. The National Advisory Committee under the leadership of the NGEC will form the nerve centre of coordination of the framework's related activities.



A multisectoral, multi-actor and cross-level (national and county) approach will be adopted in the development and implementation of the framework.

5.5 Coordination and Implementation Arrangements

A multisectoral, multi-actor and cross-level (national and county) approach will be adopted in the development and implementation of the framework. The National Advisory Committee under the leadership of the NGEC will form the nerve centre of coordination of the framework's related activities. The first initial step towards implementation of the Framework, is a coordinated multistakeholder consultation of the Draft Framework, leading towards validation and ultimate launch. National regional and community-level consultation will be undertaken under Phase II of the project.

At the national level, the NGEC, in tandem with its constitutional mandate of promoting and monitoring the mainstreaming of rights of marginalized communities, will provide overall coordination and secretariat services towards sustainable implementation of the NIDF for MCs. In undertaking this role, NGEC will work in close collaboration with the proposed National Interagency Advisory Committee (NIAC) and the Joint Coordination platform for marginalized communities to ensure collaborative, integrated, meaningful, efficient, and sustainable implementation of the NIDF for MCs.

The NGEC in consultation with the Advisory Committee will promote and create awareness, monitor, and report progress, mobilize resources, and ensure collaborative approaches between national and county governments, and within relevant national state agencies to ensure sustainable implementation

of NIDF for MCs. Any person (natural person, public or private entity) who is undertaking development actions with a bearing on marginalized communities will submit a report(s) regarding the thematic issue engaged.

Annual progress reports on the state and trends of mainstreaming marginalized communities will be submitted by the various state marginalized communities' related mandate holders to the NGEC for the generation of an Annual Status Report incorporating recommendations for the subsequent reporting period. It is proposed that the National Interagency Advisory Committee be established within the first six months of the adoption of the Framework.

The Country's devolved units - County government and Council of Governors – will play an equally pertinent role in giving life to the aspirations of the NIDF for MCs. Firstly, each County government would be expected to develop a comprehensive Inventory of marginalized communities' residents within its territory. Second, each County would be expected to designate a Focal Point/Desk for coordination and mainstreaming issues of marginalized communities in the respective Counties. Third, the Counties are encouraged to dedicate a certain percentage (5%) of their annual revenue to addressing issues of marginalized communities and incorporate the same in its 5-yearly County Integrated Development Plans and Annual plans, for sustained support and monitoring.

Marginalized Communities are the heartbeat of the NIDF for MCs. To begin with, MCs are expected to appreciate and own the overall aspirations of the Framework upon their direct consultation and validation. Marginalized communities are also expected to meaningfully consider the proposed outputs of i) the National Inventory of MCs, II) an agreed common reference for MCs in the Country, and iii) a joint representation and coordination platform for MCs. Objective, candid consideration and adoption of these elements are critical in ensuring ownership of the Framework by MCs. While an indicative criterion for the establishment of the Joint Representation and Coordination Platform for MCs is proposed, the establishment of such a Platform is entirely dependent on MCs uptake and commitment to it. It is envisioned that the Platform should be set up within the first six months of the adoption of the NIDF for MCs. Once established, it is expected that the Platform will play a proactive role in engagement with the NGEC, NIAC and other relevant actors to promote issues of interest and concern to MCs.

Partnership with Development Partners based on their areas of interest is crucial, due to the breadth and depth of issues that have to be addressed to reduce, (if not eliminate) marginalization in the country and entrench social justice.

A robust monitoring and reporting arrangement will be established with relevant institutional mandate holders for the respective thematic issues of interest – NGEC on Social inclusion, KNCHRs on human rights, CRA on access to resources, National Climate Change Council on Climate change matters and NLC on matters land among - playing a critical role in its implementation.

ANNEXES

Annex I: Comprehensive PLR analysis

The overall objective is to ensure that the proposed National Inclusive Development Framework for marginalized communities is based on functioning policies, legislations, and regulations (PLRs) that respect, protect, fulfil, and promote (civil-political, socio-economic, and environmental) rights to be promoted under the national Inclusive development framework.

The proposed National Inclusive Development Framework for Marginalized Communities must be aligned to the extent possible, with existing laws aimed at addressing underlying drivers of marginalization in the country. Importantly, assessment of the PLR framework includes whether critical civil-political (e.g., representation, participation, access to information) and socio-economic (e.g., benefit sharing rights are guaranteed and protected, including whether the mechanisms for implementation and compliance are in place and functioning in the intended manner.

The assessment under this section extends to plans, strategies and programmes put in place to assist in the implementation of the PLRs. The full bouquet of PLRs is important in efforts to ensure that the proposed national inclusive development framework for marginalized communities will be adhered to or complied with when implementing strategies proposed in the framework.

Overall, significant policy, legislative and institutional changes have occurred over the decade that support marginalized communities' related concerns in the country (See Annex I for a comprehensive analysis). Following the PLRs review and analysis, several overarching principles relevant to National Inclusive Development frameworks for marginalized communities have emerged:

- Acknowledgement of historical injustices¹, including social, economic, and political marginalization; and subsequent calls for inclusive sustainable development including through the provision of affirmative action measures² (funds, social protection, cash transfers, programmes and projects) and regional development³ to alleviate the anomaly.

⁴Climate change Act 2016,

⁵The Mining Act No. 12 of 2016; National Land Commission Act No. 5 Of 2012; Wildlife Conservation And Management Act No. 47 Of 2013

- Rights to direct representation, participation, and consultation including through Free Prior Informed Consent (FPIC) and legally binding agreements for marginalized communities,⁴
- Right of access to benefits such as employment, investment, corporate social responsibility, and royalties from investments in their land.⁵
- Respect to, the protection and promotion of cultural diversity⁶ and Indigenous knowledge systems especially in the context of natural resource management and the right of access to benefits associated with genetic resources founded.⁷
- Right to the security of land tenure, including Customary communal tenure and recognition of historical land related Injustices and establishment of mechanisms for redress
- Right to grievance redress mechanism including alternate Dispute Resolution mechanisms
- Devolution of decision-making and resources emphasizes equity, efficiency, accessibility, non-discrimination, transparency, accountability, participation, and information sharing alongside a focus on basic needs.⁸

⁴Climate change Act 2016,

⁵The Mining Act No. 12 of 2016; National Land Commission Act No. 5 Of 2012; Wildlife Conservation And Management Act No. 47 Of 2013

⁶The National Policy on Culture and Heritage (2009):

⁷The Forest Conservation and Management Act of 2016; Climate change Act 2016; The Protection of Traditional Knowledge and Cultural Expressions Act, 2016.

⁸County government Act 2012

Annexe II: Summary of Institutions with Mandates

Ministries

- Ministry of Environment and Forestry
- Ministry of Sports, Culture and National Heritage
- Ministry of Devolution

State Corporations/Parastatals

- Kenya Forest Service
- Kenya Wildlife Service
- National Museums of Kenya
- National Environmental Management Authority

Independent Constitutional Commissions

- National Gender and Equality Commission
- National Land Commission
- Kenya National Commission on Human Rights
- Commission on Administration of Justice
- Commission on Revenue Allocation
- Public Service Commission

Office of the President

- Minorities and Marginalized Communities Unit

County Governments

- Roles articulated under the County Government Act 2012

Annex III: Indicative Inventory of Marginalized Communities in Kenya

No	Community	Where found	Livelihood base	Population ⁹	Reference instruments and policies (Recognition by)
1.	Ngeekibotok	Turkana (Turkana (Along the Banks of River Turkwel)	Small Scale Farming		CoK, 2010; NGEC; CRA; ACHPRs –(IWGIA); AKP)
2.	Rendille	Marsabit (Kaisut desert)	Pastoralist		CoK, 2010; NGEC; CRA; ACHPRs –(IWGIA); AKP)
3.	Borana	Marsabit, Tana River,	Pastoralist	276,236	CoK, 2010; NGEC; CRA; ACHPRs –(IWGIA); WB
4.	Gabra	Northern Kenya (Marsabit, Isiolo, Chalbi desert)	Pastoralist	141,200	CoK, 2010; NGEC; CRA; ACHPRs –(IWGIA); AKP
5.	Ilchamus ¹⁰	Rif Valley (Baringo Central, Marigat, Mukutani, Tangulbei & Kipsaraman)	Pastoralist	32,949	CoK, 2010; NGEC; CRA; ACHPRs –(IWGIA); AKP; WB
6.	Samburu	Rift Valley (Samburu and Laikipia)	Pastoralist	333,471	CoK, 2010; NGEC; CRA; ACHPRs –(IWGIA); AKP
7.	Maasai	Rift Valley (Narok, Kajiado, Trans Mara, Laikipia)	Pastoralist	1,189,522	CoK, 2010; ACHPRs –(IWGIA); AKP
8.	El Molo ¹¹	Northern Kenya (Lake Turkana, Loiyangalani - elmolobay)	Hunters and gatherers, fishing	1,104	CoK, 2010; NGEC; CRA; ACHPRs –(IWGIA); AKP; WB
9.	Malakote/Walwana/	Tana River, North eastern Bura, Madogo & Mororo	Hunters and gatherers, Farming, Fishing	21,774	CoK, 2010; NGEC; CRA; ACHPRs –(IWGIA); AKP; WB
10.	Waata/Aweer ¹²	Northern Kenya (Marsabit, Isiolo, Garbatula, Kinna, El-Dera Modo Gashe, Ilerett and North Horr) Coast (Hola, Garsen, Tsavo, Sombo, and Arabuko Sokoke)	Hunters and gatherers, Farming, fishing pastoralists Casual Labor	20,103	CoK, 2010; NGEC; CRA; ACHPRs –(IWGIA); AKP; WB
11.	Sakuye	Northeastern, Marsabit, Isiolo, Dabel Location, Dir-dima Sub Location, Golla Sub Location	Semi-nomadic hunters	27,006	CoK, 2010; NGEC; CRA; ACHPRs –(IWGIA); AKP; WB
12.	Konso	Qachacha	blacksmith	1299	CoK, 2010; NGEC; CRA; ACHPRs –(IWGIA); AKP
13.	Endorois	Rift Valley (Koibatek, Lake Bogoria and Maji Moto area, Marigat and Mochongoi)	Agro-pastoralist, peasant farming		CoK, 2010; NGEC; CRA; ACHPRs –(IWGIA); AKP; WB
14.	Tswaka	Coast (Majoreni / Ishimoni)	Fishing / Farming Casual Labourers	1,016,174	CoK, 2010; NGEC; CRA; ACHPRs –(IWGIA); AKP
15.	Dorobo/Sebe ¹³	Kaibe Location, Chepchoina	Bee Keeping Farming Animal Keeping	23,171 (NEW)	CoK, 2010; NGEC; CRA; ACHPRs –(IWGIA); AKP
16.	Dahalo ¹⁴	Lamu, Coast, Northern	Hunters and gatherers	575 (NEW)	CoK, 2010; NGEC; CRA; ACHPRs –(IWGIA); AKP

⁹ Kenya's National Census 2019

¹⁰ The Njemps who appeared as distinct ethnic group in 2009 census is now treated as a single ethnic group with Ilchamus in 2019 census and known as Ilchamus/Njemps (ranked 30).

¹¹ The El-Molo (ranked 42) who were treated as sub-ethnic group of the Kalenjin in 2009 census are now a distinct ethnic group in 2019 census.

¹² The Waata who appeared as a distinct ethnic group in 2009 census now appear as the Aweer/Waata (ranked 36). They are related to the Somali.

¹³ The Dorobo (ranked 33) who were treated as sub-ethnic group of the Kalenjin (ranked 3) are now a distinct ethnic group in 2019 census.

¹⁴ The Dahalo (ranked 45) and considered Kenya's smallest ethnic group with only 575 people in the 2019 census. It appeared as a sub-ethnic group of the Mijikenda in 2009 census with population of 2,398. They are also known as the Sanye and reside in Tana River and Lamu. Their language is considered endangered and only 7 individuals could speak it in 2015.

No	Community	Where found	Livelihood base	Population ⁹	Reference instruments and policies (Recognition by)
17.	Bajuni	North eastern coast, Bajuni, in islands in the Indian Ocean (Lamu)	Farming	91,422	CoK, 2010;; NGEC; CRA; ACHPRs –(IWGIA); AKP
18.	Abasuba	Sindo	Village Fishing	157,787	Kenya National Archives Literature Review
19.	Nubian	Scattered around Kenya (Kibra Nairobi; Kisii, Mombasa, Meru, Kisumu)	Small scale traders	21,319	CoK, 2010;; NGEC; CRA; ACHPRs –(IWGIA); AKP
20.	Banjuni	Moambasa		91,422	CoK, 2010;; NGEC; CRA; ACHPRs –(IWGIA); AKP
21.	Orma	Lower Tana	Pastoralism	158,993	CoK, 2010;; NGEC; CRA; ACHPRs –(IWGIA); AKP
22.	Rendile	Samburu		96,313	CoK, 2010;; NGEC; CRA; ACHPRs –(IWGIA); AKP
23.	Dasenach	Marsabit	Pastoralist	19,337	CoK, 2010;; NGEC; CRA; ACHPRs –(IWGIA); AKP; Others
24.	Makonde ¹⁵	Mombasa, Kwale		3,764 (NEW) ¹⁶	GOK,2010;; CRA; ACHPRs –(IWGIA); AKP
25.	Pokot	West Pokot, Baringo , Laikipia	Pastoralist		CoK, 2010;; ACHPRs –(IWGIA); AKP; WB
26.	Somali	North Eastern (Mandera, Wajir, Ijara, Garissa)	Pastoralist		CoK, 2010;; NGEC; CRA; ACHPRs –(IWGIA); AKP
27.	Ogiek	Rift Valley and Western Kenya (Mau Forest, Mt Elgon)	Hunters and gatherers, Farming, Livestock Rearing, Honey Tapping, pastoralist	79,000 ¹⁷	CoK, 2010;; NGEC; CRA; ACHPRs –(IWGIA); WB; Others
28.	Sanya / Sanye	Coast (Malindi, Lamu, Arabuko Sokoke, Sabaki, Baricho, Tana River and Midoia), Central Western	Hunters and gatherers		CoK, 2010;; NGEC; CRA; ACHPRs –(IWGIA); AKP; WB
29.	Boni / Awer	Northeastern (Ijara and Wajir); Coast (Lamu, jima Pandanguo, Baragoni, Kiangwe, Mararani, Kiunga, Mkononi Buthei)	Hunters and gatherers & blacksmith		CoK, 2010;; NGEC; CRA; ACHPRs –(IWGIA); AKP; WB
30.	Yaaku	Laikipia, Mukogodo forest west of Mt. Kenya Doldol, Sieku,	Hunters and gatherers, game ranchers,		CoK, 2010;; NGEC; CRA; ACHPRs –(IWGIA); AKP); WB
31.	Sengwer	Rift Valley (Kapolet in Trans Nzoia; Kaisagat, Talau, Kaibos, and Kaplamai in West Pokot; Kapcherop in Marakwet West, and Embobot in Marakwet East)	Hunters and gatherers Small Farming, pastoralists, Bee Keeping, honey harvesting, Dairy		CoK, 2010;; CRA; ACHPRs –(IWGIA); AKP
32.	Orma ¹⁸	Eastern, Lower Tana River	Semi-nomadic		CoK; NGEC; WB

¹⁵ The Makonde (ranked 35) were recognised as a new ethnic group by the Government in 2016. They were originally from Mozambique and were not included in any census as Kenya citizens before.

¹⁶ Ethnic group indicated as ‘NEW’ did not appear as a distinct ethnic group in 2009 census.

¹⁷ KNBS, 2009 Population and Housing Census (2011); IFAD, 2012. Country Technical Notes on Indigenous Peoples ‘Issues: The Republic of Kenya

¹⁸ The Galla who appeared as a distinct ethnic group in 2009 census now appear as a sub-ethnic group of the Orma (ranked 20). Since the Galla reside in Marsabit and are closely related with the Oromo of Ethiopia. It is not clear why they have been classified as a sub-ethnic group of the Orma who reside in Tana River

No	Community	Where found	Livelihood base	Population ⁹	Reference instruments and policies (Recognition by)
33.	Gagabey (Boni)	Wajir (Bute)	Blacksmith		CoK, 2010;; NGEC; CRA; ACHPRs –(IWGIA); AKP
34.	Sapor	Rift Valley (Marigat - Kimalel location)	Pastoralists		African Commission
35.	Rer-Bahars	North Eastern (Bulla Kibilay)	Black smith		CoK, 2010;; NGEC; CRA; ACHPRs –(IWGIA); AKP
36.	Lkunono	Rift Valley (Laisamis, Lontolio, korr, Gatab, Meville, Nairibi, Maralal, Tamiyoyi, Ngarjin Nchingei, lemisigiyo, Barsaloi, Lorengei, Loita	Blacksmith, Pastoralist, Livestock They have Councilors		CoK, 2010;; NGEC; CRA; ACHPRs –(IWGIA); AKP
37.	Munyoyaya	Garissa, and Coast (Mbalambala, Mororo & Madogo)	Casual Labor Farming	1,600 ¹⁹	CoK, 2010;; NGEC; CRA; ACHPRs –(IWGIA); AKP, WB
38.	Gawawen	Neboi/Hunduthu			CoK, 2010;; CRA; ACHPRs –(IWGIA); AKP
39.	Gamuuns	North Eastern (Liboi)	Casual Labourers		CoK, 2010;; NGEC; CRA; ACHPRs –(IWGIA); AKP
40.	Ltorobo	Northern Kenya (Suguta Marimar, Longewan, Baawa)	Livestock Farming Honey Tapping		CoK, 2010;; NGEC; CRA; ACHPRs –(IWGIA); AKP
41.	Sweii (Ndorobo)	(Wamba, Ngilai along River Ngeny, Ngolgotim, Lodongkwe, Ndonyo Wasin, Nondyo Nasipa)	Livestock Keeping		CoK, 2010;; NGEC; CRA; ACHPRs –(IWGIA); AKP
42.	Ichakun (They are a recently formed immigrants)	Along the Banks of River Turkwel	Small Scale Farming Basketry		CoK, 2010;; NGEC; CRA; ACHPRs –(IWGIA); AKP
Other Indigenous People of Kenya (From National Archives Literature and Presentations to the Constitution of Kenya Review Commission)					
43.	Wagoshi	Western	Hunters and gatherers		CoK, 2010;; CRA; ACHPRs –(IWGIA); AKP
44.	Segenju	Shimoni peninsula	Farming		CoK, 2010;; CRA; ACHPRs –(IWGIA); AKP
45.	Ribe	Coast	Farming		CoK, 2010;; CRA; ACHPRs –(IWGIA); AKP
46.	Nyang'ori		Farming		CoK, 2010;; CRA; ACHPRs –(IWGIA); AKP
47.	Makonde	Taita hill, taveta	Farming		CoK, 2010;; NGEC; CRA; ACHPRs –(IWGIA); AKP
48.	Kuchchi		Farming		CoK, 2010;; CRA; ACHPRs –(IWGIA); AKP
49.	Chifundi	Wasini,	Farming		CoK, 2010;; CRA; ACHPRs –(IWGIA); AKP
50.	Asagidze		Farming		CoK, 2010;; CRA; ACHPRs –(IWGIA); AKP
51.	Bongomek	Mt. Elgon, Kipsigis, Nandi , Bukembe , Bungoma	Farming		CoK, 2010;; NGEC; CRA; ACHPRs –(IWGIA); AKP
52.	Shiranzi		Farming		CoK, 2010;; CRA; ACHPRs –(IWGIA); AKP
53.	Soboiga		Farming		CoK, 2010;; CRA; ACHPRs –(IWGIA); AKP
54.	Mumonyot	Mukogodo, Digirri	Pastoralist		CoK, 2010;; CRA; ACHPRs –(IWGIA); AKP
55.	Kony,	Rift Valley (Kipsigis, Nandi)	Pastoralist		CoK, 2010;; CRA; ACHPRs –(IWGIA); AKP
56.	IL Ngwesi	Mt. Kenya (Laikipia)	Pastoralist		CoK, 2010;; CRA; ACHPRs –(IWGIA); AKP
57.	Digiri	Mt. Kenya	Pastoralist		CoK, 2010;; CRA; ACHPRs –(IWGIA); AKP

¹⁹KNBS, 2009 Population and Housing Census (2011); IFAD, 2012. Country Technical Notes on Indigenous Peoples' Issues: The Republic of Kenya

No	Community	Where found	Livelihood base	Population ⁹	Reference instruments and policies (Recognition by)
58.	Sebei	Mt. Elgon	Pastoralist		CoK, 2010;; CRA; ACHPRs – (IWGIA); AKP
59.	Bok		Pastoralist		CoK, 2010;; CRA; ACHPRs – (IWGIA); AKP
60.	Lanat		Hunter-gatherers		CoK, 2010;; CRA; ACHPRs – (IWGIA); AKP
61.	Nyala	Lake Victoria	Fishing		Kenya National Archives Literature Review
62.	Terik	Kakamega/Nandi			CoK, 2010;; NGEC; CRA; ACHPRs –(IWGIA); AKP
63.	Wardei	Lower Tana	Pastoralism		CoK, 2010;; CRA; ACHPRs – (IWGIA); AKP
64.	Wayyu ²⁰	Marsabit		3,761 (NEW)	CoK, 2010;; CRA; ACHPRs – (IWGIA); AKP
65.	Gosha ²¹	Mandera		685	CoK, 2010;; NGEC; CRA; ACHPRs –(IWGIA); AKP
66.	Pokomo ²²	Tana River		112,075	
67.	Burji	Marsabit		36,938	NGEC
68.	Swahili			56,074	NGEC

²⁰ The Wayyu (ranked 36) is a newly named ethnic group that was not included in 2009 census. It was previously called the Watta and resides in Marsabit.

²¹ The Gosha had the largest loss proportionally of any ethnic group in Kenya when its population fell from 21,864 in 2009 census to only 645 in 2019, dropping in rank from 30 to 43, the third smallest of Kenya's 45 ethnic group. The Gosha resides mainly in Mandera in North-Eastern Kenya but most live in Jubaland in Somalia

²² The Pokomo (ranked 23) who appeared as a sub-ethnic group of the Mijikenda (ranked in 2009 census now appear as a distinct ethnic group.

Reference	Reference & documents & Agency	Remarks
Minority and marginalized groups	Constitution of Kenya 2010, art. 260; Draft Bill Minorities and marginalized groups ²³	- Not clear on the constitutional distinction between marginalized groups vs. marginalised communities
Ethnic Minorities and Marginalized Communities	NGEC Report on Identification of minorities and marginalized communities ²⁴	- Introduces ‘ethnic minorities’ as opposed to simply minorities
Indigenous Communities	- Constitution of Kenya 2010, art. 260 (c) - Ministry of Environment and Forestry ²⁵	- Speaks to the unique and distinct cultural and livelihood aspects of marginalized communities
Indigenous Peoples and Local Communities	Most climate change policies programs, ²⁶ Strategies, ²⁷ Guidelines ²⁸	- Concerning Land and natural resources management and Indigenous knowledge
Vulnerable Indigenous/Ethnic Minority Groups	National Reports, levels ²⁹ , GoK, Department of Forestry	- Indigenous Communities assert that their concerns are beyond vulnerability. - Not Just victims of flawed development pathways, - They’re often part of the development solution in the context of their knowledge systems, Worldview and traditional governance
Traditional forest-dwelling groups	National Forest Program ³⁰	Specific to hunter-gatherer community groups
Indigenous Ethnic Minorities And	Office of the Deputy President, Strategy Document on minority and marginalized communities ³¹ -	Draft Proposal for Funding of M&MC Integration into Kenya’s political and socio-economic fabric

²³ The Protection Of Minorities And Marginalised Groups’ Rights Bill, 2021.

²⁴NGEC, 2017. Unmasking Ethnic Minorities and Marginalized Communities in Kenya Who and Where?

²⁵Fourth Draft National Forest Policy May 2021 P.28; The National REDD+ Strategy, Dec.2021

²⁶GoK, Ministry of Environment & Forestry. The Country Approach to REDD+ Safeguards, 20 December 2021

²⁷GoK, Ministry of Environment and Forestry The National REDD+ Strategy;

²⁸GoK, Ministry of Environment & Natural Resources. National Guidelines for Free Prior And Informed Consent (Fpic) For Redd+ In Kenya, 2014

²⁹Annex 11 Notes on changes to the Logical Framework p.117 in Mid-Term Evaluation of Miti Mingi Maisha Bora – Support to Forest Sector Reform in Kenya, April 2013. Impact Consulting Oy Ltd

³⁰ Ministry of Environment, Water & Natural Resources of Kenya. Miti Mingi Maisha Bora Support To Forest Sector Reform In Kenya Implementation Phase, (2009 – 2015), Programme Document, Oct. 2013

³¹Towards Seamless Integration Of Indigenous Ethnic Minorities And Marginalized Communities Into The Rest Of Kenya’s Socio-Economic Life

Reference	Reference & documents & Agency	Remarks
Marginalized Communities.	Department Of Minority and Marginalized Communities	
Indigenous Forest Peoples (IFPs)	Office of the DP - Hunter-gatherer marginalized communities' recommendation - International Colloquium Report March 2015	Forests as ancestral lands – Speaks to ownership issues as opposed to Forest Dependent, Forest Adjacent, forest dwellers
Forest-dependent Communities	- Ministry of Environment & Natural Resources Ministry of Environment and Forestry	- The concept is a utilitarian approach devoid of land tenure rights claimed by hunter-gatherers - The spectrum of land and natural resources rights entails, access, ownership, control and use
Indigenous Peoples	- United Nations Declaration on Rights of Indigenous Peoples is the International Foundation document - Integrated in many UN international conventions to which Kenya is a signatory such UNFCCC/Paris Agreement, UN-CBD, - Directly referenced in several GoK Policies and Strategy documents, especially with the Ministry of Environment and Forestry ³² - Kenya Social and Economic Inclusion	- Exclusive of pastoralists' indigenous communities - Speaks to Internationally recognized rights of Indigenous Peoples - Goes beyond marginalization to address aspects such as cultural identity, Indigenous Traditional Knowledge, Self-Determination - Most communities are defined as marginalized under art. 260 of the CoK, 2010, have asserted association with this naming, nationally, regionally and internationally

³²The National REDD+ Strategy Dec. 2021 (ref. 23times); Indigenous Peoples Action Plan for REDD+ Implementation in Kenya, 2021; The Country Approach to REDD+ Safeguards, 20 Dec. 2021;

Reference	Reference & documents & Agency	Remarks
<p>Indigenous/marginalized communities</p> <p>Marginalized groups</p> <p>vulnerable indigenous/ethnic minority groups</p> <p>Indigenous Peoples/Sub-Saharan</p> <p>African Historically Underserved Traditional Local Communities</p>	<ul style="list-style-type: none"> - Project³³ WB Inspection Panel report³⁴ - Constitution of Kenya 2010, art. 260 (c) - Kenya National Human Rights Commission³⁵ <p>Kenya National Commission on Human Rights³⁶</p> <p>National Forest Program</p> <p>The World Bank’s Policy on Indigenous Peoples³⁷</p>	<p>Mostly informed by Constitutional Provisions on the definition of marginalized communities</p> <p>In the African context (Kenya) the policy embodies two aspects a) marginalization (underserved) and, collectivity of Cultural/indigeneity (traditional)</p>

³³GoK 2018. Vulnerable and Marginalised Group Framework Kenya Social and Economic Inclusion Project (KSEIP). Accessible from: https://socialprotection.or.ke/images/downloads/FINAL%20KSEIP_VMGF_Version_13072018.pdf

³⁴The Government Of Kenya The National Treasury Infrastructure Finance And Public, Private Partnership (IFPPP) Project Additional Finance (AF) Draft Version Vulnerable And Marginalized Groups Framework (VMGF), December 2016 accessible from:

³⁵KNCHR. Kenya @ 10: A Decade After: The State Of Human Rights Post The 2010 Promulgation Of The Constitution. A Human Rights Scorecard

³⁶Groups of people that have traditionally been explicitly or implicitly treated as insignificant or peripheral (e.g. women, sexual minorities, particular ethnic communities, etc defined in KNCHR. Guidelines For A Human Rights-Based Approach To Public Policy And Law Making At The National And County Levels. Oct. October 2017

³⁷ Environmental and Social Standard 7. Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities

Annexe V: Summary of Formal and Informal Organization and Networks

IPO/Position	Organization Objectives	Area of Operation	Target IPs
1. Arid Land Institute	<ul style="list-style-type: none"> - Involved in Research, IPs' rights. Policy review/Advocacy. - Commissioner/status with Africa Commission on Human Rights (WGIP) 	Kajiado (Kenya) & Tanzania	Groups that self-identify as Indigenous Peoples in Kenya and Tanzania, with a focus on pastoralists
2. Chepkitale Indigenous Peoples Development Project (CIPDP)	<ul style="list-style-type: none"> - IPs rights, livelihoods, Land tenure security, environmental conservation & policy advocacy for Ogiek - International processes such as the International Land Coalition (ILC), Convention on Biological Diversity (CBD) 	Bungoma and Transzoia counties	Ogiek of Mt Elgon
3. Endorois Welfare Council	<ul style="list-style-type: none"> - Human rights, Social justice + gender inclusivity - Lobbying for implementation of the African Commission and people right decision on the Endorois 	Baringo county	Endorois Community
4. Friends of Lake Turkana	<ul style="list-style-type: none"> - IPs' rights, environmental conservation with a focus on Turkana and L. Turkana 	Turkana and Marsabit counties	Turkana; El-molo; Rendille Samburu; Gabra; Dassantch
5. Indigenous Information Network (IIN)	<ul style="list-style-type: none"> - Women's rights, research, capacity building, environmental conservation & governance - CBD, UNFCCC & Global Coalition on Tropical Forests 	Narok, Pokot, Marsabit and Samburu counties	Maasai; Samburu; Rendille Pokot; Waata; Somali
6. Ilchamus Development and Human Rights Organization (IDHRO)	<ul style="list-style-type: none"> - Women and Girls' rights, Peacebuilding; environment & Climate change among Ilchamus communities 	Baringo County	Ilchamus
7. Indigenous Movement for Peace Advancement and Conflict Transformation (IMPACT)	<ul style="list-style-type: none"> - IPs' rights, Research, legal aid and litigation; Peacebuilding & security of pastoral livelihoods - Human rights mechanism, Sustainable Development Goals (SDGs). UNFCCC & Convention on Biological Diversity at regional & international level - Hosts and coordinates PARAN activities 	Laikipia, Samburu and Isiolo Counties	Samburu; Borana; Somali Maasai; Turkana
8. League of Pastoralist Women of Kenya (LPWK)	<ul style="list-style-type: none"> - Pastoralist Women's rights, in economic, education and leadership 	Turkana, Samburu, Marsabit, Kajiado, Narok and Isiolo counties	Turkana; Samburu; Rendille Maasai; Gabra; Somali
9. Mainyoito Pastoralist Integrated Development Organization (MPIDO)	<ul style="list-style-type: none"> - IPs' rights, land, governance, climate change, gender & livelihoods support for Maasai - Human rights mechanism, Sustainable Development Goals (SDGs). UNFCCC & Convention on Biological Diversity at regional & international level 	Kajiado and Narok counties	Maasai; Sengwer; Turkana; Somali; Borana; Boni; Same

Indigenous Peoples Networks/Alliances

Networks/Platform	Level of Engagement and Thematic Focus	Remarks
National structure of the Ogiek and Sengwer	Engagement at the National level, specifically on matters related to land natural resources, especially forest sector issues	<ul style="list-style-type: none"> - A nascent structure, and an outcome of the national dialogue between Indigenous Forest Peoples (Hunter-gatherers) and the Ministry of Environment and Forestry - Negligible experience and struggling with identity
Community Land Action Now! (CLAN),	Represents around 60 different indigenous and local communities,	Seeks to empower Indigenous and local communities to legally own their ancestral lands under formal title as provided for by the Community Land Act No.27, 2016
Paran Network	The Pastoralists Alliance for Resilience and Adaptation in Northern Rangelands (PARAN) is a collective social movement uniting a variety of pastoralist institutions and organizations, including customary institutions, women and youth groups, community-based and non-governmental organizations, as well as other formal and informal networks. ³⁸	Working within and across Marsabit, Isiolo, Laikipia and Samburu,
Hunter-Gatherers Forum (HUGAFO) ³⁹	<ul style="list-style-type: none"> - OPDP Serves as the Secretariat - Membership is by regional hunter-gatherer communities 	A registered CBO/Trust for overall guidance on Ogiek-related interests and concerns
Indigenous Peoples National Steering Committee on Climate Change (IP-NCCCC) ⁴⁰	<ul style="list-style-type: none"> - Mainyoto Pastoralists Integrated Organization Served as Secretariat - Membership is through regional legally registered Indigenous Peoples Organization - IPs in the Country were grouped into seven regions, i.e. North Eastern, Upper Eastern, North Rift, Central Rift, South Rift, Coast, Western 	Had coordinated and mobilised IPs of Kenya in their efforts to address the challenges of climate change and to participate in related national, regional and global processes.

³⁸ <https://www.impactkenya.org/paran>

³⁹ See annex 2: For

⁴⁰ MPIDO, 2010. Indigenous Peoples National Steering Committee On Climate Change (IP-NCCCC) Climate Change Strategy,

Networks/Platform	Level of Engagement and Thematic Focus	Remarks
<p>The Indigenous Peoples of Africa Co-ordinating Committee (IPACC)⁴²</p>	<ul style="list-style-type: none"> - IPOs in each of the region was organized into <i>Regional Steering Group</i>, which nominated a Regional focal point⁴¹ - The regional Focal Point organization nominates a Contact person, to be forwarded to the national Steering committee, and designated as a point of communication to the region a network of 135 indigenous peoples' organizations in 21 African countries. 	<p>Coordinates and Advances Africa's indigenous Peoples' rights across scales</p>

⁴¹ Qualification to be a Focal Point shall be the existence of offices, staff and programmes/projects related to
⁴² <https://www.ipacc.org.za/>

Annex VI: List of Stakeholders/Organizations who contributed to the Development of the Scoping Review Report

No	State Actors
1.	Kenya National Commission on Human Rights
2.	State Department of Lands and Physical Planning
3.	Kenya National Bureau of Standards
4.	Ministry of Environment, Climate Change and Forestry
5.	State Department for Social Protection, Senior Citizens Affairs and Special Programmes
6.	Kenya Wildlife Conservancies Agencies
7.	County Government of Kajiado
8.	County Government of Narok
9.	NGO Council of Kenya
10.	National Land Commission
11.	Kenya Forest Services
12.	State Department of Culture
13.	National Environmental Management Authority
14.	National Treasury
15.	Commission on Administrative Justice
16.	National Museums of Kenya
	Development Partners
17.	World Bank
18.	United Nations Development Programme (UNDP)
19.	United Nations Framework Convention on Climate Change
20.	Food and Agriculture Organization - UN
21.	American Jewish World Service
22.	Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH (GIZ)
23.	United Nations Department of Economic and Social Affairs (UNDESA)
24.	Office of the Human Rights High Commission

	Non-State Actors
25.	Council of Governors
26.	Mainyioto Pastoralists Integrated Development Organization
27.	Ogiek Peoples Development Program
28.	Kenya Land Alliance
29.	Indigenous Livelihoods Enhancement Partners (ILEPA)
30.	Chepkitale Indigenous Peoples programme
31.	REPALEAC
32.	Resource Conflict Institute Kenya (RECONCILE)
33.	Community Land Action Now
34.	Narasha Community
35.	Baringo Human Rights Defenders
36.	Endrois Welfare Council
37.	Northern Voice Trust
38.	Nubian Rights Forum
39.	Samburu Women Trust
40.	Deakin University - Australia
41.	DORCAS Aid International
42.	Centre for Minority Rights Development (CEMIRIDE)
43.	Drylands Learning and Capacity Building Initiative
44.	Frontier Counties Development Council
45.	Yaaku Cultural Center
46.	Panafrican Climate Justice Alliance
47.	African Indigenous Women's Organization
48.	Frontier Counties Development Council
49.	Defenders Coalition

50.	Indigenous Information Networks
51.	Indigenous Movement for Peace Advancement and Conflict Transformation (IMPACT)
52.	Ilaramatak Community Concern - Kenya
53.	International land Coalition
54.	Tenure Facility
55.	Baringo Women and Youth Organization
56.	Representatives from Maasai, Waayu, Ogiek Mau, Ogiek Mt. Elgon, Yaaku, Sengwer, Aweer, Waata and Elmolo Communities
57.	Indigenous Peoples representatives from Ghana, Morocco, Mozambique, Uganda, Tanzania, Botswana, DRC

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Kenya's minority groups bring their unique traditions to the forefront at the Bomas of Kenya during the inaugural minority rights day celebrations. Photo by NGEC

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