

Minority Rights Group International (MRG) - Submission relating to the third periodic report of the Government of Kenya - July 2012

## **I. Executive summary**

1. This Submission has been written for the Human Rights Committee to assist it in its consideration of Kenya's Third Periodic Report under Article 40 of the International Covenant on Civil and Political Rights, scheduled to occur during its 105<sup>th</sup> Session. It has been written in response to Kenya's Third Periodic Report (CCPR/C/KEN/3).

2. The Submission has been prepared by Minority Rights Group International (MRG). MRG is a non-governmental organisation (NGO) working to secure the rights of ethnic, religious and linguistic minorities worldwide, and to promote cooperation and understanding between communities. MRG has a consultative status at the United Nations Economic and Social Council (ECOSOC), and observer status with the African Commission on Human and Peoples' Rights. MRG is registered as a charity in the United Kingdom.

3. In spite of Kenya being a signatory to ICCPR and several other Human Rights Conventions, there is still a distinction and exclusion, in terms of treatment of certain communities by the State Party. A number of gaps are evident in the country regarding the understanding and appreciation of minority rights. Historical injustices and marginalisation against minorities in Kenya have not been addressed to date.

4. Since the colonial period, Kenyan Governments have continued to dispossess minority communities of their land without prior consultation and compensation. Minority communities experience discrimination, loss of the right to exercise their freedom of religion, lack of representation in public offices and elections, and lack of protection of their language and culture. Minority communities also experience discrimination in respect of applications for Citizenship and employment in public offices.

5. In addition to discriminatory government policies, the minority communities are faced with several other challenges that put them at a further disadvantage. The level of illiteracy and non-awareness of their rights curtails their ability to challenge the Government. In addition, most minority communities occupy areas that are geographically difficult to reach which means that penetration of essential Government services (e.g. water, roads, and health facilities) is very low.

6. This submission will set out the continued violations of the rights of minorities by the State Party contrary to the International Covenant on Civil and Political Rights.

More details can be found in an MRG report entitled *Kenya at 50: unrealized rights of minorities and indigenous peoples*, published in January 2012 (see ANNEX I).

## II. Current issues facing minorities

### Article 1. Right to self-determination and means of subsistence.

#### Injustice in respect of land

7. Many Kenyan minority communities were dispossessed of part or all their ancestral lands during colonial times. The pattern of dispossession and eviction has been repeated by successive governments without consultation and compensation of the communities. The Ogiek people are an example of such communities, an indigenous community with an estimated population of 20,000 people. They are scattered over at least four of the seven forest blocs of the Mau: South-West Mau (Tinet and Mariosioni), Maasai Mau (Narok), Western Mau (Tindiret) and Southern Mau (Koibatek). The Mau Forest is an area of 900 square kilometres (550 square miles) about 200 kilometres (125 miles) northwest of Nairobi. The Ogiek also inhabit an area outside the Mau-Mt. Elgon.

8. The Ogiek derived their livelihood from economic activities such as trade in surplus honey, medicinal herbs and herbal skills, animal products such as hides and skins, iron ore products such as arrow heads, bows, spears and knives, and pot making. Land has a central role for the Ogiek as it is not only a source of livelihood, but also an essential component of their culture and traditional way of life. As such, it is considered sacred and treated with great respect since it is upon this land that their survival as an indigenous people depends. Indeed, the word Ogiek means ‘caretaker of the universe (of all plants and animals)’, and therefore, they endeavour to preserve and safeguard the natural environment where they inhabit.

9. The colonial government sanctioned a series of efforts to dispossess the Ogiek of their land, assimilate, and impoverish them through constant evictions and disruptions of their traditional lifestyle. These types of colonial policies were replicated by successive Kenyan Governments.

10. More recently in 2009, the Mau Task Force Report, while recognising that: “The Mau Forests Complex is the home of a minority group of indigenous forest dwellers, the Ogiek . . . [and that] the Ogiek who were to be settled in the excised areas have not yet been given land,”<sup>1</sup> still proceeded to recommend blanket eviction of all forest occupiers without any consideration of the unique cultural and spiritual connection of the Ogiek in the Mau. Thus in October 2009, the government of Kenya through the Kenya Forestry Service, issued a 30 day eviction notice to the Ogiek and other settlers of the Mau forest, demanding that they move out of the forest. This, we contend, amounts to a violation of Article 1 of the ICCPR.

11. The State Party may argue that the Mau Forest is one of the major water reserves in Kenya and thus needs to be protected and shared. However, evicting the Ogiek community was disproportionate

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<sup>1</sup>Republic of Kenya, *Report of the Government’s Task Force on the Conservation of the Mau Forest Complex* (2009) at Annex 9, pages 11 and 16.

and unnecessary. The State Party should have consulted the Ogiek community and made attempts to negotiate an arrangement that could protect both the reserve and the Ogiek's right to the land.

12. This chain of events is not only familiar to the Ogiek people but also to other minority groups in Kenya. The Endorois community, for instance, suffered a similar fate when they were evicted from their land around Lake Bogoria and Mochongoi Forest. They exhausted national remedies and sought justice at the African Commission on Human and Peoples' Rights (ACHPR). In spite of the ACHPR's ruling in favour of the Endorois, the State Party has not made any concrete steps to implement the decision over the two years since its adoption.

### **Recommendations**

13. The State Party should ensure a consultative process with minority communities before evicting them from their homes and land. There are often other proportionate means of securing access to reserves and natural resources without having to evict or interrupt the lives of those who live in such areas.

14. The State Party should implement the ACHPR decision in favour of the Endorois. The State Party should also compensate and make arrangements for the Ogiek and other indigenous communities that have already been dispossessed.

#### National Land Policy 2009/ National Land Commission

15. The National Land Policy referred to in sections 64 and 101 of the State Report has not been fully implemented. Further, despite the assurances provided in the said sections, minority and indigenous communities, such as the Ogieks and Endorois, are not given the freedom to manage their land or benefit from the resources of reserves or natural parks. The policy itself is vague, particularly in light of the fact that the policy's aim of 'better and more effective land administration' is subject to multiple interpretations depending on the relevant party.

16. It is imperative that the State Party deals effectively with the land question. There are old and yet new demands for addressing past historical injustices in Kenya. In the past two years, the Mombasa Republican Council (MRC) has been making demands that the Coastal province which is multi-religious and consists of different communities secedes from Kenya. The MRC initially did not have visibility but has now gained the support of the people from Coast under the slogan 'Pwani si Kenya' (Coast is not Kenya). The grievances of the MRC and its supporters include perceived marginalisation of Indigenous Coast People (ICP) in employment and business opportunities, loss of land due to irregular and illegal title deeds, selective issuance of title deeds to non-Indigenous Coastal People, harassment and arbitrary arrests of MRC members and perceived insensitivity by the Government to the genuine grievances of the ICP.<sup>2</sup>

17. The State Party has been sending mixed signals in response to the issues involving the Coast. The Prime Minister has said that the government will engage with MRC in one forum but has since changed his position. In his State of the Nation address to the 10th Parliament on 14.03.2012 President Kibaki said: "Kenya is one national and an attempt or calls for secession should be rejected and shall

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<sup>2</sup> <http://www.the-star.co.ke/opinions/wycliffe-muga/63751-mrcs-secession-bid-is-impractical>

not be tolerated. Specifically, the Coast Region has been part of, is part of and will remain part of the republic of Kenya.<sup>3</sup>”

## **Recommendations**

18. The State Party and specifically the National Land Commission (to be formed) should ensure that minority communities are represented at all levels within the Commission. The communities must also be allowed to participate in the management of national parks and benefit from any profits from their lands.

19. The State Party should lobby for a greater emphasis on minority land rights. It should also consult the communities on the use of the lands and address their grievances. The Endorois and the Ogiek’s have advocated for their rights at national and regional level. However, despite the Endorois winning at the African Commission, the State Party has yet to implement the Commission’s ruling.

20. While we do not agree with the MRC that Coast is not part of Kenya, we would in the same breath ask the State Party to negotiate with the MRC to find a lasting solution. It should afford the Coast communities the same education, employment and business opportunities as the majority. The communities should also be afforded the opportunity to participate and voice their concerns at a local and national level. The continued conflict and absence of an opportunity for ventilation would otherwise lead to a time bomb which will negatively impact on Kenya, regionally and internationally.

## **Article 2. Prohibition of Discrimination**

### **Addressing Inequalities in Post-Election Policies**

21. Following the election of incumbent president Mwai Kibaki in December 2007, the disputed election results triggered violence which killed more than 1000 people, often on an ethnic basis. The ethnic dimension to the conflict was primarily between Kalenjins and Luos, who supported the opposition, against Kibaki’s Kikuyu community.

22. Kenya acknowledged in its State Report that the post-election violence of 2007-2008 stemmed from ‘ethnic and societal tensions.’ It further stated that it was committed to addressing ‘geographical, historical, economic and developmental inequalities’ which caused the violence through measures which had been taken since to ensure public resources are ‘distributed equitably’ as far as is ‘practicable geographically’.

23. However, the effectiveness of these post-election policies in reaching minority groups which have suffered historical inequalities is questionable. Although resources are allocated for infrastructural development in areas where most minorities are found, these minorities do not benefit from them.

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<sup>3</sup> <http://www.dennisitumbi.com/?p=287>

Indeed, despite the fact that land belonging to minorities has been converted to national assets, the revenue collected from, for instance, Mau Forest, Lake Bogoria and Lake Baringo, do not benefit the local minorities. Moreover, minorities are often pushed to areas that lack effective road, network and means of communication’.

24. Furthermore, it is difficult to measure the effectiveness of post-election policies as there is a lack of disaggregated data on the situation of minorities such as poverty, health and educational indexes.

### **Recommendations**

25. Whilst the State Party has provided data for minority communities in IDP camps who have been settled, post-election policies should place greater emphasis on targeting minority communities (including smaller communities), specifically with regards to land ownership, education and the development of local infrastructure.

#### Political Participation for Minority Communities/ The Political Parties Act 2007

26. Kenya’s State Report cites the Political Parties Act 2007, with regards to its provisions which focus on non-discrimination. The Act prohibits the registration of any party which is founded on, amongst other things, an ethnic basis or which uses words, slogans, emblems or symbols which could arouse ethnic, tribal, regional, linguistic or religious division. Furthermore, it also prohibits the registration of a party that has a constitutional or operational ethnic framework that provides in any way for discriminatory practices contrary to the provisions of the Constitution or any written law.

27. Whilst the Political Parties Act 2007 does prevent the registration of parties with discriminatory motives, it also prevents parties from representing minority issues, which is detrimental to the protection of minority rights.

28. Beyond the Political Parties Act 2007, minority participation in political affairs is further restricted as members of some communities are unable to participate in the affairs of Political Parties and elections for the simple reason of not having identification documents (discussed below). This does not only violate Article 2 of the ICCPR but also Article 25 which protects the right to take part in the conduct of public affairs, directly or indirectly through freely chosen representatives.

### **Recommendations**

29. The Political Parties Act 2007 should be amended to allow for Political Parties to represent minority issues and for national institutions to be accessible to minorities.

30. The State Party should ensure that all Kenyans including members of minority communities have access to identification documents and enable them to participate in elections and affairs of Political Parties of their choice.

#### Representation of Minorities in Public Institutions/ The National Cohesion and Integration Act 2008

31. In order to address discrimination on the basis of ethnic or religious grounds, the National Cohesion and Integration Act was passed in December 2008 and established the National Cohesion and Integration Commission to oversee the implementation of the Act.

32. The State Report refers to the non-discrimination provisions of the Act with regards to public entities. Specifically, the provision that all public entities must seek diversity in the recruitment of their staff who shall not comprise of more than a third from one tribe is mentioned.

33. However, these provisions have not been implemented in practice. An assessment conducted by the National Cohesion and Integration Commission (NCIC) found that only 20 out of over 40 listed Kenyan communities are statistically visible in the civil service in April 2011. Furthermore, Some 23 communities have less than 1% presence in the civil service. Most cases of minority employment took place at a lower level, in Ministries which were not well resourced. Minority representation was in contrast to the dominant Kikuyu and Kalenjin communities which make close to 40% of the entire civil service.

34. Further, another report by the NCIC (Public Universities Ethnic Audit) revealed that Kenya's public universities have become incubators of ethnicity. According to the audit which was conducted in all seven public universities and their constituent colleges, the majority of the staff members come from the same ethnic group as the Chancellor, Vice-Chancellor, or the locality of the university. The audit report which was presented to the Parliamentary Committee on Equal Opportunities also showed that 81% of the workers in the public universities come from five ethnic groups only.<sup>4</sup>

## **Recommendations**

35. The State Party, working closely with the National Cohesion and Integration Commission, needs to ensure that the provisions of the National Cohesion and Integration Act 2008 relating to diversity in public entities are implemented in practice. Specifically, there needs to be a more proactive approach taken in encouraging employment of minority communities in the civil services, particularly in higher positions.

## **Article 16. Right to recognition under the law Article 24. Right to acquire a nationality.**

### Citizenship Rights and Identity Documents

36. Traditionally, numerous minority communities, including Somalis, Nubians and Coastal Arabs have faced considerable difficulties in obtaining rights associated with citizenship and/or identity documents. This is despite the fact that some communities, such as the Nubians, have been living in Kenya for more than a 100 years, thus qualify for citizenship. The challenges faced by these communities were acknowledged in the State Report which suggests that the 'standard is higher' for these communities to obtain official documentation.

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<sup>4</sup> <http://kenyaschools.net/index.php/component/content/article/61-news/165-tribalism-in-kenyas-public-universities>

37. The State Report however maintained that there was ‘evidence’ that registration procedures which have been viewed as ‘discriminative’ in the past were being ‘redressed’. Specifically, the report suggests that national institutions are taking steps to streamline the registration process. The streamlining of the process is supposed to have been expedited following the Nubian Community Communication at the African Commission on Human and Peoples’ Rights.

38. However, there have been continued difficulties for minority communities to be granted citizenship and/or identification documents. This severely restricts, if not bars, their access to healthcare, education, employment and all other rights attached to citizenship.

### **Recommendations**

39. The State Party should seek to remove the continued barriers to citizenship and identification documents for minority communities. Specifically, with regards to the Nubian community, the state should speedily implement the African Committee of Experts on the Rights and Welfare of Child’s (ACERWC) decision which was held in favour of the Nubian children to gain Kenyan citizenship.

### **Article 17. Right to privacy, family, home or correspondence and protection of honour and dignity. Article 18. Freedom of Religion.**

40. It is interesting to note that the State Party report has not reflected on these articles. The Government continues to violate the rights of minorities including the Ogiek and the Endorois. Most are landless, having been evicted from their ancestral lands. For instance in Ndungulu, Tinderet in Nandi County, the Ogiek community live on the road reserves. They have no adequate shelter and have endured violations of their right to dignity and honour having not only lost their land but also their ability to continue to practise their religion and rituals.

41. The Endorois are yet to get their land back or receive compensation for the human rights violations they have suffered. This is so even after the landmark ruling in their favour by the African Commission on Human and Peoples Right (ACHPR) in February 2010. The State Party has yet to implement the decision. Thus the rights of the Endorois therefore continue to be violated despite their peaceful efforts for justice.

42. The Nubian community is also under siege because the development of the City of Nairobi is at their expense. They are a community that stem from Sudan to whom the British government designated an area outside Nairobi known as Kibera in the 1900s. The State Party however encourages rural migrants to settle in Kibera without regard to the disruption caused to the Nubians. The State Party also denies Nubian claims to the land and considers them to be squatters.

### **Recommendation**

43. The State party should put effective measures in place to protect the human rights of the Ogiek, Nubians and Endorois communities as well as other minority communities.

## **Article 26: Non-discrimination and Equal Protection under the Law**

### Discrimination Against Muslims and Anti-Terrorism measures

44. Kenyan Muslims have traditionally faced discrimination in the issuance of passports, national identification cards, employment and access to quality educations. However, in recent years, following the 1998 United States Embassy bombings in Nairobi, and the 2010 Kampala bombings, this discrimination has gained a new facet through anti terrorism measures. The measures have resulted in the arbitrary arrests of Kenyan Muslims both in Kenya and abroad. For example, the campaigner, Al-Amin Kimathi was arrested in 2010 after travelling to Uganda to observe court hearings of Kenyan suspects in the Kampala bombings. Kimathi was arrested and imprisoned in Uganda.<sup>5</sup>

### **Recommendations**

45. Muslims should not be discriminated against through anti-terrorism legislation, particularly through arbitrary arrests, and the State Party should not allow Kenyan Muslims to be arbitrarily detained by other countries.

46. Effective measures must be put in place to ensure that all Kenyan citizens receive a fair investigation and trial, whether in Kenya or abroad.

## **Article 27: Protection of the rights of ethnic, religious and linguistic minorities**

### Economic/ Developmental Policies: Vision 2030/ Economic Stimulus Programme 2009

47. *Vision 2030* is Kenya's development plan from 2006-2030 which aims to transform Kenya into a 'middle-income country providing a high quality life to all its citizens by the year 2030'. The Economic Stimulus Programme 2009 (ESP) was introduced in the 2009/2010 budget speech in parliament, with the aim of promoting growth and development following the post-election violence. The State Report cites that the ESP is anchored by the principles of Vision 2030 and the recognition of global concerns on environmental sustainability.

48. *Vision 2030* acknowledges the special circumstances of previously marginalised communities. In this respect *Vision 2030* offers a chance to respond to imbalances in regional development, and to reduce poverty and inequality. However, projects which have the intention of creating wealth and

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<sup>5</sup> <http://www.time.com/time/world/article/0,8599,2057966,00.html>



investment need to assess the potentially negative impact on the lives of minority communities and their production systems.

49. One of the flagship projects of *Vision 2030* is the Lamu Port and Lamu-Southern Sudan-Ethiopia Transport (LAPSETT) corridor which when completed will be the second largest transport corridor in the country. The project is taking place in Lamu town on Lamu Island, which is home to numerous minority and indigenous communities, including Bajuni, Boni, Sanye and Swahili. When completed, the project will comprise of a port, international airport and refinery at Lamu, and a labyrinth of road, rail and pipeline covering Kenya, Ethiopia and Southern Sudan. The project has required an influx of skilled workers from 'up country' who are gradually destroying the culture of the local people. The skilled workers are dominating local institutions and have caused local communities to become oppressed minorities. Furthermore, the development is likely to adversely affect the local environment, language and culture. The local people have not been consulted and are worried about their future.

50. Future projects under the national development plan which are currently at a planning stage include developments in the Tana River Delta. The area has been highlighted in Kenya's national development plan as an area for expansion of large-scale irrigated agriculture which has led to a number of schemes (for food and bio-fuels) coming forward. The Delta is the only dry season grazing refuge for local pastoralist communities (Wardei and Orma) who have used the land for centuries. If the planned projects go ahead they will convert an area of over 110,000 ha (270,000 acres – nearly three times the size of Amboseli National Park). The local people will lose their land, livelihoods and the wildlife.

51. In Isiolo County where the Resort City will be developed, tensions have already built amongst the communities.<sup>6</sup> The conflict is now within 10 km radius of Isiolo town. The pastoralist communities who have lived side by side and shared the resources have turned against one another. There have been loss of lives and wanton destruction of assets. In the eyes of the communities this is a bad omen- the Resort City may turn out to be a curse unless the government invests in peace and engages the communities in the process of developing the Resort City.

52. Further, there are strong indications that Kenya may join the oil producing countries. The preliminary explorations by the London-based explorer Tullow Oil Plc show that Kenya has more oil than previously anticipated.<sup>7</sup> The oil has primarily been found in the Arid and Semi-Arid Lands (ASAL) in Turkana County, Northern Kenya. It is too early to say but there is a sense that the local community may not get the benefits of the oil resource. There may also be risk of violence in the region due to suppressed feelings and lack of involvement of the communities living in the area.

## **Recommendations**

53. The focus of Vision 2030 (and similar initiatives) should be realigned to incorporate safeguards for minority communities and the protection of their livelihoods and the local environment. This applies to both ongoing projects such as LAPSETT and projects at their planning stage, such as the developments in the Tana River Delta. The State should carry out participatory feasibility studies, Environmental

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<sup>6</sup> <http://www.ratio-magazine.com/201201264054/Kenya/-Kenya-Isiolo-Resort-City-Plans-Trigger-Violence.html>

<sup>7</sup> <http://www.nytimes.com/2012/07/04/business/global/tullow-oil-finds-success-exploring-where-others-dont.html?pagewanted=all>

Impact Assessment and highlight in both macro and micro terms the benefits to the people, allow the local people to invest and be protected from external exploitations.

54. The State Party should endeavour to provide statistics periodically relating to the socio-economic status of minority and indigenous communities in areas where economic and developmental projects are taking place. This will assist in monitoring, and if necessary, remedying the effects of the projects on the communities.

55. The legislation process for implementation of Article 63 of the Constitution should be expedited so that the lands belonging to the minority communities are safeguarded.

56. The State Party should address inter-community conflicts through dialogue and discussion employing both conventional and traditional conflict resolution mechanisms.

57. The State Party should ensure that there is a policy and legal framework for the utilisation of oil whilst making sure that the local communities are adequately cushioned against future negative impact on the community's identity, culture, environment and livelihood.

#### General Constitutional Provisions relating to Minorities

58. Following a referendum on 4 August 2010, the majority of Kenyan voters passed a new constitution. The Constitution has several new general provisions either relating directly or indirectly to minority rights which are cited in the State Report. These include the preamble which states 'proud of our ethnic, cultural and religious diversity and determined to live in peace and unity as one indivisible sovereign nation.' Additionally, s. 6(3) of the Constitution requires the state to ensure access to services throughout the country, which the State Report suggests is 'unlike in the past when some areas were gravely marginalized.' However, it is evident that some communities continue to be marginalized in Kenya. This is particularly in light of the fact that the constitutional provisions have not necessarily been supported by a statutory and policy framework. Indeed there is also misunderstanding of who 'minorities' are and this is bound to impact negatively on the benefits which should go to the minorities.

#### **Recommendations**

59. The State Party should prioritise enabling a statutory and policy framework that promotes the implementation of direct or indirect rights relating to minorities in the new Constitution.

60. The legislation should make it clear who the minorities are and also engage communities so as to get their input into such legislations.

#### Constitutional Provisions Relating to Language and Cultural Rights

61. The new Constitution has several new provisions relating to the protection of language and cultural rights which is cited in the State Report. These include section 7 which makes English and Swahili the official languages and requires the state to promote and protect the diversity of language in Kenya. Furthermore, section 44 protects the rights of minorities to use their language and exercise their culture

62. However, in practice, the government only recognizes 42 main languages; which has contributed to the deterioration of languages in minority communities. For example, Ogiek children are no longer able to speak their mother tongue. Amongst the Abasuba community of Nyanza, even the Elders are not able to speak their language because of the influence of the Luo who are their neighbours. For the Yaaku community, it is reported that there are only 5 remaining speakers. Furthermore, it is evident that the state has failed to include minority communities in its policies relating to the promotion of culture and language.<sup>8</sup>

### **Recommendations**

63. In order to adequately support the new constitutional provisions and promote and protect the languages of minority communities, the State Party should create an inventory of languages.

64. With regards to supporting the provisions relating to cultural rights, the State Party should create a cultural institute with the mandate of protecting and promoting the cultures of minority groups.

### Constitutional Provisions Relating to Religious Freedom

65. The State Report refers to the new provision S. 8 of the Constitution which declares that there is no state religion, meaning that all religions must be treated equally before the law.

66. However, it is questionable whether this new constitutional provision has been implemented in practice with regards to minority religions. The destruction of traditional habitats has had severe repercussions to religious freedom for numerous minority communities whose religious practices are related to nature. For example, the Ogiek's place of worship is in Mau forest while for the Endorois community it is at Lake Bogoria, both of which have been affected by concessions made for logging.

### **Recommendations**

67. The State Party should ensure that the new constitutional provision relating to religious freedom is put in practice. Minority communities, particularly those whose places of worship are in nature, should have access and be able to assemble at their traditional places of worship.

### Constitutional Provisions Relating to Affirmative Action

68. The new Constitution has several provisions requiring affirmative action for minorities and other marginalized communities. The State report suggests that based on these provisions Kenya has fulfilled its obligations under Article 27 of the Covenant. Specifically, the State Report refers to:

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<sup>8</sup> [http://www.newsfromafrica.org/newsfromafrica/articles/art\\_7865.html](http://www.newsfromafrica.org/newsfromafrica/articles/art_7865.html)

- S.56 of the Constitution which requires affirmative action for minorities and marginalized groups in respect of participation in state affairs, access to education, economy and employment, basic needs and their culture.

-S.100 of the Constitution which requires parliament to make laws to promote legislative representation of ethnic, minority and marginalized communities.

69. Whilst these provisions are undoubtedly a positive step, there is still a considerable amount of work to be done before there can be greater representation and participation amongst minority communities.

70. The provisions in the 2010 Constitution have raised hopes whilst also undermining the rights of communities to representation, especially in elective positions. In particular, the Independent Electoral and Boundaries Commission (IEBC) report has diminished the rights of minority communities.<sup>9</sup> Some communities who had some representation at the ward level have found themselves either merged with others or completely left out. Putting some of the communities together has led to conflict; an example is the conflict between the Ilchamus and Endorois communities with both communities struggling to have representation.<sup>10</sup> The report of the IEBC was upheld by a five-judge bench and thus, the minority communities who challenged the decision of the IEBC lost.

71. In fact, some believe that unless the provision of Article 100 is fast-tracked and legislation made before the next General Elections, the minority communities would lose out as far as representation is concerned. The key parameter for determining representation is population and most minority communities may not have the numbers to get constituencies or Wards. The area of representation is one which the minorities and their Non-State Actors (NSA) should focus on or else the gains made in the 2010 Constitution would be just on paper. It is clear to the minority communities (who are also marginalised) that the appointment to County Assembly as stipulated in the Article 177(1)(c) of the Constitution 2010 will depend on the political parties. This means that the minority communities have to identify with and work with political parties whose manifestos recognise them and will be willing to provide slots for them. This is an opportunity for advocacy and lobbying. The minority communities and their grassroots organisations will look up to other organisation for support since they do not have the capacity and are fragmented.

72. Specifically, concerns remain for the implementation of a quota system for schools in marginalized areas, where there is lack of data to support government claims of progress. Furthermore, even if the quotas were met, there is a need to improve the overall quality of education in these areas, which continues to lag behind the rest of the country.

## **Recommendations**

73. The affirmative action provisions of the constitution need to be implemented in practice. Equal rights need to be matched by equal representation.

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<sup>9</sup> <http://www.the-star.co.ke/local/rift-valley/58777-marigat-villagers-protest-iebc-boundary>

<sup>10</sup> <http://kenyacentral.com/politics/5919-protests-over-boundaries-report.html>

74. The State Party needs to place greater emphasis on meeting quotas in education in rural and marginalized areas. Greater investment in mobile schools for example will allow pastoralist children to gain access to education in their own natural environments, whilst helping achieve quotas.

75. The State Party should ensure Articles like 100 & 177(1) (c) are fast-tracked and laws put in place before the next General Elections, scheduled for March 2013, so as to safeguard the gains made by minority communities.