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# IMPLEMENT

## ENDOROIS DECISION 276/03

REPORT ON THE IMPACT  
OF NON-IMPLEMENTATION  
OF THE AFRICAN COMMISSION'S  
ENDOROIS DECISION



Center for  
Minority Rights  
Development

**WITNESS**  
SEE IT FILM IT  
CHANGE IT



# The Impact of Non-implementation of the African Commission's Endorois Decision



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## The Author

Nyang'ori Ohenjo holds a Bachelor degree in Education from Egerton University, Kenya. He has also served as the Chief Executive Officer at the Centre for Minority Rights Development (CEMIRIDE) and has over 20 years' experience in CSOs and development work. He has worked on Africa's minority and Indigenous communities' issues, including climate change, land rights, inclusion and participation in governance processes through trainings, debates and workshops, designing policy advocacy strategies for organizations and advocacy capacity strengthening for minority and Indigenous Peoples' organizations and peace actors.

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## Partners

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WITNESS is an international human rights organization that provides training and support to activists and communities so that they can leverage the power of video and technology in the defense of human rights. WITNESS worked with the Endorois community to capture video evidence that was then presented as part of the complaint filed before the African Commission in the case against Kenya brought by CEMIRIDE and Minority Rights Group on behalf of the Endorois Welfare Council. WITNESS's work in Africa cuts across issues of land rights, war crimes, state violence, misinformation and disinformation.



The Endorois Welfare Council is a registered community based organization, established in 1995. It was founded by the senior members of the Endorois indigenous community living in the Lake Bogoria area of Baringo and Koibatek district, as well as in Nakuru and Laikipia districts within the Rift valley province in Kenya. The organization has devoted its energies to advocating for the Endorois Communities' economic, social; cultural rights.



The Centre for Minority Rights Development (CEMIRIDE) is a non-governmental organization (NGO) registered in 2001, in Kenya, with a mission to secure the rights of national minorities (such as Nubians) and Indigenous Peoples (pastoralists, forest communities and fisher peoples). The impact of CEMIRIDE's previous work has included the recognition of minorities and Indigenous Peoples in Kenya, seen through the Constitution of Kenya and jurisprudence. Specific to the Endorois Decision, CEMIRIDE together with Minority Rights Group International (MRG), with support from WITNESS, successfully prosecuted the Endorois case against the Kenya Government on behalf of the Endorois, with support from Witness at the African Commission on Human and Peoples' Rights. With an Observer Status with the African Commission, and because of its expertise and credibility on minority and Indigenous Peoples' rights CEMIRIDE, has maintained its position as a reference point on minorities and Indigenous Peoples' rights. It is registered under the Non Governmental Organisations Coordination Act of Kenya as number OP.218/051/2002/0149/2240.



Minority Rights Group International (MRG) is a nongovernmental organization (NGO) working to secure the rights of ethnic, religious and linguistic minorities and Indigenous Peoples worldwide, and to promote cooperation and understanding between communities. Our activities are focused on international advocacy, training, publishing and outreach. We are guided by the needs expressed by our worldwide partner network of organizations which represent minority and Indigenous Peoples. MRG works with over 150 organizations in nearly 50 countries. Our governing Council, which meets twice a year, has members from 10 different countries. MRG has consultative status with the United Nations Economic and Social Council (ECOSOC), and observer status with the African Commission on Human and People's Rights (ACHPR). MRG is registered as a charity and a company limited by guarantee under English law. Registered charity no. 282305, limited company no. 1544957.



## Dedication

The Centre for Minority Rights Development (CEMIRIDE), Endorois Welfare Council (EWC), Minority Rights Group International (MRG) and WITNESS would like to dedicate this report to Members of the Endorois community who have since passed on during the period between the beginning of developing the complaint to the African Commission on Human and Peoples Rights (ACHPR) to the time of this reports publication.

# Acronyms

ACHPR	- African Commission on Human and Peoples' Rights
AU	- African Union
CEMIRIDE	- Centre for Minority Rights Development
COK	- Constitution of Kenya
ECD	- Early Childhood Education
EWC	- Endorois Welfare Council
FGDs	- Focus Group Discussions
ICCPR	- International Covenant on Civil & Political Rights
IDPs	- Internally Displaced Persons
LBNR	- Lake Bogoria National Reserve
IP	- Indigenous Peoples
KWS	- Kenya Wildlife Service
MP	- Member of Parliament
MRG	- Minority Rights Group International
UN	- United Nations
UNHRC	- United Nations Human Rights Committee
UPR	- Universal Periodic Review
NAPBHR	- National Action Plan on Business and Human Rights
NLC	- National Land Commission
SDGs	- Sustainable Development Goals

# Introduction: The struggle of the Endorois community for recognition

This report presents findings on the impact of the non-implementation of the recommendations of the African Commission on Human and Peoples' Rights (ACHPR) Endorois Decision on the community and the country. In a landmark decision adopted by the African Union (AU) on 2 February 2010,<sup>1</sup> the ACHPR (hereinafter 'the African Commission') recommended that the Kenya Government recognize the Endorois community's right of ownership of their ancestral lands, reconstitute to the Endorois their ancestral lands and compensate them for their losses. It also recommended that the community should have unlimited access to Lake Bogoria National Reserve (LBNR) and benefit from the royalties and employment opportunities within the game reserve. However, the recommendations have never been fully implemented. This report demonstrates that the non-implementation of the recommendations of the Endorois Decision has negatively impacted the community's livelihoods, consigning many of its members to severe poverty, illiteracy, poor health and a life of destitution.

**Land and natural resources are central to the socio-economic and cultural lives of Indigenous Peoples..."**

The only recommendation that was fully implemented is the registration of the Endorois Welfare Council (EWC)<sup>2</sup>. The payment of royalties to the Endorois from existing economic activities and ensuring that they benefit from employment within the reserve and have unrestricted access to Lake Bogoria and surrounding sites for religious and cultural rites and grazing their cattle have seen tokenistic implementation. On the recommendation to engage in dialogue

for the effective implementation of the recommendations, the government, on 19 September 2014, under *Kenya Gazette* Notice No. 6708 established a task force on the implementation of the commission's decision. The tenure of the task force was one year. However, there has been no report on what the task force achieved. Recommendations partially implemented include recognition of the rights of ownership of the Endorois and restitution of their ancestral land; payment of adequate compensation to the community for the loss suffered; and reporting on the implementation of the recommendations within three months from the date of notification.

Land and natural resources are central to the socio-economic and cultural lives of Indigenous Peoples, and critical to their survival and general wellbeing. A key characteristic for most Indigenous Peoples is that the sustenance of their way of life depends on access and rights to their traditional lands and the natural resources therein.<sup>3</sup> The violation of these rights, therefore,

consigns them to a life of poverty and misery. Dispossession of land and other natural resources is a major human rights problem for Indigenous Peoples. The establishment of protected areas and national parks has impoverished the Endorois community, made the people vulnerable and unable to cope with environmental uncertainty and, in many cases, even displaced them.<sup>4</sup> The analysis of available data, as elaborated in the section on the *Impact of the Non-Implementation of the*

<sup>1</sup> Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, 276/2003, accessed at <https://www.escri-net.org/caselaw/2010/centre-minority-rights-development-kenya-and-minority-rights-group-international-behalf>

<sup>2</sup> EWC is now registered as a society under Registrar of Societies

<sup>3</sup> Centre for Minority Rights Development (Kenya) and Minority Rights Group International, op. cit., note 1 para 150

<sup>4</sup> Centre for Minority Rights Development (Kenya) and Minority Rights Group International, op. cit., note 1 para 150

*African Commission's Endorois Decision on the community* of this report, confirms poor access to health facilities, clean water and education. The loss of their ancestral land and non-implementation of the Endorois Decision have exacerbated their poverty.

Over the 2015 to 2019 period, Kenya's economic growth averaged 4.7 per cent, making it one of the fastest growing economies in sub-Saharan Africa.<sup>5</sup> Countrywide, 36.1 per cent of the national population were living in poverty in 2015, an improvement

from 46.8 per cent in 2005, a decade before.<sup>6</sup> However, the country's resources are largely in the hands of a few rich people, most of them in the urban areas. Indigenous communities, according to the 2019 Census, the first time that the Kenyan population ethnic identity was used to disaggregate the data, are 9,089,603<sup>7</sup>, about 19 per cent of the total population of 47,564,296. Pastoralists are 7,312,565, or 15 per cent of the total population. In a recently released report by the Kenya National Bureau of Statistics (KNBS), the 10 poorest counties include nine in the pastoralist areas (Turkana, Mandera, Samburu, Garissa, Marsabit, Wajir, Tana River, West Pokot, and Isiolo). The only other county is Busia, which has a significant population of fisher communities and agro-pastoralists.<sup>8</sup> This statistic is not surprising, given that Indigenous communities like the Endorois still grapple with the impacts of forced displacements from their lands, lack of compensation and exploitation of their natural resources in the name of development.

**... Indigenous communities like the Endorois still grapple with the impacts of forced displacements from their lands, lack of compensation and exploitation of their natural resources in the name of development..."**

The 2019 population census estimated the Endorois to be slightly more than 45,000. However, they themselves believe that they are more than 75,000.<sup>9</sup> They cite the fact that most of their people were not sensitised to the existence of a code for the Endorois as an independent ethnic community during the

2019 Census, as a result of which most of them were counted as being part of the Tugen community.<sup>10</sup> The Endorois community predominantly occupies Baringo South and Mogotio

sub-counties in Baringo County, Laikipia West sub-county in Laikipia County and Rongai sub-county in Nakuru County. In the claim to the African Commission, the Endorois asserted that land was critical to their securing subsistence and livelihood, and because of displacement their livelihoods have been destroyed and their development curtailed.

Their lack of access to their ancestral lands has had far-reaching implications. For instance, they are no longer able to gather plants growing around the shores of Lake Bogoria for traditional medicine, impacting negatively on their access to health services<sup>11</sup> - a situation made worse by the fact that there are very few health facilities, which are in any case poorly equipped. Basic services are also severely underdeveloped. In Baringo South and Mogotio sub-counties, 76.4 per cent and 82.6 per cent of the population use unimproved sources of water respectively against a national average of 47.4 per cent,<sup>12</sup> contributing to the spread of waterborne diseases. Other indicators similarly

<sup>5</sup> World Bank (undated) 'The World Bank in Kenya: Overview', accessed at <https://www.worldbank.org/en/country/kenya/overview>

<sup>6</sup> World Bank, 'Poverty headcount ratio at national poverty lines (% of population) - Kenya', accessed at <https://data.worldbank.org/indicator/SI.POV.NAHC?locations=KE>

<sup>7</sup> Total derived from addition of population of the different communities that identify as minorities and or Indigenous Peoples, who had ethnic codes in the 2019 census. 219 Kenya Population and Housing Census- distribution of population by socio economic characteristics, Vol IV Pp423

<sup>8</sup> Business Daily (2018) 'Report on richest and poorest countries out', 23 March, accessed at <https://www.businessdailyafrica.com/bd/economy/report-on-richest-and-poorest-counties-out--2195026>

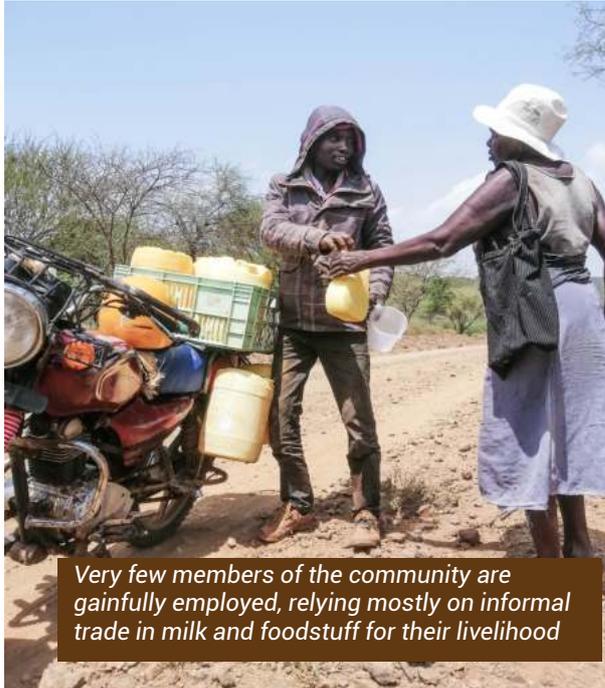
<sup>9</sup> Email conversation with EWC CEO Richard Kamng'oror on 9th February 2022

<sup>10</sup> Ibid. See also Kenya National Bureau of Statistics. (2019). Kenya Population and Housing Census Results. Kenya National Bureau of Statistics. <https://www.knbs.or.ke/?p=5621>

<sup>11</sup> Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, 276/2003, Para 16

<sup>12</sup> Kenya National Bureau of Statistics and Society for International Development (2013) Exploring Kenya's Inequality - Pulling Apart or Pooling Together?, Nairobi, pp.250 and 278. Unimproved sources of water refer to water from a pond, dam, lake stream/river, unprotected spring, unprotected well, jabia and water vendor.

suggest disproportionate levels of deprivation. While poverty in Kenya is not disaggregated by ethnic affiliation, widespread evidence suggests that a very large proportion of Endorois live in abject poverty.<sup>13</sup> To date, very few of the community members are gainfully employed,<sup>14</sup> with the majority depending on pastoralism - a source of livelihood that is now threatened by a variety of challenges, including increasingly harsh climatic conditions, decreasing acreage of land, economic depression and poor road and security infrastructure, obstructing access to markets to sell livestock.



*Very few members of the community are gainfully employed, relying mostly on informal trade in milk and foodstuff for their livelihood*

Being deprived of these essential services deepens poverty and reduces wellbeing. Considering that the Human Development Index (HDI) methodology guides discussions about development progress towards a measure that genuinely “counts” for people’s lives, then it is worth noting that the current state of the Endorois community reflects a community that is lagging behind in human development, based on three basic dimensions of human development: a long and healthy life, access to knowledge and a decent standard of living.<sup>15</sup> Given that Indigenous Peoples

(including the Endorois) make up around a fifth of the Kenyan population, addressing their needs is critical if the government is to meet its national development targets.<sup>16</sup> In Kenya’s latest Sustainable Development Goals (SDGs) progress report, the proportion of the population with primary reliance on (un)clean fuels and technology had decreased from 89.3 per cent in 2016 to 64.9 per cent in 2019.<sup>17</sup> This compares unfavourably with the Endorois community, whose members rely on unclean energy (98.3 per cent in Baringo South and 98.5 per cent in Mogotio<sup>18</sup>). The SDG progress report also indicates that the proportion of households using safe drinking water increased from 72.6 per cent in 2016 to 73.3 per cent in 2019.<sup>19</sup> Among the Endorois, however, the large majority of the population rely on unclean water.

**To date, very few of the community members are gainfully employed, with the majority depending on pastoralism...”**

According to the 2019 Kenya Population and Housing Census, 85 per cent of this open defecation occurs in 15 counties: Baringo, Garissa, Homa Bay, Isiolo, Kajiado, Kilifi, Kwale, Mandera, Marsabit, Narok, Samburu, Tana River, Turkana, Wajir, and West Pokot.<sup>20</sup> With the exception of Homa Bay, which is home to a fisher community, all the others are pastoralist counties. This is a clear indication of the neglect and marginalisation of the pastoralist communities. In the Endorois community, due to high levels of poverty, the number of households with toilets is still very low. This contributes to the high prevalence of waterborne diseases such as typhoid, Hepatitis B and dysentery, which exacerbates

<sup>13</sup> Interviews with the community and observation of living standards for the study conducted on 20th June to 23rd June 2021.

<sup>14</sup> Ibid

<sup>15</sup> The Next Frontier: Human Development and the Anthropocene. Briefing note for countries on the 2020 Human Development Report, Kenya accessed at [http://hdr.undp.org/sites/all/themes/hdr\\_theme/country-notes/KEN.pdf](http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/KEN.pdf)

<sup>16</sup> Op cite Note 9

<sup>17</sup> Republic of Kenya (2020) Second Voluntary National Review on the Implementation of the Sustainable Development Goals, Nairobi, p.56

<sup>18</sup> Kenya National Bureau of Statistics and Society for International Development (2017) Exploring Kenya's Inequality - Pulling Apart or Pooling Together?, Nairobi, pp.39

<sup>19</sup> Republic of Kenya (2020) Second Voluntary National Review on the Implementation of the Sustainable Development Goals, Nairobi, p.54

<sup>20</sup> UNICEF (2021) 'Kenya Sanitation Alliance launched by Government and UNICEF, targeting 15 counties with highest rates of open defecation', 17 November, accessed at <https://www.unicef.org/kenya/press-releases/kenya-sanitation-alliance-launched-government-and-unicef-targeting-15-counties>

their poverty.<sup>21</sup> Social dimensions such as levels of access to education, clean water and sanitation are important in assessing quality of life.<sup>22</sup> Being deprived of these essential services deepens poverty and reduces people's wellbeing. For the Endorois, social indicators paint a sad picture of a community straining heavily under the weight of poverty. In most of these areas, people must move for between 20 and 40 kilometres to reach a good road:<sup>23</sup> For example, in Koibos, Kamar and Koibos Soi locations, residents have to travel for over 40 kilometres to Mogotio and Marigat towns to access health care and other essential services.<sup>24</sup> This has made transportation costs very high, increasing already high poverty levels within the community.<sup>25</sup> At times, the Endorois have lost lives during childbirth or from a snakebite due to a lack of health facilities nearby.<sup>26</sup>

The community's right to development and quality of life can only, therefore, be achieved through the full implementation of the African Commission's Endorois Decision recommendations. Land is a critical factor in Indigenous Peoples' livelihoods and development. Because of forced displacement by the government, the Endorois have suffered immeasurable loss. They have been subjected to poverty and underdevelopment over the years after being deprived of their most important factor of production, land, and access to other natural resources. The community has also suffered biopiracy. In the 1990s, a PhD student from Leicester University in the United Kingdom collected samples of enzymes from Lake Bogoria, which were later acquired by a biotechnology company, Genencor Limited, which sold it to

**Land is a critical factor in Indigenous Peoples' livelihoods and development. Because of forced displacement by the government, the Endorois have suffered immeasurable loss..."**

its business partner, Procter and Gamble.<sup>27</sup> The latter used the enzyme to develop an extremely successful line of Tide Bleach, earning millions of dollars that subsequently became the subject of a lawsuit filed by Kenya Wildlife Services.<sup>28</sup> The researchers evidently used extremophile enzymes collected from LBNR for commercial industrial purposes without prior and informed consent of Endorois people.

Kenya now explicitly recognizes the existence of Indigenous Peoples. In its fourth State Report through the International Covenant on Civil and Political Rights (ICCPR) to the United Nations Human Rights Committee, Kenya asserted that the 'Constitution recognizes that Indigenous Peoples form part of marginalised communities, which must be protected through specific affirmative action designed to ensure that they enjoy their human rights and fundamental freedoms on an equal footing with others.'<sup>29</sup> Another interesting development is the implementation of the National Action Plan on Business and Human Rights. The plan recognizes self-identifying Indigenous Peoples as a cross-cutting concern to be addressed across business-related human rights concerns, under the various thematic areas; these are land and natural resources, revenue transparency, environmental protection, labour rights and access to remedy.<sup>30</sup> While these are progressive developments for Indigenous Peoples, including the Endorois, there is no political will

to put in place actual measures to realise their rights. For instance, it took the government more than six years to enact the community land legislation, and a further two years to make it operational. Even then, the government does not allocate sufficient funds to enable the

21 Op Cite Note 8

22 Kenya National Bureau of Statistics (November 6, 2014). Exploring Kenya's Inequality: Pulling Apart or Pooling Together? <https://www.knbs.or.ke/exploring-kenya-s-inequality-pulling-apart-or-pooling-together/> accessed on 24th March 2022

23 Op Cite 12

24 Ibid

25 Ibid

26 Ibid

27 Heuer, S., Cook-Deegan, R., Kieff, F.S. and Walsh, J.P. (2008) 'The Lake Bogoia extremophile: A case study', *Nature Biotechnology*, 24

28 Barnett, A. (2004) 'Multi-million bio-piracy lawsuit over faded jeans and African lakes', *The Guardian*, 5 September, accessed at <https://www.theguardian.com/uk/2004/sep/05/highereducation.science>

29 'Fourth periodic report submitted by Kenya under Article 40 of the Covenant, due in 2015', received 28 December 2018, UN Human Rights Committee, paragraph 5, accessed at <https://digitallibrary.un.org/record/3823097?ln=en>

30 Attorney-General, Kenyan National Action Plan on Business and Human Rights (2020-2025), June 2019 pp 11



*A panoramic view of the beautiful lands around Lake Bogoria, Kenya, that originally belong to the Endorois Community as ruled by the African Commission*

implementation of the Community Land Act, including supporting Indigenous communities to engage in it.<sup>31</sup>

Better development indicators amongst Indigenous communities such as the Endorois will therefore have a positive impact on national development and push the country towards achieving its global development targets. Against the foregoing, this report recommends the following:

1. The government should constitute a new task force on the implementation of the African Commission's Endorois Decision. It should include representation from the Endorois and Indigenous Peoples' Rights Experts.
2. The National Land Commission, according to Section 15 of the National Land Commission Act 2012, read together with Article 2 (5) of the Constitution of Kenya 2010, should adopt and fully implement the Endorois Decision.
3. The government should facilitate the development of an inventory/register of Indigenous Peoples and protect their lands.
4. A benefit-sharing legislation should be passed as required by the Constitution of

Kenya 2010.

5. Baringo county government's Endorois benefit-sharing mechanism/structure should be expanded to include the representatives of the EWC.

6. The government should provide data on IDPs from ethnic conflicts, climate change and development projects and ensure that their rights and other issues are adequately addressed.

7. The African Commission on Human and Peoples' Rights (ACHPR) should step up its efforts to engage with the Kenya Government on the implementation of its decision on the Endorois complaint.

8. Donors and development actors should support the capacity building of government officers in charge of the implementation of the rights of marginalized communities to enable them to understand the importance and value of securing their rights in national government development.

9. CEMIRIDE, WITNESS and MRG and other members of civil society should support the advocacy of the Endorois community to implement the African Commission decision.

<sup>31</sup> Independent Medico-Legal Unit et al (2021) Shadow Report in Response to The Fourth Periodic Report on The International Covenant on Civil And Political Rights (2013–2020), p.3

# Methodology

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This study considered a qualitative methodology, which involved the use of Key Informant Interviews (KIIs) and Focus Group Discussions (FGDs) in data collection. In person interviews with key informants and the FGDs were undertaken in Baringo South and Mogotio sub-counties between 20th and 23rd June 2021. Primary data was also collected through in-depth phone and online interviews to capture respondents' perceptions, expressions, opinions, beliefs, and attitudes on the subject matter.

Secondary data analysis of development data for Baringo South and Mogotio<sup>32</sup>, both predominantly occupied by the Endorois community was also done. The study also utilized documents review for the collection of secondary data, as referenced herein, as well as observation during the field visit, to establish the levels and quality of public infrastructure and its development. Some of the secondary data included legal instruments, government and development agency reports to supplement primary data and adequately answer the pertinent questions of the study.

The study population comprised 18 individuals in three focus group discussions and 10 key informant interviews (KII) with community

members, EWC staff and Baringo County government officials. Most KII interviewees were Endorois elders, both men and women, aged above 50, who belonged to a household and who were perceived to have a better understanding of the developments leading to the 2009 African Commission Decision. The in-person KIIs and FGDs in the field were conducted in Kiswahili, as the grasp of English by many respondents was limited. This data was later transcribed into English. The questions used were mainly open-ended to generate as detailed responses as possible. More probing was done to generate discussions with the respondents.

The following data, including photos, was collected:

- Access to water resources: water and sanitation hygiene (latrine access and coverage, water treatment and hand washing)
- Physical safety and security
- Sources of livelihood: access to economic empowerment opportunities, employment rate, business activities
- Food security information (Household Dietary Diversity Score, Women Dietary Diversity Score)

<sup>32</sup> Other than the two, the Endorois are also found in Nakuru County (Rongai sub-county) and Laikipia County (Rumuruti sub-county). The desk review, community visits and data analysis for this report focused on the two sub-counties in Baringo due to resource limitations

## The African Commission's landmark ruling



The Endorois Community leaders communicating their grievances to local administration at Lake Bogoria Kenya during a previous protest

In a landmark decision in jurisprudence, the African Commission for the first time, recognized Indigenous Peoples' right to traditionally owned land and their right to development under the African Charter.<sup>33</sup> The Decision by the African Commission on the Endorois was delivered during its 46th Ordinary Session held between 11th and 25th November 2009, and formally approved by the African Union at its January 2010 meeting.

The African Commission decision was based on a complaint filed in 2003 against the Kenya Government, by the Centre for Minority Rights Development (CEMIRIDE) and the Minority Rights Group International (MRG), on behalf of the Endorois community

represented by the Endorois Welfare Council (unregistered at the time). The complaint was against the forced removal of the Endorois from their ancestral lands in the 1970s.<sup>34</sup> WITNESS, in collaboration with CEMIRIDE provided a video, "*Rightful Place: Endorois Struggle for Justice*", to help tell the personal stories of the members

**The African Commission recommended that the Kenya Government recognize the Endorois community's rights of ownership to ancestral lands..."**

of the Endorois community and share the impact the displacement had on the Endorois community as a whole. *Rightful Place* was used as part of the evidence package in the case as video corroboration - the first ever use of video in this manner at the African Commission.

The community was forcefully evicted from ancestral lands around the Lake Bogoria area of the then Baringo and Koibatek districts, as

well as in Nakuru and Laikipia districts within the then Rift Valley Province, without consultations or adequate and effective compensation. After the evictions, the government created Lake Hannington Game Reserve in 1973

for tourism, and re-gazetted it as Lake Bogoria Game Reserve in 1978. Other than the game reserve, part of the contested ancestral land has since been sold, and in 2002, concessions for ruby mining were granted to a private company<sup>35</sup>.

<sup>33</sup> Centre for Minority Rights Development (Kenya) and Minority Rights Group International, Communication 276/03. op, cit Note 1

<sup>34</sup> Centre for Minority Rights Development (Kenya) and Minority Rights Group International, Communication 276/03. op, cit Note 1.

<sup>35</sup> Op Cite Note 8

## Challenges facing the 10% management

*While the EWC is supposed to be an active member of the committee handling the use of the 10% grant, this has not been the case to date. Due to this, there has been a big challenge of transparency. Reports that we managed to get from the county government indicate that from the 10% grant from the LBNR revenues, 60% is for bursaries, 35% for livelihood support, and 5% for administrative work. To date, more than 4,500 Endorois children have benefitted from bursaries. Persons with disability are also supported in various ways. Other projects include construction of livestock dips, ECD classrooms, dispensaries, water pans, vocational training colleges, chief's offices and equipping of Endorois Cultural Centre. The reports cannot be ascertained by the EWC, as there are no records.*

*The main challenge is how the grant is managed due to lack of transparency and accountability. There is lack of regulations or policy for the grant. EWC's push for the formulation of the regulations, including preparing and sharing a draft with the county government, has been met with resistance. This leads to lack of funds.*

### Richard K Kamng'oror (CEO, EWC)

Shortly after the creation of the game reserve, according to the community complaint in the African Commission, the Kenya Wildlife Service (KWS) informed elders that 400 Endorois families would be compensated with plots of "fertile land." The undertaking also specified that the community would receive 25 per cent of the tourist revenue from the game reserve and 85 per cent of the jobs created, and that cattle dips and fresh water dams would be constructed. However, after several meetings to determine the financial compensation for the relocation of the 400 families, the KWS said it would give only Ksh 3,150 per family. Even then, only 170 of the 400 families were eventually given some money in 1986, many years after the agreements were concluded. According to the community, the money given to the 170 families was to facilitate relocation rather than compensation. Moreover, access to the land was restricted. This prevented the community from practising its pastoralist way of life, using ceremonial and religious sites, and accessing traditional medicines.

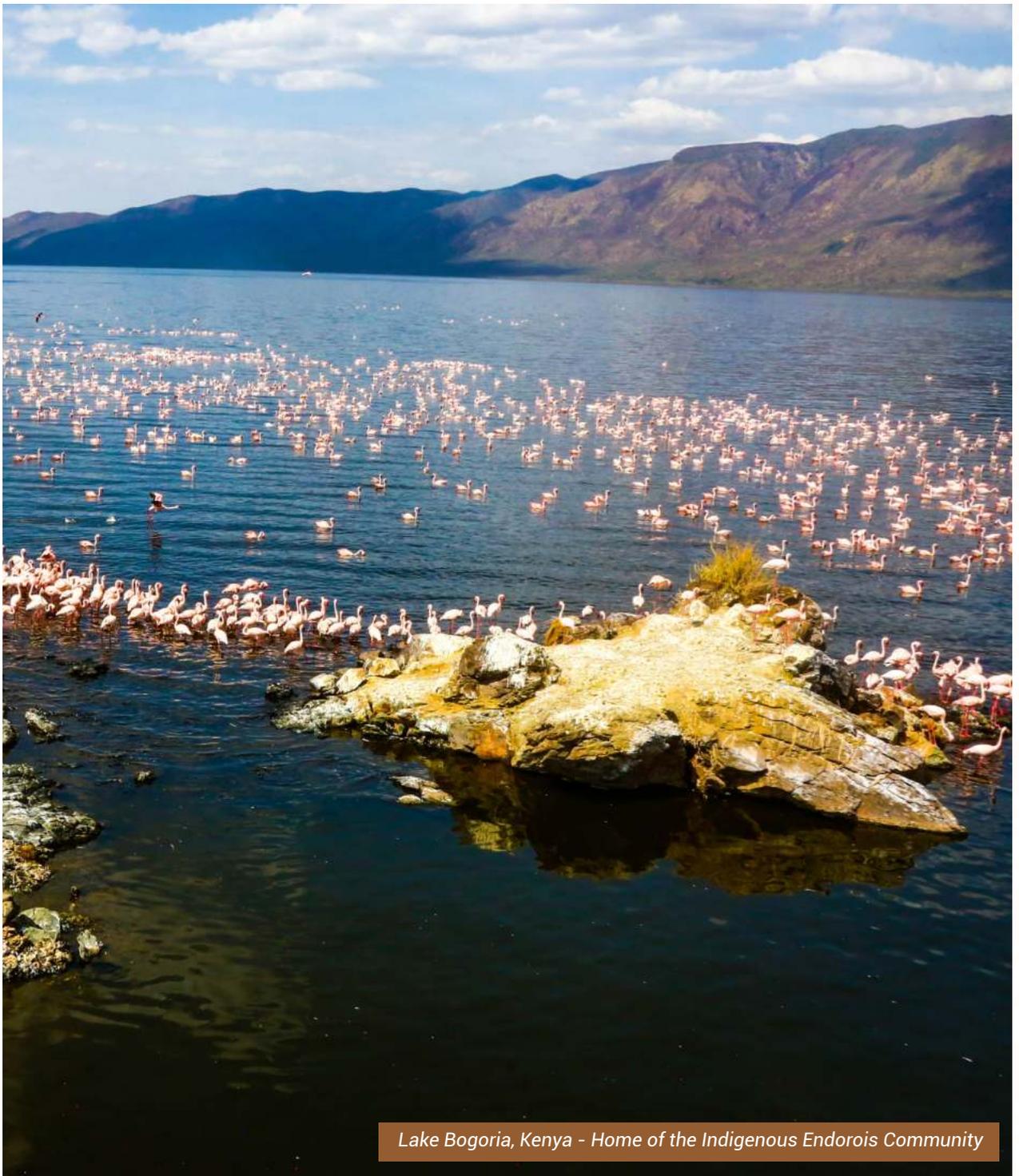
In its effort to try and resolve the resultant conflict between the government and the community, the Endorois engaged several political and judicial strategies, including advocacy, lobbying and public interest litigation. These included meeting with President Daniel arap Moi, who was also their Member of Parliament, on 28th December 1994, at his Lake Bogoria hotel. The President directed the local authority to respect the 1973 agreement on compensation and directed that 25 per cent of the annual

income for community projects be given to the Endorois. This, however, was not effected and in November 1995, upon being notified that it had not been implemented, President Moi again ordered that his directives be effected.

Following the non-implementation of the President's directives, the community instituted legal proceedings against the then Baringo and Koibatek county councils. The case was dismissed on 19 April 2002. The court argued that the community effectively lost any legal claim after the designation of the land as a game reserve in 1973 and 1974. It said that it was not able to address the issue of a community's collective right to property, referring throughout to "individuals" affected and stating that it did not believe Kenyan law should address any special protection of a people's land based on historical occupation and cultural rights.

After exhausting the available local redress mechanisms, the Endorois community, through CEMIRIDE and MRG, filed the complaint with the African Commission.

The African Commission recommended that the Kenya Government recognize the Endorois community's rights of ownership to ancestral lands, restitute their ancestral lands, compensate them for their losses, and ensure that they benefit from the royalties and employment opportunities within the Lake Bogoria Game Reserve. The recommendations have, however, never been fully implemented.



*Lake Bogoria, Kenya - Home of the Indigenous Endorois Community*

This report discusses the impact of the non-implementation of the Endorois decision.<sup>36</sup> To date, there is no known mechanism by the government to facilitate and monitor its implementation. While the government established a task force on 26 September 2014, under *Kenya Gazette* Notice No. 6708, it was never adequately financed<sup>37</sup> to carry out its operations and neither were the Endorois represented on it. The tenure of the task force was one year but its report was never made public.

This study was undertaken to understand the impact of the non-implementation of the African Commission's Decision on the Endorois community, as well as on the government's development targets. The forceful eviction violated their land and natural resource rights; Indigenous Peoples' rights; freedom of religious and cultural practices; and the right to development. These violations were contrary to the African Charter on Human and Peoples' Rights, the Constitution of Kenya and international law.

<sup>36</sup> Ibid

<sup>37</sup> Interviews with Kenya National Commission on Human Rights Staff who were members of the Task Force.

# Impact of non-implementation of the African Commission's Endorois Decision - a community trapped in a vicious cycle of poverty and underdevelopment

When the African Commission's Endorois Decision was delivered, members of the community saw it as an end to their tribulations, poverty and violations of their rights, and expected better livelihoods after decades of poverty and underdevelopment.<sup>38</sup> The community was elated and expected the government to restitute their lands (Lake Bogoria National Reserve and Mochongi Forest). These had been converted to public use without community consent. The community also expected to be compensated for loss of livelihoods and property because of the forceful evictions. These expectations have in recent

years turned into despair. Government agencies have frustrated, at every turn, their quest for the implementation of the recommendations by the 2009 African Commission decision.

The African Commission gave seven recommendations. These were that the Kenya Government:

1. Recognize rights of ownership to the Endorois and restitute ancestral land.
2. Ensure that the community has unrestricted access to Lake Bogoria and surrounding sites for religious and cultural rites and for grazing.
3. Pay adequate compensation for the loss suffered.
4. Pay royalties to the Endorois from economic activities and ensure that they benefit from employment within the reserve.
5. Grant registration to the Endorois Welfare Committee;
6. Engage in dialogue with the complainants for the implementation of these recommendations.

Report on the implementation of the recommendations within three months from the date of notification.

The only recommendation that was fully implemented was the registration of the Endorois Welfare Council (EWC).<sup>39</sup> Two other recommendations - around the payment of royalties and the provision of unrestricted access

**Because of non-implementation of the African Commission's Endorois Decision, most people have no reliable source of livelihood, and are struggling under harsh climatic conditions...."**

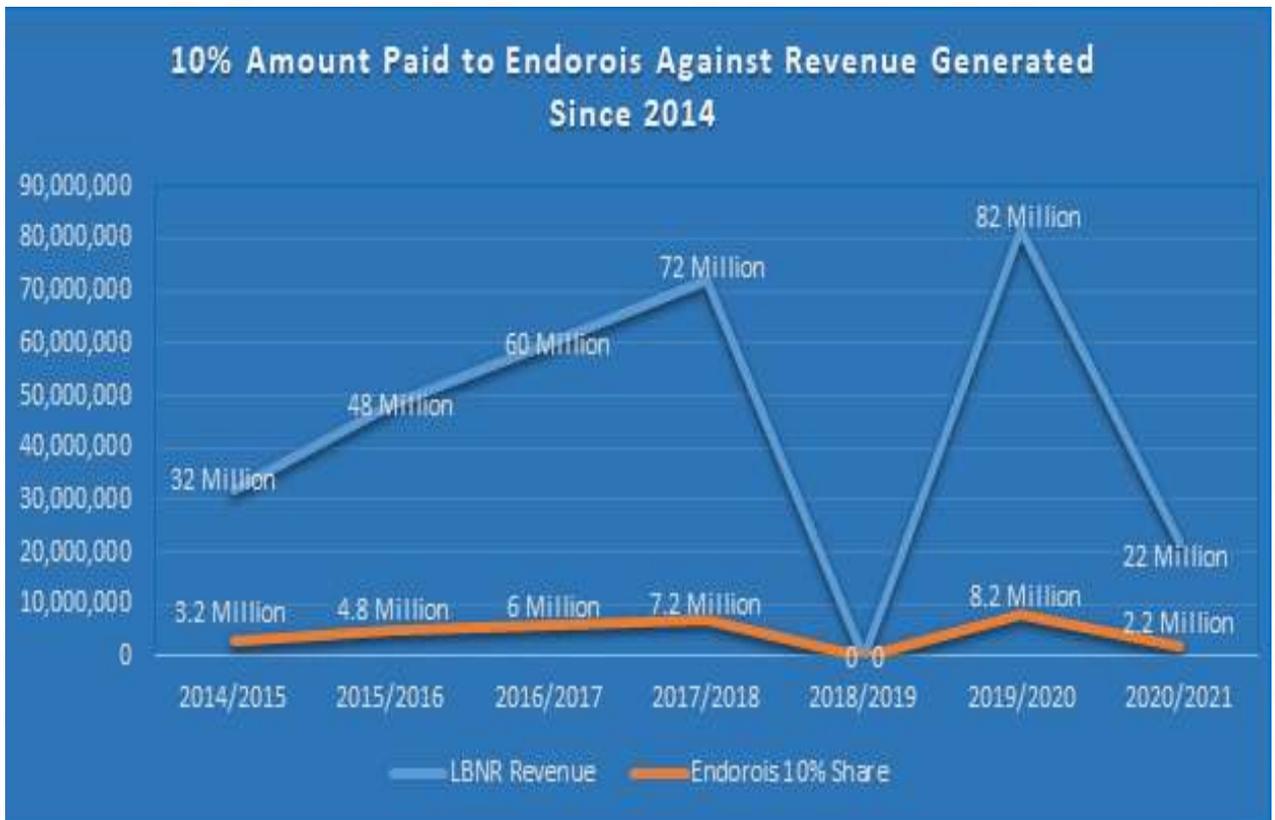
to Lake Bogoria and surrounding areas - have seen tokenistic implementation. The question of royalties is still sticky. In their complaint, the community had pleaded for 25 per cent of the revenues collected from Lake Bogoria, which was the percentage that had been agreed upon when they were first displaced. However, the County Government of Baringo has only been paying 10 per cent royalties on net income from revenues collected every year.

These royalties are paid based on the net income of the Lake Bogoria National Reserve (LBNR), as opposed to the total collected revenue, which is contrary to the recommendation in the Endorois Decision. Using the 10 per cent rate, the highest amount allocated to the community was Ksh 8.2 million from a revenue of Ksh 82 million in the 2019/2020 financial year, and the lowest was Ksh 2.2 million from a reported revenue of Ksh 22 million in 2020/2021.<sup>40</sup> Revenues for 2020/2021 were depressed because of Covid-19 containment

<sup>38</sup> Phone Interview for this report with Eric Kimalit, Board of Directors Chairperson for the Endorois Welfare Council, on 28th July 2021.

<sup>39</sup> In interviews with the EWC Chief Executive Office Officer, Richard Kamng'oror, he confirmed that EWC is now registered as an organisation under the Societies Act

<sup>40</sup> Information sourced from the EWC. Email communication with Richard, Chief Executive Officer, Endorois Welfare Council on 1 February 2022.



measures that included lockdowns, curfews and cessation of movement. Nothing was allocated for the 2018/2019 financial year, as there were no records of revenues.<sup>41</sup> While the LBNR has been setting aside 10 per cent of the collected revenues each year as the Endorois community grant, it is almost impossible to ascertain if the amounts allocated as the 10 per cent community grants are correct as the actual annual audit reports of the LBNR are not accessible as they are not part of the management or the revenue collection team.<sup>42</sup>

Lack of a proper benefits framework for the Endorois community is worsened by the frustrations that the community members undergo when trying to set up their own revenue generation initiatives, like ventures in eco tourism.

*"For instance we have had very little support from the authorities as much as our tourist Camp here in Majimoto is concerned. We have written proposals to them but nobody ever gives a listening ear. For example, a while back we did not understand which criteria was*

*used to award Lake Bogoria hotel in a Public Private partnership deal over 50 million to build structures, yet we who really need just little empowerment amounts for the benefits of many, but nobody looks at us."* - **Jeremiah Kobetbet, Endorois Community Member**

After intense lobbying by the EWC, the royalties payable increased in 2020 to 25 per cent.<sup>43</sup> However, this was split, with 15 per cent going to community grants and 10 per cent for the development of infrastructure within the protected area. The EWC opposed this, arguing that the LBNR still has 75 per cent at its disposal that should be used for management.<sup>44</sup> This resolution is yet to be effected, with the county government claiming that it cannot implement it until a case filed by 172 people in the High Court is resolved.<sup>45</sup> The EWC was, however, allowed to more actively and effectively participate in the formulation of the 10-year (2019-2019) LBNR Management Plan that has just been ratified by the Baringo County Assembly. This achievement will give the EWC a stronger voice and presence to push for greater accountability and transparency

<sup>41</sup> Ibid.

<sup>42</sup> Interview with Jeremiah Kobetbet during the FGD session in Kudu Kubus Location of a field study on 22 June 2021 undertaken by CEMIRIDE.

<sup>43</sup> Baringo County Assembly Hansard special seating on 21 September 2020. The seating adopted the Report of the Trade, Tourism and Cooperative Committee on Lake Bogoria National Reserve Management Plan 2019-2029

<sup>44</sup> Op Cite note 39

<sup>45</sup> ELC Petition 16 of 2018, in the Environment and Land Court in Eldoret. This case was filed by 172 members of the Endorois community claiming compensation for their 1970 displacement. As at the time of the report, the case is ongoing, and EWC is not enjoined as a party to the case.

in the management of funds, so increasing the benefits for the community. It must be highlighted, nevertheless, that the actual implementation of this plan and its provisions, especially the 25 per cent allocation increase to the Endorois community grant, is still facing a lot of resistance from some county government officials.

*'The EWC has since developed draft 25 per cent grant regulations but the County Government of Baringo staff are still hesitant to review and make their input to the regulations so as to operationalise the grant. The EWC recently held a meeting with the Governor and is waiting to see whether the process will be hastened. However, the EWC sees lack of political will from the county government to see the community benefiting from the grant.'* ~ **Richard Kamng'oror, CEO, EWC**

On employment, the Endorois still form the lowest number of the workers in the reserve. In 2016, for instance, the Endorois held a demonstration at the gate of the reserve, demanding jobs in the reserve.<sup>46</sup> They were given promises. However, the uptake of Endorois is still low and inconsequential. Information received from the Lake Bogoria National Reserve indicated that out of the 52 employees, 47 were from the Endorois Community. Only three of the Endorois were senior staff, making 6% of the establishment. There is no data on Endorois PWDs and women, among the LBNR staff.<sup>47</sup>

On the recommendation to engage in dialogue with the Endorois for the effective implementation of these recommendations, the government, on 19 September 2014, under *Gazette Notice* No. 6708, established a task force on the implementation of the commission's decision. It had a one-year tenure. However, there has been no published report on what the task force achieved.

Recommendations not implemented at all include the following: recognition of the rights of ownership to the Endorois and

restitute ancestral land; payment of adequate compensation for all the losses suffered; and a report on the implementation within three months from the date of notification.

The continued de-gazetting of their land is an environmental debacle as chunks of Indigenous forests have so far been excised for settlement by non-Endorois, to the detriment of anyone living on the lower plains around Lake Bogoria. Rivers draining into the lake, including River Waseges, which provides water for irrigation to the Endorois, have become seasonal, posing a great danger to the livestock rearing and subsistence farming.

Because of non-implementation of the African Commission's Endorois Decision, most people have no reliable source of livelihood, and are struggling under harsh climatic conditions. They have poor infrastructure and generally lack socio-economic amenities to support a better life.<sup>48</sup> For example, within a 6,400 square kilometre area inhabited by the Endorois community in Mogotio sub-county, there is not a single tarmac road. The study unearthed the following specific challenges the community is facing

#### **a. Access to Healthcare**

Health facilities in areas occupied by the Endorois are few and far between, and of low quality.<sup>49</sup> Without a proper road network, coupled with the ban on the community accessing, collecting and utilising traditional herbal medicines they have used for centuries, their health is always at grave risk.<sup>50</sup> On a stretch of over 30 kilometres from Mogotio, the last point where a tarmac road exists, to Maji Moto trading centre, there is no medical facility. Poisonous snake bites and cancer<sup>51</sup> have led to deaths and paralysis that could be averted in future with the establishment of medical facilities. Cases continue to be recorded in 2021. There are no maternity facilities for prenatal and postnatal care services, which exacerbates the suffering of these marginalised communities. In 15 locations, there are only

<sup>46</sup> FGD conducted at Kudu Camp on 20 June 2021 with members of the Endorois community for this report.

<sup>47</sup> This data was received from EWC Chief Executive Officer, Ricard Kamng'oror, who got it from the Chief Warden, Lake Bogoria National Reserve, James Kimaru. It is impossible to vouch for the information as no document was presented to confirm the figures availed.

<sup>48</sup> A field study undertaken by CEMIRIDE, with support from WITNESS, to unearth the actual situation of the community more than a decade after the Endorois Decision was made, reveals a people trapped in a vicious cycle of poverty and underdevelopment.

<sup>49</sup> FGD at Kudu camp, Kubus Location of a field study on 22 June 2021 undertaken by CEMIRIDE with support from WITNESS.

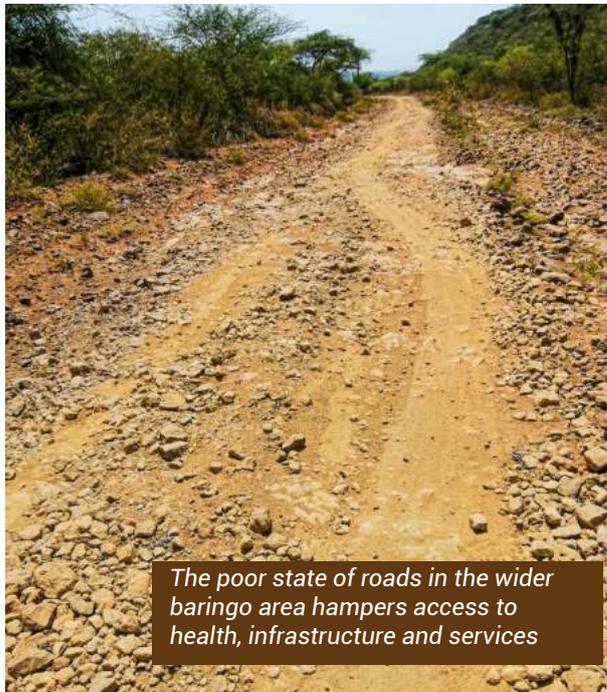
<sup>50</sup> Interview with Jeremy Chirchir, an Endorois community member, 19 July 2021 on phone for this report

<sup>51</sup> Ibid

two health centres.<sup>52</sup>

This means not much progress has been made since the last survey in 2014, which established that Baringo had an average distance of 15 kilometres to the nearest health centre.<sup>53</sup> By 2019, Mogotio only had one hospital, four health centres and 26 dispensaries (one faith-based), as well as four private clinics and nine community health units. There was not a single nursing home.<sup>54</sup> Most of these health centres do not offer specialised services, and have no theatres in cases of emergency or for complex treatment. The main hospitals that have these services are very far away and can only be accessed using specialised means of transport that are hard to come by, and very expensive when found. Due to these challenges, most of the serious health complications experienced by the Endorois community members end up being fatal.<sup>55</sup>

For emergency cases, locals must transport the sick all the way to Kabarnet (between 70 and 120 kilometres away) or to Nyahururu Town (90 and 200 kilometres away) to access proper medical care. Expectant mothers suffer many difficulties, having to traverse long distances on motor bikes, with stillbirths commonly reported and a high incidence of abnormalities, as well



*The poor state of roads in the wider baringo area hampers access to health, infrastructure and services*

as high maternal mortality rates and deaths of expectant mothers.<sup>56</sup> Health demographics data disaggregated by ethnic community or even sub-county within Baringo County are unavailable publicly. However, going by the information provided by Endorois community members during this study, as many as 90 per cent of women give birth outside hospitals.

*I come from Kumar. In 2019, a woman, who died in our village, had anaemia. She went to Kamar Dispensary and the doctor could only inject her with clinical glucose because it was all he had. There are no blood banks. She returned home and the next day, her family took her to the dispensary at Molok, where the clinical officer could not give any help and suggested that she be transferred to a more advanced facility in Nakuru, but a vehicle was delayed by almost two hours and she died while waiting at Molok. May be even if we had an ambulance in our area I believe this woman's life would have been saved. But poor road infrastructure and poor mobile phone network coverage continues to increase our suffering here ~Jane Chepkwony, Endorois community member*

## b. Access to Water

The availability of water in areas occupied by the Endorois community in Baringo South and Mogotio sub-counties is a serious challenge. The Endorois Community, in the complaint to the African Commission demonstrated that their access to clean drinking water had been affected because of the displacement. The African Commission noted:

*"In the instant communication in front of the African Commission, video evidence from the Complainants shows that access to clean drinking water was severely undermined as a result of loss of their ancestral land (Lake Bogoria) which has ample fresh water sources"<sup>57</sup>*

In Kaibos Location in Mogotio, people walk long distances to fetch water from the River Emsos, some 25 kilometres away. Those who can manage to hire motorcycles part with up

<sup>52</sup> Interview with Jane Chepkwony for this study on 20 June 2021.

<sup>53</sup> Kenya Interagency Rapid Assessment (2014) 'Baringo country baseline analysis', accessed at [https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/Baringo%20Secondary%20Data%20Review\\_20141112.pdf](https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/Baringo%20Secondary%20Data%20Review_20141112.pdf)

<sup>54</sup> Baringo County Government (undated) 'Health Sector Strategic Plan 2018-2022', p.11, accessed at [http://www.baringo.go.ke/index.php?option=com\\_jdownloads&task=download.send&id=1&catid=2&m=0&Itemid=0](http://www.baringo.go.ke/index.php?option=com_jdownloads&task=download.send&id=1&catid=2&m=0&Itemid=0)

<sup>55</sup> Focus Group Discussion with community members at Kudu Kubus Location of a field study on 22 June 2021 undertaken by CEMIRIDE

<sup>56</sup> Remarks by Jane Chepkwony during FGD session at Kudu Kubus Location of a field study on 22 June 2021 undertaken by CEMIRIDE.

<sup>57</sup> Op Cite Note 1 Para 288

to Ksh 70 (\$0.6) for a 20-litre jerry can. Poverty levels in the Endorois community are very high. Many families face serious challenges to access water, given the harsh terrain, and inaccessibility of naturally occurring water. Though water pans exist, they only provide temporary relief, especially for livestock during the rainy season, and the water is polluted and can spread waterborne diseases during the dry season.



*Facilities are still scattered far apart. We have a dispensary that was built in 1939, and until recently did not have a clinical officer for almost 4 months. It does not have staff most of the time. Most of the health facilities are more than 10 kilometres apart. They cannot address emergencies such as snake bites. They only open from Monday to Friday., yet health emergencies can occur at any time. In emergencies patients have to be transported to Mogotio or Marigat .Survival is a matter of chance. ~ Jeremia Kobetbet, Endorois community member*

Water pans have gradually disappeared due to prolonged and more frequent droughts and growing population pressure. Without government support, community members must either buy water (an expense most cannot afford) or walk long distances to fetch the precious commodity themselves.

*'It's possible to spend Ksh500 (\$5) in one day on water. And many of us just rely on our animals. We don't have any other work. So water is many times a luxury, we don't have an option but to drink what is there...If you use this salty water to cook your food, your rice turns yellow and it does not taste like normal rice ... but what can we do? I just wonder if we live in Kenya!'<sup>58</sup>*

The Kapndaram Water Project initiated by the national government, which was expected to provide a sustainable solution to the water crisis, never materialized, with the locals blaming the incompetence and unaccountability of the contractor. According to available data, in Baringo South sub-county, 76.4 per cent of the people use unimproved sources of water, which include ponds, dams, lake, stream/river, unprotected springs, wells, Jabia, and water vendors, against a national population of 47.4 per cent. In Mogotio sub-county, 82.6 per cent of the population use unimproved sources of water.<sup>59</sup> With sources of livelihood already vulnerable, putting more pressure on the locals' ability to continue to survive, the water situation and practices like open defecation are contributing to the spread of waterborne diseases due to contamination.

*"With poor roads like the one you've used and only 3 primary schools and 1 secondary school in this whole location, do you really think we have much hope? Only 1 primary school has been built more than 10 years after the court ruling, with no hope of a secondary school or a polytechnic in sight. ~ Jackson Kiplagat, Endorois community member*

### c. Access to Education

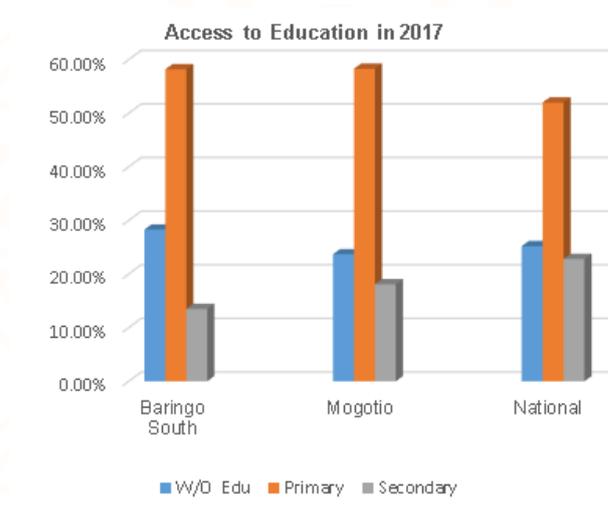
Due to limited livelihood opportunities most parents have found it difficult to finance the education of their children beyond primary school as the bursaries from the 10 per cent share of net income that the community currently receive from Lake Bogoria are inadequate. Priority is given to secondary school students, who get between Ksh 7000 and Ksh 10,000 each. Students in tertiary institutions receive no support through this fund.<sup>60</sup>

Kaibos Location stretches for 25 kilometres and has only four primary schools, about eight kilometres apart and only one secondary school. There is only one polytechnic at Maji Moto, which sometimes is not in use due to lack of students. Primary school children walk up to 10 kilometres. Many schools are not equipped to provide high quality education. They lack basic teaching resources such as

<sup>58</sup> Madam Fancie Kiprotich, a member of the Endorois Women's Forum, 19 June 2021.

<sup>59</sup> Kenya National Bureau of Statistics and Society for International Development (2013) Exploring Kenya's Inequality - Pulling Apart or Pooling Together?, Nairobi, pp.250 and 278.

<sup>60</sup> Interview with Jane Chepkwony during FGD session at Kudu Koibos Location for a field study on 22 June 2021 undertaken by CEMIRIDE



textbooks while most of them have no water supply.<sup>61</sup> And while there are some bursaries for Endorois children as part of the 10% received from LBNR revenues, they are not enough. And because the perception is that the Endorois community is allocated funds through the 10 per cent allocation, the people are denied resources from other bursary funds. This means that many Endorois children end up missing chances to further their education for lack of funds.

Basic education is free and compulsory in Kenya. There are costs, however, that parents must meet directly like paying for meals. In primary schools, for instance, parents must pay for uniforms, and meals, school renovation and development expenses that may be approved by management boards. In secondary schools, parents pay part of the fees, much as the government subsidises it. When, for instance, the Education Cabinet Secretary issued a directive that all students with school fee balances be sent home, many Endorois children went home and never returned.<sup>62</sup> Alternatively, while there have been some efforts by the government to provide free sanitary pads, the programme has not been consistent and many girls end up dropping out of school.<sup>63</sup> Such challenges lead to high levels of dropout, early marriage and unemployment.

In 2017, 28.3 per cent of the population in Baringo South sub-county had no formal

education, 58.2 per cent had only primary school education and just 13.5 per cent had received secondary school education and above. In Mogotio sub-county, meanwhile, the figures were 23.7 per cent, 58.3 per cent and 18.1 per cent, respectively. These figures compared to the national average of 25.2 per cent, 52.0 per cent and 22.8 per cent. Though the data is mixed, the disparities in secondary education levels in both sub-countries compared to the national average is a clear indication that fewer people are accessing quality education in the areas predominantly occupied by the Endorois, irrespective of the government policy of free compulsory basic education. This means that there are many challenges hindering access to education for Endorois children. As a result, they cannot effectively compete with other Kenyans in the formal job market. The academic performance is generally dismal while dropout rates are very high as hardships push more adolescents into charcoal burning and boda boda<sup>64</sup> riding. Many young residents, especially girls, end up in early marriages, which typically do not last.<sup>65</sup> This leads to a vicious cycle of poverty as many children are born and remain in poverty with no hope of escape. This dire situation has been exacerbated by the emergence of the Covid-19 pandemic.

*When we go to meetings to discuss ward bursary allocations from CDF and the national government, we, from the Endorois community, are told that we are already receiving grants from Lake Bogoria and should allow others to also get a share. We feel that we are continuously being discriminated against ~ Jane Chepkwony*

#### **d. Right to and compensation for lost land**

One of the most curious developments is the omission of community land belonging to the Endorois from the inventory of unregistered community land by the Baringo County government to the Ministry of Lands.<sup>66</sup> The Endorois Welfare Council (EWC) disputed the inventory, and provided a list of 9 pieces of

<sup>61</sup> Ibid

<sup>62</sup> Ibid

<sup>63</sup> Op Cit Note 58

<sup>64</sup> Mode of transport used is bicycles or motorcycles

<sup>65</sup> Interviews with Jane Chepkwony and Jeremiah Kobetbet during the FGD session in Kudu Kubus Location of a field study on 22 June 2021 undertaken by CEMIRIDE.

<sup>66</sup> In a letter dated 27 August 2020, from the Baringo County to the Ministry of Lands, it listed unregistered community lands for other communities excluding the Endorois ones.

unregistered land belonging to the community.<sup>67</sup> One key concern of the community is the lack of effective and visible public participation in community land registration. The exclusion of the Endorois from community land registration by some state officers is viewed as a ploy to side-line the peoples from their rightful claims.<sup>68</sup>

The Endorois forested land on the eastern escarpment of the Great Rift Valley has continued to be subdivided and allocated to non-Endorois, who then settle on the land without seeking consent from the community members who are the supposed beneficiaries of the land. This has resulted in wanton destruction of the biodiversity (flora and fauna) on a massive scale.<sup>69</sup> As a result, the Endorois:

1. Have lost their water sources, which served both their highlands and lowlands;
2. Have lost their wet and dry season pasture and water sources and experienced scarce, unpredictable, low intensity rains, leading to rampant water scarcity;
3. Increased human wildlife conflict due to the destruction of habitats, breeding sites and migratory routes for wildlife, including elephants.

Residents cannot access natural salt and other essential nutritional minerals along the lake shores for themselves and their animals. This has a negative impact on the socio-economic wellbeing of the community. Poor agricultural practices lead to soil erosion and the siltation of Lake Bogoria; the geyser and hot springs are also now disappearing. This environmental degradation could be a major cause of the rising water levels in Lakes Bogoria and Baringo, as well as the new huge swamp dubbed 'Lake 94'. There are now rampant floods and an increase in resource-based armed conflicts with other pastoral communities

#### **e. Level of economic distribution and access to livelihood improvement opportunities**

The Endorois are predominantly a nomadic Indigenous community, who earn their

livelihoods from beekeeping and herding cattle, goats and sheep. With limited access to grazing land, locals are forced to scavenge for pastures for their animals, thus exposing them to vulnerability in the context of an increasing population and with no alternative livelihood opportunities.

Considering the role that transport infrastructure plays in enhancing economic progress, the state of the roads across the Endorois territory is dismal. With some very rough murrum roads, very few investors are willing to provide public transport. Access to livestock and other markets is a serious challenge that has made it increasingly difficult to enhance incomes in the community. The failure to develop transport infrastructure has played a major role in deepening poverty among the Endorois and has deprived them of an opportunity to develop.

No royalties from specific resources are being paid to the Endorois; efforts to establish who receives these from the Kenyan government are unfruitful; moreover, without a legislative framework that guides benefits sharing mechanisms in Kenya, including payment of royalties, it is almost impossible to establish if indeed the Endorois genetic resources are not being bio-pirate. The fourth recommendation in the African Commission's Endorois Decision that members of the community ought to be given priority in employment has yet to have significant impact. The Endorois still form the lowest number of the workforce especially at the top management in the reserve and county government<sup>70</sup>.

There is a need for more jobs to be created for the Endorois, especially in the tourism sector with the support of the county and national governments. Today, the Lake Bogoria management committee has not established operational guidelines in the execution of its mandate, especially regarding jobs and other benefits. It is, therefore, difficult to establish its accountability in disbursing and

<sup>67</sup> The EWC letter to the County Executive Committee Member for Lands, Housing and Urban Development (Equivalent to a Cabinet minister at the county), dated 14 April 2021, noted the omission of certain communities from the county inventory of community lands submitted to the Ministry of Lands. In this letter, EWC listed nine community lands: Irony Community Conservancy, Chuine Community Conservancy, Kiborgoch Community Conservancy, Lake Bogoria Community Reserve, Maji Moto Swamp/Wetland, Arabal Community Land, Makobe Community Forest, Chepchuchumo Community Forest and Siginwo Community Forest.

<sup>68</sup> Phone interview with Eric Kimalit, chairperson, Endorois Welfare Council on 20 August 2021.

<sup>69</sup> Kangogo, J. (2021), 'Endorois worried about massive grabbing of forest', *The Star*, 14 February, accessed at <https://www.the-star.co.ke/counties/rift-valley/2021-02-14-endorois-worried-about-massive-grabbing-of-forest/>

<sup>70</sup> Op Cite Note 46

managing benefits from the reserve, which according to the Africa Commission's Endorois Decision belongs to the community.<sup>71</sup> Due to lack of sustainable income, and with their continued exclusion from fully benefiting from the revenues generated from the Lake Bogoria Game Reserve, as recommended by the African Commission, many Endorois still grapple with food insecurity. There has also been an increase in social problems at market centres as the challenges Endorois youth face have led some to engage in drug and alcohol abuse.<sup>72</sup> Members of the community feel that if they were more meaningfully engaged, and a properly managed benefit-sharing scheme was in place, there would be improved livelihood options available to them.<sup>73</sup>

*"One of 3 elders, including a chief, died recently, who have really been at the forefront in fighting for the rights of the Endorois. Had the recommendations been implemented, the benefits would have reached these men before they left us. Their families right now are in abject poverty, and we hope someone one day will come to their rescue. But as a show of honour to their departed spirits, the most important is to implement the court's recommendation."*

**Jackson Kiplagat, Endorois community**

Due to poverty, the Endorois have witnessed an increase in land degradation and unsustainable activities such as charcoal burning, which have a negative impact on the environment as well as on traditional operations, including beekeeping, because of the adverse effects from smoke and loss of flower habitats as a result of the massive tree cutting. While biomass such as firewood and charcoal are the predominant energy source across Kenya, especially in rural areas, Indigenous Peoples like the Endorois have traditionally played a unique and major role in forest conservation. They used only deadwood for cooking and prohibited logging,

while encouraging tree-cover preservation.<sup>74</sup> In Baringo South sub-county, 85.1 per cent and 12.9 per cent used firewood and charcoal respectively, bringing the total biomass use to 98 per cent of the population. In Mogotio sub-county, it was 88.5 per cent and 10 per cent respectively, making a total of 98.5 per cent of the total population using biomass.<sup>75</sup>

*"I applied many times until I gave up, so did many other friends of mine, including their children. When you say reserved employment for the Endorois, I really don't know who they employ,"*  
**says Jeremiah Kobetbet, an elder based at the Netbon Kudu Camp in Maji Moto Village**

For Indigenous women, including Endorois, the options to earn additional income to access alternative energy sources, improve labour productivity or engage in social and political interaction outside the household are minimal.<sup>76</sup> Women deprived of such basic energy services are not likely to earn a living, stay healthy, and have time for learning and fulfilment.<sup>77</sup> These conditions create further barriers to women's ability to voice their energy concerns and claim their economic, social and cultural rights, reinforcing their exclusion and exacerbating their problems.<sup>78</sup> Smoke from burning biomass fuels for cooking, heating and lighting is the main contributor of the high household air pollution levels with serious health implications, such as carbon monoxide, benzene and formaldehyde from biomass.<sup>79</sup>

#### **f. Security situation around the Endorois community land**

The Endorois have since 2005 experienced incessant insecurity in the form of cattle rustling. The government has never taken serious and effective measures to address this menace. The neighbouring communities, who have superior weapons - the government has disarmed the

<sup>71</sup> Op Cite Note 13

<sup>72</sup> Interview with community members during FGD session at Kapkuikui Centre, Kapkuikui Location, Mochongoi Ward, Baringo South sub-county during a field study on 20 June 2021 by CEMIRIDE

<sup>73</sup> Interview with Endorois community members during a visit between 21 and 24 June 2021.

<sup>74</sup> Songole, A. and Ohenjo, N. (2020) 'How climate change and environmental sustainability relate to human rights: Clean cooking and Indigenous Peoples' perspective from Kenya', in G. Verde, M. Garrido, P. Mthembu and A. Wilkins (eds.) *The Global Politics of Human Rights: Bringing the Universal Declaration of Human Rights (UDHR) into the 21st Century*, Berlin Forum on Global Politics, Institute for Global Dialogue, and RECLAIM! Human Rights Initiative, pp. 33-39.

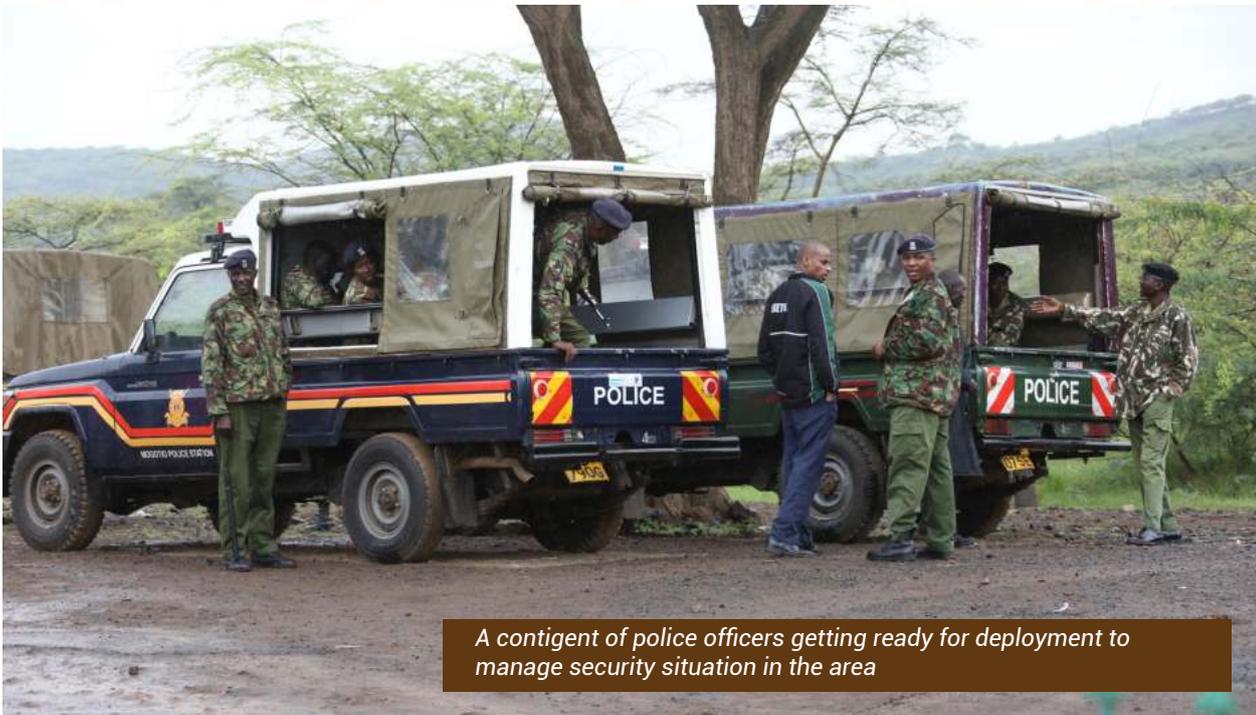
<sup>75</sup> Kenya National Bureau of Statistics and Society for International Development (2013) *Exploring Kenya's Inequality - Pulling Apart or Pooling Together?*, Nairobi, p.475.

<sup>76</sup> Op Cite Note 71 pp 34

<sup>77</sup> Op cite Note 71 pp 34

<sup>78</sup> Op Cit Note 71 pp 34

<sup>79</sup> Op cit Note 71 pp 34



*A contingent of police officers getting ready for deployment to manage security situation in the area*

Endorois police reservists without doing the same to the aggressors - have continuously mounted attacks on vulnerable communities and households<sup>80</sup>. The insecurity has affected Mukutani and Mochongoi wards (Ng'elecha and Arabal sub-locations in Arabal location in Mukutani ward, Kapkechir sub-location in Mochongoi location, Kasiela and Chebinyiny sub-locations in Chebinyiny location and Mbechot sub-location in Mochongoi ward).<sup>81</sup>

*the situation has worsened. The aggressors are forcefully evacuating Endorois residents of Kabel location of Mochongoi ward; two houses have been torched. The Endorois community members are fleeing their homes, with one person reportedly killed during these confrontations on 31 January 2022. Three more people were killed in Kasela on 1st February 2022. About 8,000 people are affected in the three locations of Arabal, Chebinyiny and Mochongoi. The security team on the ground does not appear to be getting the required back-up from Nairobi. I have written a letter to the Baringo County Commissioner requesting for the removal of the aggressors from Endorois territory using the pre-independence maps as it is now obvious, they are not on cattle rustling but expanding their land. The Endorois also requested the national government to appoint police reservists from the Endorois community*

*to protect their land and property ~ EWC CEO  
Richard Kamng'oror*

Due to the destruction of infrastructural facilities (education, health, cattle dips, water tanks, business domestic premises) and displacement from their land, Endorois lost one secondary school (Arabal Ebosos Secondary School), five primary schools (Ng'elecha, Arabal, Kapindasum, Chemorong'ion and Mukutani), each with an early childhood education (ECD) section, and two stand-alone ECDs (Ramacha and Katilomwo). More than 120 Endorois lives have been lost with over 10,000 displaced from their lands, covering nearly 600 square kilometres, and hundreds of residents maimed by permanent disabilities and other forms of injury between 2005 and 2022.<sup>82</sup>

The Endorois have lost livestock to the raiders estimated to be worth more than Ksh 1 billion.<sup>83</sup> Socio-economic and environmental impacts, including decreased livelihoods, have contributed to rising poverty levels. Many children have dropped out of school, due to pressure on land, and displaced Endorois have continued encroaching on forests and other water catchment areas, thereby aggravating the destruction therein. The crime rate has escalated, as has family disintegration and mental illness.<sup>84</sup>

<sup>80</sup> Op Cite Note 8

<sup>81</sup> Ibid

<sup>82</sup> Ibid

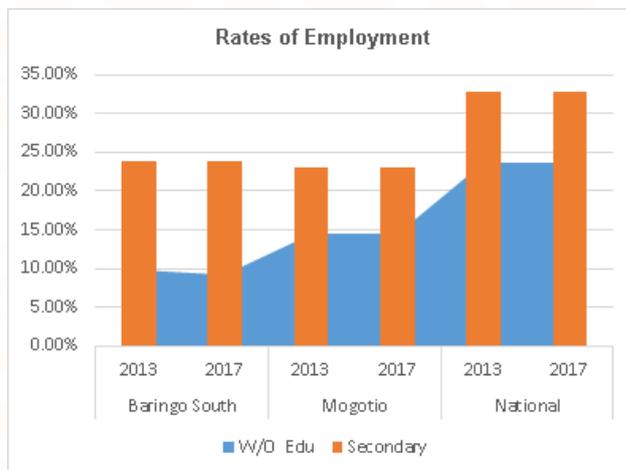
<sup>83</sup> Ibid

<sup>84</sup> Ibid

# Right to Development

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Underpinning the African Commission's Endorois Decision is the right to development. The decision was the first time globally that a ruling has been made on the right to development.<sup>85</sup> The African Commission found that the Kenya Government's failure to consult or compensate Endorois for their land amounted to a violation of their right to development. The data analysis in this report suggests that the community's impoverishment has actually worsened, with poor education levels, limited access to health care, and high child and maternal mortality rates. Many community members believe that this situation is rooted in their displacement from their ancestral lands.<sup>86</sup>



The right to development is "an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development... The human right to development also implies the full realization of the right of peoples to self-determination. This includes the exercise of their inalienable right to full sovereignty over all their natural wealth and resources."<sup>87</sup> In the

Endorois case, the Commission found that Kenya had violated their right to development by side-lining them from decision-making and excluding them from the benefits of development.<sup>88</sup>

Based on available development data from Baringo South and Mogotio sub-counties,<sup>89</sup> the quality of life of the Endorois has not improved over the years, as their right to development has continued to be violated. In 2013 in Baringo South sub-county, for instance, those without any level of education, and those with secondary level or higher education, who were in wage employment were 9.8 per cent and 23.9 per cent, respectively, while in Mogotio sub-county they were 14.4 per cent and 23.1 per cent. This was against a national average of 23.7 per cent and 32.7 per cent respectively.<sup>90</sup> These figures had not changed significantly by 2017, when the proportion of those who were formally employed in Baringo South without any education were 9.2 per cent and those with secondary school education and above were 23.9 per cent. In Mogotio, the figures were 14.4 per cent for those employed without education and 23.1 per cent for those with secondary school education and above<sup>91</sup>.

As with other pastoralist communities, climate change for the Endorois is felt through increasingly severe and frequent droughts, as well as major floods in the Arid and Semi-arid Land (ASAL) areas they occupy. Worsened by the decreasing landmass for their pastoralist livelihood, the negative impacts of climate change mean that the quality of life of this community has plummeted.

85 Claridge, L. (2020) 'Landmark ruling provides major victory to Kenya's Indigenous Endorois', 26 August, available at <https://minorityrights.org/publications/landmark-ruling-provides-major-victory-to-kenyas-Indigenous-endorois-august-2010/>

86 CEMIRIDE in-person interviews with Endorois community members on 19 June 2021

87 Declaration on the Right to Development, adopted by General Assembly resolution 41/128 of 4 December 1986, Article 1.

88 UN (2016) Frequently Asked Questions on the Right to Development, Fact Sheet No. 37, New York and Geneva, p.9

89 Op Cit Notes 11 and 17

90 Op Cite Note 11

91 Op Cite Note 17



*A group of administration police officers stand guard in watch as a large group of the Endorois community carry out public demonstrations to bring light to their grievances.*

**Pastoralists depend primarily on livestock and livestock products for food and income, grazing their animals on communally managed or open-access pastures,..”**

Pastoralists depend primarily on livestock and livestock products for food and income, grazing their animals on communally managed or open-access pastures, and using seasonal mobility as a means of managing access to water and pastures in the drylands. They manage their livestock, water, land and pasture using their Indigenous knowledge, mediated by traditional institutions. The proportion of those engaged in family agricultural holdings (the assumption being that Endorois family agricultural holdings are predominantly pastoralist in nature) were 40.3 per cent in Baringo sub-country and 18.1 per cent in Mogotio.<sup>92</sup> The lack of appropriate policies that are adaptive to the needs of pastoralist communities,

incorporating Indigenous knowledge and recognizing the role of customary institutions, has had a destabilising effect on the livelihoods of pastoral systems and reduced their ability to cope with climate change.

<sup>92</sup> Kenya National Bureau of Statistics and Society for International Development (2013) Exploring Kenya's Inequality - Pulling Apart or Pooling Together?, Nairobi, pp.111 and 118.

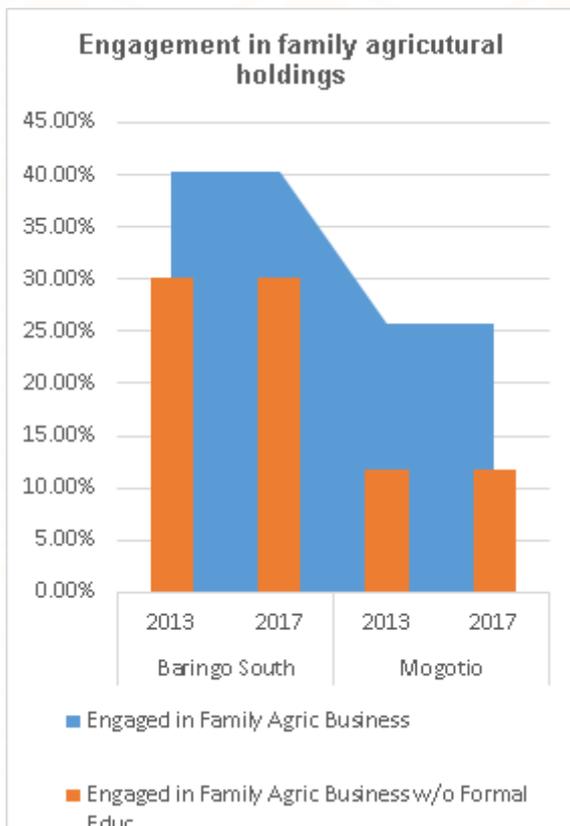
## Legislative, policy and institutional developments to date

The Endorois Decision coincided with the enactment of the Constitution of Kenya, 2010, which provided for the protection of the rights of Indigenous Peoples. Article 56 on affirmative action and Article 260, which gives the basis of recognition of Indigenous Peoples, and Article 2 (5) of the Constitution of Kenya, 2010, provide that any treaty or convention ratified shall form part of Kenyan law. Kenya has ratified The African Charter on Human and Peoples' Rights that establishes the African Commission on Human and Peoples' Rights, therefore, making its decisions final and binding to the State parties. The country has also ratified many other international treaties relating to the economic, social, cultural and political rights that were contested by the Endorois in the case. Therefore, it is obligated to implement the decision, as not doing so is a clear violation

of its own Constitution.

As noted earlier in this report, in a significant step, Kenya now admits the existence of Indigenous Peoples, within the accepted characterisation and criteria of the international human rights standards. In its fourth periodic report submitted to the UN Human Rights Committee (UNHRC), the government officially recognises the existence of Indigenous Peoples in Kenya for the first time. It notes that they form part of marginalised communities, and states that they must be protected through affirmative action designed to ensure that they enjoy their human rights and fundamental freedoms on an equal footing with others.<sup>93</sup> This recognition is a milestone for Indigenous Peoples since the government has for long disputed the existence of Indigenous Peoples in Kenya. However, going by the fact that the recommendations of the African Commission's Endorois Decision have still not been implemented, it is obvious that in practice these protections are yet to be realised.

Immediately after the enactment of the Constitution of Kenya, 2010, the country embarked on revising its land legislative and policy framework to align it with the new provisions. Many of these mirror the thinking around the African Commission's Endorois Decision. The Kenyan land regime is administered through various progressive legal and policy mechanisms. The Constitution of Kenya, 2010, provides that the State shall not deprive a person of property of any description, or of any interest in, or right over, a property of any description, unless in public interest (Article 40 (3), and where land is concerned, just compensation paid even where those who can prove ownership of such land have no titles to such land (Article 40 (4)).<sup>94</sup> Article 63 (1) (d)



<sup>93</sup> 'Fourth periodic report submitted by Kenya under Article 40 of the Covenant, due in 2015', received 28 December 2018, UN Human Rights Committee, paragraph 5, accessed at <https://digitallibrary.un.org/record/3823097?ln=en>

<sup>94</sup> Ohenjo, N., (2003), Kenya's Castaways: the Ogiek and National Development Processes, Minority Rights Group, London. pp8

provides that community land is, among others, land that is (1) lawfully held, managed or used by specific communities such as community forests, grazing areas or shrines; or (ii) ancestral lands and lands traditionally occupied by hunter-gatherer communities. Article 67 empowers the National Land Commission (NLC) to initiate investigations, on its own or on a complaint into present or historical land injustices, and recommend appropriate redress.

Section 2 of the Land Act, 2012, stipulates that community land can only be converted to either public or private land in accordance with the law on community land according to Article 63 (5) of the Constitution of Kenya, 2010. And while the Community Land Act, 2016, is yet to be operational, the Land Act, 2012, Section 111 provides that just compensation must be paid for land acquired compulsorily with determined interest. Section 120 of the Act clearly stipulates that such land compulsorily acquired cannot be formally taken before compensation has been fully paid. Section 15 of the National

of sectoral laws on land use and sustainable exploitation, utilisation, management and conservation of the environment and natural resources.

Through Article 69, the Constitution provides that the State shall ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources. It should also ensure the equitable sharing of the accruing benefits, and protect and enhance intellectual property in, and Indigenous knowledge of, biodiversity and the genetic resources of the communities. Subsequent legislation has provided mechanisms through which MIPs can effectively participate in the management and exploitation of natural resources.

The Forest Conservation and Management Act, 2016, establishes community forest associations to formulate and implement sustainable forest programmes consistent with the traditional forest user rights of the relevant community,

**The lack of implementation of this decision has negatively impacted on the Endorois community and subjected its members to deeper poverty, illiteracy and indignity. Kenya cannot effectively fight poverty and the associated problems of illiteracy, unemployment and poor health if a significant proportion of its population..."**

Land Commission Act, 2012, by effecting Article 67 (3) of the Constitution of Kenya, 2010, proposes several remedies to address historical land injustices including restitution, compensation if it is impossible to restore the land, and affirmative action programmes for marginalised groups and communities.

Underpinning the Kenya Land Policy of 2010 was the question of historical land injustices, which include evictions and lack of compensation for Indigenous communities. This also largely informed the provisions in the Constitution of Kenya, 2010, especially Article 60, which requires that land be managed and used in a manner that is equitable, efficient, productive and sustainable, as well as Articles 66, 68 and 69 that provide for regulation of land uses, revision

as well as protect sacred groves and protected trees. Alternatively, there is also the Community Land Act, which communities can lay claim to and reserve land for conservation, cultural and heritage sites, or any other purposes, as may be determined by the community, county government or national government for the promotion or upgrading of public interest.

Since the decision, there has not been a mechanism to facilitate and monitor the implementation of the recommendations, with the active participation of the Endorois. Since 2010, the country's human rights record has been reviewed three times by the UN Universal Periodic Review (UPR)<sup>95</sup> mechanism. These reviews were in 2010, 2015 and most recently 2020. In 2010, Kenya

<sup>95</sup> Universal Periodic Review (UPR) is One of the key mandates of the United Nations (UN) Human Rights Council (HRC). This is a unique Human Rights mechanism where each of the 194 Member States of the United Nations is reviewed every five years. Kenya's human rights record was reviewed by the UNHRC in 2010, 2015 and 2020,



*Scores of members of the Endorois community stage a protest to speak out about land disenfranchisement and lack of development*

accepted a recommendation<sup>96</sup> to implement the recommendations and decisions of its own judicial institutions and of the African Commission, particularly those relating to the rights of Indigenous Peoples. In 2015, Kenya accepted<sup>97</sup> key recommendations critical to Indigenous Peoples' rights: To strengthen effectively the protection of the rights of Indigenous Peoples, including to their ancestral lands; and continue implementing the legislation on the protection of the rights of Indigenous Peoples and their lands. In the latest review, Kenya accepted a recommendation to consider further measures to enhance the meaningful participation of Indigenous Peoples in all matters affecting them. The acceptance of these UPR recommendations over the years, and the reiteration of existence of Indigenous Peoples in its fourth periodic report to the UNHRC are a clear indication that Kenya is alive to the fact that for them to develop, Indigenous Peoples

need special protections, as elaborated by the Constitution of Kenya, 2010, as well as through various international law instruments. What is incomprehensible, however, is the persistent lack of effort by the government to put in place measures or mechanisms to implement the protection of the rights of Indigenous Peoples including payment of compensation for the already ascertained losses and royalties for ongoing economic activities on Indigenous Peoples' lands.

<sup>96</sup> Report of the Working Group on the Universal Periodic Review on Kenya, 17 June 2010, para 101.114 accessed at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/144/88/PDF/G1014488.pdf?OpenElement>

<sup>97</sup> Report of the Working Group on the Universal Periodic Review of Kenya, 26 March 2015 Para 142.176 accessed at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/064/59/PDF/G1506459.pdf?OpenElement>

# Conclusion

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Land and natural resources are central to the socio-economic and cultural lives of the Indigenous Peoples. The African Commission held that the government has a higher duty to protect these communities and promote their cultural rights through the creation of opportunities, policies, institutions, or other mechanisms that allow for different cultures and ways of life to exist, develop in view of the challenges facing Indigenous communities. These challenges include exclusion, exploitation, discrimination and extreme poverty; displacement from their traditional territories and deprivation of their means of subsistence; and lack of participation in decisions affecting the lives of the communities.<sup>98</sup> The lack of implementation of this decision has seriously negatively impacted the Endorois community and by extension other Indigenous communities, excluding them from the benefits of development and undermining their right to live a dignified existence.

The lack of implementation of this decision has negatively impacted on the Endorois community and subjected its members to deeper poverty, illiteracy and indignity. Kenya cannot effectively fight poverty and the associated problems of illiteracy, unemployment and poor health if a significant proportion of its population - namely, Endorois and other marginalised Indigenous communities - remains poor, despite the significant improvements in the welfare of Kenyans generally over the last decade. While poverty levels have declined across the country since 2005, there remain some areas with pockets of concentrated poverty.<sup>99</sup> While disaggregated data on poverty levels among different ethnic communities is not available, the poor outcomes evident in South Baringo and Makotia (both areas predominantly inhabited by Endorois communities) suggests that poverty levels are disproportionately high

among them.

Kenya has committed to internationally agreed development goals such as the Sustainable Development Goals (SDGs), whose targets it cannot meet, unless it fully involves Indigenous communities, including the Endorois. The country is pushing, among other measures the Big 4 Agenda, and Vision 2030, whose targets will be impossible to meet unless the rights of Indigenous communities are fully protected. Energy poverty that is clearly experienced by the Endorois at very high levels undermines the realization of the SDGs, specifically SDG 7, which aims to achieve affordable and clean energy for all. Moreover, the government's long-term economic blueprint, Vision 2030, aims at transforming Kenya into "a newly industrialising, middle-income country providing a high quality of life to all its citizens in a clean and secure environment". The social pillar of Vision 2030, "Enhanced Equity and Wealth Creation Opportunities for the Poor", underscores the government's commitment to eliminate poverty. This vision is given more impetus by the SDGs and devolved system of government.

However, the only way the government will attain these various development targets is to make a genuine commitment to protect and promote the rights of Indigenous communities. This can only be achieved with the implementation of the African Commission's Endorois Decision recommendations. One of the major reasons why Kenya is still struggling to meet its development targets is the continued violation of the right to land and natural resources of Indigenous Peoples: until Indigenous Peoples can play a meaningful part in the planning and execution of programmes that will lift them out of poverty, these targets will remain out of reach.<sup>100</sup>

<sup>98</sup> African Commission (2009) 276/03: Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) / Kenya: Summary of Alleged Facts, para 248.

<sup>99</sup> Kenya National Bureau of Statistics (2018) Basic Report on Wellbeing in Kenya, Nairobi, p.9

<sup>100</sup> KNBS The basic wellbeing report of Kenya <https://www.knbs.or.ke/?wpdmpo=basic-report-well-kenya-based-201516-kenya-integrated->

# Recommendations



*Lake Bogoria, Kenya - Home of the Indigenous Endorois Community*

1. The government should constitute a new task force on the implementation of the African Commission's Endorois Decision. The composition of the task force should include representation of the Endorois and Indigenous Peoples' Rights Experts.

2. The National Land Commission, according to Section 15 of the National Land Commission Act, 2012, read together with Article 2 (5) of the Constitution of Kenya, 2010, should adopt and fully implement the Endorois decision. Immediately facilitate the development of an inventory/register of Indigenous Peoples in Kenya and hence protect their lands.

3. Government should pass benefit-sharing legislation as required by the Constitution of Kenya 2010.

4. Endorois benefit-sharing mechanisms and structures should be expanded to include the representatives of the EWC.

5. The government should provide data on internally displaced persons because of ethnic conflicts, climate change and development projects and ensure that their rights and issues are adequately addressed.

6. The African Commission on Human and Peoples Rights (ACHPR) should step up its efforts to engage with the Kenyan Government on the implementation of its decision on the Endorois complaint.

7. Donors and development actors should support capacity building of government officers in charge of the implementation of the rights of marginalised communities to enable them to understand the importance and value of securing the rights of Indigenous communities in national government development.

CEMIRIDE, WITNESS and MRG and other civil society groups should support advocacy efforts of the Endorois community to implement the African Commission's decision.



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