

Country Technical Note  
on Indigenous Peoples' Issues

# Republic of Kenya



Enabling poor rural people  
to overcome poverty



**Country Technical Notes on Indigenous Peoples' Issues**  
**The Republic of Kenya**

**Submitted by:**

**IWGIA**

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## Acronyms and Abbreviations

<b>ACHPR</b>	African Commission on Human and Peoples' Rights
<b>ASAL</b>	Arid and Semi-Arid Lands
<b>AU</b>	African Union
<b>AWF</b>	African Wildlife Fund
<b>CBO</b>	Community Based Organization
<b>CELEP</b>	Coalition of European Lobbies for Eastern African Pastoralism
<b>CFA</b>	Community Forest Association
<b>CPS</b>	Country Partnership Strategy (World Bank)
<b>COSOP</b>	Country Strategic Opportunities Paper (IFAD)
<b>FAO</b>	Food and Agricultural Organization
<b>FBO</b>	Faith Based Organization
<b>FGM</b>	Female Genital Mutilation
<b>GDP</b>	Gross Domestic Product
<b>GEF</b>	Global Environment Facility
<b>GIZ</b>	German Agency for Technical Cooperation (formerly GEZ)
<b>GoK</b>	Government of Kenya
<b>HDI</b>	Human Development Index
<b>HIV/AIDS</b>	Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome
<b>IADC</b>	Integrated Agriculture Development Consult
<b>IBRD</b>	International Bank for Reconstruction and Development
<b>ID</b>	Identity (Card)
<b>IDA</b>	International Development Association
<b>IDP</b>	Internally Displaced Persons
<b>IEA</b>	Institute of Economic Affairs
<b>IEBC</b>	Independent Electoral Boundaries Commission
<b>IFAD</b>	International Fund for Agricultural Development
<b>IGAD</b>	Intergovernmental Authority on Development
<b>ILO</b>	International Labor Organization
<b>IMF</b>	International Monetary Fund
<b>IMLU</b>	Independent Medico-Legal Unit
<b>IPP</b>	Indigenous Peoples Plan
<b>IPPF</b>	Indigenous Peoples Plan Framework
<b>IWGIA</b>	International Work Group for Indigenous Affairs
<b>KADU</b>	Kenya African Democratic Union
<b>KANU</b>	Kenya African National Union
<b>KHRC</b>	Kenya Human Rights Commission
<b>KJAS</b>	Kenya Joint Assistance Strategy
<b>KNBS</b>	Kenya National Bureau of Statistics
<b>KNCHR</b>	Kenya National Commission on Human Rights
<b>LAPSSET</b>	Lamu Port and Southern Sudan Ethiopia Transport Corridor
<b>LPI</b>	Livestock Production Initiative
<b>MoE</b>	Ministry of Education
<b>MoH</b>	Ministry of Health
<b>MoMS</b>	Ministry of Medical Services
<b>MP</b>	Member of Parliament
<b>MTP</b>	Mid-Term Plan
<b>NACONEK</b>	National Commission for Nomadic Education in Kenya
<b>NCIC</b>	National Cohesion and Integration Commission
<b>NFD</b>	Northern Frontier District
<b>NGO</b>	Non-Governmental Organization
<b>NLP</b>	National Land Policy
<b>OAU</b>	Organization of African Unity
<b>OCHA</b>	Office for the Coordination of Humanitarian Affairs
<b>ODA</b>	Official Development Assistance
<b>ODM</b>	Orange Democratic Movement

<b>OHCHR</b>	The Office of the High Commissioner for Human Rights
<b>OP</b>	Operational Policy
<b>OPEC</b>	Organization of the Petroleum Exporting Countries
<b>PNU</b>	Party of National Union
<b>PPG</b>	Pastoralist Parliamentary Group
<b>TJRC</b>	Truth, Justice and Reconciliation Commission
<b>TNC</b>	The Nature Conservancy
<b>UNDAF</b>	UN Development Assistance Framework
<b>UNDP</b>	UN Development Programme
<b>UNDRIP</b>	UN Declaration on the Rights of Indigenous Peoples
<b>UNESCO</b>	UN Educational, Scientific and Cultural Organization
<b>UPR</b>	Universal Periodic Review
<b>WB</b>	World Bank
<b>WBG</b>	World Bank Group
<b>WHO</b>	World Health Organization
<b>WISP</b>	World Initiative for Sustainable Pastoralism
<b>WWF</b>	World Wildlife Fund



**Country Technical Note on Indigenous Peoples' Issues**  
**The Republic of Kenya**

**Summary**

The Republic of Kenya has a multi-ethnic population, among which more than 25 communities identify as indigenous. The concept of indigenous peoples is not recognized in Kenya but the government acknowledges the existence of "marginalized communities" and the new 2010 Constitution identifies these in terms very similar to the language used in the UNDRIP. These communities include hunter-gatherers and pastoralists. Both communities experience economic marginalization and socio-political exclusion in a state dominated by the interests of larger agricultural groups.

Most hunter-gatherer communities live in the forested areas of the Highlands and the coast or near rivers and lakes. This is where they used to hunt (and/or fish) and gather honey and other forest products. Despite administrative efforts to assimilate them within larger ethnic groups, they have to a large extent kept their distinct identity and culture. The pastoralist groups are found on the arid and semi-arid lands (ASALs), which constitute 84% of the country's area. They are diverse in terms of size, culture and identity. However, they also share several features: their capacity to adapt and survive in a harsh environment; the importance of livestock for their subsistence but also for their identity and culture; the system of formal age-sets and "morahood" (warriorhood)—a period for the youths to develop and assert their bravery through cattle raiding.

These indigenous peoples all have a long history of land dispossession that continues to this day. This dispossession has happened in the name of agriculture, nature conservation, military priorities and development, but also because policy-makers saw the indigenous livelihoods as being primitive and environmentally degrading. Both hunter-gatherers and pastoralists have reacted against their dispossession by fighting, protesting and lodging cases against the government, albeit to little avail. Instead, they have seen their livelihood systems undermined and irrevocably altered. For hunter-gatherers, the ban on hunting and their eviction from their ancestral forests have meant that they now live on the edges of these forests, without any legal access to land or reliable sources of livelihood. In the case of the pastoralists, the loss of rangelands and mobility has led many of them to give up their nomadic lifestyle. They have become semi-sedentarized agro-pastoralists, like some of the Maasai, or semi-nomadic like some of the Turkana and the Borana. Yet others, like many Rendille, have been forced by severe droughts and/or recurrent inter-ethnic conflicts to seek refuge in urban centers.

Kenya's indigenous peoples are among the poorest of the poor. They have never received any compensation for their land losses. Nor are they drawing any benefits from the use their lands have been put to as, e.g., game reserves or infrastructure projects. Food insecurity is widespread and food relief has, for many, become the only option. Others chose to migrate to cities in search of work but discrimination and their lack of education makes it difficult for them to find employment. Compared with the rest of the population, their health and education situation is far worse. Their human rights are violated by discrimination and abuses committed in relation to inter-ethnic conflicts and government interventions. New initiatives such as the Truth, Justice and Reconciliation Commission have therefore been welcomed. Access to legal services is hampered by a number of constraints and the high costs involved. The situation of girl children and women is marred by a number of human rights violations, e.g., denial of education, FGM and early marriages, lack of legal rights and domestic violence. Some women have, however, been able to overcome these obstacles, have formed small NGOs and are participating in public forums.

Indigenous peoples' participation in politics at the local and national level faces many obstacles (discrimination, lack of education and information, etc.). The delineation of constituencies makes it impossible for hunter-gatherers and small agro-pastoralist groups to be represented by one of their own at the national level. Pastoralist groups are better represented at the local and national level. However, due to the deficiencies of the political system (corruption, one-party dominance, etc.), this has not been of much benefit, as the slow pace of development in pastoral areas clearly shows.

Kenya's process towards democratization and devolution and the adoption of a new Constitution in 2010 marks a new understanding of the marginalization suffered by indigenous peoples. The Constitution, as well as other new legal texts, contains dispositions that directly address their situation. Kenya abstained from voting on the UNDRIP and it has not ratified ILO No. 169. However, it has ratified other important international and regional conventions which, according to the Constitution, should be reflected in the country's legislation. Kenya has a vibrant civil society, including a large number of indigenous NGOs and CBOs who played an important role in the democratization process.

IFAD has five ongoing projects based on its COSOP 2007-2012. The core target group consists of poor small producers, agro-pastoralists and pastoralists and, in two of the projects, beneficiaries include indigenous peoples such as the Ogiek, Dorobo, Ilchamus and Oromo.

Kenya benefits from a large number of donors (UN agencies, bilateral donors and NGOs), and a substantial part of its ODA is coordinated by UNDAF and KJAS. As of 01.01.2012, the World Bank was funding 36 projects, of which 12 had triggered OP/BP 4.10. However, the WB only recognizes hunter-gatherers and one single agro-pastoralist group as indigenous peoples.

While the new political agenda includes many promises for indigenous peoples, there is still a long way to go before these materialize. One hurdle will be to overcome the many vested interests and strongly anchored discriminatory attitudes within the dominant society. Another will be to ensure that the future devolution process, starting with the elections in 2013 and including the formulation and implementation of the new laws and other texts foreseen in the Constitution, ensures the inclusion and the active participation of indigenous peoples. A third set of challenges has to do with the government's policy, which seems more geared towards large infrastructure projects and mineral exploitation than addressing the socio-economic needs of indigenous peoples. To help tackle these challenges, support from international donors such as IFAD could include:

- (1) Providing civic education, including general information, to indigenous peoples on their rights in national and international context;
- (2) Helping with legal monitoring, elaboration of new legislation, and advocacy at the political and decision-making level;
- (3) Enabling indigenous peoples, through capacity building, training, etc., to participate in the devolution process and the management and administration of counties; and
- (4) Funding interventions that take as indigenous peoples' own priorities as their point of departure.

## **1. The indigenous peoples of Kenya**

### **1.1 The national context**

The Republic of Kenya is an East African country with an area of 582,646 sq. km. It opens onto the Indian Ocean to the east and shares borders with Somalia (north-east),

Ethiopia (north), Sudan and Uganda (west) and Tanzania (south). Kenya's geography is extremely diverse. It includes the fertile Central Highlands, with altitudes over 1,500 m and Africa's second highest peak Mount Kenya (5,199 m); a semi-arid belt of savannah grasslands in the south and south-east where wildlife abounds; tropical wetlands along the 400-km-long coastline; and a vast semi-desert plain to the north. Arid and semi-arid lands (ASALs) comprise 84 % of Kenya's total land area. The Rift Valley bisects the Central Highlands in a north-south direction from Lake Turkana in the north-west to Lake Victoria in the south-west (see Maps 1.1 & 1.2, Annex 1). Kenya's main river is the Tana River (700 km), which rises in the Highlands and runs to the Indian Ocean.

Kenya sits almost exactly astride the equator, and temperature, rainfall and humidity variations are extreme, altitudes being a major determinant. There are two rainy seasons—the long rains from late March to early June and the short rains from October to November or early December.<sup>1</sup> Kenya is severely affected by climate change. Temperatures have become more extreme and the seasons have changed. There are more unpredictable, extreme weather events. Droughts and dry spells have become much more frequent and affect larger areas than in the past; severe flooding occurs even in the arid zones. There are also more epidemics affecting people (malaria in particular) as well as animals.

Kenya's latest census (2009) estimates the population to be around 39 million.<sup>2</sup> It is a multiethnic population with at least 42 different ethnic groups (tribes) and 80 sub-groups.<sup>3</sup> Among these, several pastoralist and hunter-gatherer communities identify themselves as indigenous peoples.

The majority of Kenya's population lives in rural areas, with large concentrations in the Highlands and the Rift Valley around the cities of Kisumu and Nairobi, and on the coast around Mombasa.<sup>4</sup> Only 22.5% live in urban areas but Kenya is rapidly urbanizing. The ASALs are home to 10 million people and approximately 70% of the national livestock herd. Although many still follow their traditional religions and beliefs, 85% of the population consider themselves to be Christians,<sup>5</sup> and 10% Muslims. Kenya has a diversity of languages and most Kenyans speak at least three: their tribal language, Kiswahili—a 'lingua franca' in large parts of East Africa and Kenya's national language—and English. Kiswahili and English are the official languages.<sup>6</sup>

Kenya ranks 143rd (out of 187) on the 2011 HDI (Annex 4, Table 4.1). Its economy largely depends on the service sector (62% of GDP), including the tourist industry (for years Kenya's largest foreign exchange earning sector), but 75% of the labor force works in agriculture (22% of GDP). Industry and manufacturing account for 16% of GDP. After the devastating ethnic conflicts in the aftermath of the December 2007 elections,<sup>7</sup>

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<sup>1</sup> The mean annual rainfall is estimated at 621 mm but with major variations, ranging from well over 2,000 mm in the western part of Kenya adjacent to Lake Victoria to below 300 mm in the north of the country where the scarcity of rainfall is, moreover, exaggerated by its unreliability.

<sup>2</sup> The Kenyan population increased from 15.3 million in 1979 to 38.6 million in 2009—an average annual growth rate of more than 3%. The current population growth rate is estimated at 2.7% (2010), and the population in 2011 at 41 million. See Annex 4, Table 4.2.

<sup>3</sup> KNBS, "2009 Population and Housing Census. Ethnic affiliation" (2011): The five most numerous ethnic groups are the Kikuyu (6.7 million), the Luhya (5.3 million), the Kalenjin (4.9 million), the Luo (4.0 million) and the Kamba (3.8 million). The previous census (1999) did not publicize data on ethnic affiliation. This was criticized and it was therefore decided that the 2009 census would do so. This turned out to be controversial as well, since the questions about ethnic affiliation seemed inappropriate after the ethnic violence of the previous year.

<sup>4</sup> The average population density in Kenya is 66 persons per sq. km.

<sup>5</sup> The majority are Protestants belonging to various denominations.

<sup>6</sup> Article 7 (1) and (2) of the 2010 Constitution.

<sup>7</sup> In early 2008, more than 1,000 Kenyans were killed and 300,000 left homeless in post-election ethnic violence.

the country underwent a process of political and economic healing,<sup>8</sup> while at the same time resuming the constitutional and legal reform process commenced in 2002. This process came to fruition in 2010 when the new constitution was adopted by referendum. Kenya has now embarked on a course towards democracy and devolution, with crucial general elections to be held in 2013.<sup>9</sup>

The Republic of Kenya has, since independence (1963), been administratively divided into 8 provinces,<sup>10</sup> 46 districts and 262 divisions. This administrative system will be replaced immediately after the forthcoming elections to give way to 47 semi-autonomous counties (based more or less on the old districts) as part of the devolution process. The counties will be governed by elected governors and will operate independent of the central government in Nairobi (see Annex 1, Map 1.3).

## 1.2 Terminology

The notion of indigenous peoples has always been a sensitive issue in Kenya. The official position is that the term "indigenous peoples" is not applicable, as "all Kenyans of African descent are indigenous to Kenya". The Government of Kenya (GoK), nevertheless, "recognizes the vulnerabilities of minorities/marginalized communities",<sup>11</sup> and has in recent years increasingly acknowledged these communities' special situation. In 2006, in order to comply with the World Bank's Operational Policy on Indigenous Peoples (OP 4.10) it commissioned the elaboration of an Indigenous Peoples Planning Framework (IPPF), which it later adopted.<sup>12</sup> The new Constitution (2010) recognizes the vulnerabilities of "minorities/marginalized communities", and these are for the first time defined in language very close to that of the UNDRIP (see Annex 5, 5.1).<sup>13</sup> The Constitution recognizes the concept of self-determination as enshrined in the UNDRIP by recognizing the need or desire of these communities to preserve their unique cultures and identity.<sup>14</sup>

Several Kenyan "marginalized communities" have already, for many years, identified themselves as indigenous and they have been endorsed by the African Commission on Human and Peoples' Rights (ACHPR).<sup>15</sup> Some hunter-gatherer groups such as the Ogiek partly claim their indigenous status through the fact that they are considered to descend from some of the first inhabitants of the country. The pastoralists, on the other hand, base their indigenous status on the specific nature of their lifestyle and their socio-political and economic marginalization and exclusion. Both groups, however, have found this widely-used international concept appropriate for advocating for an improvement in their human rights situation. Their representatives participate regularly in international forums, such as for instance, the ACHPR ordinary sessions and the annual sessions of the UN Permanent Forum on Indigenous Issues, where they make statements identifying themselves as indigenous peoples.

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<sup>8</sup> The initial year of the implementation of Vision 2030 and its Mid-Term Operational Plan (MTP) for 2008-2012 prioritized projects for national healing and reconciliation, as well as reconstruction.

<sup>9</sup> IWGIA, *The Indigenous World 2011* (2011), 406.

<sup>10</sup> The Central, Coast, Eastern, Nairobi, North Eastern, Nyanza, Rift Valley and Western provinces.

<sup>11</sup> See Human Rights Council/UPR, Report of the Working Group on the Universal Periodic Review Kenya (2010e) §109: 23.

<sup>12</sup> See WB IPP232 of the Kenya Agricultural Productivity Sustainable Land Management Project (2006), 3.

<sup>13</sup> Art. 260 on Interpretation (Constitution 2010).

<sup>14</sup> See IWGIA, *The Indigenous World 2011*, (2011), 407.

<sup>15</sup> ACHPR, *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities*, (2005), 14-19, 106-115.

### 1.3 The indigenous peoples of Kenya

The peoples who identify themselves as indigenous number some 25 or more.<sup>16</sup> Most of these peoples were, for the first time, listed in the 2009 census, either as ethnic groups or sub-groups, i.e., members of one of the larger ethnic groups such as the Kalenjin and the Mijikenda.

All these peoples are diverse in terms of livelihood, location and size as well as origin. Based on their traditional livelihood systems, two main categories can be distinguished: hunter-gatherers and pastoralists. Each may include ethnic groups that have partly or entirely given up their original lifestyles but still remain marginalized and excluded from the more dominant segments of the population. It should also be noted that the difference between hunter-gatherers and pastoralists is not clear-cut since some hunter-gatherers keep cattle and many pastoralists mix livestock herding with other subsistence strategies (cultivation, hunting, gathering, etc.).<sup>17</sup> A sizable number of indigenous peoples have also become urbanized; among them, some have attained important positions in Kenyan society. Although their social and economic situation differs from that of the majority of their ethnic group, however, they still identify themselves as members of this group.<sup>18</sup>

Finally, two small ethnic groups should be mentioned: the Burji and the Talai. Although not former hunter-gatherers or pastoralists, they identify themselves as “indigenous” because of their marginalization and they met with the Special Rapporteur during his visit in 2006.

#### 1.3.1 The indigenous hunter-gatherers

Traditional hunter-gatherers live in the forests, hunt for meat and gather honey as well as other non-timber forest products. Included in this category are also small fishing communities living near rivers and lakes. Because these peoples differ from the pastoralists by not keeping cattle, they are often called Torobbo, Dorobo, Ndorobo or Wandorobo, all Swahili terms deriving from “*Il Torobbo*”, the Maasai term for “poor” or, by inference “those without cattle”. Dorobo is therefore considered a derogatory term. In the coastal areas, hunter-gatherers are mostly addressed by the Somali terms “Boni”, which also refers to someone without any possessions, and/or “Sanye”, which means “to gather together to use for a general purpose”.<sup>19</sup> Waata, a term of Cushitic origin, is also used.

Today, hunter-gatherer groups are increasingly known by their own names. Although the 2009 census still lists a group called “Dorobo”, it also lists seven hunter-gatherer groups, including two groups of fishers, by their own names—the Aweer, Dahalo, Waata, Ogiek, Sengwer, El Molo and Munyoyaya—and as members of some of the large ethnic groupings such as the Kalenjin, the Mijikenda and the Swahili. The Walwana (Ilwana, Malakote) are listed as an independent group.<sup>20</sup> These eight groups do not constitute an exhaustive list, and communities such as the Yaaku (Yiaku) and the Omotik definitely belong to Kenya’s hunter-gatherers (see Table 1 and Annex 2).

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<sup>16</sup> The ACHPR (in *Indigenous Peoples in Africa: The Forgotten Peoples?*, 2006:15) lists 14 as a non-exhaustive list. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people mentions 25 (Human Rights Council, Report Mission to Kenya, 2007) but other sources mention more groups (see, e.g., WB IPP451, 2010b:5; and WB IPP534, 2010c:4-5).

<sup>17</sup> Dorothy L. Hodgson, *Rethinking Pastoralism in Africa: Gender, Culture and the Myth of the Patriarchal Pastoralist* (2000), 6.

<sup>18</sup> This is, e.g., the case of those belonging to what is known as the “Maasai elite”.

<sup>19</sup> See WB IPP349 (2009a), 14.

<sup>20</sup> This tribe is listed under the name Walwana. Many ethnic groups are known under different names and/or their names have many spellings.

Indigenous hunter-gatherers were traditionally nomadic or semi-nomadic and lived in small dispersed encampments in the dense forests of the Central Highlands such as, for instance, the Ogiek in the Mau Forest Complex and the Yaaku in the forests of Mount Kenya, or such as the Aweer and the Waata in the forests in the hinterlands of the coastal area. The livelihoods of these peoples has always depended on their possibility of moving freely around their territory, using different zones according to the seasons, looking for animals to hunt and honey to gather. Hunting used to play a major role and, together with collecting honey and making beehives, was considered men's work. Women's work included processing and cooking food, building traditional shelters, maintaining firewood and water supplies, most childcare, and making leather bags, straps, etc.<sup>21</sup> Subsisting on hunting and gathering honey as well as plants, herbs and berries (or fishing like the El Molo on Lake Turkana and the Munyoyaya on the River Tana), hunter-gatherers have often fulfilled a special role in relation to the plains pastoralists in supplying honey and other forest products, and this symbiosis has "had an essential supportive and cultural role in the history of highland pastoralism".<sup>22</sup> Hunter-gatherers would also provide certain services to neighboring tribes, notably as circumcisers.

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<sup>21</sup> See, e.g., Corinne A. Kratz, "The Ogiek of Kenya" at [www.ogiek.org/indepth/Ogiek.pdf](http://www.ogiek.org/indepth/Ogiek.pdf)Kratz

<sup>22</sup> J.E.G. Sutton "Becoming Maasailand" (1993), 50.

**Table 1. Indigenous hunter-gatherers, including small fishing and agricultural communities**

<b>Tribal affiliation (2009 Census)</b>	<b>Name</b>	<b>Population</b>	<b>Livelihood</b>	<b>Location (County)</b>
Mijikenda	<b>Aweer (Boni)</b>	7,600	H-G, Agric.	Lamu (11 villages in forests)
Mijikenda	<b>Dahalo</b>	2,400	H.G.	Lamu, Tana River
Mijikenda	<b>Waata (Watha, Sanye)</b>	12,582	H-G Agric.	Lamu, Tana River
Kalenjin	<b>Dorobo</b>	35,000	H.G.	
Kalenjin	<b>Ogiek</b>	79,000 (20,000)	H-G (honey) Agro-past.	Mau Forest/Mount Elgon
Kalenjin	<b>El Molo</b>	<3,000	Fishermen	Lake Turkana
Kalenjin	<b>Sengwer</b>	>33,000	H-G Agric.	Trans-Nzoia, Eleguyo-Marakwet West Pokot.
Swahili	<b>Munyoyaya</b>	1,600	Fishermen	Garissa (Tana R.)
Walwana	<b>Malakote (Ilwana/Walwana)</b>	17,000?	Fish./Agric.	Tana River
Not in 2009 Census	<b>Omotik</b>	Ext.?	H-G	Narok
Not in 2009 Census	<b>Bajuni</b>	15,000?	Fish. ?	Mainland and coral islands off the coast of Lamu
Not in 2009 Census	<b>Yaaku (Yiaku)</b>	200? 4,000?	H-G (honey) Pastoral.	Laikipia C (Mukogodo F.)
Burji	<b>Burji</b>	24,000	Agric.	Marsabit
Kipsigi Not in 2009 Census.	<b>Talai</b>		IDP	Kericho

Sources: KNBS "2009 Population and Housing Census" (2011) and Paul Lewis, *Ethnologue: Languages of the World*—Online version at <http://www.ethnologue.com>.

Note: The Ogiek estimate their population at between 20,000 and 60,000.

This interaction with pastoralist groups was promoted during colonial times when the stated policy was that "wherever possible the Dorobo should be absorbed into the larger tribe with which they have most affinity". The post-colonial government followed a similar approach by classifying all hunter-gatherer groups under "Other" or "Dorobo" and counting them along with their dominant neighbors. This assimilation policy has meant that hunter-gatherers have adopted many cultural practices (e.g., initiation into adulthood for boys and girls, age-sets, etc.), as well as the languages of their neighboring tribes. Several of their original Cushitic languages are thus nearly extinct, and few Ogiek, for instance, speak Akiek anymore but rather Maa (the language of the Maasai), Kikuyu or Kipsigi.

At the same time, the indigenous hunter-gatherers have shown a definite robustness in asserting their own individuality and distinct separate identities.<sup>23</sup> People like the Sengwer and the Ogiek, for instance, have to a large extent kept their more egalitarian

<sup>23</sup> John G. Galaty, "The Eye that Wants a Person, Where Can It Not See?" (1993), 186.

modes of social organization.<sup>24</sup> Most hunter-gatherers have also retained their traditional religions, although these are gradually giving way to Islam (Aweer and Waata) or Christianity.

Today, the hunter-gatherers' traditional way of life is no longer possible. Hunting is banned and most hunter-gatherers no longer have access to their ancestral forests. Many have therefore been forced to turn to small-scale farming or work as day laborers. Their attachment to the forests, however, remains strong. Many still consider the forest their home and the forest is what forms their identity. The forests are also where their religious activities and rites take place, and where their extensive indigenous knowledge of their environment comes into its own. While there are no restrictions on fishing, the drying up of Lake Turkana and the construction of dams along the Tana River have also made it increasingly difficult for the El Molo and the Malakote and Munyoyaya peoples to subsist on their old skills.

### **1.3.2 The indigenous pastoralists**

The pastoralists of Kenya are nomadic and semi-nomadic stockbreeders. They live in the arid and semi-arid lands (ASALs)—the Maasai in the southern part of the Rift Valley (Narok, Kajiado, Nakuru counties) and in Laikipia county; the Pokot, Endorois, Ilchamus and Turkana in the western and north-western part of the Rift Valley (Baringo and West Pokot counties); the Samburu, Rendille, Gabra and Borana in the northern part of the Eastern province (Marsabit, Samburu and Isiolo counties), and the Orma and Somali in the east and north-east (Tana River, Garissa, Wajir, and Mandera counties) (see Table 2 and Annex 3). All these peoples are listed in the 2009 census either as independent ethnic groups or affiliated to some of the larger groups.

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<sup>24</sup> See Kratz, "The Okiek of Kenya".

**Table 2 Indigenous nomadic and semi-nomadic pastoralists and agro-pastoralists**

<b>Tribal Affiliation (2009 Census)</b>	<b>Name</b>	<b>Population</b>	<b>Livelihood</b>	<b>Location County</b>
Maasai	<b>Maasai</b>	840,000	S-Nomadic Pastoralists	Kajiado, Narok, Nankuru, Laikipia
Ilchamus	<b>Ilchamus/ Njemps</b>	33,000	Agro-past./ Fishermen	Baringo C. L. Baringo
Kalenjin	<b>Endorois</b>	10,000? 60.000?	Pastoralists	Baringo C. L. Bogoria
Kalenjin	<b>Pokot</b>	635,000	S-Nomadic Past./Agric.	West Pokot
Kalenjin	<b>Saboot</b>	240,000	Agro-pastoralists	Trans Nzoia, Bungoma.
Samburu	<b>Samburu</b>	240,000	S-Nomadic Pastoralists	Samburu C./
Turkana	<b>Turkana</b>	988,592	S-Nomadic Pastoralists	Turkana, Isiolo
Rendille	<b>Rendille/ Arial Rendille</b>	60,000	S-Nomadic Pastoralists (camel)	Marsabit C. Isiolo C.
Borana	<b>Borana/Galla (Oromo)</b>	169,000	S-Nomadic Pastoralists	Marsabit, Isiolo, Tana R., Garissa
Gabra	<b>Gabra</b>	89,515	Nomadic Camel	Marsabit
Sakuye	<b>Sakuye</b>	27,000	S-Nomadic	Marsabit, Isiolo
Dasenach	<b>Dasenach</b>	12,500	Agropast. Fish.	North Lake Turkana/
Somali	<b>Somali,</b>	2,300,000	Nomadic Pastor.	Mandera, Wajir
Orma	<b>Orma</b>	66,000	Nomadic Pastor.	Lamu, Tana R, Garissa/

*Sources:* KNBS, "2009 Population and Housing Census" (2011) and Paul Lewis, Ethnologue: Languages of the World—Online version at <http://www.ethnologue.com>

*Notes:* The **Ilchamus** and the **Njemps** belong to the same ethnic group but are listed under both names in the 2009 census with 28,000 and 5,000 individuals respectively.

**Galla** is a pejorative name for the **Borana** but they are listed under both names in the 2009 census with 8,000 and 161,000 individuals respectively.

The **Somali** include various clans, including the Ajuran, Degodia, Arri (Gurreh, Gari), Hawiyab, Murile, Ogaden, Wardei, etc., some of whom are listed as independent groups in the 2009 census.

All these peoples are highly diverse. They differ in size of population and all have their own distinct identity and culture. They dress differently; their customs and attitudes differ. They also have distinct languages<sup>25</sup> although these differences are bridged by a high incidence of bilingualism. On the other hand, they also share many features related to their livestock production systems and social organization.

The Kenyan pastoralists rear cattle, goats and sheep. Camels were traditionally only kept by a few groups but have become much more common due to their resilience to drought.<sup>26</sup> Livestock are moved in mobile herding groups, usually with the help of children. Some groups practise transhumance. They may have a significant degree of cross-border movement<sup>27</sup> or use the Tana River delta as a fallback zone, migrating by foot or, nowadays, by truck from the frequently drought-ridden north and north-east of Kenya. Other groups, like the Maasai, are semi-sedentarized and their mobility is limited. In the areas where there is some potential for agriculture, groups such as the Maasai, the Pokot and the Turkana do some farming.

The pastoral peoples of Kenya are essentially patriarchal and are organized in patrilineally related households, clans and sections. They are politically acephalous societies,<sup>28</sup> and authority and decision-making within a community is vested in the elder men, who play a crucial role based on their extensive experience and knowledge. Formal age-sets<sup>29</sup> are a shared and distinctive structural feature of East African pastoralists.<sup>30</sup> Age-sets, which are usually given a name, have different rights and privileges within society, as well as acting as a powerful force for cohesion. Men generally go through five successive age grades.<sup>31</sup> Initiation is done at specific intervals (every 5, 7 or 10 years), and therefore includes both young boys and youths who thereafter become "morans" ("warriors"). Moranhood has been described as a kind of limbo during which the young men live in an "*emanyatta*" (Maasai for compound) located away from the homestead; they are excluded from any political and social activities within the homestead and are not allowed to marry.<sup>32</sup> Moranhood may last for 10 years or more and is used by the young men to develop and assert values such as bravery and discipline but also competitiveness and belligerence. Moranhood was traditionally the time for hunting trophies (lions), warfare and cattle raiding.<sup>33</sup> Today, morans are responsible for safeguarding their group's property, especially livestock. This often leads to conflicts with neighboring tribes, cattle raids and retaliation. Apart from the expected material gain, youth portray their heroism through raids and "successful youth" are recognized and

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<sup>25</sup> Most pastoralist peoples belong to the Nilotic or the Cushitic language group.

<sup>26</sup> A 2009 livestock census reports 2,971,000 camels—a sizable increase from the 1990s when the number of camels was estimated at less than a million. See KNBS, *Livestock Census, 2009 (2010b)*; Roger Blench, "'You can't go home again' Pastoralism in the new millennium" (2001), 52.

<sup>27</sup> East African pastoralists are by and large not long distance nomads like the Peulh and the Tuareg of West Africa. Their seasonal migrations cover shorter distances and there is no system of formal migration corridors as in West Africa.

<sup>28</sup> Some religious leaders, like the Laibons of the Maasai, have played important leadership roles.

<sup>29</sup> Age-sets are all those within a broad range of ages who are formed into a group of peers with their own separate identity. Age grades are the successive statuses which individuals are ascribed over the course of their lives. See Paul Spencer, "Becoming Maasai, Being in Time" (1993), 140.

<sup>30</sup> Gunther Schlee, *Identities on the Move: Clanship and Pastoralism in Northern Kenya* (1989), 73. The Somali do not have age-sets although some of the clans did at one time adopt the system but later abandoned it. See I.M. Lewis, *A Pastoral Democracy: A Study of Pastoralism and Politics Among the Northern Somali of the Horn of Africa* (1999), 25.

<sup>31</sup> These age grades are (1) childhood ending with an initiation ceremony and circumcision; (2) youth or warriorhood/moranhood; (3) junior elders, the time for a man to marry; (4) senior elders; and (5) retired elders.

<sup>32</sup> The moran system has been seen as a way of older men retaining their monopoly over women since the moran system delays the marriage of younger men. See Spencer, "Becoming Maasai" (1993), 141.

<sup>33</sup> The purpose of cattle raids has traditionally been to re-stock the herd (e.g., after periods of drought) or acquire enough cattle for the morans to pay bride wealth and marry. Before the proliferation of small arms, casualties were limited.

rewarded by the community. With the proliferation of automatic weapons, especially in the northern part of the country, raids now often turn into bloody and lengthy conflicts.

Women do not belong to age-sets but join that of their husband when they marry. Marriage usually takes place after their initiation and circumcision, i.e., around puberty or earlier, depending on the ethnic group to which they belong. Women are regarded as social minors and their procreative resources are largely appropriated by men of elder status in the age-grade system through the bride wealth transaction.<sup>34</sup> Polygamous marriages are the rule. Besides their domestic chores, moving and setting up camp, building their homes, etc., pastoral women, also participate in activities related to livestock keeping—milking and dairy processing. They may or may not sell the milk but they usually have control over the proceeds in order to feed the family. Men are responsible for herding, and selling meat and animals. Despite their general subjugation, women play an important complementary role and, when they reach a certain structural age, they may attain some status.

Livestock provides pastoral households with the milk on which they depend for their daily subsistence (some groups will mix it with blood from their cattle) and with animals (especially small livestock) to trade and sell so that they can purchase grain, tea, etc. East African pastoralists have also developed an extensive indigenous knowledge related to their environment and their animals.<sup>35</sup> Cattle and camels are, moreover, an important part of their status, identity, culture and world view and are also widely used to establish strong forms of social exchange at specific stages of life, such as circumcision, bride wealth and other rituals in which prescribed numbers of livestock are involved.<sup>36</sup> Livestock are given to warriors as praise for courage and paid as compensation for crimes such as murder. Livestock may also be given as short or long-term loans and as gifts. The exchange of animals leads to life-long commitments of friendship and assistance and constitutes a kind of insurance mechanism against droughts or epidemics.<sup>37</sup>

With the exception of the Somali who have practised Islam for centuries, most pastoral groups adhere primarily to their indigenous religious beliefs, even though Christianity and Islam have made inroads. Most of them believe in one God—*Enkai* (Maasai), *Tororut* (Pokot), *Waka* (Gabra)—and their numerous ceremonies and rituals are closely related to Him. Religious leaders (*laibons*), diviners or prophets play an important role in the daily life of many pastoralist communities.

## **2. Socio-economic profile**

The socio-economic situation of Kenya's indigenous peoples is, to a large extent, the result of the failure of government policy to recognize and value indigenous production systems. These systems are based on hunter-gatherers' and pastoralists' intimate understanding of their environment and their invaluable expertise in maintaining a critical balance between resources and the use made of them, while at the same time reaping important benefits. The hunter-gatherers' knowledge of the forest's natural

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<sup>34</sup> Aud Talle, *Women at a Loss. Changes in Maasai Pastoralism and their Effects on Gender Relations* (1988), 2.

<sup>35</sup> The pastoralists' livestock system is based on their knowledge of how to achieve and maintain a balance between sustainable use and conservation, what livestock breed is best adapted to local conditions, etc. They may also, like the Maasai, have a number of techniques for monitoring the onset of rains and for predicting water availability in their rangelands. See FAO/links "The Utilization of Indigenous Knowledge in Range Management and Forage Plants for Improving Livestock Productivity and Food Security in the Maasai and Barbaig Communities" (2005).

<sup>36</sup> Pat Robbins, *Red Spotted Ox—A Pokot Life* (2010), 129.

<sup>37</sup> On "stock associates" or bond-friends, see, e.g., Blench, "You can't go home" (2001), 66; Robbins, *Red Spotted Ox* (2010), 240.

resources—its animals and its trees, the individual properties and use of thousands of plants, where to find and gather honey, etc.—and how to use them in a sustainable way has not only sustained the hunter-gatherers themselves but has benefited their neighbors, with whom exchange networks have been established and functioned for centuries. As for the pastoralists, they have - through selective stockbreeding - successfully managed and used lands that, because of their arid and semi-arid nature and unpredictable climate, were unfit for agriculture and therefore considered by others to be of low economic potential. Today, this production system not only provides for the subsistence of the pastoralists but is crucial for the economy of Kenya: indigenous cattle represent 75% of the national herd; pastoral livestock contribute 50% of the agricultural GDP through a large range of products (milk, meat, hides, etc.) and, as a sector, pastoralism is estimated to be worth USD 800 million a year in Kenya.<sup>38</sup> To this should be added a number of other indirect benefits.<sup>39</sup>

Yet, for years, these responsible resource use and management systems have been seen as primitive, uneconomic and inherently degrading to the environment.<sup>40</sup> Instead, colonial and post-colonial governments have pursued policies that favored sedentary agriculture and intensive stockbreeding, nature conservation, military priorities, etc., and development in general. This has been at the expense of indigenous peoples, who, without recognized collective tenure rights,<sup>41</sup> have been dispossessed of their lands, impoverished and discriminated against. Even today, Vision 2030—Kenya’s new development blueprint for 2008-2030—and the Agricultural Sector Development Strategy (ASDS) do not seem to recognize the value of indigenous production systems. Both documents indicate that the overall goal within the agricultural (including livestock) sector is to achieve an “innovative, commercially oriented and modern agriculture” and prioritize large-scale, heavy infrastructure interventions (irrigation in arid and semi-arid lands for crops and livestock) and the development of agribusiness and animal ranches.<sup>42</sup> These priorities are also reflected in government expenditure in 2010/2011 on improving livelihoods in the ASALs.<sup>43</sup> However, there are also positive developments. There is increased recognition of the value of pastoralism both at the regional level<sup>44</sup> and within Kenya. GoK has taken important steps to recognize pastoralism in policy statements and documents and has established the Ministry of Northern Kenya and Other Lands with the intention of supporting pastoralism.

## 2.1 Land Rights

Hunter-gatherers and pastoralists depend on the availability of large tracts of land—forestlands and rangelands—where their freedom of movement and their access to the natural resources on which their subsistence relies are not obstructed. Yet the

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<sup>38</sup> See CELEP “Fact Sheet: Eastern African Pastoralism/its” (2010) at <http://www.celep.info/?p=26>

<sup>39</sup> These benefits include: use of animals for traction, use of manure as fertiliser and fuel, use of livestock as credit, insurance, savings and a means of sharing risk, carbon sequestration, and maintenance of biodiversity. See IGAD-LPI, *The Contribution of Livestock to the Kenyan Economy* (2011), 6-7; Brussels Policy Briefing no.26, “New challenges and opportunities for pastoralism in ACP countries” (2012) at <http://brusselsbriefings.net>; Global Review of the Economics of Pastoralism. The World Initiative for Sustainable Pastoralism, (2006), 7.

<sup>40</sup> See, e.g., Joseph Ole Simel “Pastoralism and the Challenge of Climate Change” (2009), 32.

<sup>41</sup> Indigenous peoples base their land claims on customary rights. Today, most of their traditional lands are either public/state land (e.g., state forests) or so-called trust land, i.e., land held in trust and managed by the local authorities.

<sup>42</sup> See GoK, “Agricultural Sector Development Strategy 2010-2020” (2010a), 11, 28; GoK “Kenya: Vision 2030”, (2007), 13.

<sup>43</sup> Most resources were allocated to physical infrastructure (dams, slaughterhouses, hospitals and low-cost boarding schools), and the rehabilitation of 10 ranches for beef production. See IEA, *Budget 2010/11: More Spending—Better Controls?* (2010), 15. Accessed at <http://www.ieakenya.or.ke>

<sup>44</sup> The AU has recently adopted a Policy Framework for Pastoralism in Africa: Securing, Protecting and Improving the Lives, Livelihoods and Rights of Pastoralist Communities (2010).

indigenous peoples of Kenya have, since the advent of colonialism in the late 1890s,<sup>45</sup> experienced a continuing process of land dispossession and mobility restriction, putting their traditional livelihood at risk.

### **2.1.1 Land dispossession among hunter-gatherers**

The dispossession of many hunter-gatherer communities began in the early 1900s with white settlers taking over large tracts of their land in the Central Highlands.<sup>46</sup> Following independence, productive forest land started to be grabbed by more dominant Kenyan groups. The Ogiek from the Mau Forest Complex and Mount Elgon, the Yaaku on Mount Kenya and the Sengwer in Kapoet Forest have all seen their livelihoods undermined as a result of land alienation for farming purposes,<sup>47</sup> illegal logging and conservation policies, including the ban on hunting. Their ancestral forests were turned into individual land plots or protected areas and national parks, while they themselves were gradually deprived of their previous user rights and eventually forcibly evicted. The Aweer, who live deep within the Witu and Boni forests of Lamu county, are faced with a similar fate as a consequence of the gazetting of their forests by the government.<sup>48</sup>

Infrastructural developments also affect these communities. In the Tana Delta area, large irrigation and plantation projects, among others, are threatening their livelihood and the environment.<sup>49</sup> Of special concern is the Lamu Port and Lamu Southern Sudan-Ethiopia Transport Corridor (LAPSSET), which will strongly affect not only the indigenous peoples living on the coast but also indigenous pastoralists using rangelands along the corridor as the project is expected to involve the use of large tracts of land.<sup>50</sup>

### **2.1.2 Dispossession of land and mobility among pastoralists**

The dispossession of pastoralist peoples from the Rift Valley and Central Highlands also began in the early days of British rule and white settlements. By 1913, the Maasai had lost almost 75% of their lands<sup>51</sup> and, over the following years, they were to lose large tracts of their rangelands to African farmers<sup>52</sup> and game reserves.<sup>53</sup> In the northern part of the country, and following the establishment of the Northern Frontier District (NFD) in

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<sup>45</sup> What is today Kenya was under the charter of a British private company (1885-1895) before becoming a British Protectorate (1895-1920) and a Crown Colony (1920-1963).

<sup>46</sup> In the early 1900s, Ogiek communities were removed from forests near the Kenya-Uganda railway line so that firewood could be secured for locomotive engines.

<sup>47</sup> Many politicians have used land as a commodity to be distributed to settlers from dominant communities in return for their political loyalty.

<sup>48</sup> See WB IPP377 (2009b), 7.

<sup>49</sup> The projects and activities either proposed or implemented in the area include: the GEF's Tana River Primate Reserve Project; several large irrigation schemes; industrial prawn farming; titanium mining; and oil and gas exploration. Other proposals include the conversion of 20,000 ha of wetlands into sugar cane plantation; the leasing of 40,000 ha. for horticulture and a *Jatropha* plantation in the delta for the production of ethanol and biodiesel. See Joan Aum Otengo, "Impacts of Proposed Large-scale Monoculture Development Projects on Wetlands and Wetland-dependent Communities, Tana Delta Coast Province" (2011).

<sup>50</sup> The Lamu corridor will become the country's second transport corridor—after the Mombasa - Nairobi - Uganda transport corridor. LAPSSET includes building a port, a railway line to Juba (South Sudan), road networks, oil pipelines, an oil refinery, 3 airports and 3 resort cities (Lamu, Isiolo and Lake Turkana shores), at an estimated cost of USD 22-23 billion.

<sup>51</sup> The Treaty concluded between Chief Laibon Lenana on behalf of the Maasai community and the British Crown in 1904 and the Agreement signed by local leaders in 1911 pushed the Maasai south of the newly completed Mombassa-Uganda railroad onto a single reserve in southern Kenya (later Kajiado and Narok districts), thereby reducing their traditional area from 155,000 sq. km to 40,000 sq. km. See Albert K. Barume, *Land Rights of Indigenous Peoples in Africa* (2010), 112.

<sup>52</sup> For the most part Kikuyu, who had themselves been evicted by white settlers from their homelands in the Central Highlands.

<sup>53</sup> These reserves include, among others, Nairobi National Park, Tsavo National Park and Amboseli Game Reserve, all created between 1948 and 1964.

1902,<sup>54</sup> pastoralist peoples experienced - in the name of pacification - several restrictive measures that blocked cross-border migrations,<sup>55</sup> confined them to specific "tribal grazing areas",<sup>56</sup> and prevented them from selling livestock to the large markets in the south (see Annex 1, Map 1.4).<sup>57</sup> In many places, grazing and destocking schemes greatly limited pastoralists' mobility and interfered with traditional stock management.<sup>58</sup>

In post-colonial Kenya, the Maasai and other pastoralists have continued to experience land grabs by political elites and land reallocation by leaders to assure political allegiance along "ethnic" lines.<sup>59</sup> Traditional lands have been lost to expanding farming populations, private ranches, wheat estates, tourist game parks, etc. National governments, lured by investments and aid from the international donor community, have increasingly promoted the "modernization" of pastoralists' livestock systems and the commoditization of their herds, by introducing group ranches (or collective ranching schemes), first in the Maasai counties (Narok and Kajiado) and later expanding to other parts of the country. Group ranching turned out to be a failure as it altered the ecologically well-adapted indigenous land management systems and, within a few years, several ranches had started to be subdivided into individually owned land parcels. Many of these have subsequently been sold to land speculators and farmers, such as, for instance, in Narok where commercial wheat and barley are now grown on what used to be Maasai land.<sup>60</sup>

Other examples among many include the Maasai's loss of land to more game parks and through a process of fraudulent land "registration" by senior government officials;<sup>61</sup> the eviction of the Endorois from Lake Bogoria in the 1970s to make way for a national reserve and tourist facilities; the gradual land dispossession of the Ilchamus due to illegal encroachments, and, as recently as 2009-2010, the brutal removal of several hundred Samburu families from their traditional land in order to give way to a new nature conservancy, the Laikipia National Park.<sup>62</sup> Pollution from greenhouses producing roses and vegetables (a big industry in Kenya) has also led to the pollution of water sources and conflicts over access and rights to water. In the more northern and north-eastern ASALs, too, nature conservation,<sup>63</sup> commercial farming<sup>64</sup> and military training camps have taken over large tracts of rangeland. Herders are increasingly met with electric fencing and other demarcations that reduce their rangelands to fragmented grazing areas; their lives as well as that of their animals are threatened by unexploded ordnances left behind after military exercises; and many seasonal rivers such as Ewaso

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<sup>54</sup> The Outlying District Ordinance (1902) created the NFD (including Marsabit, Isiolo, Wajir, Mandera and Garissa) as a closed area, with restricted movement in and out of the zone. All European settlement and missionaries were prohibited. NFD was designed to be a buffer zone protecting the fertile Kenyan (White) Highlands from the influence of an influx from the Horn of Africa (Somali) and Ethiopia (Oromo/Galla).

<sup>55</sup> This, in particular, affected the Turkana and the Daasenech, whose territory was reduced by around 79%. See Elliot Fratkin, "East African Pastoralism in Transition: Maasai, Boran, and Rendille Cases" (2001), 17.

<sup>56</sup> This measure reduced the Rendille herding range from 57,600 sq. km to 8,000 sq. km.

<sup>57</sup> Quarantine laws were introduced and Isiolo town has, since 1912, been a screening center for livestock onwards. This is expected to change soon. See Fratkin, "East African Pastoralism in Transition" (2001), 6.

<sup>58</sup> See Anne Kisaka Nangulu "Food Security and Coping Mechanisms in Kenya's Marginal Areas: The Case of West Pokot" (2001), 186.

<sup>59</sup> The TJRC indicates that 34 percent of all human rights violations reported to their secretariat concern land. TJRC, "Annual Progress Report" (2011), 14.

<sup>60</sup> See, e.g., Barume, *Land Rights* (2010), 114ff.

<sup>61</sup> See Simel, "The Century Long Displacement" (2004), 44-45. It is estimated that the Maasai lost 1.5 million acres of land between 1978 and 1998.

<sup>62</sup> The land—17,000 acres—was bought by two US-based charities—The Nature Conservancy (TNC) and the African Wildlife Foundation (AWF)—from former President Moi. See Cultural Survival website at <http://www.culturalsurvival.org/news/kenya> (accessed 20.03.2012).

<sup>63</sup> Northern Kenya has some of the largest national parks in Kenya These include the Lake Turkana, the Samburu and the Marsabit National Parks. Mount Kulal is one of Kenya's six Man and the Biosphere (MAB) reserves in Kenya. Located in Marsabit County, the reserve covers approx. 7,000 sq. km extending from the eastern side of Lake Turkana. The Turkana, Samburu, Rendille, El Molo and Gabra all live in the area. No farming or pastoral activities are allowed within these protected areas.

<sup>64</sup> As its demand for foreign revenue is increasing, the government is renting out land for commercial farming to Arab states for wheat, corn and rice, as well as for raising beef cattle and ostriches and turkeys.

Nyiro and Turkwell are increasingly used in irrigation schemes and thus now run dry most of the year. This has led to the death of many livestock, more pressure on the few water sources in the region and, ultimately, to raiding and periodic conflicts between the different pastoralist communities. These often violent and lethal conflicts have led many nomadic communities to settle near “security zones” such as trading centers. As a result, around 60 percent of the Marsabit range areas are unutilized and the concentration of settlements exacerbates land degradation.

One of Kenya’s few mining industries—the Magadi Soda Company—has, since 1911, occupied 225,000 acres of former Maasai land in Kadjado near the Magadi Lake.<sup>65</sup> Mining has, until recently, played a minor role in Kenya’s economy. However, this may well change in the future as new finds are being made and oil and gas exploration is being speeded up.<sup>66</sup> GoK has already awarded leases to Chinese companies to drill on Samburu land and it is strongly believed that this was behind the massive and well-organized attacks on Samburu villages by combined police and military forces in 2009.<sup>67</sup> Thirteen oil companies are exploring in the north and north-east and, in January 2012, oil was found in Turkana.<sup>68</sup> Large, ongoing road infrastructure projects, as well as the LAPSET project, are expected to seriously affect the pastoralists living in that part of the country.

### **2.1.3 Reactions and new policies**

The indigenous peoples have reacted to their dispossession in many ways—from taking up arms like the Kenyan Somali in 1963,<sup>69</sup> to protesting publicly as the Ogiek have done several times, to seeking the support of human rights organizations and the UN system,<sup>70</sup> to filing cases before Kenyan courts, and taking their grievances to the ACHPR.

The very first law suit was filed in 1912 by members of the Maasai community trying to get the 1904 treaty and the 1911 agreement revoked.<sup>71</sup> In more recent years, several cases have been lodged against the government; such as for instance, by the Ogiek in 1997 on the grounds that the allocation of their ancestral lands to individuals that were strangers to their community infringed their constitutional rights. The case was postponed several times and, despite numerous attempts to resume the case, no judicial decision has yet been taken.<sup>72</sup> Nor have efforts to establish a dialogue with the government yielded any result, and so the Ogiek have now taken their case to the African Commission (ACHPR).<sup>73</sup> Just as the Endorois did in 2003 after having also failed to obtain redress at the national level. The ruling, delivered by ACHPR in 2010, condemned the expulsion of the Endorois people and ordered the GoK to restore their rights to their ancestral land and to compensate them.<sup>74</sup> To date, this has not happened.

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<sup>65</sup> See ITDG-EA “Preparation of a Community Development Plan—Magadi Soda Expansion Project. Final Report” (2004), 20. Since 1911, the Magadi Soda Company has produced natural soda ash dredged from Lake Magadi for use in the production of glass. The Company’s lease was renewed in 2003 by GoK without the nearby Maasai community being informed. See IWGIA, *The Indigenous World 2004*, (2004), 372.

<sup>66</sup> Exploration work is currently being undertaken in Lamu, Mandera, Turkana and Samburu counties. *The Star*, 27 March 2012, on <http://allafrica.com>

<sup>67</sup> Cultural Survival, “When the Police are the Perpetrators” (2010).

<sup>68</sup> The area around the site has now been placed under permanent watch by 150 policemen. *The Star*, 27 March 2012 on <http://allafrica.com>

<sup>69</sup> The “Shifita” War (1963-1968) can be seen as one of the consequences of British colonial policy in the NFD.

<sup>70</sup> The Ogiek have complained to the UNHCHR and the ILO.

<sup>71</sup> The case was dismissed. See Barume, *Land Rights* (2010), 87-91.

<sup>72</sup> See Barume, *Land Rights* (2010), 91-95. A similar case was filed in 1999 by another Ogiek community but was dismissed.

<sup>73</sup> The ACHPR has recently referred the case to the African Court in Arusha. This Court can make binding decisions.

<sup>74</sup> This is the first ruling to determine who indigenous peoples in Africa are, and what their rights to land are. It is considered to be a victory for all indigenous peoples across Africa. See MRG Web site: <http://www.minorityrights.org> and Annex 3 under Endorois.

In 2002, Samburu and Maasai in the Laikipia area filed a case against the British Army for damages caused by unexploded ordnances left in their rangelands following military maneuvers.<sup>75</sup> In January 2010, 52 petitioners representing the Maasai community filed a suit in Kenya's Superior Court to recover 30,000 acres of Mau Narok, land that was appropriated under British colonial rule and continues to be occupied. The case is pending.<sup>76</sup> In 2010, following their violent eviction, the Samburu in Laikipia began legal proceedings against AWF and ex-President Moi, to plead for their rights to the land. Although the case is still underway, AWF has recently "gifted" the land to the Kenyan government in a move described by the Samburu as an "affront to the justice system".

## 2.2 Climate change

The 2009 and 2010 droughts are considered the worst in the last 30 years.<sup>77</sup> Hunter-gatherer communities like the Ogiek of the Mau Forest and the Yaaku of the Mukogodo Forest have noted a number of climate change impacts, including the drying up of rivers, a lack of snow on Mount Kenya, scarcity of food, and changes in rainfall patterns and harvesting seasons. The massive siltation of the Tana River, which has made it change its course and reduced its water level, is a threat to the small indigenous communities whose production systems and livelihoods are linked to the dynamics and functioning of the river-wetlands ecosystem. The situation is worsened by high evaporation rates as global temperatures rise. This also affects the Orma pastoralists, who graze their cattle in the areas around the floodplains.<sup>78</sup>

Pastoralists find that the frequent droughts have not only decimated their herds but also made it increasingly difficult to restock. At the same time, they see that their environment can support fewer and fewer animals, and hence people. Pastoralists have had to reconsider their migration patterns. The Maasai, for instance, are forced to migrate beyond the boundaries of their ranches, crossing the border into Tanzania in order to graze their cattle and find water; wetland areas traditionally used to fall back on in times of drought have dwindled in Turkana as well as in the Tana Delta. As access to water and pasture becomes more restricted, tensions between pastoralist groups increases. In Turkana, territorial disputes have become more common as the lake recedes, taking with it the landscape features that formed the traditional boundaries between groups.

Traditional ways of predicting rain and adapting to drought can no longer be used. In the Tana Delta, traditional knowledge regarding planting and flooding seasons is now inadequate due to the unpredictability of local weather conditions.<sup>79</sup> In the north, nomads would look for signs of coming drought or rain in the stars, in the entrails of slaughtered animals or in minute changes in vegetation. This allowed them time to negotiate grazing rights in places not so severely hit, and send their cattle to relatives in distant communities. None of this is working any more.

Climate change, together with land dispossession and mobility restrictions, also results in profound cultural changes. The communal social fabric, mostly based on livestock exchange, has largely become fragmented; increased incidences of suicide have been reported among Maasai who have lost their herds. A growing number of pastoralists who have lost their livestock are now moving into urban centers where food and other help is

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<sup>75</sup> See IWGIA, *The Indigenous World 2001-2002* (2002), 379 and *2002-2003*, (2003), 368. The case was settled out of court with USD 7 million compensation.

<sup>76</sup> See Maasai Community Partnership Project Web site at <http://maasaicpp.org/>

<sup>77</sup> Drought periods (1982-1987, and 1991- 92, 1994, and 2000, 2008/9, 2010/11) have plagued northern Kenya more than anywhere else in the country.

<sup>78</sup> Jeanette Schade, "Human rights, climate change, and climate policies in Kenya. How climate variability and agrofuel expansion impact on the enjoyment of human rights in the Tana Delta" (2011), 45.

<sup>79</sup> Otengo, "Impacts" (2011), 6.

being handed out and where employment may be available. This is not an entirely new phenomenon<sup>80</sup> but it is being exacerbated by the drought and the increased competition for pastures and water. Counties such as Mandera, Wajir and Garissa have experienced a significant urbanization, with several previously small settlements now housing 40,000 inhabitants or more.

### 2.3 Economic poverty

Despite some progress, Kenya is still battling high poverty rates—46% (16.7 million) live below the poverty line, and 19% of these are considered to be “extremely poor”.<sup>81</sup> Recent macro-economic developments and prolonged periods of drought, among other things, make it unlikely that Kenya’s MDGs on poverty eradication will be reached.<sup>82</sup> There are no disaggregated data regarding poverty among indigenous peoples but poverty rates are higher in rural areas (49.1%) than in urban ones (33.7%), and reports are unanimous in denouncing the level of poverty among hunter-gatherers and pastoralists as one of the highest in the country (see Annex 4, Table 4.3).

The poorest indigenous peoples are probably those who live as internal refugees. They include several hundred Ogiek evicted from the Mau Forest Complex in 2009, who have ended up in isolated IDP satellite camps.<sup>83</sup> They also include those pastoralists in the northern part of the country who live on the outskirts of towns either because they have lost their livestock due to the drought or have been displaced by inter-ethnic conflicts but are not officially recognized as IDP.<sup>84</sup> The situation of the Ogiek and the Sengwer living near their former territories is also distressing: without legal access to land and natural resources nor to any other source of livelihood, they often live at the mercy of their non-indigenous neighbors,<sup>85</sup> Rough estimates of cash income indicate that their households may earn about one-third of average rural incomes in the country.<sup>86</sup> In the Tana Delta, small-scale farming and fishing no longer provide sufficient food or income to people and the absolute poverty rate (76.9%) is significantly higher than the national average (46%).<sup>87</sup>

Despite pastoralism’s contribution to the national economy, pastoralist communities show some of the highest incidences of poverty, and lag behind other communities in a range of development indicators.<sup>88</sup> Strong disparities exist between the ASAL counties in the north and in the south. While Turkana has a poverty rate of 94.3% and Marsabit of 83.2%, Narok and Kajiado are well below the national average. This has to do with structural and demographic differences between south and north. Years of political isolation and economic deprivation have left the northern counties without proper

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<sup>80</sup> Following the droughts of 1968-73, many Rendille in the Marsabit area settled near small trading towns and “famine-relief towns” set up by Catholic and Protestant missions at watering holes as part of their long-term famine distribution efforts. Agricultural plots were also organized for Rendille and Borana pastoralists. See Elliot Fratkin & Eric Abella Roth, “The Setting. Pastoral Sedentarization in Marsabit District, Northern Kenya” (2005), 42.

<sup>81</sup> This is high compared to neighboring countries such as Tanzania (36%) and Uganda (31 %).

<sup>82</sup> High food and fuel prices, the drought and the Euro crisis have weakened Kenya’s already fragile external position and will lower growth to an estimated 4.3 percent in 2010. Growth in GDP is expected to be around 5% in 2011. See WB Country Brief at <http://go.worldbank.org/YZJLVL3LX0>

<sup>83</sup> See Human Rights Council, “Report of the Special Rapporteur on the human rights of internally displaced persons. Mission to Kenya” (2012), 17. See also Annex 2, on Hunter-Gatherers (Ogiek).

<sup>84</sup> In 2003, it was reported that a total of 164,457 people had been displaced by conflicts in northern Kenya. Seventy percent or 105,500 of the displaced were women and children under 14 years. Most of them live in “host communities”, often on the outskirts of towns and always under extremely miserable conditions their rights often grossly violated. See ITDG EA “Conflict in Northern Kenya” (2003), 10.

<sup>85</sup> See WB IPP232 (2006), and WB IPP537 (2011a).

<sup>86</sup> WB IPP232 (2006).

<sup>87</sup> Schade, “Human Rights, Climate Change” (2011), 46.

<sup>88</sup> See CELEP “Fact Sheet: Eastern African Pastoralism/its” (2010) at <http://www.celep.info/?p=26>

infrastructure, with few towns of importance and few economic activities.<sup>89</sup> Hence the proportion of non-pastoralist population has remained low, while pastoralists have faced constraints such as a lack of livestock market infrastructure, a lack of road infrastructure and their poor access to market information, all of which is negatively affecting the returns they can get on their livestock production. In Kadjado, on the other hand, the overall poverty rate—the lowest in the country—conceals the fact that a majority of the population is non-Maasai and that there exist important pockets of absolute poverty within the Maasai community.

The indigenous peoples have never received any compensation for their land losses,<sup>90</sup> nor have they drawn any benefit from the use of these lands and their natural resources, whether they have been used for large government infrastructure schemes, mining or conservation/tourism purposes.<sup>91</sup> Tourism—Kenya's leading foreign exchange earner—is almost entirely based on wildlife safari tours to nature conservation areas established on indigenous lands and is promoted through the exotic imagery provided by photographs of indigenous peoples. Yet local communities, who bear the brunt of the problems caused by wildlife,<sup>92</sup> have only marginally benefited from tourism, also in terms of employment.<sup>93</sup> The same occurs in Magadi district (Kadjado), where 45% of the Maasai community on whose land the Magadi Soda Company is found live below the poverty line. The community in general is "affected by the low level of provision of schools, health clinics, water supply, sanitation, roads".<sup>94</sup>

Poverty affects indigenous peoples' food security: 1.5 million Kenyans living in the ASALs are food insecure, resulting in acute malnutrition.<sup>95</sup> As traditional mechanisms and strategies used by pastoralists to mitigate food insecurity break down,<sup>96</sup> seeking food relief is the only option for many indigenous peoples. In the Tana Delta, nearly one quarter of the population needed food relief in 2011 and, in January 2011, around 27% of the population of Turkana County was receiving food aid.<sup>97</sup> This, coupled with the security situation, has led to sedentarization, but also to migration. Many indigenous peoples from the ASALs are migrating to cities in search of work in increasing numbers. Barring a few exceptions, most of them are illiterate and only find menial jobs, working as watchmen, maids or prostitutes.<sup>98</sup> The country's largest employer—the Civil Service—hardly employs any people from indigenous communities. This skewed recruitment cuts

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<sup>89</sup> For many years, there were not even any adequate livestock marketing services. The main outlet for pastoralists' livestock sale in the North is the Kenya Meat Commission in Isiolo, which remained closed for many years. See John K. Livingstone, "A Comparative Study of Pastoralist Parliamentary Groups. Kenya Case Study" (2005), 5. New slaughterhouses are currently being planned or built. See IEA, Budget 2010/11 (2011), 15. Kenya's economic development has been and remains concentrated along a narrow corridor between Mombasa and Kisumu, and 80% of Kenya's economic activity is generated by just one half of Kenya's counties (23 out of 47). See SID "Pulling Apart Facts and Figures on Inequality in Kenya" (2004).

<sup>90</sup> Unlike other ethnic groups, the Maasai did not recover their land losses after independence.

<sup>91</sup> See Livingstone, "A Comparative Study" (2005).

<sup>92</sup> These problems include destruction of property, loss of human life and transmission of diseases that are dangerous to livestock. See Roselyne N. Okech. "Wildlife-community conflicts in conservation areas in Kenya" (2010).

<sup>93</sup> The Endorois, whose ancestral lands have been turned into a park, were promised 80% employment in the park but only 10% of the employees are Endorois. The agreement to give 20% of the total income from tourism to the community has yet to be fulfilled.

<sup>94</sup> See ITDG-EA "Preparation of a Community Development Plan" (2004), 20.

<sup>95</sup> Ministry of Northern Kenya website at International Institute for Environment & Development (IIED) and SOS Sahel International (accessed 04.02.2012).

<sup>96</sup> These mechanisms include, e.g., reciprocity, stock loans and reliance on kin, which have been undermined since the local economies of cattle associates and kin, too, have been disrupted; Strategies used by, e.g., Turkana and Pokot pastoralists in times of food scarcity such as gathering wild fruits, fishing and small-scale farming, can no longer be pursued.

<sup>97</sup> Diocese of Lodwar, "Turkana Emergency Appeal" (2011) 2.

<sup>98</sup> See Simel, "The Century Long Displacement" (2004), 44-45, and Johnson Mali ole Kaunga "Migration of Indigenous Peoples in Kenya to Urban Areas" (2007), 40.

across all job groups, including those that do not require high educational qualifications.<sup>99</sup>

## 2.4 Health and education

**Within health**, Kenya presents a mixed picture and it is unlikely that it will reach its health-related MDGs. Some progress has been made in child mortality and adult HIV prevalence.<sup>100</sup> Life expectancy, on the other hand, remains low (at 57 yrs), and rates for maternal mortality and stunting of children under five have increased.<sup>101</sup> Health indicators disaggregated by ethnicity are not available. However, data from the different counties show disparities in the proportion of children with “adequate height for age” and with “all vaccinations”, underlining the serious health situation existing in most pastoral areas (see Annex 4, Table 4.5).<sup>102</sup> This is corroborated by other reports that show how rates for under-five child mortality and maternal mortality in some counties can be twice as high as the national average.<sup>103</sup> HIV/AIDS among pastoral groups is not recognized as a major problem either at a policy level or by the communities themselves. Yet the population affected and infected is increasing.<sup>104</sup>

Sedentarization affects former nomadic pastoralists’ health. The loss of protein from milk and meat results particularly in greater malnutrition, especially among children: settled Samburu children under 6 are 3 times more likely to be severely malnourished than nomadic children. Studies have also shown that sedentary Turkana are exposed to reduced fertility, increased morbidity (malaria), and increased stunting<sup>105</sup> and child mortality. Sedentarization may also increase the risk of HIV/AIDS, which until now has been less prevalent in pastoral areas.

The provision of health services in Kenya is not equitable. There are major differences in the provision of health resources in terms of health personnel and infrastructure depending on geographic location (see Annex 4, Table 4.5).<sup>106</sup> However, indigenous peoples’ access to healthcare is also limited because of the costs involved,<sup>107</sup> and, in the case of nomadic pastoralists, the distances to the nearest dispensary.<sup>108</sup> The government

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<sup>99</sup> The NCIC’s ethnic audit reveals that members of the five dominant ethnic communities occupy 70% of all jobs in the civil service. See NCIC “Towards National Cohesion and Unity in Kenya. Ethnic Diversity and Audit of the Civil Service” (2011), 34.

<sup>100</sup> Mortality rates in the under-fives dropped from 115 deaths per 1,000 in 2003 to 74 in 2009; infant mortality from 77 deaths per 1,000 in 2003 to 52 deaths per 1,000 in 2008-09; the proportion of fully immunized children went from 9% in 2003 to 48% in 2008-2009; that of underweight children decreased from 22.3% to 20.9% within the same period (2003-2009). UNDP Kenya, “The state of MDGs in Kenya” (2011). <http://www.ke.undp.org/index.php/the-s>

<sup>101</sup> Maternal mortality increased from 414 in 2003 to 488 (per 100,000 live births) in 2008/9. In the same period, the percentage of stunted children went from 30 to 35.

<sup>102</sup> Only 11.8% of infants in Mandera, Wajir and Garissa have an immunization card, as opposed to a national average of 63.7%. Again, averages in the southern ASALs probably conceal the reality in the Maasai community. There are no data on the health situation of hunter-gatherers.

<sup>103</sup> In Samburu and Tana River, for instance, under-five mortality rates are 142 and 147 per 1,000 children respectively as compared with the national average of 74; maternal mortality in Samburu is reported to be as high as 1,000/100,000 live births (national average 488). See AMREF website at <http://www.amref.org/news/amref-launches-maternal-newborn-and-child-health-mnch-project-in-samburu-kenya/> (accessed 01.03.2012); Schade, “Human Rights, Climate change” (2011), 46.

<sup>104</sup> See. ITDG-EA “Impact of HIV/AIDS among Pastoral Communities in Kenya” (2005), v.

<sup>105</sup> Stunting among children is more pronounced although they are heavier because of the greater role of carbohydrates in the diet provided by schools and food relief. See Elliot Fratkin & Eric Abella Roth “Introduction” (2005), 11.

<sup>106</sup> MoH “Review of the Kenya Health Policy Framework 1994-2010” (2010a); See World Bank, “Economic Update: Navigating the Storm, Delivering the Promise with a Special Focus on Kenya’s Momentous Devolution” (2011b), 33.

<sup>107</sup> It is estimated that 16 percent of the sick do not seek care due to financial barriers, while 38 percent must dispose of their assets or borrow to pay for medical bills. Marc Luoma et al. “Kenya Health System Assessment 2010” (2010), 18.

<sup>108</sup> See MoH, “Comprehensive National Health Policy Framework 2011-2030” (2010b), 156. The overall average distance that patients/clients must travel to reach any type of facility is approx. 9 km.

has taken some steps to intensify outreach and mobile clinical services and pilot nomadic clinics have been established but the delivery of health services at the level of nomadic communities is still largely based on Faith-based organizations (FBO), NGOs and bilateral donors.<sup>109</sup>

**Within education**, good progress has been made towards achieving Kenya's MDG goals thanks to the introduction of Free Primary Education (2003).<sup>110</sup> Although improvements can also be seen in the ASALs, rates for enrolment, retention and performance are significantly lower than in the rest of the country and gender disparities are pronounced.<sup>111</sup> There is also a lack of equity in the distribution of various resources, especially teachers who resist being posted to ASAL areas, and school facilities in general (See Annex 4, Tables 4.7 to 4.11).<sup>112</sup>

A survey from 2010 indicates that 20% of children (6-16 years) in arid counties are out of school (national average: 4.5%).<sup>113</sup> This may simply be due to children's need to work, the inability of their families to pay school fees, or to the insecurity caused by ethnic clashes. Many young indigenous girls and boys also drop out of school once they are circumcised: the girls because they get married, the boys because they become "warriors". However, schooling in pastoral communities also faces a number of other constraints. There is a dire lack of infrastructure attending the needs of nomadic or semi-nomadic children, in spite of some efforts to provide low-cost boarding schools; school feeding programs; mobile schools and shepherd schools for child herders.<sup>114</sup> In addition, there are cultural and social barriers. Neither the school curriculum nor the school calendar is culturally adapted. Pastoralist parents often fear that once their children leave school they may not be able to re-integrate into the local livestock economy because they lack the nomadic education—the extensive and vital knowledge of their animals, the plants, the environment, etc. They also fear that sending a daughter to school might change her attitude to early marriage and other customs. The safety of their daughters and the Christianizing effect of schooling makes many Muslim pastoralists keep their children at home.

These challenges are taken up in a recent Policy Framework for Nomadic Education (2010). Produced in consultation with pastoralist communities, it recognizes the need for multiple delivery approaches and emphasizes the importance of alternative interventions and policies sensitive to the ecological and livelihood systems in the nomadic regions. The Framework also establishes a National Commission for Nomadic Education in Kenya (NACONEK) within the Ministry of Education.

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<sup>109</sup> MoH, "Reversing the Trends: The Second National Health Sector Strategic Plan of Kenya – NHSSP II 2005-2010" (2005) does not mention mobile clinics. The relatively few mobile clinics are mostly run by NGOs and Faith-based Organizations, which play a significant role in health service provision in Kenya and account for approximately 16.5% and 6% of inpatient and outpatient care respectively. See MoH, "Comprehensive NH Policy" (2010b) 31, 195.

<sup>110</sup> There has been an increase in the gross primary school enrolment rate (from 91.2% in 1999 to 109.8% in 2010. The net enrolment rate in 2010 was 91.4%, with a slightly higher ratio for girls (92.3%) than for boys (90.6%), See MoE, "Task Force on the Re-alignment of the Education Sector to the Constitution of Kenya 2010".

<sup>111</sup> The lack of disaggregated data does not allow for an assessment of the situation among hunter-gatherer communities nor in the Maasai areas.

<sup>112</sup> In ASAL counties, the number of pupils sharing a textbook stands at 3 per book. Ninety-five out of 100 schools lack a toilet, four out of 10 lack water in the school compound, and 31% of the children sit on the floor. UWEZO, "Kenya National Learning Assessment Report" (2010), 132.

<sup>113</sup> UWEZO, "National Learning Assessment Report" (2010), 124.

<sup>114</sup> Many of these initiatives were initially started by non-government actors but many collapsed when support was discontinued. The Duqsi, the nomadic version of a madrassa, has over time served as a point of entry to schooling. See Sara Jerop Ruto et al. "Educational Marginalisation in Northern Kenya" (2010), 37. UWEZO (op.cit.) estimates that only 2% of the children attend Duqsi and mobile schools.

## 2.5 Human and fundamental rights

### 2.5.1 Denial of identity and discrimination

Hunter-gatherers have been denied their identity by stated policies aimed at their assimilation within larger ethnic groups and classifying them under the derogatory term "Dorobo". Being recognized and listed as a distinct group in the 2009 population census therefore answered one of the demands of the Ogiek and the Sengwer. The "assimilation" policy has also meant that indigenous languages have disappeared. For people like the Yaaku, recovering their language is seen as the first step to regaining their identity as a people.<sup>115</sup>

Hunter-gatherers also suffer discrimination and marginalization because of their way of life, which is seen as "primitive". Pastoralists also suffer such discrimination, and are also considered primitive as well as violent and lawless. The NCIC audit of the Civil Service shows the prevalence of discrimination against indigenous peoples. Citizens of the Northern Kenya region continue to face difficulties in obtaining recognition and accessing citizenship rights and their inherent freedoms, particularly ID cards.<sup>116</sup> Somali Kenyans, who from 1989 to 2002 had to have special ID cards ("screening" cards), still feel discriminated and increasingly harassed.<sup>117</sup>

### 2.5.2 Conflicts and internal refugees

The recurrent conflicts between pastoralist and farming communities cause many human rights violations as mutual accusations of trespass often end in hostilities, with casualties on both sides. A good number of these conflicts stem from land issues—and human rights violations—that date back to colonial times. The Naivasha conflict between Maasai and Kikuyu, which lasted for 20 years and during which men were killed, women raped, cattle stolen and children lost, is a case in point.<sup>118</sup>

Human rights are also increasingly being violated in connection with the violent conflicts that characterize the northern part of the country in particular. While cattle raiding still occurs, its nature has changed. It has become commercialized,<sup>119</sup> and the easy access to automatic weapons<sup>120</sup> and the large number of young "warriors" involved (some of them form "militia") has turned raiding into violent acts of banditry with a high number of people being killed, including women and children who were traditionally spared. Many conflicts, though, are not related to cattle raiding traditions alone. A complex combination of other causes is also at play and includes increasingly severe and more frequent droughts, competition over control and access to pasture and water, increasing levels of poverty, the diminishing role of traditional governance systems, the activities of militant groups,<sup>121</sup> ethnocentrism, unemployment amongst the youth, etc.<sup>122</sup> Since the

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<sup>115</sup> A project entitled "Preservation and Valorization of the Yiaku language and Culture" has recently been launched. See <http://www.ambafrance-ke.org/Inauguration-of-Project-on>

<sup>116</sup> KHRC, "Foreigners at home: the dilemma of citizenship in Northern Kenya" (2009), 17.

<sup>117</sup> NCIC has received many complaints of victimization of Kenyan Somalis, and warns that "increasingly Kenya is preparing the ground to make Somalis targets of xenophobia and violent attacks". Press statement, November 2011 accessed at NCIC website: <http://www.cohesion.or.ke/>

<sup>118</sup> See IWGIA, *The Indigenous World 2004*, 372. and for latest developments:

<http://www.globalpressinstitute.org/global-news/africa/kenya/kenyan-tribes-reconcile-land-dispute-festival-wedding-and-radio#ixzz1qUZFdEN>

<sup>119</sup> Instead of keeping the cattle captured in a raid, many are sold off to traders, and moved out of the region.

<sup>120</sup> Arms are easily available from across the border in Uganda, Sudan, Ethiopia and Somalia. See also ACHPR, *Research Visit to Kenya 2010* (2012), 58ff.

<sup>121</sup> Like, e.g., the Oromo Liberation Front (OLF) which operates across the border with Ethiopia and terrorist organizations believed to be based in Somalia,

<sup>122</sup> Young pastoralists suffer from difficult access to education and few employment opportunities plus difficult access to leadership posts because the older generations cling on to power. See "Youth and Leadership Among

introduction of the multi-party system in Kenya (1991), political incentives have also become an important factor, including the distribution of arms to certain ethnic groups.<sup>123</sup> There is also evidence to suggest that a number of pastoral “warriors” have become “guns for hire”, with local elites exploiting the poverty of warriors by paying them to “eliminate” political or social rivals, or engage in armed robbery.<sup>124</sup> The competition over new political positions resulting from the national process of devolution has already claimed its first victims.<sup>125</sup>

The consequences of these inter-ethnic armed conflicts are a loss of human lives, widespread destruction of valuable property, including burning of schools,<sup>126</sup> displacements of large segments of the population, increased hatred between communities, and increased economic hardship as a result of a loss of livelihoods, leading to high levels of starvation and malnutrition among the displaced groups and unprecedented dependency on relief food.

### **2.5.3 The role of the state**

Another conflict factor in northern Kenya is the tense relationship between the state and the various pastoralist groups. This dates back to the days of colonial rule but since independence there has been a series of human rights violations, starting with the 1963-1968 “Shifita war”<sup>127</sup> and the subsequent state of emergency (1968-1992) and culminating in the Wagalla massacre in Wajir in 1984, the Turbi massacre in Marsabit in 2005,<sup>128</sup> the “operation Okoa Maisha” against the Saboat in 2008<sup>129</sup> and the Samburu killings in 2009-2010. This has deepened the feeling of marginalization, discrimination and deprivation among the pastoralists, who feel that the government’s response to the current conflict situations, in particular cross-border attacks, has been inadequate and that in many instances it has led to human rights abuses by security forces.<sup>130</sup> In most cases, these abuses have not been seriously investigated and the victims have found no redress, leading to a widespread sense that impunity prevails.

The government’s reactive and crisis-driven policy has recently given way to a number of initiatives aiming at improving the situation. This includes the creation of the Truth, Justice and Reconciliation Commission (TJRC) to enquire into historical injustices committed since 1963. The TJRC has been crucial in bringing forth hitherto undocumented and unpublicized human rights abuses committed in the northern part of the country. For many of the victims, the TJRC hearings have given them their first opportunity to speak publicly about the abuses they have suffered. A Draft National Policy on Peace Building and Conflict Management has been presented (2011). Based on a 6-year long consultative and participatory process, it establishes, among other things, a conflict early warning system and mediation support units at national, county and

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Pastoralist Communities in Kenya” (2012.03.16) at PDNK Blog at <http://pastoralistskenya.wordpress.com> ; ITDG, “Conflict Northern Kenya” (2003), 10.

<sup>123</sup> See, e.g., Cultural Survival, “When the Police are the Perpetrators” (2010) 17.

<sup>124</sup> UNDP, “Between a rock and hard place: Armed Violence in African Pastoral Communities” (2007), 5.

<sup>125</sup> See OCHA, “Humanitarian Snapshot”, 8 March 2012, at <http://www.ochaonline.un.org/kenya> (accessed on 10.04.2012).

<sup>126</sup> The Ilchamus have several times been attacked by Pokot militia, and people have had to vacate their homes, and schools to close down.

<sup>127</sup> See ACHPR, *Research Visit to Kenya* (2012), 56-58.

<sup>128</sup> The Wagalla massacre of (Somali) Degodia clan members by security officials left over 3,000 people dead and 21,000 displaced. The Turbi massacre left 90 people dead and over 7,500 displaced. Both cases are now being heard by the TJRC.

<sup>129</sup> See Annex 3, section on Saboat.

<sup>130</sup> Human Rights Council, “Report of the Special Rapporteur on ... indigenous people—Mission to Kenya” (2007), 16.

district level. It also recognizes the critical role of traditional conflict resolution mechanisms and the important role played by NGOs, CSOs and Churches.<sup>131</sup>

#### **2.5.4 Access to Justice**

Bringing their grievances and claims to court represents an enormous challenge for indigenous peoples since their access to justice is obstructed by a number of factors. There is little or no state administration, including courts, in their respective areas and they therefore have to travel long distances and spend time away from home;<sup>132</sup> the cost of legal proceedings is extremely high by the income standards of indigenous peoples and entails great sacrifices from the indigenous plaintiffs even if they can find a pro bono lawyer to assist with the case; and there is often corruption on the part of judicial and other government officials.<sup>133</sup> There is no free legal support or other legal aid scheme for their kind of cases. However, Article 48 of the new Constitution stipulates that the fees “shall be reasonable and shall not impede access to justice”.

#### **2.6 The situation of indigenous women**

Most indigenous communities are highly patriarchal and traditional,<sup>134</sup> and although women’s status and role may vary within ethnic communities and according to age, most indigenous women enjoy few rights and many traditional customs discriminate directly against the girl child and women in general. The girl child is often denied the right to education, and illiteracy is prevalent among indigenous women. Female Genital Mutilation (FGM), usually related to early marriages, remains widespread.<sup>135</sup> The highest prevalence is found in Muslim communities such as the Kenyan Somali (98%) where FGM Type III (infibulation) is most commonly practiced. Prevalence is also high among the Maasai (73%), who practice FGM Type II (excision).<sup>136</sup> In September 2011 a law was passed making it illegal to practice FGM or procure it or take somebody abroad for cutting.<sup>137</sup> It is, however, expected that it will take time before the law will be effectual (see Annex 4, Table 4.6 and section on FGM).<sup>138</sup>

Indigenous women have many chores that are physically demanding. They often have many children<sup>139</sup> and are responsible for obtaining food for all household members, while also working outside their homes, tending livestock, farming, etc. Yet a Maasai woman, for instance, will have less access to food and will stay hungry, if the amount of food is not sufficient. Most indigenous women have little access to healthcare and their mortality

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<sup>131</sup> GoK, “Draft National Policy on Peace Building and Conflict Management” (2011), §5.7. This is in line with the Constitution, Article 159(2) (c).

<sup>132</sup> There is more than 2.5 times the number of people per court house in North Eastern Province than in Central Province. See Ministry/Northern Kenya, “Draft Sessional Paper No... of 2009 on National Policy for the Sustainable Development of Northern Kenya and other Arid Lands” (2009), 19.

<sup>133</sup> See ACHPR, *Research Visit to Kenya* (2012), 53-54.

<sup>134</sup> Among many pastoralists, livestock is often ranked higher than a girl and her only value is the bride wealth her father can obtain.

<sup>135</sup> There seems nowadays to be a tendency to initiate girls at a younger age than before. One reason given is that it hastens marriage and the payment of the bride wealth.

<sup>136</sup> KNBS, “Demographic and Health Survey 2008-2009” (2010a), 264. GTZ, “Female Genital Mutilation in Kenya” (2007) at <http://www.gtz.de/de/dokumente/en-fgm-countries-kenya.pdf>

<sup>137</sup> Prior to the law, a National Committee on the Abandonment of Female Genital Mutilation had been created and a national policy formulated on FGM. The law even prohibits derogatory remarks about women who have not undergone FGM. Offenders may be jailed or fined or both.

<sup>138</sup> There are already reports of Maasai girls being taken to Tanzania in order to be circumcised and of the practice having gone underground and continuing at 60-80%. The Maasai community furthermore does not identify with the strategies used to eradicate FGM, which are borrowed from other communities. See “Cross Border Maasai on FGM” at the League of the Pastoralist Women (LPWK) Web page: <http://www.lpwk.org/>

<sup>139</sup> In 2008-09, the fertility rate in Mandera, Wajir and Garissa was 5.9 (national average: 4.6). See KNBS, “Kenya Demographic and Health Survey 2008-2009” (2010a), 48.

and morbidity rates are often higher than the national average. They are also often victims of domestic violence.<sup>140</sup>

Indigenous women are also at a disadvantage when it comes to land ownership and inheritance. Few of them have land registered in their names and their rights under communal ownership and group ranches are not defined. This allows men to dispose of family land without consulting women, as has been the case with individually owned ranches in Narok and Kadjado.<sup>141</sup> Traditions also continue to support male inheritance of family property although a recent landmark case brought to the High Court in 2008 overruled the application of a Maasai custom which disentitles daughters from claiming their father's inheritance.<sup>142</sup>

A large proportion of the internal refugees are women.<sup>143</sup> Many have lost their husbands, their families are disrupted, and few have the means to care for their family but live in abject poverty, exposed to all kinds of human rights abuses.<sup>144</sup> In the women's hearings organized by the TJRC and related to the Wagalla and Turbi massacres, several hundred indigenous women have come forward to tell of their sexual violence, torture, etc., and to show the physical scars from the sexual violence they were subjected to during the massacres.<sup>145</sup>

Women in indigenous societies have primarily been appreciated because they play an important complementary role within their households and families. This role has been greatly eroded as the consequence of a generalized impoverishment and changes in livelihood strategies, and indigenous women have become even more vulnerable and subordinate than they used to be. In Maasai communities, the transition from a pastoral subsistence economy to an economy based on market exchange and commercialized production has undermined women's traditional autonomy based on their extensive rights to parts of the family herd because men tend to control the marketing of livestock (248), often without informing or consulting the rest of the family. As a result many women have not only been disempowered but also impoverished.<sup>146</sup> Sedentarization has also reduced the relevance of women's traditional skills and labor experience while compelling them to take on other tasks (e.g., farm labor, small-scale income generating activities).

Indigenous women do not attend usually community meetings and, if they do, they will sit at the back and not participate actively. However, the past decade has seen indigenous women organize, and manage small locally-based projects; some have been able to get an education and some have formed small NGOs. The founder of one such NGO, Womankind, is a nominated MP.<sup>147</sup>

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<sup>140</sup> Mary Simat, "Violence against Indigenous Women and Girls in the Name of Traditional and Cultural Practices" (2012).

<sup>141</sup> Talle, *Women at a Loss*. (1988), 248; M.E.M. Rutten, "Land Policy, Land Tenure; Frontiers and Food Security among Maasai Pastoralists in Kenya" (1998), 191ff.

<sup>142</sup> See IWGIA, *The Indigenous World 2009*, (2009), 479.

<sup>143</sup> In northern Kenya, 70% or 105,500 of the displaced persons in 2003 were women and children aged under 14. ITDG-EA, "Conflict in Northern Kenya" (2003), 10-11.

<sup>144</sup> There seems to be a strong correlation between displacements and increased cases of rape, physical assault, prostitution, growing number of street children and child labor. See ITDG-EA, "Conflict in Northern Kenya" (2003), 12; and Human Rights Council, Report by Special Rapporteur on IDP (2012), 17.

<sup>145</sup> TJRC, "Annual Progress Report" (2011), 19.

<sup>146</sup> Talle, *Women at a Loss* (1993), 248. The 2010 Constitution, Art. 68.c.iii) and vi) addresses these issues (see Annex 5, section 5.2).

<sup>147</sup> In 1997, Sophia Abdi Noor became the first Somali woman to contest a parliamentary seat. After facing much discrimination and many obstructions she lost but continued her struggle and is now in parliament. See S.A. Noor, "Challenges facing Minority Women in Political Participation and their Solutions—Kenya and other Countries" (2009).

## 2.7 Political and other participation

Indigenous communities have, for decades, complained about their “invisibility” and lack of recognition at the administrative and political level. This is corroborated by a recent report that shows that there is no meaningful participation of indigenous communities in civil service and public office.<sup>148</sup> This, together with their limited participation in politics at both local and national level, translates into a weak voice in public decision-making, including lack of access to important resources such as the substantial Constituency Development Funds (CDFs), administered by local MPs.<sup>149</sup>

Indigenous peoples are therefore asking for greater participation in decision-making processes relevant to their situation. They face, however, a number of constraints. One is a generally low level of education. Not speaking Kiswahili is an impediment at the local level<sup>150</sup> and, in order to be elected to a County Assembly or to Parliament, a “post-secondary school qualification” is required.<sup>151</sup> Other constraints may be their lack of national identity (ID) cards, without which they cannot register to vote,<sup>152</sup> their geographical isolation—far from communication networks, public services and information in general—and the absence of civic education in their areas. They therefore often lack the necessary information that would enable them to use the provisions of existing laws and policies and assert their rights. Their mobile lifestyles also makes it difficult to accommodate a model of democratic representation based on permanent residence and pastoralists may often find themselves far from polling stations at the time of elections. Finally, the imposition of a majority onto indigenous peoples’ cultural tradition of consensus decision-making, particularly within a context of clan-based politics, is a primary cause of political disputes, leading to increased conflict between ethnic groups or clans.<sup>153</sup>

Hunter-gatherer and agro-pastoralist communities like the Ilchamus are those at greatest disadvantage. At the local level, marginalized peoples such as the Ogiek and Sengwer are not well represented in the decision-making processes. These may include participating in local politics but also in new relevant bodies such as the Community Forest Associations (CFA) or in the future structures related to the REDD+ process.<sup>154</sup> Instead, they are forced to accept being represented and administered by representatives from the more dominant ethnic groups. At the national political level, hunter-gatherers and agro-pastoralists suffer due to the fact that they live dispersed over several single-member constituencies and therefore constitute a minority with little chance of getting one of their own elected by plurality.<sup>155</sup> The Ogiek and the Sengwer have therefore claimed adequate political representation through the allocation of a

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<sup>148</sup> The report issued by the National Cohesion and Integration Commission (NCIC) indicates that only the Kenyan Somali, the Maasai, the Borana and the Turkana are represented but their presence does not exceed 2.7% (Somali) and, with the exception of the Borana, does not reflect their share of the population. NCIC, “Toward National Cohesion” (2011).

<sup>149</sup> Small communities, like the Ogiek, have all too often found these swallowed up by the larger ethnic groups within the constituencies. See ACHPR, *Research Visit to Kenya* (2012), 51.

<sup>150</sup> In the Tana Delta, e.g., only those ethnic communities that speak Kiswahili, such as the Orma pastoralists for instance, enjoy representation in local government. See Schade, “Human rights, Climate Change” (2011), 49.

<sup>151</sup> Elections Bill, 2011, Art. 23 b). The issue of the minimum education qualification for a County Assembly member is currently being debated.

<sup>152</sup> All persons over 18 must apply for an ID card by appearing in person at the registration office, and the processing of a card takes from six to eight weeks. See also KHRC, “Foreigners at home” (2009), 17.

<sup>153</sup> See Saverio Krätli and Jeremy Swift in “Understanding and Managing Pastoral Conflict in Kenya” (n.d.), 7.

<sup>154</sup> According to the 2005 Forest Act, registering as a CFA and drawing up a forest management plan entails a number of forest user rights. Kenya is presently implementing its REDD Readiness Preparation Proposal (R-PP 2101-2013). See <http://www.kenyaforestservice.org/>

<sup>155</sup> This has been the fate of the Ogiek, who are spread over five constituencies, the Endorois over two and the Sengwer over three, rendering them totally unrepresented in each. MRG Report “Kenya at 50: Unrealized Rights of Minorities and Indigenous Peoples” (2012), 12.

“special interest” seat<sup>156</sup> but, despite intensive lobbying, this did not happen in the 2007 elections. Nor did it happen in the case of the Ilchamus community, even though their right to nominate a “special interest” member of parliament was recognized by the Constitutional Court prior to the elections.<sup>157</sup>

The political involvement of pastoralists such as the Maasai and the Somali dates back to before independence.<sup>158</sup> Today, several pastoralist groups are represented at both local and national level<sup>159</sup> and pastoralists from Northern Kenya have furthermore benefited from the allocation of “special interest” seats.<sup>160</sup> In the Maasai areas, however, the influx of non-Maasai has eroded their traditional influence and the local MPs are not necessarily Maasai. Being represented politically at local and national level—by MPs and even ministers—has also not been particularly beneficial, as the slow pace of development in pastoral areas shows. Co-optation of individuals, ethnic groups, the patron/client systems at local and national levels and corruption has characterized the political arena. In the northern counties, politics has been marked by the dominance and manipulations of KANU,<sup>161</sup> and the neglect shown by the opposition parties due to the high costs of campaigning among distant, scattered pastoralist populations.<sup>162</sup> Since the 2007 elections,<sup>163</sup> however, there has been a distinct warming to the North and the ASALs in general. The creation of the Ministry of State for Development of Northern Kenya and other Arid Lands shows an increasing understanding and appreciation of the pastoral production system but also an appreciation of the ASALs’ electoral significance.<sup>164</sup> Much of this can be linked to the effective advocacy of pastoral civil society over the past two decades and to the formation of an all-party Pastoral Parliamentary Group (PPG) by pastoralist MPs,<sup>165</sup> which has the potential to act as a cohesive bloc in parliament.<sup>166</sup>

With upcoming elections (2013) and the post-election violence in 2008 still a vivid memory, the whole electoral process is being closely followed. The issue of constituency boundaries, in particular, may turn out to be a major issue.<sup>167</sup> The recent draft report by the Independent Electoral Board and Boundaries Commission (IEBC) defining the new constituencies (to be increased from 210 to 290) has been met with vehement protests

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<sup>156</sup> The 1963 Constitution establishes that the President, following a general election, shall appoint 12 nominated members of the National Assembly to represent “special interests”. See MRG Report “Kenya at 50” (2012), 12, 16.

<sup>157</sup> *Ilchamus Community vs. Electoral Commission of Kenya and Attorney General of Kenya*. See MRG Report “Kenya at 50” (2012), 12-13.

<sup>158</sup> The Somali National Association and the Maasai United Front were formed prior to independence. Later, the minority ethnic groups formed a national party, KADU, as a counterweight to the party of the dominant tribes, KANU. In 1963, KADU was persuaded to join KANU in order to end divisive politics. See Naomi Kipuri, *Seeking Space in Postcolonial Politics: The Case of Indigenous Peoples in East Africa* (2001), 263.

<sup>159</sup> The Maasai, e.g., have for many years been represented in the Parliament and at government level.

<sup>160</sup> There were 12 nominated seats in Kenya’s parliament—of which representatives from the pastoralist and/or Muslim minority communities in the North and North-East were given half. Appointed members are nominated by the political parties. These 12 seats are allocated among the parties in proportion to their nationwide share of the vote. See Livingstone “A Comparative Study” (2005).

<sup>161</sup> President Moi and KANU manipulated tribal loyalties and even stirred up murderous inter-ethnic strife in order to win constituencies. See Livingstone, “A Comparative Study” (2005).

<sup>162</sup> See Kipuri, “Seeking Space” (2001), 261-269.

<sup>163</sup> The Eastern and North Eastern provinces voted for Kibaki (PNU), while Nyanza, the Western and Rift Valley (including Turkana and Maasai areas) provinces voted for Odinga (ODM).

<sup>164</sup> Predominantly pastoralist constituencies account for around 40 seats out of a total of 210 elected seats in the National Assembly. See Livingstone, “A Comparative Study” (2005).

<sup>165</sup> The PPG has been active since 2003. Its vice-secretary, Hon. Sophia Abdi Noor, nominated MP, announced in December 2011 that the PPG was in the process of forming a political party that would comprise all leaders from the pastoralist’s community. At <http://ngonewsafrika.org/archives/10785> (accessed 01.04.2012).

<sup>166</sup> See Sara Jerop Ruto et al. “Educational Marginalisation in Northern Kenya” (2009), 21.

<sup>167</sup> It has already ignited old rivalry between the Ilchamus and Endorois, clashing over the creation of the new Mochongoi constituency in Baringo County. *Daily Mail*, 10.02.2012 at <http://allafrica.com/stories/201202120084.html>

from many indigenous leaders, except for the Maasai elite.<sup>168</sup> While IEBC officials said all communities would be treated fairly, and that the interests of minority communities—including the Ogiek and Sengwer among others—would be considered, they also stated that no special civic wards would be created for them.<sup>169</sup>

### **3. Laws of Kenya and indigenous peoples**

#### **3.1 The Constitution and indigenous peoples**

The adoption of the new Constitution in 2010 marked the end of several years of deliberations, consultations and drafting in which indigenous civil society organizations played an important role. See Annex 5, 5.1 and 5.2 for full text of relevant articles.

Supported by 68% of the voters, the Constitution makes a clean break with the past and provides several avenues for the pursuit and strengthening of indigenous peoples' individual and collective rights. It defines the notion of "vulnerable and marginalized minorities" in a way consistent with UNDRIP language (Art. 260). It promotes and protects indigenous languages (Art.7), recognizes the cultural and intellectual rights of marginalized communities (Art. 11) and their right to dual citizenship (Art. 16), which may benefit communities who live on both sides of the border. Articles 19-59 provide for a plethora of rights and freedoms, including Art. 56, which introduces the use of affirmative action programs at all levels.<sup>170</sup> Devolution—i.e., the transfer of decision-making to authorities at subnational level—will increase the participation of marginalized communities in governance (Art. 147) and the Constitution also provides for marginalized communities' representation within political parties (Art. 91), parliament (Art. 100), county assemblies (Art. 197) and public service (Art. 232).

The Constitution includes an entire chapter on Land and Environment. The land policy rests on several principles, among others: (a) equitable access to land; (b) security of land rights; and (f) gender equity in law, customs and practices related to land and property in land (Art. 60). Land is categorized into public, community and private land. Under Art. 63, community land shall be vested in and held by communities identified on the basis of ethnicity, culture or similar community of interest. This includes lands lawfully held, managed or used by specific communities as community forests, grazing areas or shrines and ancestral lands and lands traditionally occupied by hunter-gatherer communities. However, there are several caveats. Community land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively; and the state may still regulate the use of any land in the interest of defense, public safety, public order, public morality, public health or land-use planning (Art. 66).

Among other positive innovations are Art. 67, which sets up a Land Commission to make recommendations on the resolution of historical land injustices and recommend appropriate redress; Arts. 69-72, which provide for the sustainable exploitation, utilization, management and conservation of the environment and natural resources and for the equitable sharing of natural resources. The state shall also protect and enhance intellectual property rights and indigenous knowledge of biodiversity and genetic resources of the communities, and encourage public participation in the management, protection and conservation of the environment. Finally, the new constitution provides

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<sup>168</sup> The IEBC is headed by a Kenyan of Somali descent—"a conscious effort to have someone from a community that generally speaking is seen to be less vulnerable to tribalistic conduct in carrying out the duties of this important office".

<sup>169</sup> *The Standard* 26.01.12 at <http://www.standardmedia.co.ke/politics/>

<sup>170</sup> Affirmative action shall ensure, inter alia, that indigenous peoples participate and are represented in governance and other spheres of life; are provided with special opportunities in the educational and economic fields; and have access to employment as well as water, health services and infrastructure.

for easier access to justice by lowering formal requirements for and costs of filing cases as well as by broadening options for representation (Art. 48).<sup>171</sup>

Many of the provisions of the Constitution—including those related to devolution and the establishment of the Senate—will only take effect after the forthcoming elections. Other provisions depend on parliament to enact the necessary legislation. This is notably the case of several articles dealing with marginalized communities (e.g., Arts. 63 and 100), and this may take up to five years (Art. 261). While the new constitution has high potential for indigenous peoples and their rights, it leaves a great deal to the development of new laws, which will be slow.

### 3.2. Other relevant legislation and policies

**The National Land Policy (2009)**<sup>172</sup> provides a far better framework for protecting collective community lands than has so far been the case and indigenous peoples were very active in lobbying for it. The NLP is, to a large extent, reflected in the Constitution's Chapter 5 on Land and Environment. The NLP, in Chapter 3, lists the land issues requiring special intervention including: (a) Historical injustices; (b) Pastoral land issues; (c) Coastal region land issues; (d) Land rights of minority and marginalized groups; and (e) Land rights of women (§ 171). Restitution and resettlement are seen as mechanisms that can resolve these issues (§ 174-175) and recommendations for each issue are made to the government. The NLP furthermore establishes the National Land Commission (NLC) and the institutional framework that will deliver reforms in the land sector at the community, county and national levels. It calls, among other things, for an appropriate legal framework for eviction based on internationally acceptable guidelines (§ 175 and 209 (m)).

See Annex 5, section 5.3

In accordance with the recommendations formulated by NLP and the Constitution (i.e., Art. 68 of the Constitution), the following legislation on land has been adopted or drafted:

**The Draft Eviction and Resettlement Guidelines (2010)** (not yet adopted). The guidelines explicitly allude to international law, denounce the problem of land insecurity and squatters, and acknowledge international standards in their "general principles".

**The Environment and Land Court Act (2011)** establishes a superior court that will hear and determine disputes relating to the environment and the use and occupation of land.

**The Land Bill (2011)** on the sustainable administration and management of land and land-based resources and for connected purposes.

**The Land Registration Bill (2011)** on the registration of title to land, dealings in registered land, and for connected purposes.

**The Election Bill (2011)** on electoral rules and procedures.

**The National Land Commission Act (February 2012)** defines the functions and powers of the independent commission which will be tasked with registering land transfers, resolving disputes and ending gender discrimination.

**The Community Land Bill** is currently being drafted and debated.

Other recent legislation includes:

**The Truth, Justice and Reconciliation Act (2008)** that established the commission (TJRC) to probe human rights abuses since independence in 196, and to assess the

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<sup>171</sup> This is important also regarding litigation for human rights because it enables public interest litigation and litigation on behalf of others without the prerequisite proof of *locus standi* (Art. 22).

<sup>172</sup> This and other land-related documents at Ministry of Land website: <http://www.ardhi.go.ke/>

“perceived economic marginalization of communities and make recommendations on how to address their marginalization”.<sup>173</sup>

**The National Cohesion and Integration Act (2008)** that established the National Cohesion and Integration Commission (NCIC) to address the problem of ethnic discrimination within the public sector.<sup>174</sup>

**The National Gender and Equality Commission Act (2011).** The Commission is currently being established.

Important recent policies include:

**The National Policy on Peace Building and Conflict Management**

**The Draft National Policy for the Sustainable Development of Northern Kenya and other Arid Lands ‘Releasing Our Full Potential’ (2009)**

**Policy Framework for Nomadic Education in Kenya (2010)**

**The Forest Act (2005) and the Forest Policy (2007)** have the overall objectives of reducing the rate of deforestation and contributing to poverty reduction, employment creation and improvement of livelihoods through the sustainable use, conservation and management of forests and trees. The Forest Act also recognizes forest communities’ rights to continue to use the forest produce customarily taken from the forest, as long as these products are not to be sold on. A key element is to empower local communities to take an active role in forest management by registering as a Community Forest Association (CFA) and developing a management plan. Communities doing so may be granted a number of forest user rights relating to, for instance, the collection of medicinal herbs; harvesting of honey; harvesting of timber or fuel wood; grass harvesting and grazing; etc. (Sections 45-46 (2))<sup>175</sup>

**MoE Sessional Paper No. I of 2005 “A Policy Framework for Education, Training and Research: Meeting the Challenges of Education, Training and Research in Kenya in the 21st Century”** establishes that the language of instruction shall be the mother tongue in lower primary school (classes 1-3) in the rural areas, and that a culturally sensitive approach must be used to address the learning needs of different communities.<sup>176</sup>

**A Draft Wildlife Policy** was presented in August 2011 but has not been finalized.

#### **4. International and regional human rights treaties and instruments**

Kenya has signed and ratified a wide range of international and regional human rights instruments, including a number of international environmental conventions (see list in Annex 5). All these instruments could be of great significance to Kenya’s indigenous peoples, since Article 2 of the Constitution stipulates that “The general rules of international law shall form part of the law of Kenya” (5) and “Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution” (6).

In 2007, Kenya abstained from voting when the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted.<sup>177</sup> Kenya has **not** ratified ILO Convention No.169 on Indigenous and Tribal Peoples in Independent Countries.

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<sup>173</sup> Most of the TJRC’s 30,000 statements, collected from victims across the country, deal with land grievances. See TJRC’s “Progress Report 2011” at [www.tjrkenya.org](http://www.tjrkenya.org)

<sup>174</sup> NCIC website: <http://www.cohesion.or.ke/>

<sup>175</sup> GoK, Sessional Paper No. 1 of 2007 on Forest Policy, (2007a), 5-6, 19.

[http://www.kenyaforestservice.org/index.php?option=com\\_content&view=article&id=114&Itemid=137](http://www.kenyaforestservice.org/index.php?option=com_content&view=article&id=114&Itemid=137)

<sup>176</sup> Ministry of Education Web site at [www.education.go.ke](http://www.education.go.ke)

<sup>177</sup> Burundi and Nigeria also abstained, while more than 30 African states voted in favor of the Declaration. See Albert K. Barume “Responding to the Concerns of the African States” (2009), 170.

#### 4.1 International human rights treaties

Kenya is party to seven of the nine core international human rights treaties:<sup>178</sup>

- The International Covenant on Civil and Political Rights (ICCPR)<sup>179</sup>
- The International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>180</sup>
- The Convention on the Elimination of All Forms of Racial Discrimination (ICERD)<sup>181</sup>
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)<sup>182</sup>
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- The Convention on the Rights of the Child (CRC) and its Optional Protocol CRC-OP-AC<sup>183</sup>
- The Convention on the Rights of Persons with Disabilities (CRPD)<sup>184</sup>

Kenya has ratified several universal human rights instruments related to armed conflicts, a number of UN conventions and several UNESCO conventions of importance to indigenous peoples.

Kenya is a member of the International Labor Organization (ILO) and has ratified 49 of its conventions, including C29 and C105 (on forced labor), C100 and C111 (on discrimination within employment and occupation), C138 and C182 (on child labor), all of which are specifically relevant to indigenous peoples.

Kenya is also Party to the main international conventions and agreements related to the environment, biodiversity and climate change, as well as intellectual property rights.

Finally, Kenya has signed up to the UN Millennium Declaration.

#### 4.2 Regional human rights instruments

Kenya has ratified or signed the following regional human rights instruments:

- The African Charter on Human and Peoples' Rights (ACHPR)
- The African Charter on Rights and Welfare of the Child
- The Protocol to the ACHPR on the Rights of Women in Africa (signature)
- The Protocol to the ACHPR on the Establishment of an African Court on Human and Peoples' Rights

Kenya is member of the regional EACJ (EAC Court of Justice).<sup>185</sup>

#### 4.3 Other relevant regional instruments

Kenya has ratified several African conventions and is a member of several regional institutions, including the EAC (East African Community),<sup>186</sup> EALA (East African Legislative Assembly) and EACM (East African Common Market), EAPCCO (Eastern Africa

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<sup>178</sup> Kenya has only signed the Convention for the Protection of All Persons from Enforced Disappearance (CED). The ratification of the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) is under consideration. See Human Rights Council/UPR, National report (2010a), 6.

<sup>179</sup> Kenya does not recognize Inter-State complaints (art.41) and is not party to ICCPR-OP 1 and OP 2.

<sup>180</sup> Kenya has reservations on art. 10(2)3 and is not party to OP-ICESCR4

<sup>181</sup> Kenya does not recognize Individual Complaints (art. 14).

<sup>182</sup> Kenya does not recognize Inter-State complaints (art. 21) nor Individual Complaints (art. 22) and Inquiry Procedure (art.20).

<sup>183</sup> Binding declaration under art. 3: 18 years.

<sup>184</sup> Kenya is not party to OP-CRPD.

<sup>185</sup> Any person who is resident in a Partner State is allowed to file complaints on the legality of any Partner State/Community Act, regulation, directive, decision or action as beyond the powers of the Treaty.

<sup>186</sup> The EAC is a regional intergovernmental organization of five countries: Burundi, Kenya, Rwanda, Tanzania and Uganda.

Police Chiefs Cooperation Organization)<sup>187</sup>; NEPAD (New Partnership for Africa's Development); the APRM (African Peer Review Mechanism); COMESA (Common Market for East and Southern Africa), and IGAD (Intercontinental Authority on Development).<sup>188</sup>

## **5. National and grassroots organizations**

### **5.1 Governmental Human Rights Institutions**

The Kenya National Human Rights and Equality Commission (KNHRC) established by Act No. 14 of 2011.

The Truth, Justice and Reconciliation Commission (TJRC): <http://www.tjrkenya.org>

The National Cohesion and Integration Commission (NCIC): <http://www.cohesion.or.ke/>

### **5.2 National and local non-governmental organizations**

Kenya has a sizable number of national and local indigenous organizations as well as several support NGOs. This is therefore by no means an exhaustive list.

**Centre for Minority Rights Development (CEMIRIDE) (2000)** seeks to strengthen the capacity of minorities and indigenous peoples in Kenya and East Africa and secure their rights in all social, political and economic development processes.

<http://www.cemiride.org>

**Friends of Lake Turkana Trust (2009)** works with the objective of strengthening and advancing the environment and natural resources agenda in the Turkana basin.

<http://www.friendsoflaketurkana.org>

**Endorois Welfare Council (EWC) (2003)** was originally created to respond to human rights violations arising from the community's forced eviction from Lake Bogoria for the creation of a Game Reserve in 1973. Today it also promotes leadership and training on conflict resolution, advocacy and literacy among marginalized groups within the Endorois community (women, youth and the disabled). Contact: Wilson Kipkazi:

[kipkaziwk@gmail.com](mailto:kipkaziwk@gmail.com) and [excbogoria@hotmail.com](mailto:excbogoria@hotmail.com)

**Kenya Human Rights Commission (1994)** campaigns to create a culture in Kenya in which human rights and democratic culture are entrenched. It does this through monitoring, documenting and publicizing rights violations. <http://www.khrc.or.ke/>

**Kenya Land Alliance (2001)** advocates for the review, formulation and implementation of land laws and policy reforms. <http://www.kenyalandalliance.or.ke/>

**Indigenous Fishers Network (IFN) (2004)** has the main objective of taking the lead in spearheading the participation of indigenous fisher communities in the reforms processes, with specific emphasis on the constitution review and land reforms.

<http://www.fishersrights.or.ke/>

**Indigenous Information Network (1996/2001)** works with information dissemination and networking within different fields in support of indigenous and minority peoples in the region. <http://www.indigenous-info-kenya.org/>

**League of Pastoralist Women of Kenya (LPWK) (2007)** seeks to improve governance in Kenya by building pastoralist women's leadership capacity and fostering participation in a broad sense, with a focus on economic and social empowerment as well as political engagement. <http://www.lpwk.org/>

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<sup>187</sup> The Eastern Africa Police Chiefs Co-operation Organization (EAPCCO) has 12 members (Kenya Djibouti, Eritrea, Ethiopia, Somalia, Sudan, South Sudan, Seychelles, Rwanda, Burundi, Uganda and Tanzania). It was created in 1998 to promote, strengthen and perpetuate co-operation and foster joint strategies for the management of all forms of cross-border and related crimes with regional implications (terrorism, drugs, cattle rustling, environmental and wildlife crime, illegal firearms, trafficking in human beings and illegal immigrants).

<sup>188</sup> The member states of IGAD are Kenya, Sudan, Ethiopia, Eritrea, Djibouti, Somalia and Uganda. IGAD has several programs: CEWARN (Conflict Early Warning and Response Mechanism) ICPAC (Climate Prediction) and ICPAT (Capacity building against terrorism).

**Manyoito Pastoralist Integrated Development Organization (MPIDO)**

**(1996/2000)** deals with the marginalization and dehumanization of Maa pastoralists in Kenya and particularly in Kajiado North, Narok, Nakuru and Naivasha. MPIDO works for a just and equitable society that recognizes and upholds human rights and the fundamental freedoms of indigenous peoples. <http://mpido.org/>

**OGIEK Peoples' Development Program (OPDP)** (1999) is dedicated to the preservation of the Ogiek culture, the protection of nature and the improvement of socio-economic opportunities by building the synergies of Ogiek youth and women through education. <http://www.forestguardian.net>

**Pastoralists Development Network of Kenya (PDNK) (2003)** is an advocacy NGO network comprising pastoralists NGOs and CBOs and non-pastoralist institutions and individuals supporting pastoralists' development processes in Kenya. It draws its membership from the ASAL region. <http://www.pdnkenya.org/>

**Resource Conflict Institute (RECONCILE) (2001)** conducts policy research, advocacy and public interest environmental education and litigation to promote policies, laws and practices which empower citizens to participate in environmental and natural resources governance. <http://www.reconcile-ea.org/>

**Womankind Kenya (1989)** was founded by local Somali pastoral women committed to improving the living standards and the level of decision-making of their fellow pastoral women and the girl child in North Eastern province. <http://www.womankindkenya.org>

**Other, smaller NGOs include**

**Sengwer Indigenous Development Project**—Postal Address: PO Box 3894, Kitale – 30200, Kenya. Telephone: + 254 721 284 279. Email: [sengwer.idp@multitechweb.com](mailto:sengwer.idp@multitechweb.com)

**Yiaku People's Organization**—Postal Address: PO Box 947-10400, Nanyuki, Kenya. Telephone: + 254 623 223 8; Cell: + 254 722 733 412. Email: [koinante6@yahoo.com](mailto:koinante6@yahoo.com)

**El-Molo Eco-Tourism, Rights & Development Forum**—Contact: Christiana Saiti—Postal Address: Box 7683, Code 00100 GPO, Nairobi, PO Box 15, Loiyangalani. Mobile: 072 266 2798

Email: [clouwa@yahoo.com](mailto:clouwa@yahoo.com)

**6. IFAD projects and operations in Kenya**

According to the Country Strategic Opportunities Programme (COSOP) for 2007-2012, IFAD has three strategic objectives with its work in Kenya: (1) Improving the delivery of services to the rural poor; (2) Increasing incomes among the rural poor; and (3) Increased investment opportunities for the rural poor. IFAD has a liaison office based in Nairobi which supports the coordination of the IFAD country program in Kenya.

The core target group for IFAD in Kenya consists of poor small producers, agro-pastoralists and pastoralists in medium-high potential and arid and semi-arid areas. In two of the projects, beneficiaries include indigenous Ogiek, Dorobo, Ilchamus and Oromo (Borana) around Lake Turkana.

As of March 2012, IFAD had five ongoing operations in Kenya—the Smallholder Horticulture Marketing Programme; the Smallholder Dairy Commercialization Programme; the Southern Nyanza Community Development Project; the Mount Kenya East Pilot Project for Natural Resource Management; and the Programme for Rural Outreach of Financial Innovations and Technologies. The total amount of loans and grants provided by IFAD was USD104.4 million.

In particular, one programme benefits the Maasai Indigenous Peoples.

**PROGRAMME FOR RURAL OUTREACH OF FINANCIAL INNOVATIONS AND TECHNOLOGIES (PROFIT)<sup>189</sup>**

<b>Programme type</b>	Credit and Financial Services
<b>Project ID</b>	1378
<b>Approval date</b>	16 September 2010
<b>Implementation period</b>	2010-2016
<b>Total cost</b>	USD 83.2 million
<b>IFAD loan</b>	USD 29.3 million
<b>IFAD grant</b>	USD 600,000
<b>Total cost benefiting ethnic minorities</b>	n/a
<b>Executive agency</b>	Microfinance Unit (Ministry of Finance, Economic Affairs Department)
<b>Indigenous beneficiaries</b>	Maasai

**Programme Area and Beneficiaries**

PROFIT will be implemented throughout Kenya's rural areas, in particular in arid and semi-arid lands and areas with agricultural potential and a high incidence of poverty. It will reach out to smallholder farmers, pastoralists, artisanal fishers, women, landless labourers and young people.

**Programme objective**

The programme contributes to the rural finance policy process and thereby to the reform of financial sector policy in Kenya. It will encourage the development of a range of innovative financial products, such as savings and remittance services, community infrastructure loans, value chain financing, medium-term financing for the agriculture sector, microventure capital modalities, index-based insurance, health insurance, and the cutting edge biometric point of sale devices as applied by Jamil Bora (a registered non-profit trust in Kenya).

**Programme components**

The programme has three components, namely:

- (i) **Capacity Building for Policy, Regulation and Supervision;**
- (ii) **Rural Finance Innovation and Outreach Fund;**
- (iii) **Project Management.**

In addition, IFAD has funded three projects in Kenya under the **Indigenous Peoples Assistance Facility (IPAF)**:

- **Rehabilitation and protection of Kireita Forest, 2007**
- **Raising El-molo living standards with modern fishing techniques, improved marketing systems, and an effective and efficient El-molo fishermen's cooperative society, 2008**
- **The Gabbra camel herders of northern Kenya, 2011**

**Organization:** Kivulini Trust

**Area of project implementation:** Northern Kenya

**IP Group:** Gabra

**Grant amount:** USD 33,000

This project seeks to create opportunities for the less endowed members of the Gabbra community to acquire camels, which are gradually becoming the livestock of choice for pastoralists of Eastern Africa, in the light of climate change.

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<sup>189</sup> Source: President's report [EB 2010/100/R.19/Rev.1]; IFAD's Report at the X Session of the UN Permanent Forum on Indigenous Issues (UNPFII), 2011

It will enhance the insurance and risk minimization function of the system against herd annihilation resulting from drought, epidemic or enemy attack. The project will perpetuate and strengthen the traditional social security network systems based on the livestock loaning system and thereby enhance livestock-based livelihoods. It will promote social cohesion, self-reliance, reciprocity and reduce vulnerability of the Gabbra camel herders.

## **7. International organizations**

As of 2010, Kenya was receiving USD1,627 million in ODA. Key donors, in terms of financial transfers, are the US government (mostly off budget), followed by the World Bank, the African Development Bank, DFID and the European Union, although some donors who do not publish their aid, such as China, are also thought to be within this group.<sup>190</sup>

### **7.1 UN agencies**

The UN programs emerging from partnerships between GoK and UN agencies working in Kenya are coordinated and harmonized within the United Nations Development Assistance Framework, UNDAF. The current UNDAF 2009-2013 strategic plan is rooted in the Vision 2030 and Medium Term Plan (MTP) of GoK, and is based on three priority areas: (1) governance and human rights; (2) empowerment and poverty reduction; and (3) sustainability and equitable economic growth. Four cross-cutting themes are: gender equality; HIV/AIDS; migration and displacement; and climate change. Within the UNDAF structure, United Nations agencies in Kenya work in four Joint Programs<sup>191</sup> dealing with Food Security and Nutrition, Gender Equality and Women's Empowerment, Youth, and Support on AIDS.

The Kenya UN Country Team (UNCT) includes: Food and Agriculture Organization of the UN (FAO); International Fund for Agricultural Development (IFAD) International Organization for Migration (IOM); Office for the Coordination of Humanitarian Affairs (OCHA); UN Entity for Gender Equality and the Empowerment of Women (UN WOMEN); Joint UN Programme on HIV/AIDS (UNAIDS); UN Development Programme (UNDP); UN Environment Programme (UNEP); UN Educational, Scientific and Cultural Organization (UNESCO); UN Fund for Population (UNFPA); UN Human Settlements Programme (UN-HABITAT); UN High Commission for Refugees (UNHCR); UN Information Centre (UNIC); UN Children's Fund (UNICEF); UN Industrial Development Organization (UNIDO); UN Office for Drugs and Crime (UNODC); UN Office in Nairobi (UNON); UN Office for Project Services (UNOPS); UN Volunteers (UNV); World Food Programme (WFP); and World Health Organization (WHO).

### **7.2 Bilateral international and regional development agencies**

A large part of Kenyan ODA is given within the framework of the Kenya Joint Assistance Strategy (KJAS) for 2007-2012. KJAS represents the mutual commitment of GoK and 17 development partners to develop a new, more effective way of working together.<sup>192</sup> An Aid Effectiveness Kenya (AEK) desk has been established in the Office of the Deputy Prime Minister and Minister of Finance.

The KJAS is organized around three pillars in support of the GoK's Vision 2030 strategy: (1) economic growth, (2) poverty reduction, and (3) governance. Most KJAS support is

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<sup>190</sup> WBG, Country Partnership Strategy (2010), 34.

<sup>191</sup> A Joint Program is a set of activities with a common work plan and related budget involving two or more participating UN agencies and national or sub-national partners.

<sup>192</sup> KJAS members are Canada, Germany, Denmark, Spain, EU, Finland, France, Italy, Netherlands, Norway, Sweden, UK, USA, African Development Bank, Japan and Kenya,

channeled through projects and programs; general or sector budget support; and through non-state actors including faith-based organizations, the media, and trade and professional bodies. Non KJAS development partners operating in Kenya include China; Belgium; South Korea; Kuwait; Saudi Arabia; the Global Fund and GAVI.<sup>193</sup> Private foundations working in Kenya are the Rockefeller Foundation and Baylor College of Medicine.

### **7.3 International financial institutions**

#### **7.3.1 The World Bank**

As of 01.01.2012, there were 36 active World Bank projects (see Annex 8) supporting the following sectors: transport infrastructure; energy; institutional reforms; health; climate change and environment. In 2010, the World Bank Group (WBG) approved a new Country Partnership Strategy (CPS) covering 2010–2013. The CPS aims to support government efforts to implement the MTP and achieve Vision 2030.<sup>194</sup> Although the CPS does not mention indigenous peoples/marginalized communities, 12 WB programs (or every third program) have, since 2006, triggered the WB OP 4.10. These IPPs only address the situation of hunter-gatherers—the Ogiek, the Sengwer, the Waata and the Aweer/Boni—and of a single agro-pastoralist group, the Ilchamus.

#### **7.3.2 Other international and regional development banks and funds**

These institutions include: the African Development Bank (AfDB), the Arab Bank for Economic Development in Africa (ABEDA) and the OPEC Fund.

#### **7.3.3 Environmental Funding Mechanisms**

Kenya receives GEF funding and is currently preparing for REDD+ by implementing its Readiness Preparation Proposal (2010-2013).

### **7.4 International NGOs**

A large number of INGOs (secular and faith-based) work in Kenya, some in collaboration with UN or bilateral agencies, others with their own local relief efforts and small-scale development programs. They include, among many others: World Vision, Food for the Hungry, the Catholic Relief Agency, CRS Catholic Relief Services Caritas Catholic Agency for Overseas Development (CAFOD), IRW Islamic Relief Worldwide, Oxfam, CARE, Action Aid, ACF Action Against Hunger, AMREF, Dan Church Aid, DRC Danish Refugee Council, COOPI Cooperazione Internazionale, NAID Northern Aid, Save the Children, Netherlands Development Organization (SNV), PACTWORLD, VSF Swiss and VSF Germany Vétérinaires Sans Frontières.

Environmental organizations include IUCN (the World Conservation Union), WWF (World Wildlife Fund) and AWF (African Wildlife Fund).

## **8. Opportunities and challenges**

With the adoption of the Constitution, the new land policy and several human rights initiatives (NCIC, TJRC, etc.), Kenya has taken the first important steps towards recognizing its marginalized communities, acknowledging their needs and indicating how

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<sup>193</sup> The Global Fund and GAVI are two global health Initiatives.

<sup>194</sup> The CPS is a World Bank Group strategy incorporating the activities of IBRD, IDA, IFC and MIGA. See WB Group, Country Partnership Strategy FY10-13 (2010), iv.

they must be addressed. Hunter-gatherers are now being targeted directly by several WB-funded programs and there is a growing acknowledgment within the government of pastoralism as a livelihood system that is both environmentally well adapted to the ASALs and important for the country's economy. A special ministry has been created for the ASALs, and GoK recognizes that, after years of neglect, it is now time to bring development to these areas and, in particular, to the northern part of the country.

Through their various organizations and with the support of civil society organizations, the indigenous peoples have, to a very large extent, participated in and contributed to this reform process. Their feeling of achievement and their expectations of the future are high. However, the coming months will be crucial to achieving this process and before indigenous peoples' hopes of equal access to land, to traditional sources of livelihood and to decision-making processes materialize, they will have to face a number of challenges.

At the level of democratic reforms, indigenous peoples and their organizations will need to engage actively in monitoring the elaboration and passing of new legislation—in particular the legislation that will make some of the constitutional provisions of relevance to indigenous peoples effective—and ensuring that the Constitution and the new laws are implemented and enforced. They will also have to prepare for their participation in the devolution process. In both cases, indigenous peoples will have to deal with the fact that some of the proposed reforms threaten many vested interests at the national and local level and, possibly, even within their own ranks. Implementation and enforcement of the proposed reforms will not be possible if negative attitudes, discriminating stereotypes and, not least, deeply entrenched traditions of bad governance, non-accountability and corruption are not dealt with.

At the level of socio-economic development, while GoK's new interest in the northern ASALs has generated expectations, one should not forget that neither Vision 2030 nor the Agricultural Sector Development Strategy (ASDS) seem especially geared up to address the situation of the indigenous peoples on their own terms but instead prioritize large-scale, heavy infrastructure interventions and the development of agribusiness and animal ranches. Together with other large infrastructure projects (e.g., LAPSSET) and the prospective mineral and oil exploitations, these development efforts will need to be mitigated if they are not to be directly detrimental to indigenous peoples.

Dealing with all these issues will put a heavy strain on the capacities of indigenous peoples and their organizations. To help them tackle the various challenges, international donor support could include:

- Providing civic education, including general information to indigenous peoples on their rights in a national and international context.
- Helping with legal monitoring, the elaboration of new legislation and advocacy at the political and decision-making level.
- Enabling indigenous peoples, through capacity building, training, etc., to participate in the devolution process and the management and administration of counties.
- Funding interventions that take as indigenous peoples' own priorities as their point of departure.

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- 2009b** IPP377 (Boni and Watha) of Kenya Adaptation to Climate Change in Arid and Semi-Arid Lands (KACCAL) Project
- 2010a** IPP433 (Boni and Watha) of Kenya Coastal Development Project (KCDP)
- 2010b** IPP451 IPPF for the Total War Against HIV and AIDS
- 2010c** IPP534 for Kenya Health SWP and the Regional Health Systems and TB Support Project.
- 2011a** IPP537 (Sengwer) IPPF to the Water & Sanitation Service Improvement project – Additional Financing
- 2011b** "Economic Update: Navigating the storm, Delivering the promise with a special focus on Kenya's momentous devolution". At <http://go.worldbank.org/F1XAWWD1B0>

## **USEFUL WEBSITES**

**Poverty maps** <http://www.slideshare.net/WorldResources/naturesbenefits-kenya-02>

**Counties map** <http://softkenya.com/county/kenya-counties-map/>

**Statistics** <http://opendata.go.ke/Kenya>.

<http://www.knbs.or.ke/counties.php>

**Health** <http://www.measuredhs.com/publications/publication-GF17-General-Fact-Sheets.cfm>

**Education** <http://www.uwezo.net/index.php?i=68>

### **Human Rights**

**TJRC** <http://www.tjrckkenya.org>

**NCIC** <http://www.cohesion.or.ke/>

**(NGO) KHRC** <http://www.khrc.or.ke/>

**World Bank** <http://www.worldbank.org>

### **World Bank Permanent URL for Kenya**

Country Brief <http://go.worldbank.org/YZJLVL3LX0>

Kenya Opening Page <http://go.worldbank.org/HK2PG4BST0>

Publications& Documents <http://go.worldbank.org/MDX70YBCK0>

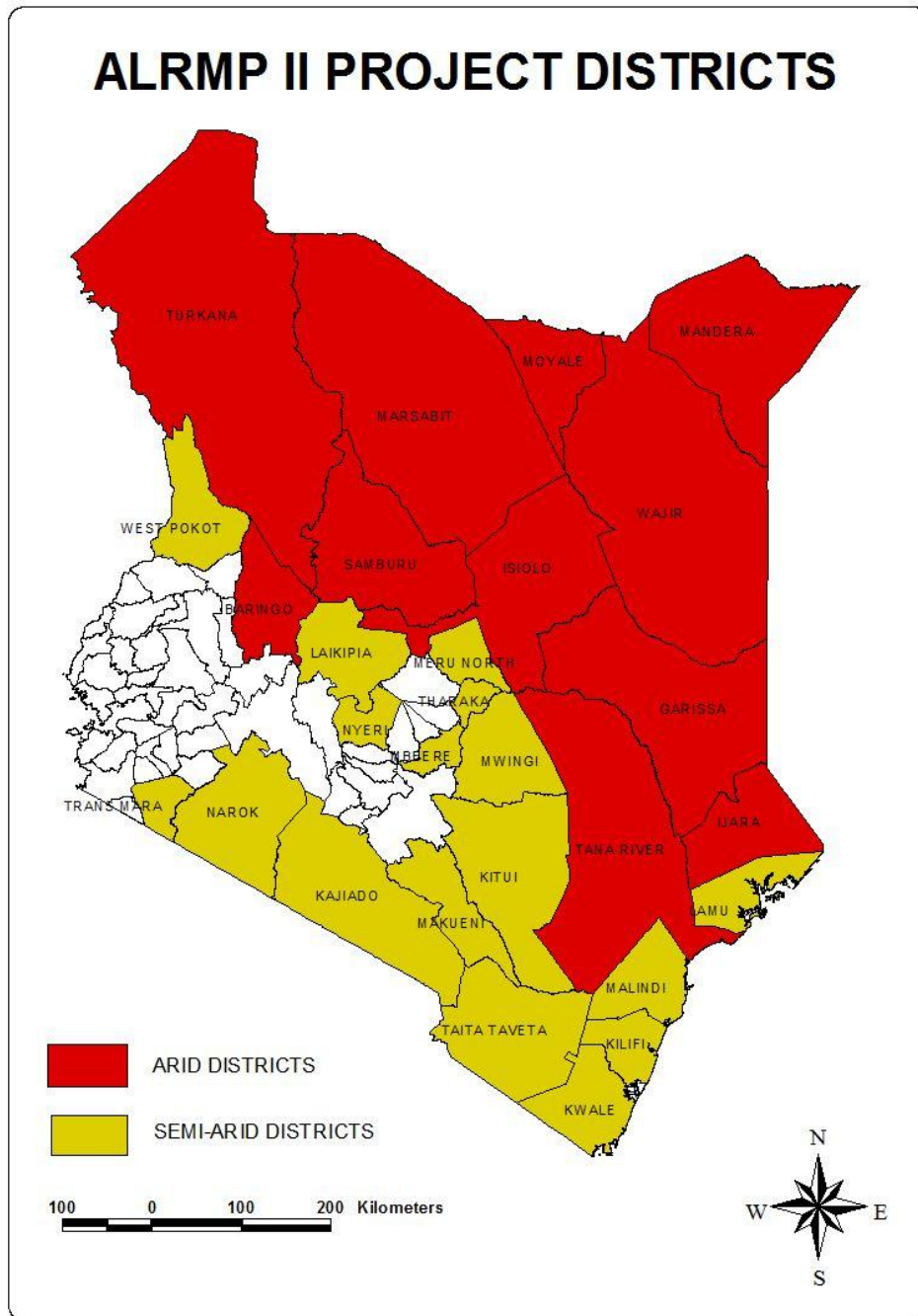
## Annexes

### Annex 1. Maps

#### 1.1 Political map with former provinces



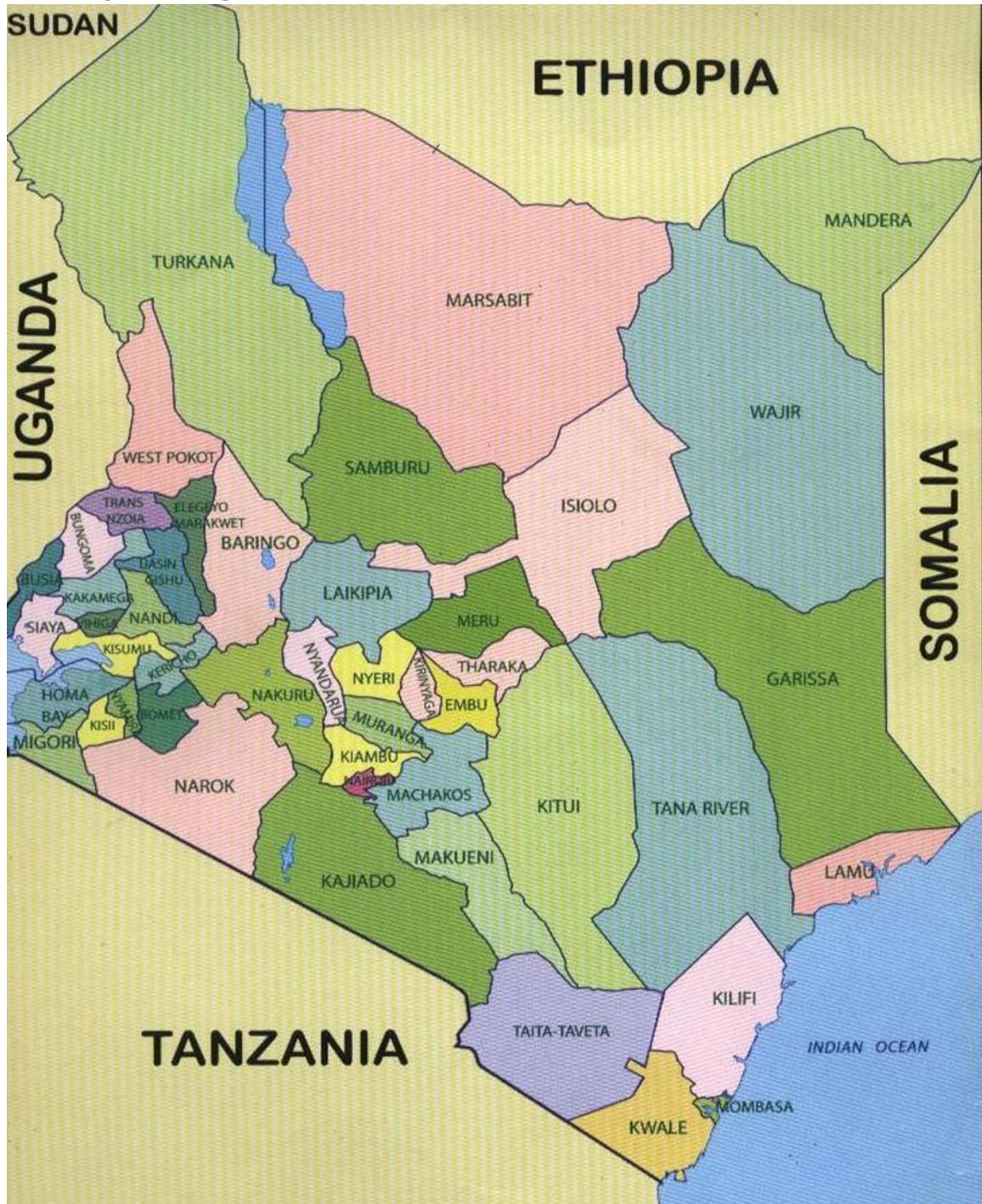
## 1.2 Map of Arid and Semi-Arid Lands (ASALs)



Source: <http://www.aridland.go.ke/images/asal.jpg>

Note: The map shows the old districts. Only 16% of Kenya's land surface is fertile with a high potential and can support rainfed agriculture (in white on map). Around 80% of the population lives in these areas. Arid districts with 200-550 mm annual rainfall cover 62% of the ASALs; semi-arid areas with 550-850 mm annual rainfall cover 36% and dry areas cover 2%. Population density varies from less than 3 per sq. km in some ASAL counties to 2,000 per sq. km in some of the Central Highland and coastal regions.

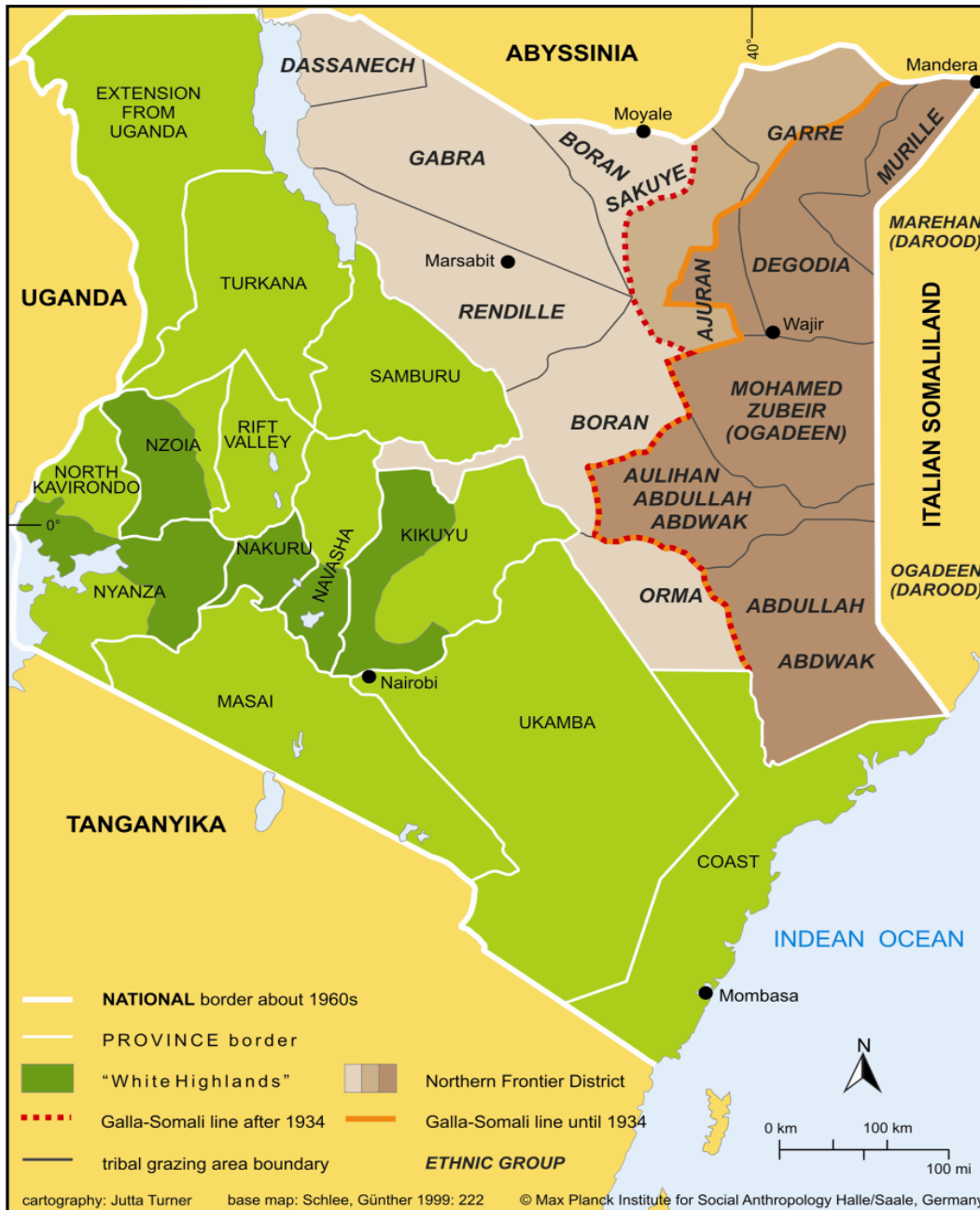
**1.3 Map showing new administrative divisions—the counties**



Source: <http://softkenya.com/county/>

List of counties: Baringo, Bomet, Bungoma, Busia, Embu, Garissa, Homa Bay, Isiolo, Kajiado, Kakamega, Kericho, Kiambu, Kilifi, Kirinyaga, Kisii, Kisumu, Kitui, Kwale, Laikipia, Lamu, Machakos, Makeni, Mandera, Eleguyo Marakwet, Marsabit, Meru, Migori, Mombasa, Muranga, Nairobi, Nakuru, Nandi, Narok, Nyamira, Nyandarua, Nyeri, Samburu, Siaya, Taita-Taveta, Tana River, Tharaka, Trans-Nzoia, Turkana, Uasin Gishu, Vihiga, Wajir, West Pokot.

**1.4 Map showing the administrative divisions in the Northern Frontier District (1930s)**



Source: Reproduced from Günther Schlee, *Territorialising Ethnicity in Kenya Ethiopia* (2010).  
 Note: The map shows the "Somali-Galla (Borana)" line that was drawn between present-day Marsabit and Wajir counties to keep the two warring groups apart. It was followed up in the 1930s by the delineation of specific tribal grazing areas.

## Annex 2. Indigenous Hunter-Gatherers

<b>Tribal affiliation (2009 Census)</b>	<b>Name</b>	<b>Population</b>	<b>Livelihood</b>	<b>Location County</b>	<b>Language Family/ Spoken</b>	<b>Religion</b>
Mijikenda	<b>Aweer (Boni )</b>	7,600	H-G, Agric.	Lamu (11 villages in forests)	Cush./20%	TR/M
Mijikenda	<b>Dahalo</b>	2,400	H-G	Lamu & Tana R.	Cush./ Near ext. Kiswahili	TR
Mijikenda	<b>Waata (Watha, Sanye)</b>	12,582	H-G Agric.	Lamu,	Cush./Wata	TR/M/C.
Not in 2009 C.	<b>Yiaku (Yaaku)</b>	200? 4,000?	H-G (beehives) Pastoral.	Laikipia C (Mukogodo F.)	Cush./ Near ext. North. Maa.	TR
Kalenjin	<b>Dorobo</b>	35,000	H.G.		Cush.	
Kalenjin	<b>Ogiek</b>	79,000 (20,000)	H-G	Mau Forest /Mount Elgon.	Nilotic/ Maa/Kikuyu	TR/Chr.
Not in 2009 C..	<b>Omotik</b>	Ext.?	H-G	Narok	Nilotic/ Maa	TR
Kalenjin	<b>El Molo</b>	<3,000	Fishermen	Lake Turkana	Cush./ Ext.? North. Maa/ Turkana	TR/Chr.
Kalenjin	<b>Sengwer</b>	>33,000	H-G Agric.	Trans Nzoia, Marakwet West Pokot.		
Swahili	<b>Munyoyaya</b>	1,600	Fishermen	Garissa (Tana R.)	Orma dialect?	M?
Walwana	<b>Malakote (Ilwana/ Walwana)</b>	17,000?	Fish./Agric.	Tana River	Bantu/	M
Burji	<b>Burji</b>	24,000	Agric.	Marsabit		TR, Chr.
Kipsigi Not in 2009 C.	<b>Talai</b>	???	IDP	Kericho		

Sources: KNBS: 2009 Population and Housing Census (2011); and Paul Lewis, Ethnologue: Languages of the World—Online version at <http://www.ethnologue.com>.

Note: The Ogiek number 79,000 according to the 2009 census but their own estimates range from 20,000 to 60,000.

### Description of the indigenous hunter-gatherer communities

#### Aweer

The Aweer (Boni, Sanye) number 7,600 people. They live in remote forested areas (near the Witu and Boni forests) in the north-eastern part of Lamu district and close to the border with Somalia, where they are also found. They are of Cushitic origin and are said to be different from the Sanye (Waat) of the Oromo Group and the Dahalo (Sanye) of Southern Cushitic origin. They speak Aweer and practise their traditional religion, although some have become Muslims. Traditionally nomadic hunter-gatherers, the Aweer are best known for their unusual practice of using semi-domesticated birds to find honey, with whistling signals. They draw their subsistence from forest products such as

honey, wild plants/fruits for consumption and medicinal purposes. Today, they are being encouraged to settle in villages and engage in agriculture (maize, beans). They perceive the forest as communally theirs. However, with the gazetting of all the forest by the government this has become a source of conflict.<sup>195</sup>

### **Bajuni**

The Bajuni are not included in the 2009 census but are estimated to number 15,000 people. They live on both sides of the border with Somalia. In Kenya, they live on the small coral islands off the coast of Lamu (Pate Island) as well as on the mainland.<sup>196</sup>

### **Burji**

This community numbers 24,000 people. They originally came from Ethiopia and arrived in Kenya in the first part of the 1900s. According to some sources, they were brought in by the British authorities to build roads in the northern part of the country; others say they came as skilled agriculturalists to initiate farming in the Marsabit area and feed the colonists and inhabitants (the predominantly pastoralist Borana, Rendille and Gabra). The Burji are often perceived as aliens and have been subject to discrimination concerning access to jobs and other economic opportunities, land ownership, etc. They used to be farmers in northern Kenya. At independence they were largely excluded from the redistribution of farm land around Moyale town but continue to produce crops on Mount Marsabit despite intense competition from pastoral groups for whom the mountain resources provide vital dry-season grazing.<sup>197</sup>

### **Dahalo**

This coastal tribe of some 2,400 people lives in Lamu and Tana River Delta. Of Cushitic origin, their language is endangered and there may not be any remaining speakers. Kiswahili is spoken today. They follow their traditional religion. Together with the Aweer, the Dahalo are seen as being at the bottom of the social ladder.<sup>198</sup>

### **Dorobo**

The Dorobo (from the Maasai name "Il Torobo" Dorobo is the Swahili form, Ndorobo the Kikuyu and Kalenjin term) are listed in the 1989 and 2009 censuses, with 24,000 and 35,000 people respectively. In the latter, the Dorobo are included as part of the Kalenjin group. However, the Dorobo are not an ethnic group but the (pejorative) name given traditionally in Kenya to small hunter-gatherer or forest-dwelling communities in the Rift Valley. Some of these communities are today known by their own name, such as for instance, the Ogiek and the Sengwer.

It is not known which communities have been included within the term "Dorobo" but there are a number of known small hunter-gatherer communities that are not listed by name in the 2009 census. For example the Yaaku and the Omotik, as well as some of the small groups listed in the WB IPP451 (2010b) "as hunter-gatherers, pastoralists, fishing and farming groups structurally subordinate to the dominant societies and the state, leading to marginalisation and discrimination". Common to these peoples is the fact that most of them are of Cushite origin. They have often become affiliated with various Nilotic tribes as "clients", working for them as metal workers, circumcisers, etc. In many cases they have also adopted their languages and no longer speak their own. However, they are distinctive in that they do not keep cattle, hunt for meat and gather honey.

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<sup>195</sup> Based on WB IPP433 (2010a); Kenya Tribes <http://www.kenya-advisor.com/kenya-tribes-a-to-h.html>)

<sup>196</sup> For further details see Derek Nurse, "Bajuni: people, society, geography, history, language" (n.d.) at <http://www.ucs.mun.ca>

<sup>197</sup> See Hussein A. Mahmoud, "Breaking Barriers: The construction of a new Burji identity through livestock trade in northern Kenya". Social Anthropology Working Paper No. 113. Halle: Max Planck Institute for Social Anthropology; and MRG Report "Kenya: Minorities, Indigenous Peoples and Ethnic Diversity (2005).

<sup>198</sup> Kenya Tribes <http://www.kenya-advisor.com/kenya-tribes-a-to-h.html>)

### **El Molo**

This small endangered tribe of less than 3,000 members lives on the south-eastern shore of Lake Turkana where the annual rainfall is about 60 mm and temperatures are over 45°C. They are of Cushitic origin. Their original language is similar to that of the Dasenach but has largely been replaced by Samburu and Turkana. They are sedentary fishermen and follow their traditional religion. One of their demands is to be granted an annual license for the hippo hunt, which is a rite of passage in the lives of young males and a big cultural event for the whole community. Most of Lake Turkana (former Lake Rudolf) is located within Kenya, a small part being within Ethiopia. The narrow lake measures 250 km in length and is mainly supplied by two rivers, the Omo (from Ethiopia) and the Turkwell (from the Kenyan Highlands). Due to various factors, including the damming of the two rivers and climate change, the lake is shrinking and becoming more salty, leading to the depletion of fish.<sup>199</sup>

### **Malakote**

The Malakote (or Ilwana, Walwana) number around 16,800 people and are agriculturalists living along the Tana River. They are largely self-sufficient. Cash income is from the sale of honey, cattle, (rice fishing) and mats that the women weave. Trading is conducted with the Somali people to the north and with businessmen in towns adjacent to the Malakote area. They are greatly affected by climate change, which has meant that siltation of the Tana River has changed its course, leaving the people downstream without water. They have also experienced flooding when the dams upstream of the Tana River are opened. One of their villages, Ziwani, was washed out in November 2006. Since then, the Malakote have not been able to resettle but have moved further inland, where they await land allocations from the government. They live in make-shift camps with precarious health conditions that are now complicated by a variety of water-borne diseases. Statistics indicate that two out of every five children under the age of five die of diseases such as diarrhea, malaria, AIDS-related infections and so on. This puts the infant/child mortality rate at an alarming 40%. The HIV/AIDS rate is also very high among the Malakote and neighboring tribes.

### **Munyoyaya**

This is a small (1,600 people) ethnic group living near the Tana River in Garissa county. They are fishermen, farmers and casual workers. The 2009 census lists them as members of the Swahili people. Other sources report that they claim to have come from Ethiopia, migrating southward and settling in their present home, yet others that they speak a dialect of Orma. Around 20% live in Garissa town.

The Munyoyaya have been affected by the construction of seven hydroelectric dams along the Tana River. Their farms, houses and animals are regularly washed away as a result of the electricity company's release of water from the dams when heavy rains rapidly increase their water volume.<sup>200</sup>

### **Ogiek**

The Ogiek (alternate names: Akie, Akiok/Okiek, Kinare, "Ndorobo") is an ethnic group consisting of 20-30 groups of former hunters and honey-gatherers living in the forested highlands of eastern Kenya. The 2009 census lists them as part of the Kalenjin tribe and puts their number at 79,000.<sup>201</sup> The Ogiek themselves estimate their total number at between 20,000 and 60,000. The Ogiek consider the Mau Forest Complex<sup>202</sup> as their

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<sup>199</sup> Shadrack Kavilu "Kenya's Smallest Indigenous Tribe Faces Extinction" (2010). *Galdú* at <http://www.galdu.org/web/index.php?odas=4718&giella1=eng>

<sup>200</sup> See WB IPP451 (2010b); the Munyoyaya People of Kenya at Strategy Leader, <http://strategyleader.org/profiles/munyoyaya.html>

<sup>201</sup> See WB IPP198 (2006). The African Commission on Human and Peoples' Rights estimated their total population at between 15,000 and 20,000 individuals (ACHPR, 2005:15), which is in line with scientific data (Heine and Möhlig 1980:32).

<sup>202</sup> The Mau Forest Complex consists of seven forested areas (South West Mau (Tinet), East Mau, Nau Narok, Transmara, Western Mau and Southern Mau, covering some 400,000 ha and extending into the counties of

ancestral lands and estimate that 15,000 of them live in various parts of the Complex. Others live in the forests around Mount Elgon, near the border with Uganda. Akiiek, a Kalenjin language of the Southern Nilotic group, is the mother tongue of most Ogiek people but they often speak their neighbors' language better than their own. The Ogiek are often considered the descendants of Kenya's first inhabitants.<sup>203</sup>

The Ogiek have, for centuries, lived as nomadic hunter-gatherers, dispersed throughout the highlands. In the past, each clan had their own parcel of land and others respected this. Permanent features such as swamps, glades, rivers, sacred sites and trees served as boundaries. Each clan had land for use during the dry season and land for use during the rainy season and their tracts transected four or five ecological zones, giving families access to honey during each season. Making beehives, collecting honey and hunting were all considered men's work. Honey was eaten, stored for future use, brewed into beer, traded and sold. The animals hunted once included bushbuck, buffalo, elephant, duiker, hyrax, bongo and giant forest hog (the most common quarry). The Ogiek hunted with dogs, bows and arrows, spears, and clubs, using poison for buffalo and elephant. The men also set traps. Women's work included processing and cooking food, building traditional dwellings, maintaining firewood and water supplies, most childcare, and making leather bags, straps, and, at one time, clothing. Unlike many other hunter-gatherers, the Ogiek gathered little plant food; they relied on a diet of meat and honey, supplemented by traded grains.

Ever since colonial rule, the Ogiek have experienced a loss of their land to white settlers, neighboring farmer communities, nature conservation, etc. Hunting has been banned since the 1970s. The Ogiek have been forced to gradually diversify their economy, adding agriculture and/or herding to their traditional hunter-gatherer lifestyle. Honey gathering is still a key activity and carried out the traditional way. Apart from honey, unlike many other hunter-gatherers, the Ogiek collect hardly any other non-timber forest products. Today, the work of women is concentrated on domestic chores and the planting and harvesting of crops. Ogiek artistry produces a rich range of verbal art, oratory and song as well as diverse material objects. Beaded personal ornaments, made by women and worn by men and women, are among their most aesthetically striking creations. Ogiek women also make tightly woven baskets and ceramics. The men's craftsmanship centers on weapons and tools.

Modes of social organization vary among Ogiek groups but, in general, one can say that patrilineages are central in land holding and residence, legal matters, inheritance and marriage arrangements, while matrilineal and affine relations are important for ceremonial occasions, in some residential and work groups, and in emotional terms. Further units are the age-sets, which create relationships among members, crosscutting relations defined by lineage and clan. Women have no separate age-sets but become associated with male age-sets through relatives. Major Ogiek ceremonies celebrate stages of social maturation: a head shaving ceremony where a child receives a new name, and initiation into adulthood. Initiation is performed around age fifteen for both boys and girls but separately. Gender-specific secrets and appropriate adult behavior are taught during initiation seclusion. Other Ogiek ceremonies concern marriage, and the pouring of libations to ancestor spirits. Besides ancestors' spirits, the Ogiek believe in one God. Although there are some variations between different Ogiek groups as to what God is, the concept of God's power is fairly uniform. God is good and it is to Him that they pray for good health, help and good luck. God is also accountable for all the inexplicable. Today, over half the Ogiek population has adopted the Christian faith.

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Kericho to the west, Narok to the south, Nakuru to the north and Bomet to the south-west. See WB IPP198 (2006).

<sup>203</sup> The following is largely based on WB IPP198 (2006), and Corinne A. Kratz, "The Ogiek of Kenya" (at [www.ogiek.org/indepth/Ogiek.pdf](http://www.ogiek.org/indepth/Ogiek.pdf)Kratz).

Political and legal matters are discussed at meetings of men. Depending on the issue, gatherings involve men from one lineage, several lineages, or a large neighborhood. All adult men have the right to attend and speak at meetings although older men often speak more extensively. This of course changes in meetings with officials, as most elders do not speak Kiswahili or English. Women were traditionally excluded from formal councils but this traditional setting is no longer ruling, as government officials and external visitors demand and invite the presence of all gender groups. The Ogiek are still mostly organized in the traditional way but, thanks to the effort of some educated Ogiek, there are now a number of Community Based Organizations and NGOs that advocate for and defend the rights of the Ogiek people.

**Land Rights history:** Both the colonial government and its successor, the Kenyan state, have on various occasions acknowledged Ogiek occupation of the Mau but failed to grant them explicit land rights. Instead, the Ogiek have been treated as tenants at the will of the state and have, over the years, seen extensive encroachment on their ancestral land from private agricultural developers and loggers who have been licensed by the Kenyan government or who have corruptly acquired the land. In this scheme of things, the Ogiek are considered illegal squatters in a government forest rather than active beneficiaries and stakeholders. The Ogiek have also suffered several evictions, the latest in 2009, in which some ended up in isolated IDP satellite camps. Two years later, the Ogiek are still living in emergency-like conditions under worn-out tents, receiving small amounts of food aid at irregular intervals, and without meaningful access to health or educational facilities. There have also been reports of deaths among the children due to the very difficult living conditions.<sup>204</sup> The current efforts to restore and rehabilitate the Mau Forest—while environmentally important—have been carried out with little consultation of the Ogiek, and may, if fully implemented, include the eviction of all individuals and groups from the water catchment areas of the Mau.<sup>205</sup> The Ogiek reacted to their dispossession by taking the State to court in 1997 on the grounds that the allocation of their ancestral lands to individuals that were strangers to their community infringed their constitutional rights. The case was postponed several times and despite numerous attempts to resume it, no judicial decision has ever been taken. In an effort to establish a dialogue with the government, a Council of Elders was formed to represent the community but when, after a few meetings, no results had been obtained, the Ogiek decided to take their case to the African Commission (ACHPR).

### **Omotik**

The Omotik are a small hunter-gatherer group believed to be nearly extinct. They are not listed in the 2009 census and their population is therefore unknown. Their origin is Nilotic and they live in the Narok district (Lemek area). Affiliated to the Maasai and Maa speakers.

### **Sengwer**

The Sengwer (also referred to as Cherangany) are former hunter-gatherers who live in the forested areas of Trans-Nzoia, Eleguyo Marakwet and West Pokot counties. The Sengwer are included in the 2009 census with a population of 33,000 and as part of the Kalenjin. They themselves claim to have between 40,000 and 60,000 members.<sup>206</sup>

Their ancestral land used to cover most of the Cherangany Hills and the lowlands of the region. It was divided between clans and, according to testimonies, each patrilineage used to have a portion of land running from the highlands to the plains and people would shift from one part to the other in line with the rainy seasons. They entertained good

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<sup>204</sup> See Human Rights Council, "Report of the Special Rapporteur on the human rights of internally displaced persons. Mission to Kenya" (2012), 17.

<sup>205</sup> Letter from the Ogiek to the Chairperson, 9th Session of the Permanent Forum on Indigenous Issues (PFII), 19th April 2010.

<sup>206</sup> The following is mostly based on WB IPP198 (2006).

relations with their neighbors (e.g., the Pokot) as they were not competing for the same resources, but bartered honey and dry meat for food crops and/or milk, etc. It is normally believed that hunting and gathering remained the main source of livelihood for all Sengwer until the middle of the last century when they were displaced from the fertile plains of Trans Nzoia in order to make way for white farmers. A minority stayed behind as farm workers but the majority went up into the forests of the Cherangany hills. In the 1920s and 30s, they were given all usufructuary rights over this area as well as the right to farm on the clearings in the forest. This lasted until the 1970s when new conservation policies recommended that all hunting should be prohibited and forests should be cleansed of people.

**Land Rights history:** Today, most of the ancestral land of the Sengwer is occupied by other ethnic groups. Part of the Sengwer ancestral land in Trans Nzoia was converted into a game park known today as Saiwa Swamp National Park. After Independence, the Sengwer, who were not considered an independent group, were not invited to join the settlement schemes in which the "white" farms were redistributed to farm workers and the dominant ethnic groups of the area, or demarcated as forests, where legal settlements or agriculture are prohibited. Some 20% of the Sengwer are said to have legal access to land but their plots are on average only 2.5 acres per household, i.e. very small. Their average annual cash income is said to be around KSh 3,000 (USD 40) per household. The majority of the community members are landless and many of them live illegally in remote parts of the forests. These people report ongoing conflicts with forest officials and neighboring communities, of house and crop demolitions and of attacks by armed cattle rustlers. The local and central administration does not usually react to complaints from the people, with the argument that they are illegally in the area and therefore not entitled to any protection from the state or county council.

The Sengwer are currently honey-gatherers and practice small-scale agriculture (maize, potatoes, beans and a variety of vegetable) and/or livestock rearing. The herds of the Sengwer are very small and mainly kept for subsistence purposes (milk, meat).

Gathering of fruits and other non-timber-forest-products also forms part of their livelihood and is mostly done by the women, while honey collection from beehives as well as from natural places such as holes in trees, etc., is traditionally a male activity. Honey has a variety of practical uses (e.g., to brew beer, medicine) but also plays an important role in traditions related to life transitions (weddings, dowry).

The Sengwer organize around patrilineages led by the elders, who seem to have quite a strong influence and have also survived the advent of modern forms of self-organization. In their struggle for land and recognition, the Sengwer elites have created a good number of Community Based Organizations and NGOs assembled and coordinated through the Sengwer Cultural Centre.

### **Talai**

The Talai (also known as the Laibons) are a sub-group (clan) of the larger Kipsigis community. At the advent of British colonial authority in Kipsigis country (1903), members of the Talai clan held an influential position in Kipsigis society. At first, they let themselves be co-opted by the British but, eventually, rebelled and the ensuing clashes with the colonial power led in 1934 to the passing of the Laibons [Talai] Removal Ordinance, and the subsequent deportation of the Talai to a location on the shores of Lake Victoria. Here, they remained under severe restrictions until 1962. On the eve of Kenya's independence, they were allowed to return to their former district but were consigned to a squatter camp on the outskirts of Kericho town where they still live. They have no land, no access to education or health services and they continue to suffer massive discrimination and marginalisation from the surrounding mainstream Kipsigis

community. Despite numerous petitions to the authorities, no steps have ever been taken to end their predicament.<sup>207</sup>

### **Waata**

The Waata (sometimes spelt/called Watha, Watta or Sanye) are hunter-gatherer communities. They are listed in the 2009 census as a member of the Mijikenda tribal group and with a population of 12,500.<sup>208</sup> They live dispersed among other ethnic groups in forested areas near Marsabit, Isiolo, the Tana River and Voi, in the precincts of the Tsavo National Park.<sup>209</sup> They belong to the East Cushite (Oromo) linguistic group and have maintained their language in spite of pressure from other languages spoken by the people among whom they live. Men do speak Kiswahili, but women often do not. They have also to some extent retained their animistic beliefs although some have converted to Islam or Christianity.

**Land Rights history:** Like other hunter-gatherer communities, their livelihood is threatened since the ban on hunting has deprived them of their main livelihood source. Access to land is a problem as most of the land is trust land controlled by the majority tribes and becomes a point of conflict if the smaller tribes and outsiders get involved. This is what has pushed small and marginalized tribes like the Waata deep into the forests, where they prefer to remain as the forests allow them to practice beekeeping. This has compelled some of them to go and live in permanent settlements, such as for instance, along the Tana River, and to adapt their diet and livelihood strategies. Since the surrounding ponds dried up, they have also lost fish as a major food item. Yields from the small-scale and rain-fed agriculture they practise are not sufficient and reliable to feed the community adequately. Since 2006 they have been participating in WFP food relief programs, which they regard as insufficient and unreliable. As life has become more expensive, the Waata women supplement their income by cutting and selling firewood, which contributes to environmental degradation.<sup>210</sup> The Waata are also used as circumcisers by, e.g., the Gabbra.

### **Yaaku**

The Yaaku (or Yiaku) are hunter-gatherers. They are sometimes called the Mukogodo Forest people, since they consider this forest near Mount Kenya as their traditional land. Today they live at the foot of the mountain and in the Laikipia (Isiolo county) area. They are not listed in the 2009 census and are believed to number only a few hundred individuals. They have since the 1930s been associated with the Maasai; they speak their language, and have taken over many of their cultural customs, including their religion. No longer able to follow their traditional lifestyle, they have also become herders. They still gather honey, though.

The Yaaku are today fighting for recognition of their identity the control over their territory. They are striving for communal ownership of the forest, which is now administered by the state. To strengthen their sense of identity, they are trying to revive their language, which is an almost extinct East Cushitic language, with the help of Dutch researchers and funding from the French embassy.<sup>211</sup>

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<sup>207</sup> See <http://www.scribd.com/doc/61381169/Talai-of-Kenya-a-Case-of-Historical-Injustices?olddoc=1>

<sup>208</sup> However, the census also lists an independent tribe by the name of Waat with a population of 6,900. The WB IPP377 (2009b:6) gives a figure of 30,000 for their population on the coast.

<sup>209</sup> Human Rights Council, Special Rapporteur on indigenous peoples, Mission to Kenya, (2007), 12. A/HRC/4/32/Add.3

<sup>210</sup> WB IPP433 (2010a), 10-11.

<sup>211</sup> See Profile of the Mukogodo of Kenya at Strategy Leaders Profiles at <http://strategyleader.org/profiles/mukogodo.html> ; "Kenya case study: Participatory 3-Dimensional Modelling" at <http://www.iapad.org>; "Preservation and Valorization of the Yiaku language and Culture" at <http://www.ambafrance-ke.org/Inauguration-of-Project-on>.

### Annex 3. Indigenous Pastoralists

Table 3.1 Indigenous nomadic and semi-nomadic pastoralists and agro-pastoralists						
Tribal Affiliation (2009 Census)	Name	Population	Livelihood	Location County	Language Family/ Spoken	Religion
Maasai	<b>Maasai</b>	840,000	S-Nomadic	Kajiado, Na-rok, Laikipia	Nilotic/South .Maa	TR/Chr.
Ilchamus	<b>Ilchamus/ Njemps</b>	33,000	Agro-past. Fishermen	Baringo C. L.Baringo	Nilotic/ North. Maa	
Kalenjin	<b>Endorois</b>	10,000? 60.000?	Pastor.	Baringo C. L. Bogoria	Tugen	
Kalenjin	<b>Pokot</b>	635,000	S-Nomadic Past./Agric.	West Pokot	Nilot./ Pökoot	TR/Chr.
Kalenjin	<b>Sabot</b>	240,000	Agro-past.	Trans Nzoia, Bungoma.	Kalenjin	TR
Samburu	<b>Samburu</b>	240,000	S-Nomadic Pastor.	Samburu C./	Nilot. North. Maa	TR
Turkana	<b>Turkana</b>	988,592	S-Nomadic Pastor.	Turkana, Isiolo	Nil. Turkana	TR
Rendille	<b>Rendille/ Arial Rendille</b>	60,000	S-Nomadic Pastor. (camel)	Marsabit C. Isiolo C.	Cush./ Rendille North. Maa	TR/ Muslim
Borana	<b>Borana/Galla (Oromo)</b>	169,000	S-Nomadic	Marsabit Isiolo, Tana R, Garissa	E.Cush. /Borana	TR./ Muslim
Gabra	<b>Gabra</b>	89,515	Nomadic Camel	Marsabit	Ext./Borana	TR/ Muslim
Sakuye	<b>Sakuye</b>	27,000	S-Nomadic	Marsabit, Isiolo	E.Cush./ Borana	Muslim
Dasenach	<b>Dasenach</b>	12,500	Agropast. Fish.	North Lake Turkana/	Cush. Dasenach	TR/Chr
Somali	<b>Somali,</b>	2,300,000	Nomadic Pastor.	Mandera, Wajir	Cush./ Somali	Muslim
Orma	<b>Orma</b>	66,000	Nomadic Pastor.	Lamu, Tana R, Garissa/	Cush./ Orma	Muslim

Sources: KNSB: 2009 Population and Housing Census (2011); and Paul Lewis, Ethnologue: Languages of the World—Online version at <http://www.ethnologue.com>.

Notes: TR = traditional religion; Chr.= Christian

The **Ilchamus** and the **Njemps** belong to the same ethnic group but are listed under both names in the 2009 census with populations of 28,000 and 5,000 respectively.

**Galla** is an old name for the **Borana** but they are listed under both names in the 2009 census with populations of 8,000 and 161,000 respectively.

The **Somali** include various clans, including the Ajuran, the Degodia, the Arri (Gurreh, Gari) Hawiyab, Murile, Ogaden, Wardeji, etc.

## Description of the various indigenous nomadic, semi-nomadic pastoralist and agro-pastoralist peoples in Kenya<sup>212</sup>

### Borana

The Borana (Boran, Boorana, Galla—an old name for the Oromo): the 2009 census gives a population of 161,000 for the Borana and 8,000 for the Galla. They live in northern Kenya, in Marsabit District, around Moyale (near the Ethiopian border) but are also found in Isiolo as well as in Garissa and Tana River counties, where they are called Waso Borana.

The Borana are related to the Oromo of Somalia and Ethiopia.<sup>213</sup> They are of Eastern Cushitic origin and their language (Borana) is also widely spoken by other groups (the Gabra, the Sakuye and others). The Borana are semi-nomadic pastoralists, herding cattle, sheep and goats but also, increasingly, camels. Homestead groups move three to four times each year – covering large distances in search of rain and grazing. A homestead may group 10 to 30 movable huts which are set up by the women and consist of interwoven branches thatched with grass.

Borana society was traditionally structured in accordance with *gadaa*, a social stratification and governance system partially based on an eight-year cycle of age sets. Under *gadaa*, every eight years, the Borana would hold a popular assembly called the *Gumi Gayo*, where laws were established for the following eight years. A democratically elected leader, the Abba Gada, presided over the system for an eight-year term. Today, the *gadaa* system and the administration system based on peasant associations exist side by side. Whereas the northern Borana have kept their traditional religion and *gadaa* age organization,<sup>214</sup> the Waso Borana have converted to Islam.

As a consequence of the Shifta War (see below) and droughts, many Waso Borana have been forced to sedentarize and move into urban areas. This has meant impoverishment and proletarianization as low-paid wage workers. Traditional social channels of reciprocity, stock loans, and reliance on kin have all but disappeared, and the Waso Borana remain one of the most destitute populations in Kenya. Throughout the 1980s and 1990s, the Borana adopted farming and increasingly demarcated and privatized formerly communal lands. On the Kenya Ethiopian border, 200 sq. km of land has been enclosed for crop farming (millet and maize).<sup>215</sup>

Ethnic identity among the northern pastoralist groups living near the border with Ethiopia and Somalia is often fluid and instrumental, people switching between being Oromo (Ethiopians) and Kenyans at different times and in different situations. The good relations Borana used to entertain with the centre in Ethiopia were reversed when they were accused by Ethiopia of supporting the Oromo Liberation Front.<sup>216</sup>

**Land rights history:** Between 1880 and 1900, large numbers of cattle herding Borana moved en masse into the Wajir area of north-eastern Kenya to escape oppression and forced recruitment in the Abyssinian empire of Menelik II. Repeatedly attacked by resident Somali in Wajir, the Borana were relocated by the British to their present location along the Uaso Nyiru

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<sup>212</sup> For an overview, see, e.g., Fratkin, "East African Pastoralism" (2001), Blench, "You can't go home again" (2001), Günther Schlee, "Territorialising Ethnicity: the political ecology of pastoralism in northern Kenya and southern Ethiopia" (2010).

<sup>213</sup> The Oromo are the largest ethnic group in Ethiopia (20 million or 1/3 of the population), where they occupy much of the central and south-central regions. Oromo separatist guerrillas have campaigned against Ethiopian rule since the 1990s. The government's repression has meant that many have taken refuge in Kenya.

<sup>214</sup> See "Borana Traditional Governance System" at <http://freedownload.is/pdf/borana>

<sup>215</sup> See Fratkin, "East African Pastoralism" (2001), 14; Fratkin & Roth, "The setting" (2005), p.40ff.

<sup>216</sup> Fekadu Adugna, "Making Use of Kin Beyond the International border – Inter Ethnic Relations along the Ethio-Kenyan Border"(2010), 46.

River near Isiolo town. In the 1920s, the British had the idea of roughly subdividing the peoples of the northern Kenyan lowlands into two broad categories, Galla (as the Borana were called) and Somali. Although many people did not really fit into this classification, the British, nevertheless, drew a territorial boundary, the "Galla-Somali line" and delineated territories for each of the pastoral groups on both sides of it. The tracks, which led from different sides to Wajir, and a number of cut lines in the vegetation served as boundaries between "tribal grazing areas". If a herd was found on the wrong side of a line, ten percent of the animals was taken as a fine.<sup>217</sup>

During the Shifta War (1963-1968) between government troops and Kenyan Somali wanting to join the newly independent state of Somalia, the Waso Borana, concentrated around Isiolo town, took the side of the secessionists. For this, they were particularly brutalized, and their animals confiscated. Between 1963 and 1970, Waso Borana in Isiolo District lost 95 percent of their camels (declining from 200,000 to 6,000), 90 percent of their small stock (from 500,000 to 38,000), and 7 percent of their cattle (from 150,000 to 140,000). Over time, support for the secession declined and emergency restrictions were lifted in 1969. By 1971, the Waso Borana were in a state of genuine starvation, surviving only by means of the massive famine relief provided by the Catholic Relief Services, which were feeding 16,000 Borana in Isiolo alone. Prolonged drought between 1971 and 1973 and again from 1982 to 1984 led to an increase in wage labor and attempts at farming. By 1984, an estimated 40 percent of the Borana and related Sakuye population of Isiolo District were living in poverty in or around the administrative townships, eking out livings as charcoal burners, firewood gatherers, paid herders, night watchmen or prostitutes.

The Borana have also lost important grazing and watering points as a result of the creation of four reserves in Isiolo.<sup>218</sup>

### **Daasanech**

The Daasanech (Daasanach) ethnic community numbers some 12,500 members (2009 census) living on the north-eastern shore of Lake Turkana, near the border with Ethiopia from where their community originates. The Daasanech are agropastoralists (cattle, millet and tobacco) as well as fishermen. They speak predominantly Daasanech, a Cushite language, and follow their traditional religion. Some have converted to Christianity.

**Land rights history:** Following the establishment of the Northern Frontier District (NFD) in 1902, a no-man's land was created along the international border. This meant that the Daasanech were no longer able to cross borders in their seasonal migrations and the loss of the "Ilemi Triangle"—a disputed area between Sudan (now South Sudan), Ethiopia and Kenya—reduced the Daasanech's territory by about 79%.<sup>219</sup>

### **Endorois**

The Endorois community is listed separately in the 2009 census as a sub-tribe of the Kalenjin with a population of 10,000. It is, however, normally estimated that they number some 60,000. The Endorois are semi-nomadic pastoralists (cattle, sheep and goats) living in the vicinity of Lake Bogoria in Baringo County. They still practise their traditional religion, and they speak the Tugen language, which is of Nilotic origin.

**Land rights history:** The Endorois have traditionally occupied and used large areas of Baringo County but their core area are the hills around Lake Bogoria and the lake itself, which they consider as sacred places, central to their religious and traditional practices. The Endorois'

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<sup>217</sup> Günther Schlee, *Identities on the Move: Clanship and Pastoralism in Northern Kenya* (1989), 4.

<sup>218</sup> See Human Rights Council, Report Mission to Kenya (2007).

<sup>219</sup> See Fratkin, "East African Pastoralism in Transition" (2001), 6.

customary rights over the Lake Bogoria region were challenged in 1973 when the government gazetted the land. In 1978, the Lake Bogoria Game Reserve was created and the Endorois were removed from the area. Certain Endorois elders were shortly after the creation of the Game Reserve, informed by the Kenyan Wildlife Service (KWS) that 400 Endorois families would be compensated with plots of "fertile land" and that the community would receive 25% of the tourist revenue from the Game Reserve and 85% of the employment generated. Cattle dips and fresh water dams would be constructed by the State. The KWS also stated it would provide 3,150 Kenya Shillings per family as compensation for their relocation.

According to the Endorois, none of these terms have been implemented and only 170 out of the 400 families were eventually given some money in 1986, years after the agreements were concluded. In order to reclaim their ancestral land and safeguard their pastoralist way of life, the Endorois complained to President Moi in 1994. However, the promises he gave them were never fulfilled, so the Endorois, as beneficial owners of Trust Land, sought constitutional interpretation in 1997 regarding their rights within the Lake Bogoria reserve. They specifically urged the Court to abolish the Trust on the grounds that the Baringo and Koibatek councils had violated their duty towards the community by failing to apply resources accrued from the reserve towards improving the social and economic welfare of the community. Their case was dismissed and the appeal filed by the community was not heard for over three years. This is why the Endorois, through CEMIRIDE and MRG, approached the African Commission (ACHPR) in 2003 seeking remedies of restitution of their land and compensation for material and spiritual losses, among other things, on the basis of the African Charter on Human and Peoples' Rights.

Since 2000, further developments have taken place affecting the Endorois' traditional land. Parts of it have been demarcated and sold by the State to third parties and, in 2002, concessions for ruby mining were granted to a private company. This included the construction of a road in order to facilitate access to heavy mining machinery. The Endorois claim that these activities run a high risk of polluting the waterways used by the community, both for their own personal consumption and for use by their livestock. Both mining operations and the demarcation and sale of land have continued despite a request by the African Commission (ACHPR) to the President of Kenya to suspend these activities pending the outcome of the Communication. On 2 February 2010, the ACHPR found in favor of the Endorois community. It accepted the Endorois' evidence that they had lived on their ancestral lands around Lake Bogoria since "time immemorial" and that the lake was the center of their religion and culture. The Commission further found that the eviction, carried out with minimal compensation, had violated the Endorois peoples' right as an indigenous people to property, health, culture, religion and natural resources. The ACHPR's legal recommendations include: R1. Recognize rights of ownership to the Endorois and reconstitute Endorois ancestral land. R2. Ensure that the Endorois community has unrestricted access to Lake Bogoria and surrounding sites for religious and cultural rites and for grazing their cattle. R3. Pay adequate compensation to the community for all the loss suffered. The Kenyan state has not implemented these recommendations.<sup>220</sup>

### **Gabra**

The Gabra are an Eastern Cushite people originating from Ethiopia and Somalia. According to the 2009 census, where they are listed as an independent ethnic community, the Gabra number 89,515. The Gabra speak Borana, an Oromo language of the Eastern Cushite family, having gradually lost their Rendille-related language. They are primarily nomadic pastoralists, herding camels, goats and sheep. They live in the Chalbi desert of northern Kenya, between Lake Turkana and Moyale and Marsabit, extending into the Bula Dera plain east of the Moyale-Marsabit road. They share portions of this area with the Borana, Rendille, Samburu, Daasanach

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<sup>220</sup> MRG Report Kenya Minorities (2005), 17; MRG Report Kenya 50 years (2012), 17.

and Turkana, which they regard as enemies. However, marriage can sometimes take place between a Gabra and a Rendille, or a Gabra and a Borana. They still cross borders with their herds, especially in times of drought.<sup>221</sup>

The Gabra live in one of the driest areas of East Africa, with two rainy seasons separated by a hot, dry season and a short, cool one. It is during the two rainy seasons that the Gabra live most self-sufficiently and ritual ceremonies abound. The cyclical weather pattern, in conjunction with the pasture needs of the Gabra's herds, largely determine migrations, and the timing of initiation rites.

Relationships and family ties are very strong. Up to 25 movable huts make up a homestead (or village) of up to 10 to 15 families. These huts are round structures of bent pole frames covered with skins or pieces of cloths and grass mats. The packing and unpacking of the huts at moving time is done by the women. The men care for the animals. Their basic diet is milk drunk fresh or curdled. The Gabra do not mix milk with blood as do some other herding nomads.

Gabra society is organized according to patrilineal descent and its basic unit is the clan. There are around 40 clans in Gabra society, composing five phratries. The aspect of phratry is important to Gabra daily life because each phratry has its own territory. Each clan has its own cattle ear-mark and brand. Gabra society is a gerontocracy with elders being the decision makers at the camp level, the clan level and the phratry level where the assembly serves as a mobile judicial, administrative and spiritual center. Men go through five age grades ideally separated by eight years. They are circumcised at the age of 20. This is the start of a long period of warriorhood and trophy hunting raids. Today, the Gabra are involved in many violent conflicts, most often with the Borana with whom they compete for access to water holes and pastures. During "warriorhood", the young men are excluded from the political and social activities of the main camp.

Women play an important role at the household level and when moving camp. They refer to themselves as children with regard to the political process, and do not take part in the various assemblies. They may, however, sit in the background and listen, and although men demean the contributions women make, men often defer to women in certain matters.

The Gabra culture is entwined with their care of camels. Animals, and especially camels, are highly prized: a camel will be loaned or given to other Gabra in need, and a future act of reciprocity will be expected. In this sense, camels provide great security; they also provide most of the meat and the dry season's supply of milk. They also transport goods and water from foraging areas to surrounding villages. Selling camels and their by-products to outsiders is taboo.

The Gabra traditionally believe in one God, *Waka*. Gabra religious beliefs are inseparably linked to their herds since animals are needed for sacrifice to ensure fertility, health and cooperation from the spirits. The Gabra mostly follow the traditional religion inherited from their ancestors but Muslim influence is strong in some areas.

**Land rights history:** The Gabra first settled just south of the Ethiopian border. However, recurrent attacks from Ethiopian soldiers and the Daasanach led to their relocation by the British to near the Huri hills area further south of the border. Like all pastoral groups in the

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<sup>221</sup> Based on "People Profile: the Gabbra of Kenya and Ethiopia" on Strategy Leader at <http://strategyleader.org/profiles/gabbra.html>; Toru Soga, "System and Reality: the Camel Trust System of the Gabra".

northern lowlands, the Gabra suffered under the administrative measures taken by the British (e.g. "tribal grazing areas").

### **Galla (see under Borana)**

#### **Garri**

The Garri (also known as Gurreh, Gari) originally come from Ethiopia and Somalia, and are listed in the 2009 census (under the name Gurreh) as a sub-clan of the Somali tribe. They number 693,792 members, making them the largest sub-clan. This affiliation is sometimes contested and there are Garri members who insist that they share many more common features (genealogy, symbols used for cattle branding, etc.) with the Gabra and the Oromo. Ethnic identity among the northern pastoralist groups living near the border with Ethiopia and Somalia is often fluid and instrumental, people switching between being Somali and Kenyan at different times and in different situations. Most Garri were in favor of joining the new Somali state in 1963 but, following the collapse of Somalia, the Garri and Gabra have often associated with Ethiopia.<sup>222</sup>

#### **Ilchamus**

The 2009 census lists the Ilchamus (28,000) and the Njemps (5,000) as two independent tribes. Njemps, however, is the name of a swamp south of Lake Baringo to where the Ilchamus were moved in the 1950s, and is an alternative name for the Ilchamus. The two census figures give a total population of some 33,000. The Ilchamus themselves estimate their number to be around 45,000.

The Ilchamus speak Maa. Although agropastoralists, they have often been assimilated with the Maasai, their neighbors. The Ilchamus live near the shores of Lake Baringo and on the islands in the lake. Most Ilchamus live on the mainland, in permanent, scattered settlements. The social infrastructure in these settlements—if there is any—is significantly worse than in the neighboring communities. Water comes in most cases from open water holes which are used by animals and people alike. The Ilchamus practise both livestock rearing (zebu cattle and small stock) and subsistence agriculture. Agriculture is carried out on a very small scale and nearly entirely for subsistence due to the limited rainfall in the area. Beekeeping and charcoal production are carried out for subsistence and commercial purposes and are often the only source of cash income.

Around 800 Ilchamus live on the islands. They subsist nearly entirely from fishing, as no agropastoral activities are possible. Men do the fishing, while women smoke and market the fish on the mainland. Income from fishing is threatened because of reduced stocks (industrial fishing, over-exploitation, environmental degradation, etc.). Another factor is the increasing population of crocodiles, which are totally protected and are said to affect not only the fish stocks but also cause significant losses of livestock and even human lives.<sup>223</sup>

**Land rights history:** The Ilchamus have suffered several forced displacements, the latest being in the 1940-1950s when they were moved away due to the Perkerra Irrigation scheme near Marigat. They did not receive any compensation or resettlement assistance as they were considered mobile pastoralists, and the swamps south of Lake Baringo (Njemp) into which they were forced and which they are presently occupying are not very suitable for human settlement due to the prevalence of tsetse flies, ticks and malaria. Nevertheless, even in this area, the Ilchamus are not protected and their neighbors are said to encroach constantly on their land and/or loot their farms and animals.

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<sup>222</sup> Adugna, "Making Use of Kin" (2010), 46. See Garri website at <http://garagarri.wordpress.com/2011/11/06/eid-goats-bunn-and-a-dictionary/>

<sup>223</sup> Based on WB IPP232 (2006).

The Ilchamus (like many other ethnic groups in Kenya) see their land dispossession as linked to their lack of political representation at the national level. In 2004, they therefore decided to bring a case against the government of Kenya before the High Court of Kenya, arguing that they were indigenous people and that a member of their community had never and would never represent them in parliament because the current demarcation of constituency boundaries made them a perpetual minority. Consequently, the Ilchamus contended that this demarcation violated their fundamental rights to political representation, to choose a candidate of their choice, to freedom of conscience and freedom of expression. They further contended that the Baringo Central Constituency should be divided into two separate constituencies, taking into account the appropriate demographic and numerical considerations and all powers set out in section 42 of the Constitution of Kenya, so as to prevent the continuing electoral, political, social and economic marginalization of the Ilchamus. The High Court ruled in their favor (December 2006) and directed the Electoral Commission of Kenya to take into account all the requirements set out in section 42 of the Constitution of Kenya at its next boundary review and, in particular, to ensure adequate representation of sparsely populated rural areas, and to take account of population trends, and communities of interest, including minorities, especially the Ilchamus of Baringo Central Constituency. The decision was not implemented in relation to the 2007 elections.<sup>224</sup>

### **Maasai**

The Maasai live in Kenya and Tanzania. In Kenya, they total about 840,000 individuals (2009). They belong to the Nilotic language group and they are traditionally pastoralists (cattle, goats). Most live in Kajiado and Narok counties, where a sizable number also practise some agriculture. A small group is found in Laikipia and Nakuru.

The Maasai have, to a large extent, kept their traditional features and customs. The men still dress in their traditional red and blue checkered robes, and the women are beautifully adorned with colorful bead necklaces and bracelets. Their language—Maa—is widely spoken in the form of many dialects, Purko being the largest in Kenya. They live in *bomas*, which are large compounds of 6 to 12 households although this number is tending to decline, giving way to single household *bomas*. Their individual dwellings are oblong structures made of mud and cow dung on a wooden stick framework and are built by the women.

The Maasai are divided into sections. A section is a sub-tribe with a fixed territory that belongs to section members collectively. Within each section there are various localities—areas where there is enough wet and dry season grazing and water resources in normal times. Maasai society is patriarchal. Age-sets are an important feature and include 5 grades of 15 years each. Young boys are circumcised at around the age of 10-15, and become “warriors” or morans. This is followed by the next grade, Junior Elders, when men may marry. This first marriage is arranged by the father who also provides the cattle for the bride wealth. The senior elder age-set has the primary responsibility for the traditional administration and makes the important decisions in the community.

Men are the managers and supervisors of their livestock, dealing with range conditions, water availability, marketing, etc. Almost all of the herding is done by children, boys as well as girls. The creation of ranches (see below) means that the herds normally stay within the ranch. However, in certain ranches where sufficient water and pasture are not available year round, the young morans will be responsible for taking the herds and migrating to other grazing areas for a couple of months or more.

Women do not belong to age-sets but join their husband’s when they marry. This happens usually after their initiation and circumcision, at puberty, at the age of 13-15. Women are

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<sup>224</sup> See MRG Report “Kenya at 50” (2012), 12-13.

regarded as social minors and their procreative resources are largely appropriated by men of elder status in the age-grade system through the bride wealth transaction. Polygamous marriages are the rule. Pastoral women, besides their domestic chores, building their dwellings, etc., also take part in livestock management, looking after cattle and small stock which have been allocated to their sub-household. They are responsible for milking and dairy processing; and have the right to the milk. They will also help with planting and harvesting if their families also farm. Despite their general subjugation, women play an important complementary role and, when they reach menopause, they may attain a high and important status.

Like most pastoral groups, the Maasai adhere primarily to their indigenous religious beliefs and only 25% of the Maasai people have converted to Christianity. The idea of religion in the Maasai culture is bound with the importance they place on the stages of life. Each ritual rite of passage into a new life-stage and age-set is a metaphoric step closer to God—called *Enkai* or *Engai*. Each ceremony includes the ritual sharing of meat, which brings all the participants closer to God. Loibons (laibons) are highly regarded spiritual leaders in charge of Maasai religious customs and traditional affairs. With the rise of external religions, loibons are becoming less visible since non-traditional Maasai believe them to be devil worshippers.<sup>225</sup>

**Land rights history:** The Maasai are believed to have arrived in northern Kenya around the first millennium. From there, they moved southward and settled with their cattle in the Rift Valley and the adjacent land from Mount Marsabit to Dodoma (Tanzania). During the earlier years of the British colonization, the Maasai's land area was reduced from some 155,000 sq. km to a 40,000 sq. km reserve (1913) roughly congruent with present-day Narok and Kajiado counties. This was the result of a Treaty concluded between Chief Laibon Lenana on behalf of the Maasai community and the British Crown in 1904 and an Agreement signed by local leaders in 1911. In 1912, members of the Maasai community filed a law suit—the first court case on land in Kenya—trying to get the 1904 treaty and the 1911 agreement revoked but their case was dismissed on technicalities. In the following decades, more land was lost to farmers (displaced Kikuyus), mining in the Magadi Lake area, and nature conservation. The National Parks of Tsavo, Nairobi and Lake Nakuru were created before independence and are all on land taken from the Maasai.

Since the 1970s, they have experienced further far-reaching changes starting with the transformation of their rangelands into ranches—an ill-advised effort by the Kenyan government to “modernize” Maasai livestock production. Group ranching turned out to be a failure as it altered the Maasai's indigenous systems of land administration and land-use patterns and, by 1990, many ranches had already been subdivided into individually owned land parcels. Much of this land has eventually been sold and is now owned by non-Maasai. The Maasai who continue as stockbreeders are therefore to a large extent sedentarized and herd their cattle and goats within the relatively limited area of a ranch, while seasonal migration is only practised by a few of them. Many pastoralists have also become landless and are unable to continue a normal traditional way of life. The Maasai have continued to lose land to game parks (e.g., Amboseli National Park, Masai Mara Game Reserve) and through the process of “registration”—a system by which senior government officials using corrupt means have been able to acquire Maasai land. It is estimated that the Maasai lost 1.5 million acres of land between 1978 and 1998.<sup>226</sup>

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<sup>225</sup> Based on Talle, *Women at a Loss* (1988); Grandin, “The Maasai” (1991); Thomas Spear and Richard Waller, *Being Maasai* (1993); Rutten, “Land Tenure” (1998); Hodgson, *Rethinking Pastoralism* (2000); Fratkin, “East African Pastoralism” (2001).

<sup>226</sup> Barume, *Land Rights of Indigenous Peoples in Africa* (2010); Roselyne N. Okech, “Wildlife-community conflicts in conservation areas in Kenya” (2011), 73.

The daily struggle for survival has led many Maasai to practise both pastoralism and agriculture, converting marginal rangelands, wetlands and riverine habitats into farmlands. Many families are breaking up in search of pasture for their livestock or in search of employment. Many Maasai have migrated to urban areas in search of work.

### **Oromo**

(see under Borana)

### **Orma**

This semi-nomadic pastoralist group lives in the north-eastern part of Kenya, along the Tana River in Garissa and Tana River counties. The 2009 census lists them as an independent tribe with a population of 66,000. They are descendants of the Galla nation of Ethiopia and northern Kenya, who moved to the Tana Delta in the late 19th century after tribal clashes. They have been entirely Muslim for four generations. Their language is classified as Cushitic and is widely used.

Orma herd cattle, sheep and goats. They have their base villages in the delta but move back and forth with their cattle from the hinterlands (wet season grazing areas) towards the river (dry season grazing areas). The cattle have a high cultural value as bride price, for weddings and funerals, and Orma men with more than 1,000 cattle are granted special recognition.

### **Pokot**

The Pokot live both in Uganda and in Kenya. In Kenya, they are part of the Kalenjin tribal group and the 2009 census puts their population at 633,000. They live in Baringo and West Pokot counties. They speak Pökoot, language of the Southern Nilotic language family

Based on area and cultural differences, the Pokot people are usually divided into two groups: the Hill Pökoot and the Plains Pokot. The Plains Pokot live in the dry and infertile plains and are predominantly pastoralists, herding cows, camels, goats and sheep. They speak the East Pökoot dialect. The Hill Pokot live in the rainy highlands in the west and in the central south of the Pokot area and are both farmers and pastoralists. They speak West Pökoot.

However, cattle play an important role for both groups and farming and herding were, and still are, complementary economies rather than mutually exclusive alternatives in West Pokot. Erratic rainfall, high temperatures and evaporation rates have taught the people not to rely on crops alone but also on animals. Their diet consists of grain and animal products—milk, meat and blood. In addition, their utilization of natural vegetation and wildlife for food has been extensive. Herding and hunting/gathering strategies are closely coordinated with grain-producing activities for survival in a harsh environment. The men have responsibility for the herds, although women milk the animals and can and do have some rights over some animals.

While households move less frequently, cattle camps are highly mobile. Decisions on production, distribution and consumption are taken at household level. Management of communal resources (pastures, water) takes place at the neighborhood level. Cows are used for barter, exchange and, most significantly, as bride wealth. A man is permitted to marry more than one woman, as long as he has a sufficient number of cows to offer to her family in exchange. This is the primary way for wealth and resources to change hands in Pokot society. Cows are rarely slaughtered for meat because they are much more valuable alive.

Pokot society is governed through a series of age-grades. Young men undergo initiation between the ages of 15 and 20, while clitoridectomy is practised on young girls at the onset of menarche. Young men and women form close bonds with other members of their initiation groups, and these bonds serve as future political ties. When a man or woman reaches old age among Pokot, he or she is accorded a certain degree of status and respect. Like most East African pastoral societies, the Pokot have an egalitarian political organization. Elders preside

over important community decisions, festivals and religious ceremonies. Neighborhood councils grouping together elders from the communities are important for decision-making at local level and regarding communal resources (water, pastures).

*Tororut* is the supreme deity among the Pokot. Prayers and offerings are made to him during communal gatherings, including feasts and dances. Such ceremonies are usually presided over by a community elder. Diviners and medicine men also play a significant role in maintaining spiritual balance within the community. Pokot believe in sorcery and use various forms of protection to escape the ill will of sorcerers. They also revere a series of other deities, including sun and moon deities and a spirit that is believed to be connected with death. Dances and feasts are held to thank the god for the generosity and abundance he bestows upon Pokot communities. Today, many Pokot are Christians.

The Pokot also have strong systems of norms and values (solidarity, respect, bravery). Warrior ideals are held in high esteem and the Pokot are often involved in cattle raids and conflicts in general.

**Land rights history:** grazing and destocking schemes greatly limited the pastoralists' mobility and interfered with traditional stock management. These schemes were established as official policy to control overstocking/overgrazing but also as a way to raise revenue for the state through fines and the sale of "destocked" animals at throwaway prices to government licensed dealers who would sell at a profit for export. Most of the grazing schemes were failures and, by 1962, only ten percent of all the schemes in Kenya were operational.<sup>227</sup>

### **Rendille**

The Rendille people (60,000) are semi-nomadic camel herders who live primarily in the dry regions of Marsabit and Isiolo counties. They originate from Somalia and can be divided into two rather distinct groups—the Rendille proper and the Ariaal Rendille. Their respective population size is not known.

The Rendille are concentrated in the Kaisut Desert. They speak Rendille, a Cushitic language related to Somali, and they are organized into two moieties composed of nine patrilineal clans. They live in large settlements with hundreds of people living together, and are a more defined and cohesive group than the Ariaal. The Rendille tend to favor camels for their herds rather than cattle. This is likely because their lands are very dry and the camel is simply better suited to the environment. They are milked just like cows, providing the staple of the Rendille diet. The movements of the Rendille are not random but follow a specific pattern to allow access for all clans to the water sources and pasturing areas. Men are responsible for caring for the large herds of animals, as well as protecting them from predators and other tribes. All the household and childcare duties fall on the women of the tribe. It is the unmarried men who are required to travel the furthest from the camps with the herds.

Age-sets are the main component of Rendille society. Initiation rituals take place precisely every 7 or 14 years, creating a series of generational age-sets each with its own role in society. Men have many stages of warriorhood but women are simply married or unmarried. Marriages are usually arranged by parents, since it is not permitted to marry within one's own clan and contact with other clans is minimal for younger people. A bride price in livestock is always part of the negotiations. Because men cannot marry until they have completed their warrior phase, there is usually a sizable age difference between man and wife. Missionary work has not had much effect on the Rendille, who still follow their traditional beliefs in a god called *Ngai*.

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<sup>227</sup> Based on Michael Bollig, *Risk Management in a Hazardous Environment: a Comparative Study of Two Pastoral Societies* (2006), 37; Robins, *Red Spotted Ox* (2010); Nangulu, "Food Security" (2001), 161-167.

The Ariaal Rendille live in an interdependent relationship with the Samburu and speak Samburu, a dialect of Maa. They form a cultural bridge between Samburu cattle pastoralists and Rendille camel pastoralists, sharing many cultural features with the Rendille (large lowland settlements, rituals, etc.) as well as with the Samburu (they keep cows, have the same age-set ceremonies, same ritual cycles, etc.).

**Land rights history:** The Rendille used to occupy a vast area from the north-eastern shores of Lake Turkana south to the Uaso Nyiro River. They eventually lost land to the Borana and the Turkana and, during colonial times, the British administration imposed “tribal boundaries” to restrict movements in the Northern Frontier District. This measure reduced the Rendille herding range from 57,600 sq. km to 8,000 sq. km.

After independence, the Rendille and Ariaal experienced serious disruptions due to the Shifta civil war in the 1960s and devastating droughts in the 1970s. Many settled around Christian missions distributing famine-relief foods and, since the 1970s, nearly one half of the Rendille and Ariaal have settled in or near the towns of Korr, Kargi, Ngurunit and Laisamis where they have benefitted from new opportunities in wage labor, commercial entrepreneurship, and access to schools and healthcare.<sup>228</sup>

### **Saboat**

The Saboat (or Sabaot) are found in Uganda and in Kenya where they belong to the Kalenjin tribal group and number 240,000, according to the 2009 census. The majority live in the Mount Elgon region (Trans Nzoia and Bungoma counties), an area which is of economic, political, spiritual and historical importance for them. Originally pastoralists, crop farming (maize, beans and coffee) has increasingly taken over from livestock as the main source of income. They still follow their traditional religion, and some of them say that the concept of a Creator was not something introduced to them by missionaries. In fact, the role of the Christian Church is more frequently discussed in terms of how it brought development to the area, and particularly education.

**Land rights history:** The Sabaot have lost much of their land over the past century. They were displaced by the British and are still waiting for compensation and resettlement under the post-independence agreements between the Governments of the United Kingdom and Kenya. They have also lost land to other ethnic groups, mainly to the Bukusu (a Luhya tribe) with whom they have a long history of tension, which broke out in violent clashes in the early 1990s in the Mount Elgon area. In 2005, the Sabaot Land Defence Force (SLDF), a guerrilla militia, began operating in the area. The SLDF has been accused of killing more than 600 people, and of committing a variety of atrocities including murder, torture, rape, and the theft and destruction of property. Commentators have attributed the outbreaks of violence and rise of the militia to several factors: conflict over scarce land resources, widespread unemployment among young men, and a fast-growing population. In March 2008, a large-scale military assault by the Kenya Army (“operation Okoa Maisha”) resulted in allegations of serious human rights abuses by the Army, including murder, torture, rape and arbitrary detention. Victims of these events have recently been heard by the TJRC.<sup>229</sup>

### **Sakuye**

The Sakuye (or Saguye) are a semi-nomadic pastoral people living in Marsabit and Isiolo counties. The Sakuye are listed in the 2009 census with 27,000 people. The Sakuye are

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<sup>228</sup> See Fratkin, “East African Pastoralism in Transition” (2001), 16. Fratkin, “Maa-speakers of the Northern Desert – Recent developments in Ariaal and Rendille Identity” (1993). 273-276.

<sup>229</sup> See Human Rights Council, Report Mission to Kenya (2007), 11. The Saboat case, see <http://in2eastfrica.net/kenya-ag-challenges-court%E2%80%99s-jurisdiction-in-mt-elgon-saboat-case/>. TJRC, “Annual Progress Report” (2011), 21. IMLU, “Double Tragedy: Report on Medico-Legal Documentation of Torture and related Violation in Mount Elgon “Operation Okoa Maisha”. An Investigative report” at <http://www.imlu.org>

affiliated to the Borana; they speak a Borana dialect and often used to settle next to them. Their name comes from the old name for Marsabit, Saaku. The Sakuye adopted Islam in the early 20th century. Today the Sakuye population is divided and lives in Dabel and in Isiolo.

**Land rights history:** Following Kenyan independence, the Sakuye joined the Somalis in Kenya in their attempt to secede and join the Somali Republic. During the Shifta war, they lost most of their livestock as their camel herds were machine-gunned. The remainder of the livestock perished when the Sakuye were kept in camps ("keeps"), the surroundings of which were speedily overgrazed because these camps did not move. There are tales of atrocities and random killings, when treks of Sakuye were marched to the east by their enemies, the loyalist Borana.

In the early 1970s, the impoverished remainders of the Sakuye gathered at Dabel, a group of hills below the escarpment of the Ethiopian plateau on the Kenyan side. There was a little more rain there than in the lower parts of the lowlands, and agriculture was just possible, albeit with low returns and high risks. Able-bodied younger men earned their living by poaching. Some of them died of thirst on the endless plains, trying to smuggle leopard skins into Somalia. Many young men were unable to pay the bride wealth. In order to avert a situation whereby a high proportion of Sakuye girls would be given to non-Sakuye suitors able to pay a bride wealth and many young Sakuye men ending in involuntary celibacy, the Sakuye abolished bride wealth and endogamy was practised for a number of years.

The camel-oriented rituals which the Sakuye had practised before in much the same form as the neighboring Gabra and Rendille, had become meaningless after the loss of the camels. Their still rather nominal affiliation to Islam did not satisfy their spiritual needs. The gap was filled by the Husayniyya, a Sufi order named after the legendary Sheikh Hussein (Husayn) of Bale in south-eastern Ethiopia, which they now follow in Dahel.<sup>230</sup>

### **Samburu**

The Samburu are semi-nomadic pastoralists. The 2009 census puts their number at 237,000. They mainly live in Samburu county, which stretches from the southern tip of Lake Turkana down to the Uaso Nyiro River. They speak the Northern Maa language, which belongs to the East Nilotic language and is very similar to that spoken by the Ilchamus. They rear cattle, sheep and goats and their entire society and culture revolves around their cattle.

The Samburu remain more traditional in life and attitude than their Maasai cousins and most still make their living through livestock-keeping. In recent years, however, recurrent droughts and cattle disease have undermined their livelihood. In 1984, their cattle herds were reduced by half or even completely destroyed because of the severe drought. This has forced an increasing number to become wage workers (night watchmen, policemen, soldiers and teachers) and many young warriors migrate to the coast where they become part of the tourist industry.

A Samburu village is made up of 5 to 8 families living together in somewhat temporary huts made of plastered cowpat or hides and grass mats stretched over a frame of poles. A fence of thorns surrounds each family's cattle yard and huts. They will generally move on to new pastures every five weeks. Adult men care for the grazing cattle and are responsible for the safety and protection of the village and the cattle. Women are in charge of maintaining the portable huts, milking cows, obtaining water and gathering firewood.

Samburu society is structured around age-sets. Both boys and girls go through an initiation into adulthood, which involves training in adult responsibilities and circumcision. The Samburu

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<sup>230</sup> Based on Schlee, *Identities on the Move* (1989); Fratkin, "East African Pastoralism in Transition" (2001), 16.

initiation ceremonies marking a new age-set for boys take place on average every fourteen years and may gather as many as 200 boys and youths at a time. After circumcision, the boys become morans, or warriors. While this role is not as important as it once was, Morans will go on cattle raiding expeditions when the herds need to be replenished. After serving five years as junior morans, the group goes through a naming ceremony, becoming senior morans for six years. After these eleven years, the senior moran are free to marry. Girls too are circumcised (clitoridectomy) but do not have age-sets. They usually marry just after circumcision, some as young as 12 years old. Their husband will usually be much older. Marriages are frequently polygamous. Since he must pay a bride price in cattle for each wife, only a man of some wealth can afford many wives. Each wife will have her own house for herself and her children.

For the Samburu, livestock is important as a means of subsistence. Their staple food is milk, yogurt, butter, boiled meat and roasted meat. Cattle blood is drawn to drink sometimes mixed with milk. Clothes, footwear, ropes and bed sheets are made of animal skins. However cattle are also an indispensable element of Samburu society as a means of social cohesion. Cattle are used as bride wealth, in weddings and all other rites of passage, and for establishing extensive social and economic networks bonding family members, clans and cattle associates together.

Samburu society has been called a gerontocracy. The collective wisdom of the elders is a major premise. This is based on their extensive experience and knowledge, which is shared through local discussion and debate. Community decisions are normally made by men (senior elders or by both senior and junior elders but not morans), often under a tree designated as a "council" meeting site. Women may sit in an outer circle and will not usually speak directly in the open council but may convey a comment or concern through a male relative. However, women may have their own "council" discussions and then carry the results of such discussions to the men for consideration in the men's council.

The Samburu's traditional beliefs are still very much intact. They believe in a distant creator god called *Nkai* or *Ngai*, who lives in the mountain peaks. Prayers are given directly to *Nkai*, and diviners cast spells for fertility and rains.<sup>231</sup>

**Land rights history:** Like many other ethnic groups, the Samburu have, over the years, suffered a loss of rangelands. Several game reserves have been created on their traditional lands, such as the Samburu National Park and the Buffalo Springs National Park before independence. In 2009-2010, several hundred Samburu families were brutally removed from their traditional land in order to give way to a new nature conservancy, the Laikipia National Park, designed by two US-based charities—The Nature Conservancy (TNC) and the African Wildlife Foundation (AWF)—on 17,000 acres bought from former President Moi.<sup>232</sup> Some of their traditional rangeland has been designated by the government as a military zone without their knowledge or consent. The zone has been used by the Kenyan Army, the British Army and the US Marines. Following the exercises, many unexploded ordnances have been left behind and many have exploded, killing more than 60 pastoralists, most of them children. Thousands have been injured and large numbers of livestock have also been killed. In 2002, Samburu and Maasai in the Laikipia area filed a case against the British Army for damages. The case was settled out of court with USD7 million compensation.<sup>233</sup>

Today, the Samburu face yet other challenges—oil drilling and road construction—that represent serious threats to their traditional pastoral livelihood. Some of these threats have already materialized: in 2009, combined police and military forces organized massive attacks

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<sup>231</sup> Paul Spencer, *The Samburu, Maasai and their Neighbours. A synopsis of five related volumes* (2010).

<sup>232</sup> See Cultural Survival Web site at <http://www.culturalsurvival.org/news/kenya> (accessed 20.03.2012).

<sup>233</sup> See IWGIA *The Indigenous World 2001-2002* (2002), 379.

on Samburu villages. It is strongly believed that these attacks are related to the leases given by the Kenyan government to Chinese companies to drill for oil in exchange for road building.

### **Somali**

The Somali of Kenya are part of the larger Somali population found in Somalia and Ethiopia. The 2009 census lists the Somali as a population group made up of 6 different sub-groups (plus a group that identifies as "Somali"): the Ajuran (177,000), the Degodia (516,000), the Gurreh or Garri (694,000), the Hawiyah (58,000), the Murile (177,000) and the Ogaden (621,885). Including the "Somali" (141,000), this gives a total of 2,385,572. Furthermore, the census lists a few small Somali clans (the Galjeel—another name for the Hawiyah clan—the Isaak and the Leysan) as independent tribes with a total population of 15-16,000 people. Compared with the 1989 Kenyan census which put the Somali population in Kenya at approximately 900,000, the 2009 census figures seem very high and they have therefore been contested. An official recount is expected to take place in a number of districts.

The Somali are of eastern Cushitic origin. Somalis are not a unitary people group but a grouping of broad clan federations. However, they practise the same religion (Islam) and speak the same language or related dialects. Clans are the basic point of cultural and political identity for Somalis. Clans are genealogically based and cut across language lines. Somalis do not have age-sets, although the Hawiyah clan as well as a few others at one point in time did adopt an age-set system from the Galla.<sup>234</sup>

Somali culture is primarily centered on livestock. Men herd and protect the camels and cattle (cattle mainly in area south of Garissa and camels mainly to the north), women are responsible for milking the animals, food preparation and family nurture. Formerly, the diet consisted almost entirely of milk and milk products but now includes maize meal and rice for most. Families live in portable huts made of bent saplings and woven mats; home building and home making are the women's responsibility. Villages consist of a group of huts for related families arranged in a circle or semi-circle with cattle pens in the center. Polygamy is widely practised and each wife has her separate hut. Marriages are often arranged between a young bride and older groom. Suitable matches are made through clan alliances, although the practice is not as common today. Although female circumcision is fairly common throughout the tribes of Kenya, it is found in its most extreme forms among the Somali tribe. Young girls have much of their genitalia cut out completely, leaving scar tissue and frequent infections. The practice remains common in spite of government attempts to discourage it.

While the majority of the Somali are still involved in pastoralism, many have settled in other parts of the country, as small town merchants in Maasai and Turkana areas, and they have also asserted themselves in the business sector, particularly in Eastleigh, a Nairobi neighborhood. Following the civil war in Somalia that broke out in 1991, some 400,000 Somalis sought asylum in Kenya. Many of them now live in Nairobi and Mombasa where they are involved in innovative commercial ventures.

**Land rights history:** The Somali first arrived in Kenya at the end of the 19th century. During the colonial period (approximately 1891 to 1960), the Somali people were divided into five mini-Somalilands: British, French, Italian, and Ethiopian Somalilands, and in Kenya, the Northern Frontier District (NFD). The history of the Somali in Kenya has been one of discrimination and conflict. The policies pursued by the colonial authorities, both towards the NFD in general and the Somali in particular (e.g., establishing the Galla-Somali line,) had the effect of curtailing the integration of the Somali people with the rest of the Kenyan people. This explains why, on the eve of independence, the Somali looked across the border where the

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<sup>234</sup> See I.M. Lewis, *A Pastoral Democracy: A Study of Pastoralism and Politics Among the Northern Somali of the Horn of Africa* (1999), 8, 25.

Italian and British Somalilands had been merged to form a single independent state, the Somali Republic (1960). By then, political activities had been legalized in Kenya and the Somali people of NFD, with the active moral, diplomatic and material support of the newly independent Republic of Somali, formed the Northern Province Peoples Progressive Party (N.P.P.P.) whose main agenda was the secession of NFD and re-union with the Republic of Somali. This gave rise to the question as to whether part of NFD should be separated from Kenya and included in the Somali Republic. A commission was appointed by the British government to assess popular opinion on this issue in the NFD. Its investigation indicated that separation from Kenya was almost unanimously supported by the Somali and their fellow nomadic pastoralists, the Waso Borana and the Sakuye, among others, who together represented a majority of the NFD's population. It also indicated that five out of six districts—namely Garissa, Wajir, Mandera, Moyale, and Isiolo—favored secession by an 80% majority vote.

The British government did not follow the conclusions of the Commission and, after independence in 1963, the new Kenyan leaders pursued the same colonial policies, thereby perpetuating the antagonism between the Somali people and the Kenyan State. In 1963, the situation exploded and, for five years (1963-1968), the Somali in NFD and the Somali Republic were at war with newly independent Kenya. The "Shifta War" claimed thousands of lives and caused massive economic losses to the Kenyan Somali. No quantification of these losses has been undertaken by government or independent bodies. However, it must be noted that the current poor economic status of the community may partly be a correlative of this brutal war.<sup>235</sup> The war played a substantial role in influencing post-independence government policy towards the region. Although the state of war between Kenya and the Somali Republic formally ended two years after the Arusha ceasefire in 1968, it was not replaced by a state of peace but a trail of chaos (inter- and intra-ethnic conflict) and attendant human rights violations. Kenyan Somali leaders were routinely placed in preventive detention, where they remained well into the late 1970s. The North Eastern Province was closed to general access (along with other parts of Kenya) as a "scheduled" area (ostensibly closed to all outsiders, including Members of Parliament, as a means of protecting the nomadic inhabitants), and news from inside was very difficult to obtain. The government refused to acknowledge the ethnically based irredentist motives of the Somali, making constant reference in official statements to the *shifta* (bandit) problem in the area. A number of reports, however, accused the Kenyans of mass slaughters of entire villages of Somali citizens and of setting up large "protected villages" or "keeps"—in effect concentration camps. The Wagalla massacre of Degodia clan members by security officials in 1984 left over 3,000 people dead and 21,000 displaced. The Turbi massacre in 2005 left 90 people dead and over 7,500 displaced. Victims and survivors from both massacres have for the first time been able to bear witness before the **TJRC**.<sup>236</sup>

The repeal of emergency rule in 1992 ushered in a new period of government retrenchment from the border area. While liberation from the harsh emergency laws was welcomed by local populations, the timing of the retrenchment was disastrous, coinciding as it did with the collapse of the Somali state and a tidal wave of refugees, militia and guns coming across the border from Somalia in 1991 and 1992. By late 1991, the Kenyan government had essentially lost control of hundreds of kilometers of territory in Northeast Province. Even in major towns like Mandera, Kenyan police and military could not enter certain parts of the town after dark. Heavily armed clan-based militias and gangs, sometimes organized by business and political elites, engaged in looting of livestock and vehicles, terrorizing both Somali and non-Somali communities beyond the Tana River.

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<sup>235</sup> KHRC, "Foreigners at home" (2009), 62-64.

<sup>236</sup> See TJRC "Annual Progress Report" (2011).

While the overall situation in the region has greatly improved, the Somali are still suffering the tragic consequences of the short-lived "Shifita war". For many years, Kenyan Somali had to carry special "screening" cards and, according to the NCIC, they still suffer from discrimination.

### **Turkana**

The Turkana are a nomadic pastoralist community. The 2009 census lists the Turkana as an independent tribe with a population of 988,592, or 2.5% of the Kenyan population, making Turkana the tenth largest ethnic group in all of Kenya. Although this figure was initially found controversial and rejected as too large by the government, a High Court ruling (Feb 7, 2012) stated that the Kenyan government accepts the 2009 census figures for Turkana.<sup>237</sup>

The Turkana's language, an Eastern Nilotic language also called Turkana, is widely used. The Turkana live in the north-western part of Kenya (as well as in Ethiopia). This is an arid to semi-arid part of Kenya, with erratic rainfall (180 mm on average annually) and temperatures ranging from 24° to 38° C. The marginal nature of the Turkana environment creates survival risks, which the pastoralists must cope with through multi-resource exploitation. In contrast to many East African pastoralists, the Turkana employ diverse food-procuring strategies which include fishing, farming, and gathering of wild foods, in addition to multi-species pastoralism. It is, however, the latter which characterizes their economy and culture: in their oral traditions they designate themselves the people of the grey bull, after the Zebu, the domestication of which played an important role in their history.

To take best advantage of the diverse land resources and environmental variability, the Turkana manage multiple species of livestock, comprising camels, goats, sheep, cattle and donkeys. Since each species has distinct dietary needs, the Turkana are able to exploit different expanses of the range during any period of the year. Cattle are confined to mountain areas and river courses during the dry season, and moved to the plains during the wet season, while the plains are endowed with sufficient grazing for sheep and goats and camels during the wet and the dry season as well. To contend with these factors, the Turkana pastoralists have evolved a highly flexible social system. The basic management and social unit is the *awi*, consisting of a man, his wives, children and other dependents. Each *awi* manages the multiple livestock species by dividing the management and labor requirements between different sub-family units. The *awi* unit is autonomous from any other family, but each *awi* forms part of a flexible neighborhood composed of members from one territorial group who negotiate rights for pasture and water rights with neighboring groups.

The Turkana employ diverse mechanisms to ensure food security options. Livestock is the medium through which social security links are maintained. Livestock are exchanged in a reciprocal system of rights and obligations between "bond friends" in which mutual insurance is maintained over a wide range of relationships, varying from close affine to members of the same age-group or special friends. Such relationships are highly beneficial in maintaining individual food security in the event of disasters such as raids, drought and diseases, provided the disaster is not widespread. However, pauperization occurs when the system of reciprocity breaks down, which happens if the local economies of all the bond friends are devastated by regional drought, epidemics or widespread raids.

Although culturally predisposed towards cattle production, gathering of wild fruits is an important activity, especially during droughts. In addition, hunting has been an important means of survival for some Turkana. The Turkana also practise small-scale agriculture, relying on floods along the main rivers and the lake shore. However, flood-dependent agriculture is a gamble, as crops are washed away whenever the floods are excessive, whereas inadequate

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<sup>237</sup> See, e.g., Gufu Oba, "Ecological Factors in Land Use Conflicts, Land Administration and Food Insecurity in Turkana, Kenya" (n.d.) at <http://www.odi.org.uk/resources/docs/5389.pdf>

floods produce insufficient harvests. In spite of its important supplementary role, traditional agriculture does not provide enough surpluses to feed people during the periodic droughts. Furthermore, those groups inhabiting the lake shore are able to supplement their diet with fish from the lake.

The dwellings of the Turkana consist of a wooden framework of domed saplings on which palm fronds, hides or skins are thatched and lashed on. During the wet season, they are usually covered with cow dung. Animals are kept in a brushwood pen. Clothing and adornments are elaborate and used to distinguish between age groups, development stages, occasions and status of individuals or groups in the community. Traditionally, men and women both wear wraps made of rectangular woven materials and animal skins. Men carry wrist knives made of steel and goat hide and women will customarily wear necklaces. Both men and women shave their hair completely. Western-style clothing is, however, increasingly being adopted, especially among urban Turkana. The Turkana's language, an Eastern Nilotic language also called Turkana, is widely used.

Turkana believe in the reality of a Supreme Being named *Akuj* who created the world and is in control of the blessings of life. They also revere their ancestors and appease them with animal sacrifices when they are angry. *Ekipe*, "the Ancestor", is an active element in the everyday lives of people but is seen as an evil spirit. Turkana religious specialists continue to act as intermediaries between living people and ancestors and also help in problem solving in communities.

There are several important clan rituals. Male and female initiation rituals do not traditionally include circumcision. Today, due to inter marriage with other clans, circumcision has been adopted among some Turkana. The large influx of refugees from South Sudan is therefore a cause for concern as the Turkana fear that, due to intermarriage with the Dinka and Toposas, their identity and cultural practices could be endangered.

Turkana County suffers from one of the highest levels of insecurity in the country. This is partly due to the wars in neighboring countries and the attendant influx of refugees as well as small arms. Due to the war in southern Sudan, Turkana has become home to the largest group of refugees in the region. There also exists a long tradition of cattle rustling, across borders as well as within the county, which has become a deadly affair with the proliferation of small arms in the region. The Turkana, like their pastoral neighbors, have a cattle raiding culture. Memories of past successful raids are passed on through war songs and dances. The songs describe the heroics of the older generation and their exploits, shaping the emotions and attitudes of the younger generation. Raiding of traditional enemies was previously a means of expanding grazing lands, gaining access to new water sources and, most importantly, an economic stratagem for restocking and improving social status by acquiring livestock from defeated enemies. In Turkana society, men have responsibility for protecting communal grazing lands and livestock from attack by their enemies. This means that each raid is spontaneously followed by counter raids.

**Land rights history:** Between 1911 and 1918, a series of military expeditions were mounted by the British to break Turkana resistance and seize firearms. Rather than being subdued, the Turkana responded by escalating raids on other tribes and confronting the British punitive forces. The consequence was a complete disruption of the Turkana pastoral economy which left a large portion of its population in poverty and, due to the loss of livestock, upset the social security system of reciprocal assistance. By 1918, however, after many thousands of cattle and small stock had been confiscated, the British succeeded in pacifying Turkana resistance. The administrative measures subsequently taken by the British (creating a no man's land zone along the borders; tribal grazing areas, etc.) had an impact on the mobility of the Turkana. They have also seen some of their rangelands turned into large nature conservancies such as the Lake Turkana National Park– a World Heritage Site; and the South Turkana Game Reserve

(1,901 sq. km). Turkana has also become home to the largest group of Sudanese refugees in the region.

The Turkana have, since the days of British colonization and to this very day, suffered from marginalisation and underdevelopment and Turkana is now the poorest county in the country with a poverty rate of 94.3.<sup>238</sup> This may change in the future with a number of infrastructural projects (the LAPSSET projects, irrigation schemes, etc.) and the exploitation of oil which, now that oil has been struck (2012), is expected to start soon. Whether this will bring benefits to the Turkana people remains to be seen.

#### Annex 4. Socio-economic indicators

**Table 4.1 Human Development Index (2011)**

Kenya Rank 2011			143	
Year	Kenya	Low human development	Sub-Saharan Africa	World
2011	0.509	0.456	0.463	0.682
2005	0.467	0.422	0.431	0.660
2000	0.443	0.383	0.401	0.634

Source: UNDP, *Human Development Report* (2011b).

Note: Kenya ranks highest among its neighboring countries: Tanzania (152), Uganda (161) and Ethiopia (174).

**Table 4.2 Demographic data**

Indicators	Value	Year
Population, total both sexes*	<b>41,609,700</b>	<b>2011</b>
Population, male*	<b>20,783,040</b>	<b>2011</b>
Population, female*	<b>20,826,690</b>	<b>2011</b>
Density (people/km <sup>2</sup> )	<b>66</b>	<b>2011*</b>
% of population in urban areas	<b>22.5</b>	<b>2011*</b>
Population growth rate	<b>2.6</b>	
Population aged 0-14 years (%)	<b>42.8</b>	
Population aged 60+ years (females and males, % of total)	<b>4.5/3.8</b>	
Fertility rate, total (births per woman)	<b>4.9</b>	<b>2009</b>
Life expectancy at birth	<b>57.1</b>	<b>2010</b>
Literacy rate, adult total (% of people ages 15 and above)	<b>87</b>	<b>2009</b>
Crude birth rate (‰)	<b>57</b>	<b>2010</b>
Crude death rate (‰)	<b>11</b>	<b>2010</b>

Sources: UNDP, *International Human Development Indicators Kenya* (2011); *World Statistics Pocketbook* United Nations Statistics Division and UNICEF Statistics Kenya.

Note: \* estimated population based on 2009 census.

<sup>238</sup> See Diocese of Lodwar, *Emergency Humanitarian Appeal Turkana* (2011).

**Table 4.3 Population, area, density and poverty rate in selected ASAL counties**

Counties	Population	Land area	Density	Poverty Rate
<b>Nakuru</b>	1,603,325	7,495	214	40.1
<b>Kajiado</b>	687,312	21,900	31	11.6
<b>Narok</b>	850,910	17,933	47	33.8
<b>Tana River</b>	240,075	38,437	6	76.9
<b>West Pokot</b>	512,690	9,169	56	69.8
<b>Turkana</b>	855,399	68,680	13	94.3
<b>Samburu</b>	223,947	21,022	11	73.0
<b>Marsabit</b>	29,166	70,961	4	83.2
<b>Wajir</b>	661,941	56,686	12	84.0
<b>Ntl average</b>	<b>821,491</b>	<b>12,368</b>	<b>66</b>	<b>47.2</b>

Source: Commission on Revenue Allocation, County Fact Sheets, (2011) (2011).

Note: Nakuru county is included for comparative purposes. It is located in the Central Highlands and part of the Mau Forest Complex is found here.

**Table 4.4: Some figures regarding health, health facilities and health professionals**

Health expenditure	Year	Data		
Public expenditure on health, % of GoK total expenditures	<b>2010/2012</b>	<b>5.5</b>		
<b>Health infrastructure</b>	<b>2010</b>	<b>Total</b>	<b>MoH</b>	<b>Others*</b>
Hospitals		450	254	196
Health Centres		715	460	255
Dispensaries		3,327	2,290	1,037
Maternity/Nursing homes		154	---	154
Clinics		1,906	---	1,906
<b>Health Professionals</b>	<b>2008</b>	<b>Total</b>	<b>No./100,000**</b>	
Doctors		6,623	17	
Pharmacists		2,860	7	
Registered nurses		14,073	37	
Enrolled Nurses		31,917	83	
Clinical officers		5,035	13	

Sources: MoMS Facts and Figures (2010); MoH, Review of the Kenya Health Policy Framework 1994 – 2010 (2010a), 27.

Note: \* Others include FBOs and NGOs, Other Institutions and Private Health Services.

\*\* No. of health professionals per 100,000 persons.

**Table 4.5 Some health indicators for selected ASAL counties**

Counties	Had all vaccinations	Adequate height for age	TB per 10,000 people 2009/10	Improved water/sanitation % households 2009		Pop. per doctor	Persons Served/hospital/health c. bed
<b>Nakuru</b>	64.3	49.3	62	66.4/	97.0/		750
<b>Kajiado</b>	70.7	73.0	15.0	72.3	74.2	76,000	800
<b>Narok</b>	62.2	65.4	18.0	33.6	70.9	41,000	1100
<b>Tana River</b>	85.7	49.7	29.0	55.5	29.3	48,000	1000
<b>West Pokot</b>	56.2	52.7	57	37.2	32.8	73,000	1200
<b>Turkana</b>	66.7	65.8	31.2	74.3	17.8	285,000	1400
<b>Samburu</b>	85.6	57.8	42	67.8	26.5	25,000	500
<b>Marsabit</b>	80.1	66.9	25	77.6	35.4	32,000	600
<b>Wajir</b>	72.7	21.7	8	73.5	13.3	132,000	3400
<b>Ntl average</b>	<b>75.0</b>	<b>59.8</b>	<b>39.0</b>	<b>66.5</b>	<b>87.8</b>	<b>25,000</b>	

Source: Commission on Revenue Allocation, County Fact Sheets, (2011) and World Bank, "Economic Update: Navigating the Storm" (2011b), 33.

Note: The data for persons served per government-funded hospital or health centre bed are based on a chart and therefore only indicate approximate values.

**Table 4.6 Some health data regarding women (Kenya average)**

	1998	2003	2008-09
Median age at first marriage (25-49 yrs)	19.2	19.7	20.0
Total fertility rate	4.7	4.9	*4.6
Median age at first sex for women (25-49 yrs)	16.5	17.6	18.2
% of teenage pregnancies	20.9	23.0	17.7
Mean ideal number of children	3.8	3.9	3.8
Maternal Mortality:	590	414	448
% live births delivered in health facilities	—	40.1	42.6
<b>Life expectancy</b>			<b>57.5</b>

Source: MEASURE DHS, at <http://www.measuresdhs.com> (Accessed 27.03.2012); KNBS, Kenya Demographic and Health Survey 2008-09 (2010a).

\* Fertility rate in North-Eastern province (Mandera, Wajir and Garissa) in 2008-09 was 5.9.

### **On Female Genital Mutilation (FGM)**

FGM is a widespread practice, in particular among some of the pastoralist groups in the north: it is not faith-related although the proportion of Muslim women who are circumcised is around double that of Christian women. With regard to ethnicity, female genital cutting is far more prevalent among the Somali (97.6%), the Kisii (96.0%) and the Maasai (73.2%) than among other groups. The type of mutilation varies. Type III (infibulation) is most common among

Somali women; Type II (excision) among the Maasai. However, this is changing and Type II has become less prevalent, while Type I (clitoridectomy) is now more common. On average, women now aged between 15 and 19 were subjected to FGM at the age of 13, whereas women now aged between 19 and 49 were excised on average at the age of 15. Some ethnic groups (Somali, Borana) inflict FGM on girls younger than ten years of age. Reports point, however, to the practice being inflicted on ever younger girls. In some cases, poverty is forcing families to marry off their daughters young to obtain a dowry, while another factor is the rise in teenage pregnancies. Some parents may fear that older daughters may become aware of their rights and refuse to submit to the practice. A study commissioned by Action Aid Kenya in 2006 showed that the age for undertaking FGM was declining, with the majority facing it between the ages of 5 and 7, when resistance is minimal. There is a strong correlation between education level and FGM. Fifty-eight percent (58%) of women with no education report that they are circumcised, compared with only 21% of those with at least some secondary education. Early/forced marriage and female circumcision impede a girl's education in pastoralist communities. The critical point to break in the cycle is seen as delaying and eventually stopping FGM. It is now prohibited by law. However, this cultural practice will be hard to eradicate and there are already reports of girls being taken to neighboring countries in order to be circumcised.

*Sources:* KNBS "Demographic and Health Survey 2008-09" (2010a), 264;  
<http://www.gtz.de/de/dokumente/en-fgm-countries-kenya.pdf>

**Table 4.7 Education data 2005-2010**

<b>Indicators</b>	<b>Value</b>
Education: government expenditure (% of GDP)	7.0
Expected years of schooling (of children under 7) (years)	11.0
Adult literacy rate (both sexes (% aged 15 and above)	87.0
Mean years of schooling (of adults over 25) (years)	7.0
Education index (expected and mean years of schooling)	0.582
Combined gross enrolment in education (both sexes) (%)	66.7

Source: UNDP Kenya 2012 (accessed 16.04.2012).

**Table 4.8 Publicly-Funded Mobile Schools, by District (2009)**

<b>District</b>	<b>No. of schools</b>	<b>Girls</b>	<b>Boys</b>	<b>Total</b>	<b>%</b>
Turkana	15	1796	845	2641	59.52
Marsabit	4	63	64	127	2.86
Garissa	5	143	198	341	7.69
Wajir	8	124	160	284	6.40
Ijara	7	104	173	277	6.20
Isiolo	2	63	68	131	2.95
Samburu	5	194	157	351	7.91
Tana River	2	80	120	200	4.51
Moyale	3	37	48	85	1.92
<b>Total</b>	<b>51</b>	<b>2604</b>	<b>1833</b>	<b>4437</b>	<b>100</b>

Source: MoE Brief on Mobile Schools, March 2009

**Table 4.9 Out of school children (6-16 years in Arid Districts)**

Tana River	23.9
Mandera Central	20.6
Wajir North	24.6
Wajir East	10.7
Samburu East	24.0
Samburu Central	15.5
Samburu North	42.2
Pokot North	42.4
National Average	3.7

Source: UWEZO, Annual Learning Assessment Report 2010 (2010), 124.

**Table 4.10 Men and women (age 6+) who have attended school  
(selected ASAL counties and in %), 2008.**

County	Male	Female	Total
<b>Mandera</b>	28.5	2.0	15.2
<b>Turkana</b>	26.6	6.0	16.3
<b>Marsabit</b>	20.5	164.6	17.6
<b>Garissa</b>	29.8	7.8	19.5
<b>Wajir</b>	35.5	7.1	21.2
<b>Isiolo</b>	46.7	27.5	37.8
<b>Samburu</b>	41.0	321.1	30.7
<b>Tana River</b>	38.5	23.4	30.8
<b>Moyale</b>	48.4	26.0	37.7
<b>Average</b>	35.1	15.1	25.3
<b>National</b>	82.5	71.2	76.8

Source: Kenya National Bureau of Statistics, Analysis Section 2008.

**Table 4.11 Educational statistics for selected ASAL counties**

Counties	% can read and write	% attending school 15-18 yrs	% population with primary education	% population with secondary education
<b>Nakuru</b>	83.2	74.7	63.4	13.4
<b>Kajiado</b>	55.4	44.9	62.0	12.5
<b>Narok</b>	41.4	73.1	73.5	7.2
<b>Tana River</b>	49.8	46.9	67.9	5.5
<b>West Pokot</b>	46.9	67.6	72.0	6.2
<b>Turkana</b>	18.1	39.0	71.0	9.5
<b>Samburu</b>	28.9	63.3	63.6	6.5
<b>Marsabit</b>	26.2	47.0	70.4	8.9
<b>Wajir</b>	26.2	55.5	64.4	9.0
<b>Ntl average</b>	66.4	70.9	66.6	12.7

Source: Commission on Revenue Allocation, County Fact Sheets, (2011)

## **Annex 5. Relevant Constitutional provisions and other legislation**

### **5.1 Constitutional definition of “marginalised community”**

Art. 260 – Definitions

A “Marginalised community” is defined as

- (a) a community that, because of its relatively small population or for any other reason, has been unable to fully participate in the integrated social and economic life of Kenya as a whole;
- (b) a traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole;
- (c) an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or
- (d) pastoral persons and communities, whether they are—(i) nomadic; or (ii) a settled community that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole;

A “marginalised group” is a group of people who, because of laws or practices before, on, or after the effective date, were or are disadvantaged by discrimination on one or more of the grounds in Article 27 (4), i.e. race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

### **5.2 The Constitution and main articles relevant for indigenous peoples**

The Constitution consists of 18 Chapters and 6 Schedules. The most relevant provisions are within:

#### **Chapter One—Sovereignty of the People and Supremacy of this Constitution (Arts. 1-3)**

*Art. 2. Supremacy of this Constitution ...*

(5) The general rules of international law shall form part of the law of Kenya.

#### **Chapter Two—The Republic (Arts. 4-11)**

*Art. 7. National languages ...*

(3) The State shall

- (a) promote and protect the diversity of language of the people of Kenya; and
- (b) promote the development and use of indigenous languages ...

*Art. 10. National values and principles of governance ...*

- (2) The national values and principles of governance include--
  - (a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;
  - (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised;

*Art. 11. Culture*

- (1) This Constitution recognises culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation.
- (2) The State shall—
  - (a) promote all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage;
  - (b) recognise the role of science and indigenous technologies in the development of the nation; and
  - (c) promote the intellectual property rights of the people of Kenya.
- (3) Parliament shall enact legislation to—
  - (a) ensure that communities receive compensation or royalties for the use of their cultures and cultural heritage; and
  - (b) recognise and protect the ownership of indigenous seeds and plant varieties, their genetic and diverse characteristics and their use by the communities of Kenya.

**Chapter Three—Citizenship (Arts. 12-18)**

*Art. 16. Dual Citizenship*

A citizen by birth does not lose citizenship by acquiring the citizenship of another country.

**Chapter Four--The Bill of Rights (Arts. 19-57)**

Part 1—General Provisions Relating to the Bill of Rights

*Art. 21 on Implementation of rights and fundamental freedoms ...*

- (3) All State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, ... members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities.
- (4) The State shall enact and implement legislation to fulfil its international obligations in respect of human rights and fundamental freedoms.

*Art. 22. Enforcement of Bill of Rights*

- (1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.
- (2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by--
  - (a) a person acting on behalf of another person who cannot act in their own name;
  - (b) a person acting as a member of, or in the interest of, a group or class of persons;
  - (c) a person acting in the public interest; or(d) an association acting in the interest of one or more of its members.

*Art. 27. Equality and freedom from discrimination ...*

- (4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, ... ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.
- (5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).
- (6) To give full effect to the realisation of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.

Part 2—Rights and Fundamental Freedoms

*Art. 44. Language and Culture*

- (1) Every person has the right to use the language, and to participate in the cultural life, of the person's choice.
- (2) A person belonging to a cultural or linguistic community has the right, with other members of that community—
  - (a) to enjoy the person's culture and use the person's language; or
  - (b) to form, join and maintain cultural and linguistic associations and other organs of civil society.
- (3) A person shall not compel another person to perform, observe or undergo any cultural practice or rite.

*Art. 48. Access to Justice*

The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.

*Art. 49. Rights of an arrested person*

- (1) An arrested person has the right—
  - (a) to be informed promptly, in language that the person understands,

Part 3—Specific Application of Rights

*Art. 56 Minorities and Marginalized groups*

The State shall put in place affirmative action programmes designed to ensure that minorities and marginalised groups—

- (a) participate and are represented in governance and other spheres of life;
- (b) are provided special opportunities in educational and economic fields;
- (c) are provided special opportunities for access to employment;
- (d) develop their cultural values, languages and practices; and
- (e) have reasonable access to water, health services and infrastructure.

**Chapter Five—Land and Environment (Arts. 60-72)**

Part 1—Land

*Art. 60. Principles of Land Policy*

(1) Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles—

- (a) equitable access to land;
- (b) security of land rights;
- (c) sustainable and productive management of land resources;
- (d) transparent and cost effective administration of land;
- (e) sound conservation and protection of ecologically sensitive areas;
- (f) elimination of gender discrimination in law, customs and practices related to land and property in land; and
- (g) encouragement of communities to settle land disputes through recognised local community initiatives consistent with this Constitution.

(2) These principles shall be implemented through a national land policy developed and reviewed regularly by the national government and through legislation.

*Art. 61. Classification of Land*

(1) All land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals.

(2) Land in Kenya is classified as public, community or private.

*Art. 63. Community land*

(1) Community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest.

(2) Community land consists of—

- (a) land lawfully registered in the name of group representatives under the provisions of any law;
- (b) land lawfully transferred to a specific community by any process of law;
- (c) any other land declared to be community land by an Act of Parliament; and
- (d) land that is—

(i) lawfully held, managed or used by specific communities as community forests, grazing areas or shrines;

(ii) ancestral lands and lands traditionally occupied by hunter-gatherer communities; or

(iii) lawfully held as trust land by the county governments, but not including any public land held in trust by the county government under Article 62 (2).

(3) Any unregistered community land shall be held in trust by county governments on behalf of the communities for which it is held.

(4) Community land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively.

(5) Parliament shall enact legislation to give effect to this Article.

#### *Art. 67. Land Commission*

(2) The functions of the National Land Commission are—

(e) to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;

(f) to encourage the application of traditional dispute resolution mechanisms in land conflicts;

...

#### *Art. 68. Legislation on land*

Parliament shall—

(a) revise, consolidate and rationalise existing land laws;

(b) revise sectoral land use laws in accordance with the principles set out in Article 60 (1); and

(c) enact legislation ...

(iii) to regulate the recognition and protection of matrimonial property and in particular the matrimonial home during and on the termination of marriage;

(vi) to protect the dependants of deceased persons holding

interests in any land, including the interests of spouses in actual occupation of land; ...

Part 2—The Environment and Natural Resources

#### *Art. 69. Obligations in respect of the environment*

(1) The State shall—

(a) ensure sustainable exploitation, utilisation, management and conservation of the

environment and natural resources, and ensure the equitable sharing of the accruing benefits;

(b) work to achieve and maintain a tree cover of at least ten % of the land area of Kenya;

(c) protect and enhance intellectual property in, and indigenous knowledge of, biodiversity and the genetic resources of the communities ...

### **Chapter Seven—Representation of the people ...**

Part 3—Political Parties

#### *Art. 91. (1) Every political party shall ...*

(e) respect the right of all persons to participate in the political process, including minorities and marginalised groups;

(f) respect and promote human rights and fundamental freedoms, and gender equality and equity;

### **Chapter Eight—The Legislature ...**

Part 2—Composition and Membership of Parliament ...

#### *Art. 97. (1) The National Assembly consists of ...*

(c) twelve members nominated by parliamentary political parties according to their proportion of members of the National Assembly in accordance with Article 90, to

represent special interests including the youth, persons with disabilities and workers; ...

#### *Art. 100. Promotion of representation of marginalized groups*

Parliament shall enact legislation to promote the representation in Parliament of ...

(d) ethnic and other minorities; and

(e) marginalised communities.

### **Chapter Eleven—Devolved Government**

Part 1—Objects and Principles of Devolved Government

#### *174. The objects of the devolution of government are ...*

(b) to foster national unity by recognising diversity;

- (c) to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them;
- (d) to recognise the right of communities to manage their own affairs and to further their development;
- (e) to protect and promote the interests and rights of minorities and marginalised communities;

*Art. 197. County assembly, gender balance and diversity ...*

- (2) Parliament shall enact legislation to—
  - (a) ensure that the community and cultural diversity of a county is reflected in its county assembly and county executive committee; and
  - (b) prescribe mechanisms to protect minorities within counties.

### **Chapter Thirteen—Public Service**

*Art. 232. The values and principles of public service include ...*

- (h) representation of Kenya’s diverse communities; and
- (i) affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service, of...
  - (ii) the members of all ethnic groups;

### **Chapter Fourteen—National Security**

*Art. 241 Establishment of Defence Forces and Defence Council ...*

- (4) The composition of the command of the Defence Forces shall reflect the regional and ethnic diversity of the people of Kenya.

### **Fourth Schedule (Article 185 (2), 186 (1) and 187 (2))—Distribution of Functions Between the National Government and the County Governments....**

Part 2—County Governments

The functions and powers of the county are ...

1. Agriculture, including—(a) crop and animal husbandry; (b) livestock sale yards; (c) county abattoirs; (d) plant and animal disease control; and (e) fisheries.
2. County health services ...
8. County planning and development, including—(a) statistics; (b) land survey and mapping; (c) boundaries and fencing; (d) housing; ...
9. Pre-primary education, village polytechnics, home craft centres and childcare facilities.
10. Implementation of specific national government policies on natural resources and environmental conservation, including—(a) soil and water conservation; and (b) forestry.
14. Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.

### **Fifth Schedule (Article 261 (1))—Legislation to be enacted by Parliament**

Chapter Five—Land and Environment

Time specification

Community land (Article 63)	Five years
Regulation of land use and property (Article 66)	Five years
Legislation on land (Article 68)	18 months
Agreements relating to natural resources (Article 71)	Five years
Legislation regarding environment (Article 72)	Four years
Promotion of representation of marginalised groups (Article 100)	Five years
County assembly gender balance and diversity (Article 197)	Three years
Values and principles of public service (Article 232)	Four years

### **Sixth Schedule (Article 262)—Transitional and Consequential Provisions**

- (2) The provisions of this Constitution relating to devolved government, including Article 187, are suspended until the date of the first elections for county assemblies and governors held under this Constitution.

### **5.3. The 2009 Land Policy (NLP)**

The most important innovations of the NLP include the re-categorization of land into public, community and private land, a policy to use land productively and sustainably, and to share benefits with the local population.

Land issues requiring special intervention are listed (3.6) and include among others: (a) Historical injustices; (b) Pastoral land issues; (c) Coastal region land issues; (d) Land rights of minority and marginalized groups; (e) Land rights of women.

Mechanisms for resolving these issues are to be put in place taking into account the land reform principles of redistribution, restitution and resettlement in order to facilitate access to, and utilization of, land and land-based resources.

#### *3.6.1.2 Restitution*

174. The purpose of land restitution is to restore land rights to those that have unjustly been deprived of such rights. It underscores the need to address circumstances which give rise to such lack of access, including historical injustices. The Government shall develop a legal and institutional framework for handling land restitution.

#### *3.6.1.3 Resettlement*

175. The resettlement principle seeks to procure adequate land for the reorganization of both rural and urban settlements in light of expanding populations, conflicts, historical injustices and disasters.

The Government shall:

- (i) establish criteria for the determination of who qualifies to benefit from resettlement programmes;
- (ii) ensure that it is carried out in a transparent and accountable manner; and
- (iii) provide them with infrastructure and basic services.

#### *3.6.2 Resolution of Historical Land Injustices (178-179)*

178. Historical land injustices are grievances which stretch back to colonial land administration practices and laws that resulted in mass disinheritance of communities of their land, and which grievances have not been sufficiently resolved to date. Sources of these grievances include land adjudication and registration laws and processes, and treaties and agreements between local communities and the British. The grievances remain unresolved because successive post-independence Governments have failed to address them in a holistic manner.

179. The Government shall:

- (a) Establish mechanisms to resolve historical land claims arising in 1895 or thereafter. The rationale for this decision is that 1895 is the year when Kenya became a protectorate under the British East African Protectorate with the power to enact policies and laws under the Crown. It is these colonial practices and laws which formed the genesis of the mass disinheritance of various Kenyan communities of their land;
- (b) Establish a suitable legal and administrative framework to investigate, document and determine historical land injustices and recommend mechanisms for their resolution;
- (c) Review all laws and policies adopted by post-independence Governments that exacerbate the historical land injustices;
- (d) Establish suitable mechanisms for restitution of historical land injustices and claims; and
- (e) Specify a time period within which land claims should be made.

#### *3.6.3 Pastoral Land Issues (180-183)*

183. To secure pastoralists livelihoods and tenure to land, the Government shall:

- (a) Recognize pastoralism as a legitimate land use and production system;
- (b) Review the Land (Group Representatives) Act and provide for pastoralism in the "Land Act";
- (c) Establish suitable methods for defining and registering land rights in pastoral areas while allowing pastoralists to maintain their unique land systems and livelihoods;
- (d) Establish a legislative framework to regulate transactions in land in pastoral areas;
- (e) Ensure that the rights of women in pastoral areas are recognized and protected;

- (f) Provide for flexible and negotiated cross boundary access to protected areas, water, pastures and salt licks among different stakeholders for mutual benefit; and
- (g) Ensure that all land uses and practices under pastoral tenure conform to the principles of sustainable resource management.

#### 3.6.4 *Land Issues Peculiar to Coast Region (184-193)*

193. To address the Coastal land problems, the Government shall:

- (a) Establish suitable legal and administrative mechanisms to address historical claims arising from the application of the Land Titles Act (Cap 282) of 1908; ...
- (g) Establish a framework for consulting indigenous occupants of land before establishing settlement schemes and other land use projects;
- (h) Protect and conserve the Tana and Sabaki Delta ecosystems in collaboration with contiguous communities;
- (i) Sensitize and educate people on their land rights and land administration and management procedures;
- (j) Provide a framework for sharing benefits from land and land based resources with communities;

#### 3.6.6 *Land Rights of Minority Communities (198-199)*

199. To protect and sustain the land rights of minority communities, the Government shall

- (a) Undertake an inventory of the existing minority communities to obtain a clear assessment of their status and land rights;
- (b) Develop a legislative framework to secure their rights to individually or collectively access and use land and land based resources;
- (c) Provide legal and institutional frameworks for restitution; and
- (d) Support their resource management systems to ensure sustainability of land and land based resources.

#### 3.6.10.3 *Gender and Equity Principles (220-223)*

223. To protect the rights of women, the Government shall:

- (a) Enact appropriate legislation to ensure effective protection of women's rights to land and related resources;
- (b) Repeal existing laws and outlaw regulations, customs and practices that discriminate against women in relation to land;

#### 3.6.10.4 *Matrimonial Property (224-225)*

225. To secure the rights of spouses to matrimonial property, the Government shall:

- (a) Review succession, matrimonial property and other related laws to ensure that they conform to the principle of gender equity;
- (c) Protect the rights of widows, widowers and divorcees through the enactment of a law on co-ownership of matrimonial property;
- (d) Establish appropriate legal measures to ensure that men and women are entitled to equal rights to matrimonial property; and
- (e) Establish mechanisms to curb selling and mortgaging of family land without the involvement of spouses.

#### 3.6.9 *Informal Settlements (209-*

209. The essence of 'informal' or 'spontaneous' or 'squatter' settlements is the absence of security of tenure and planning. ...

211. To deal with the challenges presented by squatters and informal settlements, the Government shall:

- (a) Take an inventory of genuine squatters and people who live in informal settlements;
- (b) Determine whether land occupied by squatters is suitable for human settlement;
- (c) Establish appropriate mechanisms for the removal of squatters from unsuitable land and their resettlement;
- (d) Facilitate planning of land found to be suitable for human settlement;
- (h) Establish a legal framework and procedures for transferring unutilized land and land belonging to absentee land owners to squatters and people living in informal settlements;

(m) Establish an appropriate legal framework for eviction based on internationally acceptable guidelines.

#### 4.2 Policy Framework for Land Management Institutions

231. The Government will set up three key land management institutions: the National Land Commission (NLC), the District Land Boards (DLBs) and Community Land Boards (CLBs).

##### 4.2.3 Community Land Boards (247-249)

247. Community Land Boards (CLBs) shall constitute the third tier of the devolved land administration and management.

248. The CLBs shall be composed of democratically elected community representatives and supported by officers appointed by NLC

249. The elected members of CLBs shall be people ordinarily resident in an area as determined by the DLBs in consultation with the affected communities. Membership criteria shall respect ethnic diversity, gender, socio-political dynamics, and environmental sustainability.

**The definition of land** 'Land' is defined as including '(a) the surface of the earth and the subsurface rock; (b) any body of water on or under the surface, (c) marine waters in the territorial sea and exclusive economic zone; (d) natural resources completely contained on or under the surface; and the air space above the surface' (Art. 260).

## Annex 6. List of international and regional human rights and other legal instruments

### The UN Declaration on the Rights of Indigenous Peoples (UNDRIP)

#### International human rights treaties<sup>239</sup>

- The Convention on the Elimination of All Forms of Racial Discrimination (ICERD)<sup>240</sup>
- The International Covenant on Civil and Political Rights (ICCPR)<sup>241</sup>
- The International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>242</sup>
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)<sup>243</sup>
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- The Convention on the Rights of the Child (CRC) and its Optional Protocol CRC-OP-AC<sup>244</sup>
- The Convention on the Rights of Persons with Disabilities (CRPD)<sup>245</sup>

#### Universal human rights instruments related to armed conflicts

- The Four Geneva Conventions of 1949 and the additional 1977 protocols I and II
- The Convention relating to the Status of Refugees and its 1967 Protocol
- The Rome Statute of the International Criminal Court

#### Other international Conventions

##### UNITED NATIONS

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<sup>239</sup> Kenya has only signed the Convention for the Protection of All Persons from Enforced Disappearance (CED) and is in the process of ratifying the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW).

<sup>240</sup> Kenya does not recognize Individual Complaints (art. 14).

<sup>241</sup> Kenya does not recognize Inter-State complaints (art.41) and is not party to ICCPR-OP 1 and OP 2.

<sup>242</sup> Kenya has reservations on art. 10(2)3 and is not party to OP-ICESCR4

<sup>243</sup> Kenya does not recognize Inter-State complaints (art. 21) and No Individual Complaints (art. 22) and No Inquiry Procedure (art. 20).

<sup>244</sup> Binding declaration under art. 3: 18 years.

<sup>245</sup> Kenya is not party to OP-CRPD

- The Convention against Transnational Organized Crime (CTOC) and the Palermo Protocols to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children
- The Convention on the Law of the Sea (UNCLOS III)

#### **UNESCO conventions**

- The Convention concerning the Protection of the World Cultural and Natural Heritage
- The Convention for the Safeguarding of the Intangible Cultural Heritage
- The Convention on the Protection and Promotion of the Diversity of Cultural Expressions

#### **ILO conventions**

- C98 (Right to organize and to collective bargaining)
- C29 & C105 (Elimination of Forced and Compulsory labor)
- C100 and C111 (Elimination of Discrimination in respect of Employment and Occupation)
- C138 and C182 (Abolition of Child Labor)

#### **International conventions related to environment, bio-diversity and climate change**

- CBD—The Convention on Biological Diversity (1992) and its Cartagena Protocol on Biosafety (2000)
- Agenda 21 (1992)
- UNFCCC—UN Framework Convention on Climate Change (1992) and its Kyoto Protocol on the Reduction of Overall Emissions (1997)
- The Vienna Convention for the Protection of the Ozone Layer (1985) and the Montreal Protocol on Substances that Deplete the Ozone Layer (1987)
- The Ramsar Convention on Wetlands (1971)<sup>246</sup>
- CITES—Convention on International Trade in Endangered Species (1973)
- CMS—Convention on the Conservation of Migratory Species of Wild Animals (1979)
- UNCCD—UN Convention to Combat Desertification...particularly in Africa (1994)
- The Nuclear Non-Proliferation Treaty (NPT) 1968
- The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their disposal (1989)
- The Rotterdam Convention. On the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in internal Trade (1998)
- The Stockholm Convention on Persistent Organic Pollutants (2001)
- The Convention for the protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region (1985)

#### **International conventions regarding intellectual property rights**

- WIPO Convention (1979)
- The Berne Convention for the Protection of Literary and Artistic Works (1971)
- TRIPS—Agreement on Trade-related Aspects of Intellectual Property Rights (1994)

#### **The UN Millennium Declaration**

##### **Regional human rights instruments**

- The Charter of the African Union
- The African Charter on Human and Peoples' Rights (1981)
- The African Charter on Rights and Welfare of the Child
- The Protocol to the ACHPR on the Rights of Women in Africa (signature)
- The Protocol to the ACHPR on the Establishment of an African Court on Human and Peoples' Rights (1998)

Kenya is a member of the regional EACJ (East African Court of Justice),<sup>247</sup> and of the EALA (East African Legislative Assembly).

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<sup>246</sup> Kenya has five lakes in the Rift Valley region (Baringo, Bogoria, Elmenteita, Naivasha, and Nakuru) designated as Wetlands of International Importance.

### **Other regional conventions and agreements**

- The African Union Convention on the Prevention and Combating of Corruption
- The African Union Convention Governing Specific Aspects of Refugee Problems in Africa
- The African Economic Community Treaty
- Cultural Charter for Africa
- African Convention on the Conservation of Nature and Natural Resources
- Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movements and Management of Hazardous Wastes within Africa (signed)
- Pelindaba Treaty on the African Nuclear Weapons-Free Zone
- CEWARN Protocol<sup>248</sup>

### **Membership of regional bodies**

East African Community (EAC)

East African Common Market (EACM)

Eastern Africa Police Chiefs Cooperation Organisation (EAPCCO)<sup>249</sup>

New Partnership for Africa's Development (NEPAD)

African Peer Review Mechanism (APRM).

IGAD (Intercontinental Authority on Development)

## **Annex 7. World Bank projects in Kenya<sup>250</sup>**

### **1. P128663—Health Sector Support Additional Financing 2011/N/A**

**Total Project Cost:** USD56.8 million (IDA Commitment)

**Major Sectors (%):** Health and other social services (Health) (100%)

**Themes (%):** Child health (30%), Health system performance (50%), Nutrition and food security (20%)

**Environmental Category B**

**Project Development Objective:** to enhance national and regional health systems' capacities for diagnosis and surveillance of tuberculosis and other communicable diseases.

**OP 4.10: IPP 154 (2010)** Planning Framework.

### **2. P124109—Kenya Transport Sector Support Project 2011/2016**

**Total Project Cost:** USD478.02 million (IBRD+IDA 300.0; French Agency For Development 97.5; IDA Borrower 80.5)

**Major Sector (Sector) (%):** Transportation (Roads and highways) (73%), Public Administration, Law, and Justice (Public administration-Transportation) (18%), Transportation (Aviation) (9%)

**Themes (%):** Other urban development (5%), Rural services and infrastructure (5%), Trade facilitation and market access (45%), Infrastructure services for private sector development (45%)

**Environmental Category B**

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<sup>247</sup> The EACJ allows any person who is resident in a Partner State to file complaints on the legality of any Partner State/Community Act, regulation, directive, decision or action as beyond the powers of the Treaty.

<sup>248</sup> Protocol on the Establishment of Conflict Early Warning and Response Mechanism, signed in Khartoum in January 2002). The signatory states undertake, among other things, to establish national conflict early warning and response units.

<sup>249</sup> The Eastern Africa Police Chiefs Co-operation Organisation (EAPCCO) EAPCCO has 12 members (Kenya Djibouti, Eritrea, Ethiopia, Somalia, Sudan, South Sudan, Seychelles, Rwanda, Burundi, Uganda and Tanzania). It was created in 1998 to promote, strengthen and perpetuate co-operation and foster joint strategies for the management of all forms of cross-border and related crimes with regional implications (terrorism, drugs, cattle rustling, environmental and wildlife crime, illegal firearms, trafficking in human beings and illegal immigrants).

<sup>250</sup> This list includes projects approved since 2004 and still active as of 1 January 2012. See WB website at <http://web.worldbank.org/external/projects/>

**Project development Objectives:** to (a) increase the efficiency of road transport along the Northern Corridor and the Tanzania-Kenya-Sudan road corridor; (b) enhance aviation safety and security to meet international standards; and (c) improve the institutional arrangements and capacity in the transport sector.

**OP 4.10:** Not triggered

### **3. P113542—Kenya Informal Settlements Improvement Project (KISIP) - 2011/2016**

**Total Project Cost** USD165.0 million (IDA 100.0; Swedish Intl. Dev. Cooperation Agency (Sida) 10.0; French Agency For Development 45.0; Borrower 10.0)

**Major Sector (Sector) (%)**: Water, sanitation and flood protection (General water, sanitation and flood protection sector) (40%), Public Administration, Law and Justice (Sub-national government administration) (30%), Transportation (General transportation sector) (30%)

**Themes (%)** Other urban development (20%), Urban services and housing for the poor (60%), Municipal governance and institution building (20%)

#### **Environmental Category B**

**Project Development Objective:** to improve living conditions in informal settlements in selected municipalities in Kenya. This will be achieved by enhancing security of tenure and improving infrastructure based on plans developed in consultation with the community.

**OP 4.10:** Not triggered

### **4. P122491—Total War Against HIV & AIDS (TOWA) - Additional Financing Kenya 2010/N/A**

**Total Project Cost:** USD55.0 million (IDA 55.0)

**Major Sector (Sector) (%)** Health and other social services (Health) (87%). Finance (Payments, settlements, and remittance systems) (9%), Finance (General finance sector) (4%)

**Themes (%)** Malaria (52%), HIV/AIDS (36%), Tuberculosis (3%), Public expenditure, financial management and procurement (9%)

#### **Environmental Category B**

**Project Development Objective:** to assist Kenya to expand the coverage of targeted HIV and AIDS prevention and mitigation interventions.

**OP 4.10:** IPP 451 (2010) Planning Framework

### **5. P122163—Extending Mobile Applications in Africa through Social Networking (Akirchix) 2010/2013**

**Total Project Cost:** USD0.49 million (Technical Assistance Loan 0.49)

**Major Sector (Sector) (%)** Information and communications (General information and communications sector) (100%)

**Themes (%)** Technology diffusion (33%), Micro, Small and Medium Enterprise support (33%), Infrastructure services for private sector development (34%)

#### **Environmental Category C**

#### **Project Development Objective**

**OP 4.10:** Not triggered

### **6. P107798—Kenya Agricultural Carbon Project -2010/N/A**

**Total Project Cost:** USD1.0 million (Carbon Fund 1.0)

**Major Sector (Sector) (%)** Agriculture, fishing and forestry (General agriculture, fishing and forestry sector) (100%)

**Themes (%)** Climate change (67%), Other rural development (33%)

#### **Environmental Category B**

**Project Development Objective** to ensure environmental sustainability.

**OP 4.10:** Not triggered

**7. P088600—Kenya Agricultural Productivity and Sustainable Land Management Project (KAPSLMP) 2010/2015**

**Total Project Cost** USD12.67 million (Global Environment Project Lending Instrument 10.0; Local Communities 0.4; Borrower 2.1; Bank-Netherlands Partnership Program 0.1)

**Major Sector (Sector) (%)** Agriculture, fishing and forestry (General agriculture, fishing and forestry sector) (36%), Agriculture, fishing and forestry (Agricultural extension and research) (30%), Public Administration, Law and Justice (Public administration - Agriculture, fishing and forestry) (22%), Agriculture, fishing and forestry (Irrigation and drainage) (10%), Agriculture, fishing and forestry (Forestry) (2%)

**Themes (%)** Water resource management (26%), Land administration and management (74%)

**Environmental Category B**

**Project Development Objective:** to facilitate agricultural producers in the targeted operational areas to adopt environmentally sound land management practices without reducing their incomes.

**OP 4.10:** IPP 232 (2006). The first Planning Framework (adopted by GoK) targets the Ogiek, Sengwer and Ilchamus.

**8. P094692— Kenya Coastal Development Project Kenya 2010/2016**

**Total Project Cost:** USD42.0 million (IDA 35.0; Borrower 2.0; Global Environment Facility Co-financing Trust Funds 5.0)

**Major Sector (Sector) (%)** Agriculture, fishing and forestry (General agriculture, fishing and forestry sector) (75%), Public Administration, Law and Justice (Public administration - Agriculture, fishing and forestry) (19%), Agriculture, fishing and forestry (Agricultural extension and research) (4%), Agriculture, fishing and forestry (Animal production) (2%)

**Themes (%)** Water resource management (13%), Rural policies and institutions (8%), Rural non-farm income generation (47%), Rural services and infrastructure (14%), Land administration and management (18%)

**Environmental Category B**

**Project Development Objective:** to promote an environmentally sustainable management of Kenya's coastal and marine resources by strengthening the capacity of existing relevant government agencies and by enhancing the capacity of rural micro, small and medium-sized enterprises in selected coastal communities.

**OP 4.10:** IPP 443 (2010) targeting Waata and Boni/Aweer

**9. P108845—Kenya Coastal Development Project 2010/2016**

**Total Project Cost:** USD40.0 million (GEF 5.0; Global Environment - Associated IDA Fund 30.0; Borrower 5.0)

**Major Sector (Sector) (%)** Agriculture, fishing and forestry (General agriculture, fishing and forestry sector) (67%), Public Administration, Law and Justice (Public administration - Agriculture, fishing and forestry) (33%)

**Themes (%)** Biodiversity (33%), Water resource management (55%), Land administration and management (12%)

**Environmental Category B**

**Project Development Objective** Ensure environmental sustainability

**OP 4.10:** n/a.

**10. P121504—Support to the Government of Kenya for Social Protection Programming 2010/N/A**

**Total Project Cost:** USD1.5 million (Rapid Social Response Program 1.5)

**Major Sector (Sector) (%)** Health and other social services (Other social services) (100%)

**Themes (%)** Social safety nets (100%)

**Environmental Category C**

**Project Development Objective** n/a

**OP 4.10:** n/a

### **11. P074091—Health Sector Support 2010/2015**

**Total Project Cost:** USD100.0 million (IDA 100.0)

**Major Sector (Sector) (%)** Health and other social services (Health) (94%), Public Administration, Law and Justice (Public administration - Health) (6%)

**Themes (%)** HIV/AIDS (17%), Child health (17%), Health system performance (17%), Other communicable diseases (33%), Population and reproductive health (16%)

#### **Environmental Category B**

**Project Development Objectives:** to improve: (i) the delivery of essential health services for Kenyans, especially the poor; and (ii) the effectiveness of planning, financing and procurement of pharmaceuticals and medical supplies.

**OP 4.10: IPP 431 (2010) Planning Framework – General.**

### **12. P091979—Kenya: Adaptation to Climate Change in Arid and Semi-Arid Lands (KACCAL) 2010/N/A**

**Total Project Cost:** USD46.32 million (GEF 45.5; Borrower 0.8)

**Major Sector (Sector) (%)** Agriculture, fishing and forestry (General agriculture, fishing and forestry sector) (40%), Agriculture, fishing and forestry (Irrigation and drainage) (20%), Agriculture, fishing and forestry (Animal production) (20%), Public Administration, Law and Justice (Public administration - Agriculture, fishing and forestry) (20%)

**Themes (%)** Climate change (60%), Water resource management (20%), Land administration and management (20%)

#### **Environmental Category B**

**Project Development Objective:** to increase the capacity of selected districts and communities of the ASALs to adapt to climate variability and change. The project is to be piloted in five districts namely, Garissa, Turkana, Marsabit, Malindi and Mwingi.

**OP 4.10: IPP 377 (2009) targeting Waata and Boni/Aweer**

### **13. P103037—Electricity Expansion 2010/2016**

**Total Project Cost:** USD1390.65 million (Multi-donor funded; IDA 330.0; Local Sources of Borrowing Country 90.9; Borrower 169.7; Global Partnership on Output-Based Aid 5.0)

**Major Sector (Sector) (%)** Energy and mining (Power) (53%), Energy and mining (Renewable energy) (40%), Public Administration, Law and Justice (Public administration - Energy and mining) (7%)

**Themes (%)** Education for All (3%), Health system performance (3%), Rural services and infrastructure (33%), Urban services and housing for the poor (3%), Infrastructure services for private sector development (58%)

#### **Environmental Category A**

**Project Development Objectives:** to (a) increase the capacity, efficiency and quality of electricity supply; and (b) expand access to electricity in urban, peri-urban, and rural areas.

**OP 4.10: IPP 404 (2010) Planning Framework, targeting Sengwer, Ogiek, Waata, and Boni/Aweer**

### **14. P066488—Municipal Program 2010/2015**

**Total Project Cost:** USD165.0 million (IDA 100.0; Swedish Intl. Dev. Cooperation Agency (Sida) 10.0; French Agency For Development 45.0; Borrower 10.0)

**Major Sector (Sector) (%)** Water, sanitation and flood protection (General water, sanitation and flood protection sector) (35%), Transportation (General transportation sector) (25%), Public Administration, Law and Justice (Sub-national government administration) (22%), Water, sanitation and flood protection (Solid waste management) (15%), Public Administration, Law and Justice (Central government administration) (3%)

**Themes (%)** Decentralization (3%), Other urban development (26%), Urban services and housing for the poor (40%), Municipal governance and institution building (28%), Public expenditure, financial management and procurement (3%)

#### **Environmental Category B**

**Project Development Objective:** to strengthen local governance and improve service delivery in selected municipalities.

**OP 4.10:** Not triggered

**15. P111546—Kenya Youth Empowerment Project 2010/2015**

**Total Project Cost:** USD145.0 million (IDA 60.0; Borrower 85.0)

**Major Sector (Sector) (%)** Health and other social services (Other social services) (84%), Education (Vocational training) (13%), Public Administration, Law and Justice (Public administration-Other social services) (3%)

**Themes (%)** Social safety nets (44%), Education for the knowledge economy (6%), Other social protection and risk management (50%)

**Environmental Category B**

**Project Development Objective:** to support the Government of Kenya's (GoK) efforts to increase access to youth-targeted temporary employment programs and to improve youth employability.

**OP 4.10: IPP 395 (2009)** Planning Framework

**16. P120038—BEIA-Scaling up Biodiesel Production in Kenya 2010/2012**

**Total Project Cost:** USD0.25 million (Borrower 0.10; Energy Sector Management Assistance Program 0.15)

**Major Sector (Sector) (%)** Energy and mining (Renewable energy) (100%)

**Themes (%)** Biodiversity (20%), Climate change (30%), Other rural development (30%), Micro, Small and Medium Enterprise support (20%)

**Environmental Category C**

**Project Development Objective: N/A**

**OP 4.10:** Not triggered

**17. P119736—Enhancing Agricultural Productivity Project 2010/N/A**

**Total Project Cost:** USD0.0 (Special Financing Emergency Recovery Loan 19.13; Borrower 2.27)

**Major Sector (Sector) (%)** Agriculture, fishing and forestry (Crops) (100%)

**Themes (%)** Global food crisis response (100%)

**Environmental Category B**

**Project Development Objective:** to assist the recipient to increase access to agricultural inputs and technologies among targeted smallholder farmers in selected districts.

**OP 4.10:** Not triggered

**18. P109683—Kenya Agricultural Productivity and Agribusiness Project 2009/2014**

**Total Project Cost:** USD98.58 million (IDA 82.0; Local Communities 2.45; Borrower 14.13)

**Major Sector (Sector) (%)** Agriculture, fishing and forestry (Agricultural extension and research) (52%), Industry and trade (Agro-industry) (22%), Agriculture, fishing and forestry (General agriculture, fishing and forestry sector) (15%), Public Administration, Law and Justice (Public administration- Agriculture, fishing and forestry) (6%), Energy and mining (Renewable energy) (5%)

**Themes (%)** Gender (3%), Rural policies and institutions (15%), Rural services and infrastructure (47%), Participation and civic engagement (10%), Micro, Small and Medium Enterprise support (25%)

**Environmental Category B**

**Project Development Objective:** to increase the agricultural productivity and incomes of participating smallholder farmers in the project area. The project activities will contribute to these objectives by transforming and improving the performance of agricultural technology systems, empowering stakeholders and promoting the development of agribusiness in the project area.

**OP 4.10:** IPP 349 (2009) targeting Ogiek and Sengwer

**19. P106200—Northern Corridor Additional Financing 2009/N/A**

**Total Project Cost:** USD370.9 million (IDA 253.0; Foreign Private Commercial Sources (Unidentified) 49.6; Borrower 68.3)

**Major Sector (Sector) (%)** Transportation (Roads and highways) (64%), Transportation (Aviation) (19%), Transportation (Railways) (17%)

**Themes (%)** Regional integration (25%), Natural disaster management (12%), Trade facilitation and market access (25%), Administrative and civil service reform (13%), Infrastructure services for private sector development (25%)

**Environmental Category B**

**Project Development Objective:** the additional financing to the Republic of Kenya will help finance the costs associated with: (i) completion of the original project activities whose scope and costs have increased unexpectedly (78 percent); (ii) implementing expanded project activities that scale up the development effectiveness of the project to address institutional capacity constraints and strengthen governance in the construction industry and carrying out feasibility and design studies for the Sudan Link Road and Urban Public Transport (12 percent); and (iii) emergency rehabilitation and replacement of infrastructure and public assets damaged as a result of the political crisis that followed the general elections in December 2007 (10 percent).

**OP 4.10:** Not triggered

**20. P110173—Energy Sector Recovery Project Additional Financing Kenya 2009/N/A**

**Total Project Cost:** USD81.0 million (IDA 80.0; Borrower 1.0)

**Major Sector (Sector) (%)** Energy and mining (Power) (90%), Public Administration, Law and Justice (Public administration - Energy and mining) (10%)

**Themes (%)** Rural services and infrastructure (10%), Administrative and civil service reform (10%), Urban services and housing for the poor (30%), Infrastructure services for private sector development (50%)

**Environmental Category B**

**Project Development Objective:** N/A

**OP 4.10:** Not triggered

**21. P111545—Kenya Cash Transfer for Orphans and Vulnerable Children 2009/2013**

**Total Project Cost:** USD126.0 million (IDA 50.0; UN Children's Fund 12.0; British Department For International Development (Dfid) 34.0; Borrower 30.0)

**Major Sector (Sector) (%)** Health and other social services (Other social services) (80%), Public Administration, Law and Justice (Public administration - Other social services) (20%)

**Themes (%)** Social safety nets (87%), Administrative and civil service reform (5%), Vulnerability assessment and monitoring (8%)

**Environmental Category C**

**Project Development Objective:** to increase social safety net access for extremely poor OVC households, through an effective and efficient expansion of the CT-OVC Program.

**OP 4.10:** Not triggered

**22. P083172—Nairobi National Park Ecosystem Wildlife Conservation Lease Project 2008/2012**

**Total Project Cost:** USD1.21 million (GEF 0.72; Foundation/s (Identified) 0.48)

**Major Sector (Sector) (%)** Agriculture, fishing and forestry (Animal production) (100%)

**Themes (%)** Biodiversity (67%), Land administration and management (33%)

**Environmental Category C**

**Project Development Objective:** to ensure environmental sustainability

**OP 4.10:** Not triggered

**23. P096367—Water and Sanitation Service Improvement Project 2007/2012**

**Total Project Cost:** USD159.31 million (IDA 150.0; Borrower 9.3)

**Major Sector (Sector) (%)** Water, sanitation and flood protection (Water supply) (80%), Water, sanitation and flood protection (Sewerage) (20%)

**Themes (%)** Urban services and housing for the poor (100%)

**Environmental Category** B

**Project Development Objectives:** to: (a) increase access to reliable, affordable and sustainable water supply and sanitation services; and (b) to improve the water and wastewater services in the areas served by Athi Water Services Board (AWSB), Coastal Water Services Board

(CWSB) and Lake Victoria North Water Services Board (LVNWSB)

**OP 4.10:** IPP249 (2007) targeting the Sengwer

**24. P106636—CF Kengen, Sondu Miriu, Kipevu 2007/N/A**

**Total Project Cost:** USD17.06 million (Carbon Fund 17.6)

**Major Sector (Sector) (%)** Energy and mining (Power) (50%), Energy and mining (Renewable energy) (50%)

**Themes (%)** Climate change (100%)

**Environmental Category** B

**Project Development Objective:** to utilize water from the Sondu Miriu River to generate electricity, thus generating more renewable energy for sale to KLPC on the basis of a power purchase agreement.

**OP 4.10:** Not triggered

**25. P106635—CF Kengen, Kiambere, Tana, Eburru Kenya 2007/2018**

**Total Project Cost:** USD2.77 million (Carbon Fund 2.77)

**Major Sector (Sector) (%)** Energy and mining (Renewable energy) (100%)

**Themes (%)** Climate change (100%)

**Environmental Category** B

**Project Development Objective:** to increase generating capacity by redeveloping the Tana Power Station while using the existing water transmission system. Other objectives are to mitigate the flooding and sedimentation problems which have adversely affected the Masinga Reservoir and power station intermittently over the years with the concomitant environmental benefits of this.

**OP 4.10:** Not triggered

**26. P081712—Total War Against HIV and AIDS (TOWA) Project 2007/2013**

**Total Project Cost:** USD115.0 million (IDA 80.0; British Department For International Development (Dfid) 33.0; Borrower 2.0)

**Major Sector (Sector) (%)** Health and other social services (Other social services) (35%), Health and other social services (Health) (35%), Public Administration, Law and Justice (Central government administration) (24%), Public Administration, Law and Justice (Sub-national government administration) (6%)

**Themes (%)** HIV/AIDS (33%), Other social development (16%), Health system performance (17%), Other public sector governance (17%), Participation and civic engagement (17%)

**Environmental Category** B

**Project Development Objective:** to assist Kenya to expand the coverage of targeted HIV and AIDS prevention and mitigation interventions.

**OP 4.10:** Not triggered

**27. P074106—Western Kenya CDD and Flood Mitigation Project 2007/2015**

**Total Project Cost:** USD100.0 million (IDA 86.0; Local Communities 7.2; Borrower 6.8)

**Major Sector (Sector) (%)** Health and other social services (Other social services) (40%), Water, sanitation and flood protection (General water, sanitation and flood protection sector) (34%), Public Administration, Law and Justice (Sub-national government administration) (15%), Agriculture, fishing and forestry (General agriculture, fishing and forestry sector) (10%), Public Administration, Law and Justice (Central government administration) (1%)

**Themes (%)** Water resource management (13%), Natural disaster management (24%), Land administration and management (13%), Participation and civic engagement (25%), Other social protection and risk management (25%)

**Environmental Category B**

**Project Development Objective:** to empower local communities of men and women to engage in sustainable and wealth creating livelihood activities and reduce their vulnerability to flooding.

**OP 4.10:** IPP199 (2006) targeting the Ogiek and the Sengwer

**28. P095050—Natural Resource Management Project Kenya 2007/2013**

**Total Project Cost:** USD78.0 million (IDA 68.5; Local Communities 2.1; Borrower 7.4)

**Major Sector (Sector) (%)** Agriculture, fishing and forestry (Irrigation and drainage) (58%). Agriculture, fishing and forestry (Forestry) (31%), Agriculture, fishing and forestry (General agriculture, fishing and forestry sector) (6%), Public Administration, Law and Justice (Central government administration) (5%)

**Themes (%)** Other rural development (40%), Water resource management (40%), Rural services and infrastructure (20%)

**Environmental Category B**

**Project Development Objective:** to enhance the institutional capacity to manage water and forest resources, reduce the incidence and severity of water shocks, such as drought, floods and water shortage in river catchments and improve the livelihoods of communities in the co-management of water and forest resources.

**OP 4.10:** IPP198 (2006) targeting the Ogiek and the Sengwer

**29. P085414—Development of The National Statistical System Project 2007/2012**

**Total Project Cost:** USD50.5 million (IDA 20.5; Borrower 30.0)

**Major Sector (Sector) (%)** Public Administration, Law and Justice (Central government administration) (91%), Public Administration, Law and Justice (Sub-national government administration) (6%), Education (Tertiary education) (3%)

**Themes (%)** Administrative and civil service reform (17%), Poverty strategy, analysis and monitoring (17%), Economic statistics, modeling and forecasting (33%)

**Environmental Category C**

**Project Development Objective:** this credit is a follow-on Adaptable Program Lending under the global STATCAP APL program. The objective of the Project is to establish a sustainable national statistical system to provide reliable, timely and accurate data in accordance with international standards.

**OP 4.10:** Not triggered

**30. P104075—Kenya Microfinance for Water Services Project 2006/2013**

**Total Project Cost:** USD1.15 million (Global Partnership on Output-Based Aid 1.15)

**Major Sector (Sector) (%)** Water, sanitation and flood protection (Water supply) (100%)

**Themes (%)** Other financial and private sector development (100%)

**Environmental Category U**

**Project Development Objective:** N/A

**OP.4.10:** Not triggered

**31. P099628—BioCF Kenya Greenbelt Movement 2006/2018**

**Total Project Cost:** USD2.2 million (Prototype Carbon Fund 2.2)

**Major Sector (Sector) (%)** Agriculture, fishing and forestry (Forestry) (100%)

**Themes (%)** Other rural development (33%), Other environment and natural resources management (67%)

**Environmental Category B**

**Project Development Objective:** N/A

**OP 4.10:** Not triggered

**32- P103458—Kenya KenGen Carbon Finance umbrella Kenya 2006/2018**

**Total Project Cost:** 0 (N/A)

**Major Sector (Sector) (%)** Energy and mining (Renewable energy) (100%)

**Themes (%)** Climate change (100%)

**Environmental Category** N/A

**Project Development Objective:** N/A

**OP 4.10:** N/A

**33. P083250—Financial and Legal Sector Technical Assistance Project 2004/2013**

**Total Project Cost:** USD18.0 million (IDA 18.0)

**Major Sector (Sector) (%)** Public Administration, Law and Justice (Law and justice) (40%), Public Administration, Law and Justice (Central government administration) (30%), Finance (Payments, settlements and remittance systems) (14%), Finance (Banking) (12%), Finance (Capital markets) (4%)

**Themes (%)** Law reform (25%), Regulation and competition policy (25%), Legal institutions for a market economy (24%), Debt management and fiscal sustainability (13%), State-owned enterprise restructuring and privatization (13%)

**Environmental Category** C

**Project Development Objective:** to create a sound financial system, and a strengthened legal framework and judicial capacity that will ensure broad access to financial and related legal services.

**OP 4.10:** Not triggered

**34. P083131—Energy Sector Recovery Project 2004/2013**

**Total Project Cost:** USD225.52 million (Multi Donor funding; IDA 80.0; Borrower 33.5)

**Major Sector (Sector) (%)** Energy and mining (Power) (85%), Energy and mining (Oil and gas) (12%), Public Administration, Law and Justice (Central government administration) (3%)

**Themes (%)** Corporate governance (14%), Regulation and competition policy (29%), Urban services and housing for the poor (29%), Infrastructure services for private sector development (14%), State-owned enterprise restructuring and privatization (14%)

**Environmental Category** B

**Project Development Objectives:** to: (i) enhance the policy, institutional and regulatory environment for private sector participation and sector development; (ii) support efficient expansion of power generation capacity to meet the economy's projected supply deficits by FY2006/07; and (iii) increase access to electricity in urban and peri-urban areas while improving the efficiency, reliability and quality of service to existing consumers.

**OP 4.10:** Not triggered

**35. P085007—Micro, Small, and Medium Enterprise Competitiveness Project 2004/2012**

**Total Project Cost:** USD22.0 million (IDA 22.0)

**Major Sector (Sector) (%)** Industry and trade (General industry and trade sector) (45%), Finance (Micro- and SME finance) (35%), Education (Vocational training) (10%), Public Administration, Law and Justice (Central government administration) (5%), Public Administration, Law and Justice (Sub-national government administration) (5%)

**Themes (%)** Rural markets (13%), Improving labor markets (24%), Tax policy and administration (13%), Regulation and competition policy (25%), Micro, Small and Medium Enterprise support (25%)

**Environmental Category** C

**Project Development Objective:** to increase productivity and employment in participating MSMEs by strengthening financial and non-financial markets to meet the demand, strengthening institutional support for employable skills and business management and reducing critical investment climate constraints on MSMEs.

**OP 4.10:** Not triggered

**36. P082615—Northern Corridor Transport Improvement Project 2004/2012**

**Total Project Cost:** USD275.0 million (IDA 207.0; Borrower 68.0)

**Major Sector (Sector) (%)** Transportation (Roads and highways) (72%), Transportation (Aviation) (15%). Public Administration, Law and Justice (Central government administration) (10%). Health and other social services (Other social services) (2%), Health and other social services (Health) (1%)

**Themes (%)** Regional integration (13%), Regulation and competition policy (24%), Trade facilitation and market access (25%), Administrative and civil service reform (13%), Infrastructure services for private sector development (25%)

**Environmental Category B**

**Project Development Objective:** to help finance the costs associated with: (i) completion of the original project activities whose scope and costs have increased unexpectedly (78 percent); (ii) implementing expanded project activities that scale up the development effectiveness of the project to address institutional capacity constraints and strengthen governance in the construction industry and carrying out feasibility.

**OP 4.10:** Not triggered

