



**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS**

**INPUT FOR SPECIAL RAPPORTEUR'S REPORT ON VIOLENCE AGAINST  
INDIGENOUS WOMEN AND GIRLS**

SUBMITTED TO:

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## INTRODUCTION

The Kenya National Commission on Human Rights is an Independent National Human Rights Institution established under article 59 of the Constitution of Kenya and operationalized by the Kenya National Commission on Human Rights Act, 2011 (revised 2012). The Commission has a broad mandate to promote the respect and a culture of human rights in the Republic of Kenya. The Commission's mandate is implemented through various strategies including research, advocacy and lobbying, education and training, complaints and investigations, litigation, monitoring, partnership building and networking among others. The Commission's functions are guided by the 1993 United Nations approved principles on the establishment and functioning of national institution (Paris Principles) and is accredited as an 'A' status institution for its compliance with the Paris Principles by the Global Alliance of National Human Rights Institutions (GANHRI). The Commission also enjoys Affiliate Status before the African Commission on Human and Peoples' Rights.

The Commission makes this submission pursuant to its human rights mandate and as the designated principal organ in ensuring state compliance with regional and international human rights obligations.

### A. GENERAL COMMENT

The rights of marginalized communities are enshrined in Kenya's Constitution, 2010 which defines them to include *inter alia*, 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 or an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy.<sup>1</sup>

Women are categorized as part of a vulnerable population in Kenya and remain disadvantaged with regards to equal enjoyment of rights and treatment including the right to have their dignity respected and protected, the right to peace and security, and access to justice. While this remains true for most women and girls, the impact of discrimination and inequality is greater on those belonging to indigenous communities.

### B. SPECIFIC COMMENTS

- 1. The different manifestations of violence experienced by indigenous women and girls, whether perpetrated by members of their community or non-members, including but not limited to domestic violence; sexual harassment and violence at the workplace (including domestic work); sexual violence; harmful practices; violence in the context of conflict; trafficking in persons; violence in the context of migration; violence related to land grabbing and violations of land rights; violence against indigenous women human rights defenders or defenders of land rights;*

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<sup>1</sup> Article 260, Constitution of Kenya (2010).

***obstetric violence and violations of indigenous women and girls sexual and reproductive health and rights.***

- Physical and sexual abuse and violence including FGM in some communities and violence during forceful evictions and electoral violence by among others law enforcement agencies.
- Intimate partner violence
- Women Human Right Defenders (WHRDs) who often fight for the rights of indigenous women and girls are at greater risk of violence as their work is seen as challenging established tradition, cultural norms and practices and contrary to defined gender roles.
- Economic violence: Indigenous women and girls are dependent on natural resources for their own sustenance and livelihood as well as that of their families. The repeat evictions of indigenous communities from their land means women and girls' are deprived of sustainable use of natural resources and consequently deprived of their livelihood and source of income.
- Economic violence also manifests in the destruction of homes and property leaving women and girls at risk of other violations including sexual violence and abuse.
- Child marriages: The girl child continues to be more disadvantaged in this regard. They do not enjoy equal right to education and are married off early to avoid them being a burden to their families and or to secure the future of their families.
- Emotional/ psychological violence: fear of breakdown of marriages and stigma associated with gender based violence and other forms of violence may result in loss of dignity and self-worth in women.

***2. Good practices and challenges on increasing indigenous women and girls' access to effective mechanisms to prevent their exposure to violence as well as to assist and protect victims of violence in a comprehensive manner.***

Good practices:

- Identify and support WHRDs from within the community who can act as liaisons, sensitize women on available mechanisms and or assist in articulating issues facing indigenous women and girls. The Kenya National Commission on Human Rights works with WHRDs as they are often the first responders in the event violations take place.
- Women empowerment- increase or safeguard women's ability to access, inherit and use land and property. For women to access the mechanisms they need

resources or else they remain dependent on their male relations and are reluctant to seek assistance for fear of jeopardizing their relations.

- Building capacity of law enforcement agencies such as the Kenya Forest Services (KFS) which has been one of the perpetrators of violence meted on indigenous people. KNCHR and KFS with the support of the Ministry of Environment and Forestry in partnership with United Nations Development Programme (UNDP) through the *Reducing Emissions from Degradation and Deforestation* (REDD+) Project have developed training curriculum and manuals, and community sensitization on mainstreaming the Human Rights-Based Approach (HRBA) in forest conservation, protection and management in Kenya. By adopting HRBA law enforcement agencies will be better placed to ensure effective mechanisms are put in place to address the issues of indigenous women and girls.

Challenges:

- Low levels of human rights awareness amongst indigenous women and girls
- Absence of women in leadership positions to champion for the needs of women and girls'
- Culture and traditional practices continue to stifle women preventing them from voicing their issues and limiting their participation in political and public life.

***3. Good practices and challenges regarding the effective participation of women and girls that are at risk of violence or that have been subjected to violence in processes that affect their lives, including those that seek to protect them against violence.***

Good practices:

- Empower women to enable them participate meaningfully as community members with views and opinions that must be heard rather than have them adopt a victim mentality.
- Put in place measures to ensure women are consulted and included as aggrieved parties to better provide insights and solutions to matters pertaining their lives.
- Create awareness among communities holistically i.e. men, women, children to bring about change in attitude or mindset

Challenges:

- Discussions around sexual abuse and violence is still viewed as taboo in some communities and this makes it difficult to have comprehensive discussions on the subject.

- Low literacy levels prevent women from effectively participating as there is the notion that the educated are better placed to do so.
- Poverty in many cases renders women and girls' dependent on their male relations. The narrative in communities is that men are breadwinners and women are caregivers. Women shy away from participating in conversations deemed taboo or inappropriate as this has a direct impact on their access to resources. Furthermore, compensation is paid out to land owners or custodians, usually men and women then do not necessarily have access despite them belonging to the community.

***4. Good practices and challenges on indigenous women's participation in transitional justice processes that address violence inflicted upon them, or in judicial communal or state systems more generally, as well as their access to effective reparations for past crimes committed against them.***

Good practices:

- Include and actively involve women in peace building initiatives particularly use of informal peacebuilding processes.
- Social capital- use of traditional gender roles to contribute to peacebuilding. Use women to empower other women. Patriarchy dictates that for social order to exist in communities, women can only be seen and not heard. Women are socialized as such and there must therefore be a change of attitude in both men and women so that the issues are addressed by communities holistically from a standpoint of mutual understanding.
- Kenya National Action Plan on Women, Peace and Security 2020 – 2024 (KNAP II) compiles its objectives under four thematic pillars (participation; prevention; protection and; relief and recovery) that align with the framework of United Nations Security Council Resolution (UNSCR)1325 on women and peace and security adopted by the UN Security Council on 31 October 2000 as part of the Women, Peace and Security (WPS) agenda. The NAP should be implemented in indigenous communities.
- Use of existing traditional dispute mechanisms<sup>2</sup> to resolve some of cases as communities trust and identify with these mechanisms.
- Address systemic barriers on access to justice for indigenous women and girls
- Actively support indigenous women and girls in their quest for justice

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<sup>2</sup> Article 159 (2)(c) and (3), Constitution of Kenya (2010).

## Challenges:

- Weak governance structures and political good will to support transitional justice mechanisms and implement various inquiry recommendations as is the case with the Truth, Justice and Reconciliation (TJRC) Report.
- Impunity, corruption and abuse of power by the political elite who engineer or sponsor violence and ignite ethnic tensions for their own benefit.
- Low representation of women in traditional dispute resolution mechanisms some of which rely on cultural practices that are oppressive to women and girls

### ***5. Disaggregated data on violence against indigenous women and girls, including on the perpetrators and their relationship to the victims.***

### ***6. Any other issue of relevance.***

The Constitution, 2010 has been lauded as progressive and transformational with a very progressive and expansive Bill of Rights. It provides that all State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities.<sup>3</sup> Further, indigenous women and girls' have a right to enjoy equal treatment and opportunities as their non-indigenous counterparts including right to peace and security, to access to justice and to be treated with dignity. They however continue to suffer discrimination on the basis of gender and belonging to marginalised communities. In this regard, legislation should be enacted to provide for affirmative action measures safeguarding the rights of indigenous women and girls.<sup>4</sup>

The State ought to provide adequate security in areas occupied by indigenous communities as perpetrators include *inter alia* state agents, neighboring communities, illegal squatters and this not only leaves women to risk of attack but also hampers their efforts to carry out their daily activities.

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<sup>3</sup> Article 21 (3), Constitution of Kenya (2010).

<sup>4</sup> Article 27 (6), Constitution of Kenya (2010).