

LETTER 1: PUSH FOR IMPLEMENTATION OF ENDOROIS DECISION

To:

Attorney General of the Republic of Kenya

CC:

President of the Republic of Kenya

RE: CALL FOR KENYAN STATE TO FULFILL LEGAL OBLIGATION TO IMPLEMENT THE AFRICAN COMMISSION ON HUMAN & PEOPLES' RIGHTS DECISION IN COMMUNICATION NO. 276/2003 IN FAVOUR OF THE ENDOROIS COMMUNITY

We write in solidarity with the Endorois community for their long standing struggle to their ancestral land and traditional livelihood and respectfully submit this letter to call for implementation by the Government of Kenya, in accordance with its legal duties, the African Commission on Human & Peoples' Rights (hereinafter the Commission) decision in the Endorois case, Communication No. 276/2003 – *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* – issued in 2010. ESCR-Net - International Network for Economic, Social and Cultural Rights is a global network comprising of over 300 members including social movements, Indigenous Peoples' groups, NGOs, academic institutions, trade unions and advocates across more than 80 countries who are committed to a common mission of building a global movement to make human rights and social justice a reality for all. The effective implementation of human rights decisions is vital to the rule of law. It has been 14 years since the decision was issued by the Commission and implementation is vital. As Kenya, like most regions in the world, grapples with intersecting crises of climate change and biodiversity loss, human rights remain essential to protect public and planetary well-being particularly because Indigenous Peoples' and local communities play an outsized role in addressing these intersecting crises.

BACKGROUND OF THE ENDOROIS STRUGGLE, COMMUNICATION & DECISION ISSUED BY THE AFRICAN COMMISSION

The Endorois struggle for their land rights dates back to 1973, when the Government of Kenya forcibly evicted them from their ancestral lands without prior consultation or subsequent compensation in Mochongoi/Ol Arabel forest and from Lake Bogoria to create Lake Bogoria National Reserve for tourism. The unlawful evictions resulted in displacement and dispossession from their ancestral lands, leading to loss of property, livelihoods, cultural identity, the right to practice religion and the right to development. In 1986, the Government of Kenya undertook further forced evictions in Lake Bogoria subjecting the community to arrests, torture, torching of houses of those who tried to resettle back, as well as temporary suspension or sacking of community members who were government employees. The Endorois sought for justice and redress for these grave human rights violations by filing a case in the High Court of Kenya in 1997. The High Court dismissed the case in April, 2002.

In 2003, the Endorois, in partnership with Minority Rights Group (MRG) and Center for Minority Rights Development (CEMIRIDE) filed a case before the African Commission, and on the 25

November 2009, the Commission rendered a landmark ruling vindicating the rights of the Endorois people. The ruling was adopted by the African Union Heads of States Summit on 2 February 2010 in Addis Ababa Ethiopia. The Commission established that the Kenyan Government had violated the Endorois peoples' rights under Article 1 (the states obligation to recognize the rights, duties and obligations enshrined in the African Charter), Article 14 (the right to property), Article 17 (the right to culture), Article 21 (the right to natural resources) and Article 22 (the right to development). Accordingly, it directed the State of Kenya to:

- a) To recognize rights of ownership to the Endorois and restitute Endorois ancestral land;**
- b) Ensure that the Endorois Community has unrestricted access to Lake Bogoria Game Reserve and surrounding sites for religious and cultural rites and for grazing their cattle;**
- c) Pay adequate compensation to the Community for all the loss suffered;**
- d) Pay royalties to the Endorois from existing economic activities and ensure that they benefit from employment possibilities within the Reserve;**
- e) Grant registration to Endorois Welfare Committee;**
- f) Engage in dialogue with the complainants for the effective implementation of the recommendations;**
- g) Report on the implementation of these recommendations within three months from the date of notification.**

DEMANDS FOR IMPLEMENTATION OVER THE YEARS & FAILED GOVERNMENT RESPONSES

14 years down the line, the only Commission recommendation fully complied with by the government was the formal registration of the Endorois Welfare Council (EWC). Other recommendations have seen little or no progress, despite EWC actively pursuing the state's full implementation. For example:

- On engaging with complainants for effective implementation of the ruling (Recommendation f), the Kenyan Government established a taskforce on 19th September 2014 vide Gazette Notice 6708; the taskforce visited the Endorois community only once, and without proper notice, and its term ended after one year with no production of any report on their findings.
- On payments of royalties (recommendation d), the Endorois community was paid royalties once through Baringo County Government from proceeds of some genetic materials, but it was stopped purportedly due to a Kenyan going to court complaining that the Endorois were not adequately compensated from the resources sold. The one-time royalties were paid through the Kenya Wildlife Service to the Baringo County Government. Kenya Wildlife Service failed to respond to follow up communications.
- On compensation (recommendation c) and ongoing compensation, Baringo County Government also generates revenue from Lake Bogoria National Reserve, which the Endorois community used to be paid 10% of the total collected annually to be used in Endorois territory for bursaries, construction, cattle dips, chief offices, and excavation of water pans, among others services. EWC successfully pushed for an increment to 25%

in the current Lake Bogoria National Development Plan 2019-2029, though the county government took 10% of it purportedly for infrastructure development within the Lake. This community grant has been operating for years without any policy governing it, and there is no transparency in its operations, thus it is subject to abuse and does not benefit the community. The Endorois community were also supposed to get 85% of all employment opportunities from Lake Bogoria National Reserve, and despite the fact that the warden in charge of the reserve is an Endorois, most jobs are given to outsiders, with locals given junior positions.

These three actions do not meaningfully address implementation, and all the other Commission recommendations have seen no implementation whatsoever.

Various efforts have been made to urge the government to act and provide clarity on the lack of progress so far, including in 2013 by the Commission, which issued a resolution urging the Kenyan Government to implement the decision. Further, the Commission held an oral hearing at its 53rd Ordinary Session in April 2013 where the Government of Kenya pledged to submit within 90 days an interim report on measures it has taken to implement the decision and a comprehensive report at the Commission's next ordinary session; the Commission followed up with a note verbale to the Republic of Kenya as a reminder of its pledge. However, the Government of Kenya did not honour its pledge at the Commission's next ordinary session.

International human rights bodies globally have urged Kenya to fulfill its legal obligation to implement the Commission decision. In 2016, in its Concluding Observation to Kenya, the United Nations Committee on Economic, Social and Cultural Rights recommended that the government implement, without further delay, the decision of the Commission and ensure that the Endorois are adequately represented and consulted at all stages of the implementation process. In 2017, in its Concluding Observations to Kenya, the Committee on the Elimination of Racial Discrimination called on the State to ensure legal acknowledgement of the collective rights of the Endorois to own, develop, control and use their lands, resources and communal territories according to customary laws and traditional land-tenure systems.

IMPACTS OF NON-IMPLEMENTATION OF THE DECISION

For most Indigenous Peoples, the sustenance of their way of life depends on access and rights to their traditional lands and natural resources, the violation of which consigns them to a life of poverty and misery. On 4 April 2022 WITNESS together with Centre for Minorities Right Development (CEMIRIDE), Endorois Welfare Council (EWC) and Minorities Rights Group International (MRG), released [a report](#) which documents how the loss of the Endorois ancestral land has led to a vicious cycle of impoverishment and underdevelopment of the community. The non-implementation of the decision by the Kenyan Government, especially the lack of restitution of Endorois ancestral land and of unrestricted access of the Endorois to the Lake Bogoria National Reserve and its surrounding for grazing, salt licks, cultural rites and medicinal plants, has deprived the Endorois of their livelihoods. Government inaction deprives them of land for grazing and other economic activities like bee keeping, subjecting them to poverty; and erodes their rich culture, as they can no longer practice their religion and cultural rites. The Government of Kenya's failure to compensate, coupled with skewed allocation of little resources by both the

national and county governments to the Endorois territory has led to poor provision of social amenities in the entire Endorois ancestral land. Access to quality healthcare services, education and clean water is nonexistent. The community travels long distances to the facilities which in most cases have no trained staff, equipment or required infrastructure. For example, there are Early Childhood Centers where children learn under a tree and sit on stones. Maternal deaths are common, and water borne diseases are on the rise due to lack of access to clean water. This is compounded by low immunity within the community due to poor health resulting from malnourishment due to poverty. Further, the road infrastructure and network connectivity is also very poor, thus curtailing communication, slowing development aids, and causing major insecurity.

Additionally, the government's lack of implementation has forced the Endorois to practice farming despite being pastoralists who practiced rotational grazing in Mochongoi forest and Lake Bogoria. The current farming practice to sustain their lives has led to loss and damage of biodiversity due to loss of vegetation and land degradation, leading to massive soil erosion. The soil erosion has created several gullies which has led to siltation of water bodies, notably Lake Bogoria and Lake Baringo. Currently, the hot springs in Lake Bogoria are fizzling out due to a lot of silt deposits in the lake. Due to high poverty levels, coupled with high unemployment rates, some members of the community have resorted to charcoal burning, worsening the current serious impacts of climate change leading to rising water levels in the lakes and displacements of many households. Mochongoi forest was partly converted into a settlement scheme and most of it allocated to non-Endorois, leading to the destruction of the trees, which not only worsens the climate crisis but also destroys the habitat of several wildlife creating a serious human-wildlife conflict both in Mochongoi and within Lake Bogoria Landscape.

KENYA'S OBLIGATIONS UNDER INTERNATIONAL HUMAN RIGHTS LAW

Articles 2(5) and 2(6) of the Constitution of Kenya, 2010 play a crucial role in defining Kenya's obligations under international human rights law and its commitment to respecting and fulfilling human rights. In particular, Article 2(5) states that: "the general rules of international law shall form part of the law of Kenya." Additionally, Article 2(6) states that: "any treaty or convention ratified by Kenya shall form part of the law of Kenya." These two provisions underscore Kenya's commitment to international human rights law and emphasize the incorporation of international treaties into domestic law, the supremacy of international law, and the importance of respecting, protecting and fulfilling human rights obligations and rulings. The provisions also serve as a foundation for upholding human rights in Kenya's legal and political system.

Kenya's acceptance and ratification of international human rights instruments, such as the Universal Declaration of Human Rights (UDHR); the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); and the African Charter on Human Peoples' Rights (African Charter) obligates the state to uphold the rights and duties contained in these instruments, which include but not limited to: (i) respecting and protecting the rights enshrined in the treaties for all individuals within its jurisdiction; (ii) providing remedies and access to justice for individuals whose rights have been violated; (iii) reporting to international human rights monitoring bodies on its compliance with the

treaties through periodic reports; and (iv) cooperating with the international community and organizations to advance human rights globally.

Kenya, by incorporating international human rights law in the Constitution, underscores the significance of respecting, protecting, and fulfilling human rights, which is the cornerstone of democratic governance and the protection of individual freedoms and dignity. The Government is therefore bound to take active measures to prevent human rights violations, protect individuals from abuses, and ensure access to remedies when rights are violated. Moreover, respect for international human rights rulings is fundamental to the rule of law and the protection of human rights. It not only reflects a commitment to justice, equality and the rule of law, but it is also essential to the stability, progress and prosperity of a nation and the global community as a whole.

In view of the foregoing, it is imperative that the Government of Kenya and other institutions ensure full compliance with the Commission decision as a matter of justice for the Endorois community and also because failure to do so undermines the legal system and human rights protection as a whole.

CALL TO ACTION

The social and cultural value of land for Indigenous Peoples in particular is immeasurable and rights relating to land are central to the realization of a range of human rights. It is thus crucial to implement the decision of the Commission and we hereby draw attention to the aforementioned decision and call on the Government of Kenya **TO:**

- 1. Publish within fourteen (14) days from the date of this letter, the report by the Taskforce established on 19th September 2014 vide Gazette Notice No. 6708 on the implementation of the Commission's decision in Communication No. 276/2003 in favour of the Endorois Community;**
- 2. Fast-track implementation of the Endorois decision by engaging the Endorois community within twenty one (21) days from the date of this letter, with a view to build consensus on the implementation plan of the decision;**
- 3. Provide to the community an implementation plan after consultations with them on the steps the government will take to fast track implementation and the responsible government agencies; and**
- 4. Provide regular reports to the Commission on the progress made towards the implementation of the decision and the protection of the Endorois community rights.**

Yours Sincerely,

CC:

Solicitor General of Kenya

National Assembly of Kenya

Kenya National Commission on Human Rights

The Commission on Administrative Justice (Office of the Ombudsman)

National Gender & Equality Commission

County Government of Baringo

Cabinet Secretary Ministry of Lands, Public Works, Housing & Urban Development

Principal Secretary, State Department for Lands & Physical Planning

Annexure: Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya 276/2003, Judgement.