

# INDIGENOUS PEOPLES IN AFRICA

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HEARING  
BEFORE THE  
TOM LANTOS HUMAN RIGHTS COMMISSION  
HOUSE OF REPRESENTATIVES

ONE HUNDRED AND TWELFTH CONGRESS  
FIRST SESSION

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MAY 12, 2011

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TOM LANTOS HUMAN RIGHTS COMMISSION

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THURSDAY, MAY 12, 2011

HOUSE OF REPRESENTATIVES,  
TOM LANTOS HUMAN RIGHTS COMMISSION,  
*Washington, D.C.*

The Commission met, pursuant to call, at 10:04 a.m., in Room 2226, Rayburn House Office Building, Hon. James P. McGovern [co-chairman of the Commission] presiding.

Cochairman McGOVERN. The hearing will come to order.

Welcome, everybody. I want to welcome everyone here this morning for this very important hearing on "Indigenous Peoples in Africa."

And I would like to thank the staff of the Tom Lantos Human Rights Commission, especially Lars de Gier, for their work in coordinating today's hearing.

This is the second in a series of hearings looking at human rights issues affecting the world's indigenous peoples. The first hearing, held last year, looked at the situation of indigenous peoples in Latin America. Another hearing looked into the rights of indigenous peoples more globally, as governments and corporations lay claim to and exploit resources on their ancestral territories, with case studies on oil, mining, and timber extraction.

Today, we are turning our attention to Africa. And I am sure some of you are asking, aren't all the people of Africa indigenous to Africa? Our focus today is on indigenous peoples, communities, and tribal nations of Africa who, among other characteristics, have a distinct identity, culture, and language, have continuity with and have occupied ancestral lands or at least part of them, have common ancestry with the original occupants of these lands, and are determined to preserve, develop, and transmit to future generations their ancestral territories and distinct cultural and social identity as the very basis for their existence as a people.

We in Congress know some of their names. We know the Batwa and the Bacwa forest peoples of Uganda, Rwanda, and DRC, and their cousins in Cameroon and the CAR. We know the terrible genocide of Rwanda between the Hutu and the Tutsi nearly decimated the already-fragile existence of the all-but-forgotten Twa people. We know about the Maasai of Kenya and Tanzania; the San of South Africa and Botswana; the Ogoni of Nigeria; and the Tuareg of Algeria.

But the majority of these indigenous peoples are not so well-known. They are often minorities in societies dominated by other ethnic, racial, or tribal groups. In their commitment to maintain their unique cultural identity and social institutions, they are often marginalized and face discrimination, human rights abuses, and even violence.

Dominant forms of economic development in farming often undermine their traditional livelihoods, steal or push them off their ancestral lands, or steadily erode their ability to survive in the forest or across the plains or in the mountains and deserts or even more remote regions.

Taken as a whole, they are most likely to be poor, disenfranchised, and lacking the protection of basic rights and services. Only a few African states recognize and protect the basic collective rights of indigenous peoples in their constitutions or national legislation. Indigenous peoples suffer from weak political representation and from discrimination and negative stereotyping from mainstream society.

Indigenous women, in many cases, face particular problems, as both belonging to marginalized groups and being subjected to culturally based forms of discrimination as women. These include access to leadership positions, decision-making power, issues of land rights, rights and access to education, violence against women, and forced marriage, including child marriage.

I have found, however, that when indigenous peoples have the opportunity to organize and speak and act on their own behalf, they are a powerful force in determining their own future and their own destiny. As stewards of their land and as the living depository of knowledge accumulated over millennia, indigenous peoples can play and are undertaking unique roles in combating climate change, preserving biodiversity, and in boosting agricultural productivity in a sustainable way.

So I look forward to the hearing today and listening to the views of our witnesses on these and other matters.

On our first panel, I am very proud to have Sharon Cromer. She is the senior deputy assistant administrator for sub-Saharan Africa at USAID, a position that she has held for almost 1 year now. With respect to Africa, she has served in many capacities and has, among other things, been the USAID mission director in Ghana and Nigeria. She has an incredible resume and incredible knowledge.

And I am proud that you are here and look forward to hearing your testimony. Thank you.

[The statement of Mr. McGovern follows:]

PREPARED STATEMENT OF THE HONORABLE JAMES P. MCGOVERN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS AND COCHAIRMAN OF THE TOM LANTOS HUMAN RIGHTS COMMISSION

Good morning. I want to welcome everyone here this morning for this very important hearing on indigenous peoples in Africa. And I would like to thank the staff of the Tom Lantos Human Rights Commission, especially Lars de Gier, for their work in coordinating this hearing.

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- Have a distinct identity, culture, and language;
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- Have common ancestry with the original occupants of these lands; and

- Are determined to preserve, develop and transmit to future generations their ancestral territories and distinct cultural and social identity as the very basis for their existence as a people.

We in Congress know some of their names –

We know the Batwa and the Bacwa forest peoples of Uganda, Rwanda, the DRC and their cousins in Cameroon and the CAR. We know the terrible genocide of Rwanda between the Hutu and Tutsi nearly decimated the already fragile existence of the all-but-forgotten Twa people.

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Only a few African states recognize and protect the basic collective rights of indigenous peoples in their constitutions or national legislation. Indigenous peoples suffer from weak political representation and from discrimination and negative stereotyping from mainstream society. Indigenous women, in many cases, face particular problems as both belonging to marginalized groups and being subjected to culturally-based forms of discrimination as women. These include access to leadership positions, decision-making power, issues of land rights, rights and access to education, violence against women, and forced marriage, including child marriage.

I have found, however, that when Indigenous Peoples have the opportunity to organize and speak and act on their own behalf, they are a powerful force in determining their own future and their own destiny. As stewards of their lands and as the living depository of knowledge accumulated over millennia, indigenous peoples can play and are undertaking unique roles in combating climate change, preserving biodiversity and in boosting agricultural productivity in a sustainable way.

I look forward to hearing the views of our witnesses on these and other matters.

#### INTRODUCTION OF PANELS

##### PANEL ONE:

- **Sharon Cromer**, who is the senior deputy assistant administrator for sub-Saharan Africa at USAID, a position she has held for almost one year now. With respect to Africa, she has served in Cote D'Ivoire and Senegal, and has been the USAID Mission Director in Ghana and Nigeria.

##### PANEL TWO:

- **Rebecca Adamson**, the President and Founder of First Peoples Worldwide, one of the few indigenous-led international organizations working to support, empower and promote the priorities of indigenous peoples on-the-ground. Ms. Adamson, who is Cherokee, is well-known for her asset-based development strategies among American Indians and Indigenous Peoples. She is also the co-author of the book, "The Color of Wealth."
- **Phillemon Nakali Loyelei** represents the Nyangatom Tribe, which is from the Omo Valley Region of Ethiopia. He is currently in the United States and seeking political asylum. He left Ethiopia because of threats he and his family received after speaking out against a dam that is being built that will adversely affect his people.
- **Lavinia Currier** is a Trustee of the Sacharuna Foundation, a private foundation that promotes land and wildlife conservation and indigenous rights and livelihoods. Educated at the Putney School and at Harvard University, Ms. Currier is a lifelong conservationist, human rights activist and filmmaker. Her most recent feature film is a Central African Republic and U.S. co-production that looks at daily life of the Ba-Aka forest peoples of the CAR.

**STATEMENT OF SHARON CROMER, SENIOR DEPUTY ASSISTANT ADMINISTRATOR FOR SUB-SAHARAN AFRICA, U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT**

Ms. CROMER. Thank you, Mr. Chairman.

It is both an honor and a privilege to present this testimony to the Tom Lantos Human Rights Commission. I am grateful for this occasion to describe to you how the U.S. Government, and specifically USAID, is helping indigenous peoples in Africa as they look ahead to a rapidly changing set of challenges and opportunities.

Late last year, following a period of intensive review within U.S. Government agencies, President Obama announced that the United States would endorse the United Nations Declaration on the Rights of Indigenous Peoples. Clearly, the President wanted our efforts to reflect American values regarding human rights both at home and abroad.

The declaration contains guidance on how indigenous peoples want to be treated within the boundaries of their traditional home areas. I am proud to say that USAID is responding to the particular needs of indigenous peoples in Africa. And, through our initiatives and programs, we are giving meaning to our Nation's endorsement of that declaration.

My testimony today will touch very briefly on seven key points.

My first point is that, over the past 50 years, USAID has earned a well-deserved reputation for reaching out to indigenous peoples as partners in Africa's development. The people we describe as "indigenous" are many, and they are widely spread across Africa. From the Equateur province of the Democratic Republic of Congo to the Godere Forest of the Mejangir people of Ethiopia, from Mali's central plateau in the Mopti region where the Dogon people live to the arid Namibian landscape, USAID is there and has been.

We partner with the Nilotic pastoralists in the Karamoja region of Uganda and with small and vulnerable communities deep in the rainforests of the Congo River Basin. We have put into place community-centered approaches for biodiversity conservation in the wide zone across the Upper Guinean Forest Ecosystem in West Africa. We are active with mobile pastoralist communities in an area known as the Pastoral Arc of the Horn of Africa, stretching across Kenya, Ethiopia, and Somalia.

Few other institutions have such a geographic reach and such wealth of experience in working with indigenous people. This distinguishes USAID.

The second point is that no one wants progress for indigenous peoples to come at the expense of damaging their environments or undermining their cultures. Globalization has driven development faster and farther than ever before. And, unless properly managed, the ecosystems of tropical forests, coastal regions, mountains and highlands, and semi-arid rangelands stand in jeopardy. All of these areas have become increasingly vulnerable to destructive forms of exploitation and to the forces of climate change.

The global demand for natural resources is unrelenting, and the threat extends to the integrity and health of the cultural and social structures that define each indigenous person and his or her community. At USAID, we have committed ourselves to work closely with indigenous peoples across Africa to generate

development strategies and practices that are sensitive to threatened cultures, unique languages, and valuable natural resources. Our development strategies and the programs that spring from them reflect our concentration on respecting nature, generating wealth, and fostering good governance.

The goal is straightforward: We are determined to achieve measurable improvements in the quality of life for indigenous peoples and to include them in social and political institutions in ways that make sure that they are also benefitting from any substantial economic growth in their areas.

The third point is that we at USAID understand the importance of developing a partnership with indigenous peoples. We demonstrate our commitment to the interests of indigenous peoples in Africa by calling attention to all relevant human and legal rights that such peoples ought to have access to, by respecting their cultures, and by understanding their complex natural environments.

In some cases, USAID's primary role is to help to establish carefully crafted and sustainable environmental safeguards. At other times, indigenous peoples look to the leverage that we at USAID can provide through our voice in national, regional, and global policy forums.

USAID also exercises our responsibility within Title XIII of the International Financial Institutions Act to review multilateral assistance programs and address any potential adverse impacts on indigenous peoples.

The fourth point is the need to reconcile American values with traditional African cultures. We want to help indigenous peoples to keep what is best about their own cultures. However, as with USAID programming globally, our work with indigenous peoples includes an emphasis on issues of gender equality and human rights.

We are also working to build the capacity of indigenous peoples and their organizations to open up a path toward sustainable livelihoods, even within sensitive ecosystems. To get there, we know we will need to draw upon their own understanding of their ecosystems and demonstrate to them that we are serious about offering our assistance as they try to conserve these unique resources.

The fifth point is that there is a delicate global balance. USAID is aware that the development pressures on the lands and resources of indigenous peoples have potentially negative consequences that affect whole countries, regions, and even the health of the planet. Tropical forests, coastal zones, and semi-arid lands all form part of a delicately balanced global ecosystem that demands our understanding, protection, conservation, and respect.

The sixth point is the fact that the guidance that shapes USAID's approach to indigenous people and indigenous issues is seen in a variety of approaches in line with State Department policies. As we move from policy to action, we are careful to be governed by our experienced ambassadors and USAID mission directors in the field.

Priorities under these policies include: developing sustainable economic uses of biological resources; building local capacity for the management of biodiversity; supporting innovative conservation and research programs; encouraging indigenous peoples in local communities to have a strong voice at every stage of decision-making; and lending our weight in setting conservation priorities that respect

the rights of indigenous people at the local, national, and regional levels.

Indigenous peoples depend on natural resources, but too often they are marginalized in terms of their decision-making power over these resources. USAID has worked for decades to redress that situation through our decentralized and participatory approaches, such as our community-based natural resources management programs all over the continent.

We are now working closely with our colleagues at the Millennium Challenge Corporation and the State Department to develop a U.S. Government policy on environmentally friendly and ethically sound ways to frame our development activities when it comes to land management, all the while respecting the priorities of indigenous peoples.

At USAID, we insist upon strong environmental safeguards and state-of-the-art monitoring and evaluation practices so that we know if we are getting the results that our investments are aiming for.

We are aware that important new initiatives, such as Feed the Future and USAID's investment in supporting the international and national efforts in reduction in emissions from deforestation and forest degradation, will mean shifts in land and natural resource use, access, ownership, and control, making the need for a renewed commitment to environmental safeguards even more necessary.

My final point is that there is good reason for optimism. USAID recognizes, celebrates, and supports promising new initiatives that have been generated by Africans for the welfare and benefit of African indigenous peoples.

For example, the new Kenyan constitution obligates the state to provide for adequate representation of marginalized groups in all levels of government, to exercise affirmative action on behalf of these groups, and to promote the use of indigenous languages and the free expression of traditional cultures.

The Democratic Republic of Congo also recently passed legislation recognizing the rights of indigenous peoples, including their rights to participate in decisions affecting them according to their own decision-making processes and their rights to communal land as adjudicated under customary law.

We know, however, that more needs to be done. We need better research to better understand the character of the threats and opportunities faced. We have to reach for policy consensus among multiple stakeholders to be sure that we protect the rights, respect the cultural inheritance, and incorporate the perspectives, knowledge, and preferences of indigenous peoples into our combined development agendas.

We also know that we must continue to work with our international partners and African governments to mitigate the serious incidences of violence arising out of widespread conflicts in many regions in which indigenous peoples live so that a clear path to sustainable peace can be realized.

Thank you, Mr. Chairman and members of the Commission. I am happy to take questions.

[The statement of Ms. Cromer follows:]

PREPARED STATEMENT OF SHARON CROMER

**"Indigenous Peoples of Africa"**

**Written Statement**

by  
**Sharon Cromer**  
**Senior Deputy Assistant Administrator**  
**Bureau for Africa**  
**United States Agency for International Development**

before the  
**Tom Lantos Human Rights Commission**  
**Committee of Foreign Affairs**  
**U.S. House of Representatives**  
**Thursday, May 12, 2011**

Mr. Chairman, Members of the Commission, it is an honor and a privilege to present this testimony to the Tom Lantos Human Rights Commission. I welcome the opportunity to outline how the United States Agency for International Development is helping to address the challenges faced by indigenous peoples in Africa.

### **Overview**

In Africa, millions of indigenous people live in highly vulnerable ecosystems, including tropical forests, coastal zones, mountains and semi-arid rangelands -- all areas that have come under increasing pressure. All groups of indigenous peoples require development strategies and practices -- compatible with cultures, languages, natural resources and lifestyles -- that differ from those of the surrounding dominant cultures.

There is no universally agreed-upon definition of the term "indigenous peoples." For the purposes of USAID's policies and programming in Africa, arguably the best characterization might include the concept of "distinctive social and cultural groups that are relatively politically, economically and/or socially marginalized and therefore vulnerable." This should include present and former hunter-gatherers, as well as many pastoralist communities. USAID, while recognizing the diversity of indigenous peoples, focuses attention and resources on ensuring all disadvantaged people, including indigenous peoples, are included in development.

USAID's commitment to the interests of indigenous peoples (IPs) in Africa is made manifest in two principal ways. First, USAID is concerned about the legal rights of IPs, as well as the human rights of indigenous individuals, and the identification of social safeguards to protect these rights. Second, USAID recognizes the integrated manner in which IPs are part of sensitive and economically important ecosystems -- such as the forested Congo River Basin, or the arid and semi-arid landscapes which many African pastoralists and their livestock inhabit, and where survival depends on the ability to be mobile.

Many IP communities, who generally do not fully participate in state or formal democratic governance institutions, are unprotected by strong forces that encroach on their traditional lands, threatening their vulnerable environments through resource exploitation. The legal rights of IPs are seldom protected in this context, and the human rights of their members are neglected in the face of rapid economic growth. Even conceptualizing the rights of IPs poses challenges, as both individual rights and collective rights may be implicated.

USAID is committed to pursuing reasonable measures to strengthen protection of the human rights of indigenous individuals and the collective rights of indigenous peoples, and to protect their cultural and spiritual values and beliefs, ethnic identities, and customary governance systems.

USAID has a particular interest in reducing the sexual and gender-based violence that frequently targets indigenous women and girls in Africa. USAID is also advancing a strategic approach to current practices that connect faith traditions of IPs to conservation and the protection of biodiversity. "Faith" in this context refers to organized religion, and traditional culture/traditional knowledge. Our increasing efforts to integrate considerations of informal, indigenous and customary law into our Rule of Law programming worldwide will also have a positive effect on the legal rights of IPs.

### **Policy and Practice in USAID pertinent to Indigenous Peoples**

USAID's approach to indigenous people and indigenous issues is included within various policy documents. Substantively, USAID focuses on:

- developing sustainable economic uses of biological resources;
- building local capacity for the management of biodiversity, including co-management of parks and protected areas;
- supporting innovative, nongovernmental conservation and research programs;
- encouraging the engagement of indigenous peoples and local communities at every stage of decision-making; and
- facilitating the setting of conservation priorities that respect the rights of indigenous peoples at the local, national, and regional levels.

Experience of fifty years of development overseas demonstrates that programs that integrate nature (environmental management), wealth (economic growth) and power (good governance), and ethical leadership have the most promising results. Proven strategies of socially and environmentally sound management of natural resources can simultaneously (1) help move rural people along the path to more active and engaged citizenship, leading the way toward a more democratic, decentralized and vibrant society, (2) provide for substantial economic growth for local communities and national accounts, and (3) lead to increases in the productivity of the resource base.

IPs depend on natural resources and ecosystem services, but too often are marginalized in terms of their decision-making power over these resources. Operationally, USAID has worked for decades to redress that situation through decentralized Natural Resources Management. For example, the Property Rights and Resource Governance (PRRG) program within USAID has included explicit language on IPs and has targeted IPs in activities such as the SECURE (Securing Rights to Land and Natural Resources for Biodiversity and Livelihood) project on the Kenya Coast. PRRG also produced a briefing paper on land tenure and property rights (LTPR) issues as they relate to IPs.).

The Land Tenure Unit at USAID is working closely with the Millennium Challenge Corporation and Department of State to develop a Whole of Government policy on land governance, which articulates a position within foreign policy. It will have specific language for all rights holders, including indigenous people. When completed, we expect this will also guide our government's policies on principles of responsible agricultural investment. It will also include a position on recognition of customary rights—the primary legal system by which indigenous people (and many other communities we work with in Africa) access land and resources.

USAID has strong environmental safeguards and monitoring and evaluation protocols and practices that include provisions for consultation with and engagement of local stakeholders – including IPs -on planned investments that might have environmental impacts. New initiatives such as Feed the Future and USAID's investment in supporting the international and national efforts in Reduction in Emissions from Deforestation and Forest Degradation (REDD)<sup>1</sup> call for renewed commitment to environmental and social safeguards as these investments will entail shifts in land and natural resource use, access, ownership and control. As such USAID is in the process of crafting a new Land Policy, an overarching policy on democracy, human rights and governance and comprehensive guidance on social impacts related to REDD in coordination with NGOs, civil society, and other donors.

There are some bright spots in increased protection of IPs in Africa. A recent example is the new Kenyan constitution, which obligates the state to provide for adequate representation of “marginalized groups” in all levels of government, exercise affirmative action on behalf of these groups, and promote the use of indigenous languages and the free expression of traditional cultures. The “marginalized groups” category has a broad and inclusive meaning, focusing on communities that have not participated in the economic and social life of Kenya as a whole, including hunter/gatherer and pastoral societies.

In addition, other countries are beginning to recognize the rights of IPs. The Republic of Congo (Brazzaville), for example, recently passed legislation recognizing the rights of IPs, including their rights to participation in decisions affecting them according to their own decision-making processes, and their rights to communal land, including land rights under customary law. The Central African Republic has also issued similar legislation.

USAID recognizes that more needs to be done to assist and support IPs in Africa. Better research is required to understand the character of the threats and opportunities faced by Africa's IPs. Policies need to be agreed upon among multiple stakeholders to adequately address IPs' issues, and to protect their rights, respect their cultural inheritance, as well as to incorporate their perspectives, knowledge, and preferences into development paradigms. The recent numerous violent conflicts in Africa have a disproportionate impact on IPs, and more needs to be done to achieve a resolution to such conflicts and a clear path ahead to sustainable peace. Efforts are also needed to mitigate the displacement of IPs due to militarization and violence, the forces of economic globalization, climate change, and even some environmental conservation initiatives. IPs' own governance structures and knowledge and skills should be capitalized upon to help improve security and resilience and quality of life.

### **Overview of USAID's Africa Programs**

USAID is active across Africa, and many of our programs have direct or indirect impact on indigenous peoples. An illustrative profile of USAID's African programming reflecting this focus is described below.

Democratic Republic of the Congo (DRC). While indigenous people are not specifically targeted by USAID's democracy and governance program, IP groups are indirect beneficiaries of the voter education sessions organized by sub-grants to civil society organizations (CSOs) under USAID's civic education interventions. Indigenous people did attend the electoral education caravans that USAID implemented in April 2011 in the streets of the three main cities of the Equateur province, which is one of the main IP areas in the country.

IPs are clearly indirect beneficiaries of the VOICE grant fund, given that several of USAID's sub-grantees are civil society organizations CSOs that are active in the promotion of human rights (including rights of members of minorities) at the local level. USAID's capacity building activities allowed these CSOs to better serve the communities where they are established – communities which include IPs and other vulnerable local populations.

Ethiopia. USAID is supporting the strengthening of democracy and good governance in the traditional home of the Mejangir people. This work is preserving the traditional cultural and livelihood practices of the Mejangir people while also presenting alternative livelihood options. This program is preserving the ecological integrity of the Godere Forest, its surrounding watershed and all the biodiversity that exists therein. In so doing, the program is also building knowledgeable and empowered indigenous communities while also strengthening an environment in which peace will be sustained. Since 2007, USAID Ethiopia has supported the Mejangir, Gambella Regional State, and the Mejangir zonal government in particular, to establish a

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<sup>1</sup> “REDD” here includes REDD+ where the + stands for going beyond mere slowing or halting of deforestation: it includes “avoided deforestation”, i.e. conservation of existing forests, and “reforestation/afforestation”, i.e. increasing/enhancing existing forest carbon stocks. It is also typically understood to include a preservation of the rights of IPs as part of any REDD mechanism.

participatory forest management system to help sustainably address existing tensions and future threats of renewed violent inter-communal hostilities issues of forest/land use and governance.

USAID Ethiopia also has had a significant investment in pastoral development programs for about 10 years, especially the Pastoralist Livelihood Initiative (PLI). The goal of the Pastoralist Livelihoods Initiative is to reduce poverty, hunger and vulnerability to droughts and other shocks in selected pastoralists' communities in Ethiopia. USAID pastoral development programs have:

- Advanced institutional sustainability measured in terms of the capacity and willingness of the Ethiopian government, the private sector and/or pastoral communities to continue project activities without USAID support;
- Improved accessibility of pastoralists to markets and improving the prices pastoralists receive for livestock and livestock products, thereby improving the capacity of pastoralists to purchase the inputs and services they require;
- Helped to create a policy environment conducive to pastoral resilience, welfare, and commercial success; and
- Improved collaboration with traditional authorities and conflict resolution by revitalization of elders' councils (to control of private enclosures and rehabilitate significant areas of degraded rangeland, for example) in the Borana Zones of southern Ethiopia.

Mali. The Dogon are an indigenous ethnic group living in the central plateau region of Mali. To support the Dogon indigenous population, USAID is funding the Mali Sustainable Tourism Alliance (MSTA). The goal of the MSTA is to help provide income-earning opportunities with fairly distributed benefits to all stakeholders while respecting and protecting natural resources in the local communities. The primary activities will be carried out in the Mopti Region, focusing on the Dogon area.

Namibia. USAID Namibia invested in the highly successful Namibia community-based natural resources management (CBNRM) program called Living in a Finite Environment (LIFE), from 1992 until June 2008, in cooperation with the Namibian Ministry of Environment and Tourism (MET). The program's objective was increasing benefits received by historically disadvantaged Namibians from sustainable local management of natural resources in communal areas.

LIFE fostered the creation of an enabling environment for CBNRM through a facilitative and supportive role in policy development and the strengthening of institutional capacity of CBNRM support organizations. It also enhanced the involvement of historically disadvantaged Namibians by fostering awareness of emerging CBNRM development opportunities — which helped change their attitudes toward wildlife and conservation. The LIFE2 phase continued to build the institutional capacity of project partners to provide CBNRM services to conservancies, institutionalized the CBNRM program at the formal tertiary educational level, and increased Namibian support of national-level CBNRM coordination, planning, and decision-making. In the LIFE Plus phase, the project strengthened partnerships with the private sector, provided intensified support to the development and management of conservancy natural resources (through participatory land use planning, development, and extension of community natural resources monitoring systems), supported the strategic introduction of wildlife in conservancies with low game densities, and diversified income generation opportunities to increase non-financial benefits and new income to households and conservancies.

Uganda. Karamoja, the north-eastern region of Uganda, is home to the Karamojong, Nilotic descendants with links to Ethiopia and Sudan who remain faithful to their nomadic agro-pastoralist heritage. Pastoral conflict in the region which has been exacerbated by easy access to weaponry, diminishing natural resources, and widespread poverty has undermined the development of the region. In close coordination with the USG interagency, USAID implements carefully targeted interventions designed to support key state and traditional institutions to improve stability and peace, provide humanitarian assistance, and promote improved livelihoods.

USAID/Uganda is addressing the causes of conflict and is engaging communities in activities that promote livelihood and reconciliation between communities. In these communities, USAID is also providing humanitarian assistance and emergency food aid as needed. In health, the Joint Clinical Research Centre (JCRC) supports Kaboong Hospital on Antiretroviral therapy (ARV), HIV care, lab services and post exposure prophylaxis for victims of sexual violence or health workers who sustain needle pricks while on duty. USAID also implements a Multi-Year Assistance Program for Karamoja to improve food production, consumption and sales among smallholder farming households, and improve health and nutrition among pregnant/lactating women and children under five.

In southern Africa, USAID continues to support community-based natural resources management through a regional program called Conservation Partnerships for Sustainability in Southern Africa (COPASSA). COPASSA aims to scale up results produced by USAID conservation investments over the last 25 years in wildlife conservancies and other biodiversity-focused community-based programs in Southern Africa. COPASSA works to spur innovation and scale up successful initiatives by establishing partnerships that promote CBNRM principles, and developing and distributing tools to help rural communities use information more effectively.

### **Forested Regions**

Many indigenous peoples reside in areas that span national boundaries. Africa's forested regions represent a major focus for USAID. Some of Africa's most vulnerable IPs dwell in the rainforests in the Congo Basin, a region that represents 70% of all African forests, spanning more than one million square kilometers in ten countries. Only the rainforests of the Amazon are larger. More than 40 million people depend on the Congo River Basin rainforests for food, forest products (e.g., materials for traditional crafts, cultural/religious practices, and economic development), energy and medicine. Deforestation not only threatens IPs, but also important wildlife species and ecosystems such as watersheds that provide essential services to people and economies.

There are many indigenous groups in the Congo Basin. Small-scale societies, whether self-defined as IPs or not, are politically and economically marginalized, often the poorest of the poor, who try to be in harmony with the natural resources which form the basis of their livelihoods and culture. Logging is not what is threatening Congo Basin forests the most -- it is encroachment due to agricultural expansion and population growth. But appropriate agricultural and economic development is also needed by the larger society in which the IPs are embedded to provide for greater livelihood security for all. Conservation efforts are balancing the protection of ecosystems and species with improving the livelihoods of forest dwellers.

The U.S. Government shares a stake in preserving these forest environments, as they sequester carbon, and deforestation and use of wood for fuel releases large amounts of CO<sub>2</sub> and other greenhouse gases into the atmosphere, posing significant threats to the exacerbation of global climate change.

The Central Africa region – the Congo River Basin and other tropical forest landscapes – is the focus of USAID’s Central Africa Regional Program for the Environment (CARPE). The CARPE program is a long term investment that has been particularly aimed at reducing deforestation, conserving great apes and their ecosystems, and enhancing the livelihoods of people in the region. CARPE is the Africa Bureau’s “flagship” biodiversity program, and in the future, is likely to incorporate a focus upon reducing emissions from deforestation and forest degradation (REDD). As it evolves, for instance via foreign assistance financing and leveraged investment mechanisms which are expected to emerge as a result of international negotiations on climate change over the next few years, the REDD concept has the potential to transform the way that land-use decisions are made in developing countries by creating an economic value for standing forests, while also taking into consideration the needs and vulnerabilities of indigenous peoples who are integral elements of the forest ecosystem. CARPE’s support for indigenous peoples includes using participatory and inclusive approaches to land-use and management planning.

The estimated indigenous population of this region includes approximately 500,000 Mbuti people (pygmies<sup>2</sup>) living in the Central African rainforests. The members of these communities are partially hunter-gatherers, subsisting to some degree on the wild products of their environment and trading with neighboring farmers to acquire cultivated foods and other material items. Problems facing the indigenous peoples include discrimination by other ethnic groups, eviction from their traditional homelands due to deforestation caused by agricultural expansion and logging, and the general burden of living in extreme poverty.

In West Africa, USAID’s Sustainable and Thriving Environments for West Africa Regional Development (STEWARD) program focuses on key transboundary priority zones across the Upper Guinean Forest Ecosystem (Guinea, Ghana, Ivory Coast, Sierra Leone, Liberia), working with local communities to promote a regional approach for biodiversity conservation in West Africa. STEWARD grantees, such as the Wild Chimpanzee Foundation, take a very community-centered approach and work in isolated areas. STEWARD will be working with countries and the Mano River Union on social safeguards for REDD, which directly addresses IP issues.

#### **Rangelands, Pastoralism and Livestock**

The expansive rangeland regions where the pastoralists of Africa live are another important focus, and where regional approaches are called for. Arid and semiarid rangelands constitute about 60% of the surface area of East and West Africa. The so-called “Pastoral Arc” of the Horn of Africa contains the largest concentration of pastoralists, agro-pastoralists, and livestock in Africa. Pastoralism is a rational economic land-use system able to generate significant returns, and one that has strong relationships with the environment and deep roots in culture and tradition. Widespread misunderstanding about pastoralism has left it often under-protected, undervalued and an unintended victim of uninformed policy. But this traditional mobility-dependent livelihood, designed as an adaptive strategy for thriving in some of the world’s harshest regions, is well suited to the climatic and economic uncertainties of our times. Harnessing the mobility and governance systems of pastoralists can be expected to enhance resilience to climate change and serve U.S. security interests as well.

USAID recognizes that revitalized customary pastoral clan governance systems, supported by understanding government institutions, can play a significant and robust role in solving inter-ethnic conflict in pastoral areas. Pastoralists’ knowledge, skills, practices and customary governance structures are essential in maintaining the rangelands, biodiversity and peace in these fragile ecosystems.

From 2006 to 2010, USAID/East Africa managed an innovative transboundary program called Regional Enhanced Livelihoods in Pastoral Areas (RELPA) in the Horn of Africa. It built upon and complemented the Pastoral Livelihoods Initiative (PLI) of USAID /Ethiopia (see above) and the Northeast Pastoral Development Project (NEPDP) of USAID/Kenya. The aim of RELPA was to support an effective transition from emergency relief to the promotion of long-term economic development in the transboundary pastoral areas of southern Ethiopia, northern Kenya, and southwest Somalia. In 2007, USAID partnered with a consortium of NGOs lead by CARE to implement a component of RELPA known as the Enhanced Livelihoods in the Mandera Triangle consortium program (ELMT). This project helped to foster a wide partnership of organizations in the cross-border region that could effectively implement RELPA activities at the field level, while other components focused on policy level interventions, such as a Policy for Food Security in Pastoralist Areas developed with the Common Market for East and Southern Africa (COMESA). Also, transboundary peace initiatives were mounted with the Conflict Early Warning and Response Network (CEWARN), a specialized body of the Intergovernmental Agency for Development (IGAD) in the Horn of Africa, in collaboration with the USAID/East Africa Regional Conflict Management and Governance (RCMG) office.

The In West Africa, the USAID Agribusiness and Trade Promotion (ATP) project includes a focus on the livestock value chain, consisting of cattle, sheep and goats, largely produced by pastoralists. While the project does not focus specifically on pastoralists at the production level, they are major stakeholders. ATP aims to increase the volume and value of intra-regional

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<sup>2</sup> There is no single term to replace so-called “pygmies,” who prefer instead to be referred to by the name of their various ethnic groups, or names for various interrelated groups such as the Aka (Mbenga), Baka, Mbuti, and Twa.

agricultural trade in West Africa. Through ATP, USAID focuses on target activities that catalyze the efforts of West African stakeholders to find sustainable solutions to key constraints in intra-regional agricultural trade. This approach will not only significantly strengthen intra-regional trade during the project, but will also make the impacts sustainable after the end of the project.

USAID also has a Global Livestock program called Adapting Livestock Systems to Climate Change Collaborative Research Support Program (ALS-CC CRSP). It aims to reduce vulnerability, increase adaptive capacity, and augment the income of livestock producers in regions where agricultural systems are changing, available resources are shrinking, and climate is having an impact. It is focused on small-scale livestock producers and pastoralists living in semi-arid ecosystems in regions in East and West Africa and Central Asia where livestock production is closely tied to the state of environmental, human, and animal health.

Finally, USAID's Higher Education for Development partnership Program has given a grant to Colorado State University and the University of Nairobi to establish a Sustainable Drylands Centre, which will advance pastoralist development issues around Africa.

## Conclusions

While this summary has primarily focused on USAID's activities in the context of natural resource management, Indigenous Peoples are beneficiaries in many of USAID's programs across the sectors, including economic growth, health, education, democracy and governance, conflict mitigation and management. Increasingly, USAID is including explicit language on IPs and has targeted IPs in its activities.

Current USAID guidance and practice focus on indigenous peoples and indigenous issues by:

- involving indigenous peoples and local communities at every stage of decision-making;
- facilitating the creation of conservation priorities that respect the rights of indigenous peoples at all levels of government;
- modifying or codifying indigenous tenure systems rather than introducing or fostering more formal, complicated and expensive systems;
- encouraging the development of indigenous organizations that meet people's requirements for sustained economic and social progress;
- developing sustainable economic uses of biological resources;
- building local capacity for biodiversity management; and,
- supporting nongovernmental conservation and research programs that target IPs.

Further, USAID has a particular interest in and focus on:

- reducing the sexual and gender based violence that frequently targets indigenous women and girls in Africa.
- advancing a strategic approach to current practices that connect faith traditions of IPs to conservation and the protection of biodiversity.
- integrating considerations of informal, indigenous and customary law into our Rule of Law programming worldwide will also have a positive effect on the legal rights of IPs.

USAID has also adopted the following fundamental principles and priorities in our work with African IPs:

Indigenous Peoples are stakeholders in their own development. USAID recognizes that Indigenous Peoples are distinctive social and cultural groups, and tend to be politically, economically and/or socially marginalized and therefore vulnerable.

Conservation efforts, biodiversity and the role for IPs. USAID recognizes that conservation of biodiversity requires working with and honoring the role of IPs, who should be enabled to be the stewards of their lands, while enjoying the benefit of appropriate social safeguards.

Land tenure, property rights and agri-business. USAID is working closely with the Millennium Challenge Corporation and Department of State on land governance issues within our foreign and development policies.

Climate Change and the impact on IPs. USAID leadership on strong environmental safeguards and monitoring and evaluation protocols and practices is represented in part by its support to the international and national efforts in Reduction in Emissions from Deforestation and Forest Degradation (REDD), which contains a call for renewed commitment to environmental and social safeguards. This means going beyond mere slowing or halting of deforestation: it includes "avoided deforestation", i.e. conservation of existing forests, and "reforestation/afforestation", i.e. increasing/enhancing existing forest carbon stocks. It is also typically understood to include a preservation of the rights of IPs as part of any REDD mechanism.

Likewise, helping pastoral communities revitalize their indigenous NRM and customary governance systems will improve rangelands productivity, and lead to better resilience to drought and reduced conflict, even in the face of higher threats to food security due to climate uncertainty. Healthy rangelands have enormous potential to sequester carbon.

In summary, while there remains much to do, both in terms of policies and programs, USAID has been highly cognizant and active in support of Indigenous Peoples.

Cochairman McGOVERN. Well, thank you very much for your excellent testimony. And we appreciate this administration's commitment to protecting the rights of indigenous peoples.

I had mentioned before that we had a hearing on indigenous peoples in Latin America. And one of the sad realities of the situation is that, by the time, in many cases, voices are raised to protect the rights of indigenous communities, they are already destroyed. And that is one of the things that, obviously, we are very much concerned about.

Let me begin with a question. There was a recent article in *The Economist* which talked about the surge in land deals, especially in Africa. And the article, furthermore, questions the benefit of large land acquisitions by investors and highlights the pernicious influence of corruption on these transactions. The World Bank has suggested a mechanism modeled after the Extractive Industries Transparency Initiative to increase transparency with respect to such land acquisitions.

But I am curious what we think about that. I mean, I was at a briefing this morning with Lester Brown, and he was also talking about this kind of surge in land acquisitions and the implications it has, not only on indigenous communities but on a country's ability to grow food and have access to water. So I would like your thoughts on that.

And what methods is the United States pursuing to improve the agricultural productivity of small-scale farmers? And what is being done to ensure that they are not evicted from their lands when these land deals are made?

Ms. CROMER. Thank you, Mr. Chairman.

Over the past 2 years, large-scale land acquisitions by private-sector investors and sovereign wealth funds have been widely criticized, as you state. Problems cited include opaque and nonparticipatory negotiations to lease and sell land and the prevalence of contracts that provide only limited employment opportunities for local people.

Some criticism is fair, but problems should not be viewed as universal. Investment is essential to accomplish the goals of improved security and agricultural productivity. And indigenous people may, with appropriate protections of their land tenure and property rights, benefit from large-scale transactions that result from transparent, participatory negotiations and that lead to arrangements or partnerships that provide meaningful benefits to local communities.

Creating a system of records that recognizes and enforces the rights of individual groups and legal entities to land and natural resources is critically important in order to empower the rights of holders and protect against unlawful evictions, resettlements, and uncompensated takings of property.

At the same time, creating robust land governance systems will help encourage domestic and foreign direct investment that will help spur increases in agricultural productivity. And that will help meet the important policy goals of the U.S. Government's Feed the Future strategy, which is also commensurate with our African partners' goals of increasing agricultural productivity.

So it is important, Mr. Chairman, to make sure that we are using all measures

to ensure the participation of indigenous peoples in these governance systems, and we at USAID are committed to that.

Cochairman McGOVERN. Speaking just in very general terms with regard to Africa -- and I know that we are trying to get more representation from indigenous communities at the table when issues are being dealt with. But one of the things that I heard -- and maybe I am wrong on this -- is that there are sometimes substitutes for representation from the indigenous communities, that their participation rate is not as high as we would like. And, you know, when I say "we," I am using the general "we," not the United States -- but we are not doing enough to kind of involve them in some of these major decisions, that oftentimes there are substitutes for the indigenous representation that are making some of these decisions.

I am just curious, I mean, if you would kind of rate, you know, the participation of indigenous communities in Africa in some of these decisions that affect them directly. I mean, you know, is it low, is it medium, is it high? How would you characterize that?

Ms. CROMER. We have a number of experts at USAID who could characterize that better than I could. In fact, I have two of them here with me. If you would like, they could come to the table and answer that question for you.

Cochairman McGOVERN. Sure.

Ms. CROMER. I have Dr. Chloe Schwenke -- would you like to come to the table? -- and Walter Knausenberger.

Ms. SCHWENKE. Good morning, Mr. Chairman.

Cochairman McGOVERN. Good morning.

Ms. SCHWENKE. I am Chloe Schwenke.

This is a challenge that is faced in all of our activities involving African people generally, not just indigenous populations, and that is to make sure that their voices are actually being heard, themselves. What happens as an interim stage is that civil society organizations speak on their behalf. That is a reflection of just a sense of comfort to be engaged in that type of dialogue that civil society groups are more conversant with.

We are quite careful to, you know, consistently question those civil society groups around the issues of legitimacy. Who are you speaking for? On what authority are you making these statements? Are your assertions justifiable? It is sort of a due diligence process that we regularly engage in with civil society.

We also exert consistent pressure with civil society to develop capacity so that more and more, through time, actual representatives of indigenous peoples are there at the table and that we don't need to have a separate voice representing them. That trend is well-advanced across Africa. It is much less well-advanced within indigenous populations, largely as a function of education and largely as a function of just unfamiliarity with that type of dialogue process.

Our residual concern, of course, is how we get women involved in that process, as well. Because traditional societies, if you go revert to who they would say represents them, they won't put their women forward. And the women, themselves, because they, in many cases, simply have no access to any education in a formal sense, are not very well-positioned to speak well on their own behalf.

So we have a lot of work still to do to have that dialogue with traditional

leaders to say, we really need to hear from your women, we really want to hear from your women. And we are working with civil society to put that message across as part of the total package of empowerment of local representatives of indigenous populations, to be those conversants with us.

Cochairman McGOVERN. And, again, I guess a concern is, as we develop this process to involve more direct representation and more women representation, while all that is going on, there are these land deals that are happening, there are trade agreements that are being moved forward, there is all kinds of stuff going on that, you know, in some cases, potentially could have a very adverse impact on some of these communities.

And so, you know, one of the challenges is, how do you protect the rights of these communities, how do you protect their culture, their identity so that they don't get, you know, swept up in some of these deals that are being made, and then it is too late, really?

I mean, again, I go back to the hearing -- I remember going back to the hearings we had in terms of Latin America, I remember going and visiting Ecuador and visiting some of the indigenous communities that really have been kind of essentially decimated because of development deals. I mean, they no longer operate the way they used to. Their culture has been kind of destroyed, and, you know, their whole way of life has. And they have been pushed farther and farther, in that case, into the jungles. But they are just different; they are no longer what they used to be.

And I don't know what the right answer is. It is just raising the concern that, you know, in an age where we are all committed to development and expansion and land deals and trade agreements, that especially us, here in the United States, that we are sensitive to the realities that face these indigenous communities.

And I appreciate -- I think you are kind of speaking to the converted here, but it is just something that is troublesome to us. And we are trying to find ways to, you know, help be a voice for these communities, you know, while all this is going on.

Ms. SCHWENKE. Thank you, Mr. Chairman.

Cochairman McGOVERN. Let me ask, to what extent are we considering indigenous peoples as partners in our efforts to combat climate change?

Mr. KNAUSENBERGER. Yes, sir. My name is Walter Knausenberger.

And I spent quite a few years working in East Africa with the mobile pastoralist communities. And there is a community which exhibits all the attributes of indigenous peoples as described who have not been represented at the appropriate fora, have been maligned over the decades as troublemakers, when, in fact, they have governance systems which could be part of the solution. They actually manage to move their livestock over large landscapes and have trade routes which are well-established over the millennia and have the ability to adapt to climate change. That is their very nature, their mobility.

So they have, over millennia, been able to respond to where the rains fall, move their cattle to another range that are verdant and where water is available. And then in dry seasons, wet seasons, movement dynamics are all sort of well worked out. The problem has been that those systems are not respected by state authorities, not recognized, haven't been until quite recently.

In Ethiopia and Kenya, we have seen a trend toward engaging with these

pastoralist governance structures in a spirit of understanding and, in fact, recognizing that they have a lot of knowledge to contribute to the management of those landscapes, which, in fact, currently produce over half of all the meat consumed in East Africa. But they are at risk because of the population growth, districting, political changes and representation. The populations are expected to settle down, and that is quite destructive to the health and stability of these landscapes.

So that is a response -- in a response to climate change, they have systems which, if they were allowed to be restored, they actually would be productive members of society.

Cochairman McGOVERN. Well, that kind of brings me to this next point, that, you know, indigenous peoples have developed certain practices and methods to cultivate the lands that they have lived on, you know, for hundreds of years. And, you know, they possess a very specialized knowledge about their natural environment.

And, you know, I think what I have come to appreciate is that, in many cases, they are more advanced than we are, in terms of how you should manage land and how you should develop it. I guess, you know, to what extent are we exploring and learning from these traditional practices or types of knowledge, which could be not only supported locally but then could be used elsewhere, could be models elsewhere?

Mr. KNAUSENBERGER. Well, the general pattern that we approached in developing programs that implicate or involve indigenous peoples is that of participation. We have a system that is well-established now in the last 15, 20 years called the community-based natural resources management systems that have been implemented in dry-land areas in southern and eastern and western Africa and in forested areas, a participatory land-use management program that has involved indigenous peoples and all the other local stakeholders. And they are really involved at all stages of the decision-making process.

So, in that way, they are involved. But there is also always the risk of having others speak for them, in a sense, that we have talked about before. And that is an additional level of sensitivity we all need to bring to this.

If you are involved in, like we are in the Congo River Basin -- the Central African Regional Program for the Environment has been in place now for 15 years, and it has been engaging specifically with the forest peoples. And with our participant organizations, the implementing organizations, the NGOs who work there, like The Gorilla Foundation and such, they need to engage with the populations there to help protect them. Because the indigenous peoples do recognize them as assets and know how to manage them, and that knowledge has to be capitalized upon.

Ms. CROMER. Thank you, Mr. Chairman.

Just to give you a couple of examples, indigenous and local ecological knowledge is a major tool in combating desertification and the impact of climate change. And, as you know, this refers to the knowledge, practices, and beliefs of indigenous people.

In Mali, the Dogon peoples have a unique culture that survives in a stunning but harsh landscape. Their vegetation and tree resources are being decimated by overharvesting and desertification. USAID works with the Dogon to enhance sustainable ecotourism to bring needed revenue to this poor part of Mali while

protecting the cultural integrity of the Dogon people. So this is one area.

We also work with the U.S. Peace Corps in Mali to help women protect precious indigenous trees, whose fruits provide food and cooking oil and revenue in these parts of Mali.

So these are two areas where we are working very closely with indigenous peoples to improve their livelihoods and protect the environment.

Cochairman McGOVERN. I think that is great, and I want to commend the administration for doing that.

But I also think that there are, again, examples of practices within indigenous communities that we can learn from, too, you know, that may be models for supporting other indigenous communities or other communities in general, you know, in other parts of the world.

It is fascinating to me, as I get to learn about some of these different communities, the innovation, the boldness in terms of some of the development, you know, the smart development in agriculture, even in terms of medicine. Sometimes there is a tendency up here to think of indigenous communities as somehow primitive, not part of the regular -- all of us, the so-called regular people, I guess. But the reality is, in many cases, in some areas, they are much more advanced.

And so I would like to think that, as we move along here, that in addition to providing assistance, you know, in ways that we know we can be helpful, that we also learn from them and apply some of their practices in how we combat climate change and how we do better agriculture and that kind of stuff. So I think there is a lot that, you know, we can learn from them.

Ms. CROMER. My own experience in Nigeria, Mr. Chairman, is that we were working with the National Institutes of Health to do just what you say. We helped to build a lab in Nigeria, where we were working with Nigerian scientists to look at traditional medicines and herbs and see how they are used among the indigenous populations and to use that knowledge to advance medicine here at home and globally.

So there is a lot of transfer of information in our direction, as well.

Cochairman McGOVERN. You mentioned a couple of examples of where we are helping in some of these communities. I mean, are you finding that indigenous communities are directly applying for some of the assistance that we can offer?

A better question may be, where do they fit in, like, into the Feed the Future initiative, for example? Are these communities aware of the assistance protections and the support that we can offer?

Ms. CROMER. That is an excellent question, and that is a question that we are addressing right now.

Feed the Future is a new Presidential initiative. We are working to develop strategies around the new program. And we will be reaching out to communities and indigenous populations to make sure that they are part of the program.

In the USAID's new business reforms, we do have as one of our goals to do more direct awards to country and community and indigenous populations so that we can work directly with them, building their capacity, learning from them, and working in partnership with them. So that is one of our major goals.

Cochairman McGOVERN. I appreciate that.

And, look, let me just conclude by saying that this commission cares very deeply about the issues facing indigenous communities, not just in Africa but all over the world. We very much appreciate your service. We very much appreciate your dedication to this issue. I think we are kind of on the same wavelength here.

But I will end with just kind of an offer, that if there are things that you think are important for Congress to be more involved in and more supportive of, especially during these tight budgetary times, you know, there is a bipartisan group of us who would be more than willing to work with you. I mean, these are important issues, and I think, to the extent that we handle them well, it will reflect well on the United States. These are the kinds of things we should be doing.

So I thank you so much for your testimony and for your service, and we look forward to working with you.

Ms. CROMER. Thank you, Mr. Chairman.

Cochairman McGOVERN. Our second panel will be with Rebecca Adamson, the president and founder of First Peoples Worldwide, one of the few indigenous-led international organizations working to support, empower, and promote the priorities of indigenous people on the ground. Ms. Adamson, who is Cherokee, is well-known for her asset-based development strategies among American Indians and indigenous peoples. She is also the co-author of the book, "The Color of Wealth."

We also have at the table Phillemon Nakali Loyelei, who represents the Nyangatom tribe, which is from the Omo Valley region of Ethiopia. He is currently in United States and seeking political asylum. He left Ethiopia because of threats that he and his family received after speaking out against a dam that is being built that will adversely impact his people.

And, finally, Lavinia Currier, who is a trustee of the Sacharuna Foundation, a private foundation that promotes land and wildlife conservation and indigenous rights and livelihoods. Educated at the Putney School and at Harvard University, Ms. Currier is a lifelong conservationist, human rights activist, and filmmaker. Her most recent feature film is a Central African Republic and U.S. co-production that looks at the daily life of the Ba'aka forest peoples of the CAR.

And if I messed anybody's names up, I apologize. You can correct that for the record. But, as I tell people, I am from Massachusetts, and some people think we don't even speak English.

So, Ms. Adamson, why don't we begin with you? And we welcome you here today.

#### **STATEMENT OF REBECCA ADAMSON, PRESIDENT AND FOUNDER OF FIRST PEOPLES WORLDWIDE**

Ms. ADAMSON. Esteemed Members of this chamber, invited guests, and, in particular, Mr. Chairman, I want to thank you for the opportunity to bring before you the issues of indigenous peoples in Africa.

I also want to thank our government for the endorsement of UNDRIP. It was very meaningful for us.

Here is something you probably don't hear often in this panel: We have some good news. This is our chance to do well by doing good. By showing leadership in granting land tenure rights, backing the legal measures to enforce them, and

supporting traditional land management techniques for indigenous peoples in Africa, you can do the right thing while also improving our economic wellbeing and increasing our national security.

For many indigenous peoples, you provide the only government forum where we can have our say. Very few African countries even recognize the existence of indigenous peoples, let alone provide them avenues for political participation. So we thank you very much for today.

These roughly 21.9 million people are the most marginalized residents of the African continent. Their many cultures and ways of life are under threat, in some cases to the point of extinction. Survival, for most, depends on traditional lands that foreign governments and corporations seize daily, generally the poorest, harshest terrain out there. Their continued existence and cultural practice is a testament to our dynamism, intelligence, strength, and community. We have a lot to learn from indigenous peoples and those here today.

You may have already contemplated human rights issues here at this committee, and likely you already have. However, have you considered that the rights of indigenous people of Africa are vital to our national security?

Today's conflicts across West Africa and the Sahara have their origins in policies that excluded indigenous nomads from policymaking. Giving recognition to all groups, respecting their differences, and allowing them to flourish in truly democratic spirit does not lead to but, rather, prevents conflict. Our national security interests are best served through assisting African states in the development of multicultural democracies with representation of all ethnic groups.

Working models exist. For example, Kenya's 2010 constitution, passed by popular referendum, is the continent's first to enshrine the rights of indigenous peoples. And the local divisions of General Motors, General Electric, and FedEx all report that they believe Kenya is on the right track.

Not surprisingly, good governance is also good for business -- American business. When we allow foreign governments and organizations to trod upon indigenous peoples, our interests in upholding human rights and opening up competitive markets and in mitigating the conflict that fuels extremism suffer.

Ethiopia serves as a reminder. It has investments from 36 countries, including India, Pakistan, China, and Saudi Arabia, and 896 foreign businesses. For them, the government forcibly resettled 15,000 people, impoverishing whole communities and denying them the power to contest or benefit from the land deals.

Conversely, our Chamber of Commerce reports that the American firms seek investments to employ Ethiopians to farm for local consumption and export where there is demand -- investments that will not come to fruition without your involvement.

Africa offers long-term growth opportunities, but, without your attention, we will cede potential gains to our Chinese and Indian competitors. To help African markets emerge, you must support true tenure security.

Besides commercial development, governments dispossess traditional land in Africa for national parks and conservation areas. Under the guise of conservation, over 1.5 million indigenous peoples were evicted from the homelands they have always protected, for the intended purpose of protecting those lands.

Conservation of our biodiversity is crucial, and we must support the 15,348 protected areas in Africa. But, currently, indigenous people live in and protect 86 percent of the world's standing forests. And 80 percent of the world's remaining biodiversity resides in our territories.

Again, there is a lot to learn from indigenous peoples.

The U.S. funds multi-billion-dollar efforts to reduce and mitigate carbon emissions and billions of tax dollars for conservation. Using traditional stewardship practices, it costs \$3.50 a hectare to conserve land and biodiversity on indigenous territories. Large conservation organizations spend \$3,500 a hectare to do the same. Yet, inexplicably, over 90 percent of the conservation funding goes to support the protected-area strategies implemented by international NGOs.

Africa's indigenous people know how to protect African lands, resources, and wildlife. They also have the most to lose from continued destruction. Global climate change and associated food insecurity has reduced some African indigenous communities to desperation, as their cattle herds dry off and their crops wither.

But there are almost no African wildlife professionals in large conservation projects. In the USAID Congo Basin Forest Partnership, spanning over 700,000 square miles across 6 countries, encompassing 24 million people, U.S.- and European-based NGOs run the show. Not a single African conservation group nor indigenous representative voice is among them, nor do these NGOs have indigenous peoples on their board. And this is after a previous Congo Basin initiative led to the eviction of 45,000 pygmies from their traditional forest homelands.

We have three requests that we would like to place before this esteemed committee today. The steps that we ask you to take might be small, but we think they are very important. We would like to see this commission consider the following actions: to recommend the Human Rights and International Organizations Subcommittee of the House Foreign Affairs Committee be assigned legislative jurisdiction for indigenous peoples issues, concerns, and interests.

We would like this commission to consider directing the annual State Department human rights reports to contain sections for reporting specifically on the status of human rights of indigenous people in law and in practice.

And in accordance with the human rights reporting under the Foreign Assistance Act, we would like this committee to request that the GAO perform an audit and report on the status of the internationally recognized human rights of the various groups of indigenous people.

It is not often that the right thing to do also serves our vital interests. As a human rights undertaking, a demonstration of U.S. leadership in the world, an investment in our economic future, and a down payment on our security, we must take the rights and needs of indigenous peoples to heart, and we must act in solidarity to promote and protect them.

Thank you.

[The statement of Ms. Adamson follows:]

PREPARED STATEMENT OF REBECCA ADAMSON

Testimony  
Of  
Rebecca Adamson

**President and Founder  
First Peoples Worldwide  
Before**

**The Tom Lantos Human Rights Commission  
United States Congress**

**May 12, 2010**

The overall picture of the human rights situation of indigenous peoples in Africa is a serious cause for concern, and effective protection and promotion of their human rights is urgently required.

The African peoples who are applying the term 'indigenous' in their efforts to address their particular human rights situation cut across various economic systems and embrace hunter-gatherers, pastoralists as well as some small-scale traditional farmers. They practice different cultures, have different social institutions and observe different religious systems. The Pygmies of the Great Lakes Region, the San of southern Africa, the Hadzabe of Tanzania and the Ogiek, Sengwer and Yakuu of Kenya can all be mentioned as examples of hunter-gatherer communities who identify themselves as indigenous peoples. Similarly, pastoralist communities such as the Pokot of Kenya and Uganda, the Barabaig of Tanzania, the Maasai of Kenya and Tanzania, the Samburu, Turkana, Rendille, Endorois and Borana of Kenya, the Karamojong of Uganda, the Himba of Namibia and the Tuareg, Fulani and Toubou of Mali, Burkina Faso and Niger can all be mentioned as examples of pastoralists who identify as indigenous peoples. Additionally, the Amazigh of North Africa also identify as indigenous peoples.

The total population of Indigenous Peoples in Africa is estimated to be 21.9 million. (IWGIA 2008) Overall characteristics of Indigenous groups are that their cultures and ways of life differ considerably from the dominant society, and that their cultures are under threat, in some cases to the point of extinction. A key characteristic for most of them is that the survival of their particular way of life depends on access and rights to their traditional lands and the natural resources thereon. They suffer from discrimination as they are regarded as less developed and less advanced than other more dominant sectors of society. They often live in inaccessible regions, often geographically isolated, and suffer from various forms of marginalization, both politically and socially. They are subjected to domination and exploitation within national political and economic structures that are commonly designed to reflect the interests and activities of the national majority.

Lack of legislative and constitutional recognition of their existence is a major concern for indigenous peoples. Very few African countries recognize the existence of indigenous peoples in their countries. Even fewer do so in their national constitutions or legislation. Indigenous Peoples representation in the legislative assemblies and other political structures of their respective states tends to be very weak; hence issues that concern them are not adequately addressed. This is a direct violation to the UN Declaration on the Rights of Indigenous Peoples, the ILO Convention 169 on Indigenous Peoples Rights and *Article 13(1)* of the African Charter on Human and Peoples Rights which guarantees all citizens the right to participate in the government of their own country.

It has been our experience that U.S. Embassies rarely address the human rights of indigenous peoples within their in-country human rights reports. **However, the human rights and rights of Indigenous Peoples of Africa intersect**

**with vital U.S. national security interests.** Today's unstable situations in the many conflict zones across West Africa and the Sahara all have their origins in policies that excluded Indigenous nomads from governance and policy-making. Conflicts in West Africa will continue until reconciliation can be reached between the Indigenous Peoples of the region and their fellow citizens.

A rich variety of ethnic groups exists within basically all African states, and multiculturalism is a living reality. Conflicts do not arise because people demand their rights but because their rights are violated. Giving recognition to all groups, respecting their differences and allowing them all to flourish in a truly democratic spirit does not lead to conflict, it prevents conflict. In the long term, United States national security interests are best served through assisting the African states in the development of multicultural democracies based on respect for, and representation of all ethnic groups within this important continent..

I would like to highlight some positive developments that are taking place on matters such as; cultural rights, constitutional recognition , more favorable development policies and, in a few cases, even on land rights issues. USAID should look to countries such as South Africa, Algeria, Morocco, Mali, Republic of Congo, Burundi and Cameroon, and Kenya for Africa grown solutions and lessons they could support elsewhere.

We hoped our panel would have Mary Simat, a Maasai from Kenya to be here in person. However she has submitted of written testimony on an unprecedented success in democracy building. Passed by public referendum in 2010, Kenya's new Constitution provides the continent with the first African constitution that enshrines the rights of Indigenous Peoples. Good governance is good for business. The in-country divisions of GM, General Electric and FedEx report "a sense that they (Kenya) are on the right track." In the long term, their empowerment can lead to greater participation and prosperity, and therefore peace.

The San, Pygmies, Ogiek, Maasai, Barabaig, Tuareg, Hadzabe, etc., are of course seeking, individual human rights protection, just like other individuals the world over. However, it goes beyond this. These groups seek recognition as peoples, and protection of their cultures and particular ways of life. A major issue for these groups is the protection of collective rights and access to their traditional land and the natural resources upon which their way of life depends.

These basic collective rights are being violated because many pastoralists, hunter-gatherers and other Indigenous groups are being evicted from their land or denied access to the natural resources upon which their culture and survival as peoples depends. This dispossession is driven by two factors: large foreign investments for commercial development and the establishment of national parks and conservation areas.

Large scale commercial land grabs have become strikingly popular. Preliminary research by the International Land Coalition, estimated that over 47m hectares of African lands have been subject to some sort of negotiation with a foreign investor. *The Economist* reports that over a tenth of the farmland of South Sudan has been leased this year and proposals that would allow Saudi business groups to take control of 70% of the rice-growing area of Senegal are being tendered.

Because the African land market is so ill-developed and the governments are so weak, most these land deals contribute little or nothing to the public good. Even after the contract is signed, there is no guarantee the land deal

will go accordingly. A World Bank survey showed that in the Amhara region of Ethiopia, only 16 of 46 projects were working as intended. In Mozambique only half the projects were working as planned. One project in Mozambique had promised 2,650 jobs only to create a mere 35-40 full time positions.

Very little, if any, sustainable development is occurring and land rents are de minimus: \$5 per hectare in Liberia and \$2 per hectare per year in Ethiopia. But that is not stopping the land grab. So far, Ethiopia has investments from 36 countries, including India, Pakistan, China and Saudi Arabia, and 896 businesses including Karuturi – one of the world's top 25 agribusinesses. While making this land available for investors last year, Ethiopia resettled 15,000 people from their customary homelands. The majority of the land leases encompassed Indigenous territories. Many of the concessions include homelands upon which whole villages live; dispossessing them of their livelihood and denying them the power to contest or benefit from the land deals.

Throughout Africa the land of indigenous peoples is gradually shrinking; stripped of their natural resource assets they face certain destitution and possible extinction. To allow customary land systems to flounder in the realm of illegality deprives Indigenous Peoples of state sanction for and protection of their basic rights. It is a serious violation of the UN Declaration of the Rights of Indigenous Peoples (arts 13-19), ILO Convention 169 on the Right of Indigenous Peoples and the African Human and Peoples Rights Charter (*Article 20, 21 and 22*), all which state clearly that peoples have the right to existence, the right to their natural resources and property, and the right to their economic, social and cultural development.

The goal is to create a stable investment environment in which communities can maintain their land claims, prosper and flourish alongside investment and national economic development. **Upholding indigenous land rights and preventing the human rights violations that these massive scale land grabs pose to the livelihood social and cultural well-being of Indigenous Peoples intersects with the economic future and U.S. national economic interests.** The U.S. Chamber of Commerce, reports that the long-term business strategy of American firms for Ethiopia is to seek “investments to employ Ethiopians to farm for local consumption and export where there is demand.” US interests are better promoted through a free market economy and to help African markets emerge the U.S. Government needs to support true tenure security that will come from: elevating customary land rights up into formal law, making customary land rights equal in weight to registered rights, and supporting the normative processes necessary to uphold and enforce such rule of law. Africa offers long-term growth opportunities and the US government needs to find more innovative ways to help companies invest in Africa. Otherwise the U.S. economy will incur the severe opportunity cost of conceding to its Chinese and Indian competitors.

Dispossession and land alienation whether by foreign investments or to create national parks and protected areas leads to an undermining of the knowledge systems through which Indigenous Peoples have sustained life over the centuries. From 1990 to 2000 conservation promoting the protected area strategies resulted in over 1 million Indigenous Peoples being evicted from their homelands, seriously threatening the continued existence of indigenous peoples and rapidly turning them into the most destitute and poverty stricken groups in Africa.

Conservation of our biodiversity is crucial and the 15,348 protected areas in Africa (Scholfield and Brockington 2008) should be supported but currently Indigenous Peoples live in and protect 86 percent of the world's standing forests. Testament to the efficacy of traditional knowledge is the fact that 80% of the world's remaining biodiversity resides within Indigenous territories. Globally, Indigenous lands encompass as much as 24 percent of Earth's surface. While the global network of protected areas encompasses 12 percent of earth's land. If recognition and support is given to Indigenous land tenure and management the amount of protected areas could more than double.

Multibillion-dollar schemes paid for by U.S. tax dollars are being implemented to reduce and mitigate carbon emissions through reforestation projects and preventing deforestation. And billions of tax dollars are expended for conservation and biodiversity protection. Using traditional Indigenous knowledge and stewardship, it costs \$3.50 per hectare for Indigenous groups to conserve lands, forests and biodiversity on Indigenous territories. The administration and management of national parks and protected areas by large conservation organizations costs \$3,500 per hectare.

**Upholding Indigenous Peoples' land tenure and supporting their land management regimes serves U.S. interests in cost-effective conservation, mitigation of climate change, and global food security.** Currently a disproportionate share of biodiversity and conservation funding –well over 90 percent - goes to support conservation via the protected areas strategy. In the first analysis done of conservation NGOs in sub-Saharan Africa (Scholfield and Brockington 2008) it was estimated that the annual expenditure from between 2004 to 2006 was just under \$200 million. This represented the expenditures associated with 280 conservation NGOs covering 14% or 197 of Africa's protected areas. The report stated that a more adequate expenditure for meeting the needs of African protected areas conservation was \$2 billion a year.

Promoted by large US based organizations, there is a telling absence of African wildlife professionals and an emphasis on the role of Europeans at work saving African wildlife. In the USAID Congo Basin Forest Partnership, a conservation effort spanning over 700,000 square miles across six countries with 24 million people living in it the governing board and active players cited in this effort consist of 14 US and European based NGOs: Africa Wildlife Fund, Center for Internet Forestry Research, CIRAD Centre de cooperation international en recherche agronomique, CI, Forest Stewardship Council, Forest Trends, Jane Goodall Institute, IUCN, Program for Endorsement of Forest Certification PEFC, SVN Netherlands Development Organization, TRAFFIC the Wildlife Trade Monitoring Network, Wildlife Conservation Society WCS, WRI, and WWF

Not a single local African conservation group, community conservancy and Indigenous representative voice is found in the project. Yet in partnership with WWF a previous Congo Basin initiative to create a network of Protected Areas lead to the evictions of 45,000 pygmies from their traditional forest homelands (Schmidt) In addition Global climate change and associated food insecurity has reduced some African Indigenous communities to desperation as their cattle herds die off or their crops come in at the wrong time of a globally warmed growing season.

In order to save time today this part of our testimony is being submitted via videos that can show you some of the impact climate change is having in Indigenous communities. Indigenous Peoples as models for low carbon sustainable livelihoods are the most negatively impacted by the changes brought on through climate change. We

asked communities from all over the world to submit videos of the effects of climate change and what they are doing about it. Congress can see the resilience and brilliance of Indigenous Peoples offer for solutions in mitigation and adaptation. Your support and protection of our rights would enable us to join you in finding solutions we all need while building a more fair just and sustainable future for all.

Cochairman McGOVERN. Thank you very much for your excellent testimony.

And we will now hear from Phillemon -- can you pronounce your name for the record so I don't screw it up too bad?

**STATEMENT OF PHILLEMON NAKALI LOYELEI, REPRESENTATIVE  
NYANGATOM TRIBE - ETHIOPIA**

Mr. LOYELEI. Good morning, Chairman and commission members. And greetings from Ethiopia.

My name is Phillemon Nakali Loyelei, a member of the Nyangatom community in the southern part of Ethiopia.

Cochairman McGOVERN. I wasn't too off.

Mr. LOYELEI. It is with great honor and pride that I am able to share my experience with you today.

I know my time is limited, but let me take a moment to publicly thank the Tom Lantos Human Rights Commission, Chairmen James McGovern and Frank Wolf, and, of course, the U.S. House of Representatives for holding today's hearing on the indigenous people of Africa.

First, I would like to talk with you about the Gibe dam project of the Omo River. Secondly, I would like to mention some of the positive effects of the community conservation project that began with the Mursi and other indigenous tribes in our region.

Currently, the downstream communities of the southern part of Ethiopia are already experiencing the negative impact of the Gibe III agro-electrical dam upon their land and water bodies and upon their basic human rights to make a livelihood.

These communities have not been consulted by the Ethiopian Government about the appropriations of their lands and waters. In fact, very few of us have heard any information about the dam and the impacts. The native indigenous tribe have never had an idea of what was going on by the Ethiopian Government, and they have never been informed. And it was only the few of the elite from the indigenous community who had an idea that something was going on.

As an indigenous people, we are left out of all decision-making process on constructions of Gibe III dam. Ethiopian Government did not visit in person or speak with any of our community representative when they conducted their social and environmental impact assessment. They sat in Addis Ababa and made their decisions without contacting through due diligence or talking with the indigenous community. They made a kind of descriptive research which the community did know, and then they made some kind of descriptive which the community did not even hear about, and they don't know what is going on. And they contacted the indigenous community, so who will be most affected by this project.

So it wasn't based on the prior consents of the pastoralist communities, which are the downstream communities. I am talking about downstream communities, because the dam is built on upper stream of the Omo River, and the upper-stream communities would be affected and also the downstream communities. So I am just

here representing to you the downstream communities of Ethiopia, which is the southern part of Ethiopian.

The Government of Ethiopia holds hostile views of anyone critical of the dam, insisting that the opposition to the Gibe III dam was international, it was from the international NGOs, not from the pastoralist and hunting communities who will be directly affected by the Gibe III.

This is not true. We, the Nyangatom, representing the other affected pastoralist communities in this hearing, oppose the dam because it threatens to adversely affect our way of life. It is not the outside NGOs who are making these decisions for us, as our government claims. We, the indigenous people, oppose it.

But we do not have democracy in Ethiopia. Because we don't have a democracy, we don't have a voice to talk. Few of the elites of the indigenous or the minority group who would be affected by the dam, we don't have a right to speak in front of the Ethiopian Government that there will be something affecting our communities. And we need to say our things, but we have no democracy and the government doesn't want us to talk to them confrontly. And we carry this voice to the international community so that our voice would be heard from international communities and directed from the international community to the Government of Ethiopia, not from us who are within Ethiopia.

And, within Ethiopia, it is not only the Nyangatom who will be impacted by the Gibe III dam. It will also negatively affect the lands and waters of Mursi, Kwegu, Karo, Mugle, Suri, and the Daasanach peoples. And this negative impact will be far-reaching, to include the Turkana communities of Kenya, northern part of Kenya.

And this negative impact will not only be far-reaching, it will also bring measurable impacts, which are losing of lakes, fishing ground. And already these things are already happening. And now these communities have lost their fishing ground and farming lands, and now they don't have any agriculture anymore, and they are starving. They are dependent on aid from the government.

The Gibe dam is bad for the indigenous people of the South Omo region of Ethiopia. However, there is good news coming from the region, too. Community conservancy projects are benefiting several indigenous groups in South Omo. The one I am familiar with, this conservancy project started by the Mursi people. We are placing a great hope in what is known as indigenous community stewardship areas or conservancies as a sustainable foundation for livelihood and environmental protection in southern Ethiopia.

With support of First Peoples Worldwide and the International Land Commission, a group of Mursi representatives recently conducted experience sharing with six conservancies managed by Rendille, Maasai, and Samburu communities in Kenya. Upon returning home to Ethiopia, the Mursi immediately decided to set up their own conservancy. And they have subsequently been joined in the community conservation initiative by the Bodi, Kwegu, and, most recently, Suri. Now, Nyangatom community, which I came from, they have a plan to join the Mursi to share the experience the Mursi got from Kenya.

So the indigenous communities conservancy collaborative management initiative and the development in South Omo represents a superior model of conflict resolution and mitigation mechanism because these communities have been in

conflict for many years and they have been fighting, and this would enable them to bring them together and manage their resources and their wildlife.

I most sincerely hope that, with today's great hearing as a starting point, the Tom Lantos Human Rights Commission and the United States Congress take the opportunity to address the total failure of the Ethiopian Government to consult and receive consent from the indigenous peoples whose lands and livelihood would be most negatively affected.

Secondly, I would like to see the U.S. Congress encouraging the Ethiopian Government on behalf of the indigenous-controlled community conservancies in South Omo.

I am speaking to inform you of our issues at a great personal risk to both my family and myself. I fear returning to Ethiopia because, if I return, it is almost certain I will be harmed. But I feel that my people and other indigenous groups of South Omo deserve basic human rights, and this story must be shared.

I thank you again for your time.

[The statement of Mr. Loyelei follows:]

PREPARED STATEMENT OF PHILLEMOM NAKALI LOYELEI

**Testimony  
Of  
Phillemon Nakali Loyelei  
Nyangatom Tribe  
Before**

**The Tom Lantos Human Rights Commission  
United States Congress**

**May 12, 2010**

Written Testimony of Phillemon Nakali Loyelei  
Prepared by First Peoples Worldwide in collaboration with Phillemon Nakali Loyelei  
For the Tom Lantos Human Rights Commission Hearing on Indigenous Peoples of Africa  
May 12, 2011

Good morning Chairmen and Commission Members, and greetings from Ethiopia. My name is Phillemon Nakali Loyelei, a member of the Nyangatom Tribe. Our customary homelands, along with those of numerous nearby tribes, are located in the Omo River Valley.

I know my time is limited, but let me take one moment to publicly thank the Tom Lantos Human Rights Commission, Chairmen Frank Wolf and James McGovern, and the U.S. House of Representatives for holding today's hearing on the Indigenous Peoples of Africa. It is a timely hearing for Indigenous tribes of the Omo River Valley. I also understand it to be the first hearing Congress has ever devoted solely to the Indigenous Peoples of Africa, and I am honored and hopeful to be taking part.

I will have good and hopeful developments to speak of, but I must begin with the disaster that has struck my people and neighboring tribes in the form of the Gilgel Gibe III dam. This gigantic dam is the Ethiopian government's largest development project. When completed in a few short years, it will dam the Omo River which we have always relied on. We rely on it to flood arable land, and there we plant our crops. But already we have noticed that "coffer" dams, built to assist in construction until the main dam is finished, have reduced the flow of water in the Omo. In one recent year, reduced flow meant the flood waters of the Omo did not inundate as much land as usual, so we could not plant as many crops as usual. With a drought already upon us, the reduced planting resulted in famine. I and other tribal members in my region know that tribal individuals died in the famine.

We face this impact, yet our basic human right to be consulted about plans for our customary land has been ignored. The government of Ethiopia has disregarded our right to free, prior and informed consultation, let alone consent. Few of us have any genuine information about the dam. Even now only a few of us understand its full implications for the Nyangatom and other Omo tribes. But in view of the current Middle East conflicts that began in Africa with dispossessed Indigenous nomads, Congress should be aware that among the implications of Gilgel Gibe III dam is – conflict.

In fact, this is how violence begins. As Indigenous Peoples, we are left out of the decision to build the dam. But the fighting will be left to us once the dam narrows the river or dries it out. Then my tribe will face the tribe that has always been far away across the river, planting their bank of the river as we plant ours. Without the river to separate us and provide for us both, we will fight it out for what little water is left. We don't know where that war would end, but we do fear it will come about as a direct result of Gilgel Gibe III dam. And we are not alone. An independent feasibility report foresees "disruptions in food production and drinking water access" among the economic impacts of the dam. "Despite their significance, these impacts do not appear to have been quantified or adequately considered in assessing the economic and technical feasibility of Gibe III."

The same independent report cites many technical problems with the dam's construction plans. Potential funders, such as the World Bank, have been warned off by the guarded nature of the Gibe III project. ("Gilgel Gibe III Economic, Technical and Engineering Feasibility": Desk Study Report Submitted to the African Development Bank By Anthony Mitchell, April 15, 2009.)

The government of Ethiopia continues to take a hostile view of the dam's critics, especially those Indigenous critics who have the most to lose. I have spoken out publicly against the dam, and for this I must seek political asylum in the United States. The government has questioned my family and friends about my activities and whereabouts, and in Ethiopia we know what this means.

We do not have Democracy in Ethiopia today. Our human rights are considered expendable, and even the rule of law is suspended at will when it comes to Indigenous Peoples. I sincerely hope that in the birthplace of modern Democracy, we can find allies in Congress who will help us build Democracy in Ethiopia. A modest stronghold of Democracy in the South Omo (as our region of Ethiopia is known), encouraged by America but achieved by peoples who belong to this land, would furnish a model for other tribal regions. Enough such models would most certainly enhance U.S. national security, given the Indigenous presence in many potential conflict zones.

I have dwelt so far on major troubles we face as Indigenous tribes in Ethiopia. But we are also taking a major step to solve our own troubles, and I hope you will see the value of our efforts, which continue to inspire us.

We are placing great hope in what are known as "Community Conservancies." For Indigenous purposes, a better term would be "Indigenous Stewardship Areas." But by any name, they stand for the collaborative management of land in a manner that protects its biodiversity, while producing revenue or other goods for the local people. Often the land at issue is a government "protected area" that is also customary land to Indigenous Peoples. In this case, the Mursi and other South Omo tribes are collaborating in the establishment of a community conservancy. Other pastoral and forest peoples are watching with interest. Indeed, the potential today exists for a network of community conservancies throughout South Omo.

That networking, that bridging into broader relationships that First Peoples Worldwide helped us initiate, represents a dramatic change for the better. When we learned of the community conservancy model in 2007, conflict in South Omo between pastoral communities and conservation agencies was commonplace, especially where homelands and protected areas overlapped. The sources of conflict ranged from conservationist restrictions upon traditional Indigenous resource use, to government agency efforts to resettle whole communities through destruction of villages or the expulsion of residents. The Nyangatom and neighboring tribes could easily still be living with the expectation of worse to come.

But our expectations looked up in 2007. Through First Peoples Worldwide, we learned of the community conservancy model, well-established in Kenya. With support from First Peoples Worldwide, Mursi representatives traveled to Kenya and met with representatives of the Maasai, Rendille and Samburu tribes. Let me note what a departure this was from established practice in conservation. Normally, conservationists either want to recruit we Indigenous Peoples into their own master plan, or they want to evict us altogether from our customary lands – they want to drive out Indigenous Peoples who are protecting the land through traditional ecological knowledge, so that they can protect it through a more "scientific" approach. Research findings continue to debunk the myth of scientific superiority in conservation, but that is not my point.

My point here is that on the visit to Kenya, Indigenous Peoples got to learn from other communities about a model of conservation that worked for them. The Mursi came back and said – "We are going to do that, we don't quite know how. But it's a good thing and we, the Indigenous Peoples on our own customary land, are going to do it." Afterward they contacted the Nyangatom, and we too knew a good thing when they described it to us.

And we have proceeded upon that community commitment ever since. We have been able to hold our own against two concerted attempts to evict us from our customary lands by making them a "protected area." The challenge before us is related in detail in the book *Conservation Refugees*, by Mark Dowie, who dwells on the Mursi experience but also mentions my own Nyangatom people, along with the Suri, Dizi, Kwegu, Bodi and Me'en.

We have done well to survive the challenge so far. The conservationist and government interests behind these eviction processes have not altogether gone away. But again we have been heartened by the government's 2007 Ethiopia Wildlife Proclamation, which aligns the government with a paradigm shift in conservation toward community conservancies.

Advocates for the new paradigm were not mainstream conservationists but Indigenous organizations and human rights NGOs, incensed at mounting evidence of evictions of Indigenous communities living within national parks and reserves. To counter what is generally known as 'science-based conservation,' these advocates invented a new expression: 'rights-based conservation.' Under this emergent new conservation regime, local communities enjoy varying degrees of ownership and responsibility. Communities may plan, propose and manage dedicated Community Wildlife Conservation Areas. They can collaborate with agencies and NGOs in managing other protected area categories. They may be paid for their labors.

But two great obstacles remain. One is the refusal of old guard governments and their allies to abandon the option of resettling communities from “core conservation areas.” Though the new paradigm insists that resettlement will be voluntary and consensual, it seldom offers any convincing alternative formula for reaching consensus.

The second obstacle to rights-based conservation under the new paradigm is funding, for no widespread mechanism has been established to support community initiatives. Community trust funds tend to go unfunded; also absent are agreed-upon provisions for supporting in-community capacity-building in stewardship that are equivalent to those institutional options catering to conventional protected area managers and technicians.

The Indigenous community conservancy, collaborative management initiative under development in South Omo, however, presents a model of both conflict avoidance and economic development through land management. We have come to recognize the potential of pastoral communities in our region to prevent conflict between rival traditional neighbors in the course of negotiating community conservation areas. In brief, to join the community conservancy co-management program is to abdicate violence. Having witnessed this effect in the Kenya community conservancies, the Mursi of our region have already embarked upon their own conflict prevention process, and the rival Bodi have agreed to join. The Mursi unilaterally imposed a hunting ban throughout their territory, half of which overlies half of Mago Park, a protected area in South Omo. They then proceeded to persuade the Bodi to join their conservation initiative. The principle of compatibility seen here is site-specific and agile; it opens up debate and offers resolution based on Indigenous assertion of their rights within their own homelands, while respecting the broader necessity of protecting biodiversity through conservation.

Sustainable economic development through land management is within the grasp of an Indigenous community conservancy in Ethiopia. The rights-based paradigm in conservation recognizes that land-based communities are well-placed to monitor illegal hunting and logging. It offers communities the chance to obtain their own sports hunting or timber extraction concessions, in return for their surveillance of safari outfits for compliance with game quotas, or of loggers for compliance with timber extraction quotas.

Land-based communities in conservation areas are also well-placed to make distinct contributions to threat response, threat anticipation and threat avoidance, based on their local knowledge. And finally, Indigenous protection of their customary lands, as we’re seeing in Mursiland for instance, leads to flourishing wildlife and other biodiversity, with lucrative consequences for tourism and ecotourism revenue.

The Indigenous communities of South Omo are engaged in the process of establishing a community conservancy that will protect biodiversity, produce revenue for regional peoples, and help stabilize a potential conflict zone next door to Sudan. The government of Ethiopia is engaging in the negotiation process. A network of Indigenous conservancies in South Omo will mark an advance in national security for Ethiopia, Africa, and by extension the United States.

I most sincerely hope that with today’s great hearing as a starting point, the Tom Lantos Human Rights Commission and the United States Congress will see its way to encouraging the Ethiopian government in behalf of Indigenous-controlled community conservancies in South Omo.

But in addition, as we turn toward the more distant future, I respectfully urge the Congress to establish an Indigenous-specific funding mechanism for Indigenous community conservancy projects that meet the criteria of protecting biodiversity, producing sustainable revenue through collaborative land management in poverty-stricken regions, and stabilizing hostilities in potential conflict zones. Such investment would be innovative, effective, and much to the credit of a nation that has taken a leadership role in the struggle against climate change, poverty, and instability. It would also contribute, in time, to the cherished American vision of global Democracy.

But the prospect of an unprecedented funding mechanism requires me to explain the problem with existing funding mechanisms, in this case the United States Agency for International Development. USAID is the one American counterpart of the many European government ministries that channel funding direct into Indigenous causes and Indigenous hands. I rely on my friends at First Peoples Worldwide for this account of USAID.

Much as Americans may cherish the picture of U.S. grain sacks at African crisis sites, all must agree that a much greater sight would be sustainable African communities without a dire need of U.S. assistance. That sight is not yet within view, but we have enough of a track record to know that USAID is not good at innovative solutions to the cycle of poverty. Indeed, USAID is good at promoting the disparity in capacity and funding that afflicts Indigenous Peoples worldwide. It has no policy for dealing with Indigenous Peoples beyond occasionally referencing them as a “target group.” And the only funding USAID provides for Indigenous Peoples is routed through intermediary NGOs or consulting firms.

Under new agency head Rajiv Shah, USAID is trying to reform their approach to international assistance, and we give them every credit for trying.

But reforming an entrenched institution is not easy, and now the USAID operations budget has been cut to the quick, with steeper cuts in store for next year if we can believe the trends we are seeing. Under the best of circumstances, we doubt that USAID would be able to reform itself and correct the problems it has helped to promote – the problems of crisis funding that leave no local capacity in place once the crisis passes.

Under the circumstances, we believe USAID should intervene in times of crisis, along the lines of reform spelled out by Rajiv Shah – a slow approach that leaves capacity in local hands once the crisis fades from conscience and USAID funding is tapped out.

But it is time that Indigenous development – on-the-ground, local development, directed by people who know their own needs and who aren't going anywhere – found a new institutional home within the U.S. federal system of international assistance.

Along with a new institution, a new worldview is also profoundly needed. Despite the millions of dollars in aid and philanthropy poured into relieving the poverty of Indigenous Peoples throughout the world, poverty persists and deepens as land-based cultures erode and spiritual attachments to land and living beings diminish. Many in the philanthropic community and USAID circles explain this persistence of poverty through a lack of Indigenous capacity, which they proceed to address by funding non-Indigenous intermediaries working on behalf of Indigenous Peoples.

A long track record in this regard proves, however, that the challenge lies not in a lack of Indigenous capacity, but in the lack of capacity of donors and funders for adapting their paradigms and practices to the Indigenous context.

But in Africa, Indigenous allies are proving that Indigenous land management can offer powerful protections to biodiversity, as I have mentioned in this testimony. Indigenous land management, guided by traditional ecological knowledge, can protect biodiversity at a fraction the cost of organized conservation, while generating revenue streams through tourism, ecotourism, and environmental monitoring services. In South Omo, we have learned that Indigenous-controlled community conservancies can also produce a peace dividend.

Encouraging and supporting on-the-ground, local Indigenous groups in their land management claims would be a wise priority of Congress. As if the Gibe III dam were not enough, land throughout the continent is being sold to foreign interests, to feed their own citizens, raising the prospect of future food insecurity – with all that may imply for future cycles of conflict and humanitarian crisis in Africa.

Cochairman McGOVERN. Thank you very much. We appreciate you being here. Thank you for sharing your story. It is important for us to hear.

Ms. Currier?

## **STATEMENT OF LAVINIA CURRIER, PRESIDENT OF THE SACHARUNA FOUNDATION**

Ms. CURRIER. Thank you, Mr. Chairman. I am honored to testify before the Tom Lantos Human Rights Commission.

My name is Lavinia Currier, and I am trustee of the Sacharuna Foundation. Our main grant-making priority areas are land and wildlife conservation, indigenous rights in Botswana, Mexico, Canada, and the Central African Republic. The foundation has also supported Tibetan refugees and Tibetan independence.

Since 2004, Sacharuna has made more than \$1 million in grants in wildlife conservation, BaAka pygmy health, training and capacity building in the Dzangha-Sangha region of southwestern Central Africa. Our primary mission there is to promote and sustain the rights and livelihoods of the BaAka people that live in the reserve, in addition to supporting wildlife conservation. In the last 20 years, biologists and anthropologists have come to recognize that conservation of biodiversity is intimately connected to cultural diversity.

I am testifying as a witness today because of my interest in the region of Dzangha-Sangha Park and Reserve, which began in 1999 when I traveled there as a World Wildlife Fund board member; then most recently directed the film "Oka! Amerikee," a fictionalized story of ethnomusicologist Louis Sarno, who has lived with the BaAka for 25 years in Yandoumbe. This film, which was shot entirely in the forest of Dzangha-Sangha and features BaAka actors in lead roles, is the first Central African-U.S. co-production, and it will be released this coming fall.

My testimony is motivated by a deep concern for the BaAka people and a sense of hope and optimism that, with the Government of CAR's ratification of ILO 169, the Indigenous and Tribal Peoples Convention, there is an extraordinary and unprecedented opportunity for the BaAka and other indigenous people in Central Africa to improve their situation.

The BaAka of Dzangha-Sangha are among the last functioning hunter-gatherers on the continent of Africa, indigenous to the Congo Basin, recognized by the ancient Egyptians as the first people of Africa, and named "pygmaios" by the Greeks for their small stature. They are renowned for their profound understanding of the forest, second only in size and importance to the Amazon. As well as being superb naturalists and hunters, I also learned in the process of making the film that they are great storytellers and musicians, as well. They play a call-and-response with the birds and insects of the forest in five-part harmony, something which is really amazing to witness.

Like so many isolated indigenous people, the BaAka and their nomadic way of life is under siege. Extractive industries, such as logging and mining, degrade the forest upon which they depend for sustenance. Their land rights are fragile and overlap with other groups from the timber concessions and their migrant loggers to

conservation groups that protect what used to be traditional game for the BaAka.

As their abilities to subsist from the forest decline, they become increasingly sedentary in villages, where they are economically marginalized and vulnerable to exploitation, where their diet and health has declined, education when it did happen was not useful and is now virtually nonexistent. One of the most immediate threats to their livelihood at present is the bush meat trade, which has become organized and international with poachers coming into the region with heavy weapons.

When I first visited the BaAka in 1999, they told me they generally walked half an hour into the forest to set their nets, where they would be sure to find game like blue duiker, tortoises, porcupine, and so on. Now, they report, they have to travel deep in the forest for a day or more, and even then they are not guaranteed to find meat. How are the BaAka -- small, barefoot men and women, armed with elegant technologies of arrow and spear and net -- to compete with marauding poachers with AK-47s?

Fortunately, in the area of the Dzangha-Sangha Park and Reserve, the forest still stands, the BaAka still live, and the nation-state of Central African Republic, one of the six poorest countries in the world, had the wisdom and courage to validate the indigenous people living within its borders: first, to sign the U.N. Indigenous and Tribal Peoples Convention; and then, last April, to ratify the ILO 169, a binding treaty that covers a wide range of issues, including land rights, access to natural resources, health, education, employment, et cetera.

This treaty's overarching principle is that indigenous and tribal people should be consulted and fully participate in all decision-making processes that concern them. For the BaAka, there are obvious hurdles to overcome, which have been referred to by previous speakers today -- their non-hierarchical social system, fear of reprisal by Bantu neighbors and local authorities, lack of voice for women, et cetera. Nonetheless, this treaty has profound opportunities for the Central African Government, but the government will need outside support to make it a reality.

A committee is being formed now at the highest level of government to draw a roadmap for ILO 169's implementation, but, at present, there are no funds for it to begin its work. International donors, NGOs, and foundations such as Sacharuna should be prepared to help CAR make these ideas real. Some of our recommendations to this committee are in our written testimony in detail.

In the recent past, it was commonly thought by countries such as Central African Republic that indigenous people were an embarrassment to the nation-state. But now the world has come to its senses, to recognize that diversity of culture, like diversity in nature, does not compromise a nation but enriches it.

Thank you.

[The statement of Ms. Currier follows:]

PREPARED STATEMENT OF LAVINIA CURRIER

Testimony  
Of  
Lavinia Currier  
President  
Sacharuna Foundation  
Before

**The Tom Lantos Human Rights Commission  
United States Congress**

**May 12, 2010**

**Introduction**

Thank you for the opportunity to testify before the Tom Lantos Human Rights Commission. I am Lavinia Currier, Trustee of the Sacharuna Foundation. Sacharuna's main grantmaking priority areas are land and wildlife conservation and indigenous rights in Botswana, Mexico, Canada and Central African Republic (CAR). The Foundation has also supported Tibetan refugees and Tibetan independence. Since 2004, Sacharuna has made over \$ 1 million in grants for wildlife conservation, BaAka Pygmy health, training and capacity building in the Dzangha-Sangha region of southern Central African Republic. Our primary mission there is to promote and sustain the rights and livelihoods of the BaAka people that live in the reserve in addition to supporting wildlife conservation. We believe that these objectives are mutually supporting.

I am testifying as a witness today because of my long-standing interest in the region of Dzanga-Sangha, which began in 1999 when I traveled there as a World Wildlife Fund (WWF) Board member 11 years ago, then most recently directing the feature film *Oka!Amerikee*, the fictionalized story of ethno-musicologist Louis Sarno who has lived with the BaAka of Yandoumbe for 25 years. The film will be released theatrically this coming fall as the first Central African/US co-production.

Over several years and many visits camping in the forest with the BaAka hunters I observed their profound understanding of forest ecology, as well as their superb abilities as storytellers and musicians. Making the film I traveled around the region to far-flung villages and encampments to cast BaAka in lead roles, training the actors in theater games and confidence-building exercises, and interacting with village elders on behalf of the film in order to secure locations, actors, and permission to tell their story. Producing the film also involved negotiations with the Central African Government, from the highest levels of the Ministries to the local gendarmerie, and every agency in between.

My testimony today will focus on our concerns about the BaAka people and recent positive developments such as the ratification of ILO 169 that may improve the BaAka and other indigenous people's situation in the CAR.

**II. Background Context on Central African Republic**

The Central African Republic is a land locked country about the size of Texas and has a population of 4.5 million people. The per capita income is \$750 (US) with about 67% of the population living in poverty. According to the World Bank, the agricultural sector (cotton, coffee, tobacco, timber) generates more than half of the country's gross domestic product and 80% of the population is in subsistence agriculture. Timber and Diamond industries account for a combined 56% of export earnings. CAR's natural resources include diamonds, uranium, timber, gold, and oil. While CAR is rich in natural resources, it remains one of the world's poorest and least developed countries due to its land locked position, weak institutions, economic mismanagement, corruption, unskilled work force, and an unstable security situation.

CAR gained its independence in 1960, but that was followed by three decades of mostly military governments. In 1993, civilian rule was established which lasted until March of 2003 when General President General Francois Bozize led a successful military coup, and established a transitional government. General Bozize has remained in power since that time, and was recently re-elected in February 2011.

CAR has also been affected by influx of over 100,000 refugees from Chad and Sudan, as well as three rebel groups in the north that have taken up arms against the government. While the current government has negotiated a peace agreement with rebels there are still pockets of lawlessness in eastern and northern parts of CAR.

According to the World Bank, this instability has had severe humanitarian consequences, including over 1 million people affected by violence, 295,000 persons displaced, food insecurity, chronic malnutrition and a decimated health infrastructure.<sup>3</sup>

Because of this instability, donor attention and NGO activities have been mostly focused in the North, as the southwest region of the Dzanga-Sangha Protected area complex (park and reserve) where the BaAka Pygmies live is considered relatively secure.

**III. Background on BaAka Pygmies in Dzanga-Sangha in CAR**

Dzanga-Sangha complex in southwest CAR, which is co-managed by World Wildlife Fund and the Government of CAR (GCAR), is divided into three management areas including two national park areas, and the Dzangha Sangha Dense Forest Special Reserve. While the parks are strictly protected from all forms of exploitation except tourism and research, the reserve is a mixed use area that allows community hunting and commercial logging. The Special Reserve has been subject to commercial logging activities for over 25 years through a series of boom and bust cycles of different companies coming and going from the region. A combination of unsustainable practices, no regulatory control and poor business practices has led to threats to the BaAka people's livelihoods in the forest.

Currently there are two groups that the GCAR recognizes as indigenous. These include the Mbororo in the north and the pygmies in the southern rainforest districts of Ombella-M'Poko, Lobaye, Mambere-Kadei and Sangha-Mbaere. This pygmy group is referred to by the GCAR as Aka or BaAka. Our testimony mainly concerns the BaAka Pygmies living in the Dzanga-Sangha Protected reserve.<sup>4</sup> The BaAka live in series of seven villages in the Special Reserve and it is estimated there are

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<sup>3</sup> The World Bank, Emergency Project Paper on a Proposed Grant to the CAR for Support to Vulnerable Groups Community Development Project, March 17, 2009, page 4.  
<sup>4</sup> See Mathamale, Jean Jacques, Saint Jerome Sitamon, et al, The Situation of Forest Peoples of the Central African Republic, Rainforest Foundation, 2009.

around 5,000 BaAka people in and near the reserve.<sup>5</sup> The BaAka are indigenous to the Congo Basin generally and are considered to be ancient nomadic dwellers of the region. Traditionally hunter-gatherers, over time the BaAka have also become subsistence farmers and adopted a more sedentary way of life.

The BaAka are renowned for their exceptional knowledge of the forest and its animals, insects and medicinal plants. They collect honey from eight different bee species by climbing upward to over 100 feet into the forest canopy. BaAka rank among the world's most skilled animal trackers. Their heightened senses can detect subtle animal tracks even in dense forest foliage. They hunt with large nets while whistling to each other like birds to report their locations. Their small body size enables them to move about the forest and to dissipate their body heat more efficiently.

Most BaAka spend part of the year near a village in the Special Reserve where they practice slash and burn agriculture and trade their agricultural and forest products, bush meat and honey for produce, and other goods. Periodically they return to the forest to gather and hunt, and build huts sheltered by the tree canopy for a life style with less disease, cleaner water, fewer disputes with Bantu neighbors, and no need for money. Entire families can fit inside their waist-high beehive huts fashioned out of bent branches covered with large leaves and daubed with mud. A distinctive mark of beauty in BaAka appearance is the careful chipping of their teeth into pointed triangle shapes.

Music is highly-valued in BaAka life. Their frequent call-and-response songs harmonize with the sounds of birds, crickets and cicadas and other forest life around them. Whole communities of BaAka will sing and dance in chorus during communal ceremonies. The complexity and profundity of their music arise from their amazing ability to reflect the complex sounds of the forest around them. Their rich-voiced singing is based on pentatonic five-part harmonies organized in 64-beat cycles.

The BaAka speak the Aka language, along with the language of whichever of the various Bantu peoples they live among. In 2003, UNESCO designated their oral traditions as a *Masterpiece of an Intangible Heritage of Humanity*.

**Issues of Concern:** The BaAka face serious problems related to their traditions, cultural identity, health, welfare and livelihoods. These include land tenure or rights over traditional hunting areas, economic marginalization/sedentary lifestyle, the bushmeat trade, education, health care, and extractive industries such as logging and mining.

**Land and Hunting Rights** are key to the continued viability of the BaAka's cultural survival, and eventually their physical survival as well depends on their access to an intact forest and the game and forest products upon which they depend. When the Park and Reserve at Dzanga Sangha were established 3 decades ago, the BaAka were denied access to some of their important food sources (elephants and primates) and hunting areas. However, a traditional hunting area was established at the same time for the BaAka which has now become a communal hunting zone.

BaAka cannot be ensured the exclusive use of the now communal hunting areas because of the historic patterns of in-migration of ethnic groups and the overlapping use of lands in CAR generally. In the case of Dzanga Sangha Reserve, the BaAka arrived in the area hundreds of years ago at the same time as the Sangha-Sangha people, who fish the Sangha River. Further complicating the situation, the arrival of commercial logging in the area brought an influx of Bantu (or Bilo), coming from all over CAR, who now number about 4,000.

The logging industry, being marginal at best in such a remote region, has created a boom and bust cycle. It has been defunct for 8 years in Bayanga (the main town in the area), throwing the logger immigrants out of work and making them dependent on resources from the same hunting reserve as the BaAka. Enforcement of the "traditional" hunting has been difficult, even despite the presence of park guards who are Bantu and often related to the poachers.

**Economic viability/relationship between BaAka and Bantu:**

The relationship between the BaAka and the local Bantu appears to be a steadily degenerating one. Originally arguably a symbiotic relationship where the nomadic BaAka would trade bushmeat and forest products to the Bantu for metal implements and other manufactured goods, the Bantu have steadily dominated the less aggressive BaAka. The BaAka have become like vassals, hunting for the Bantu, often with illegal weapons, working in their manioc fields for wages as low as 3 cigarettes daily, and even conducting their magic rituals for them as diviners. A Bantu farmer commonly refers to "his" BaAka, and even rents their labor to other farmers.

As the forest has been diminished through logging and increased bushmeat trade, the BaAka have become more and more sedentary and thereby more dependent on the villagers for economic survival. In spending more time in the villages, besides the diminishment of their independence, they have become consistently less healthy. Unused to attending to sanitary concerns of a sedentary life, they suffer from dirty latrines, parasites, and addiction to the alcohol that the villagers supply them.

It is now more difficult for the BaAka to retreat to the forest, so they are also prey to the continual threats and bullying of local authorities, who often use them as scapegoats for poaching and sorceries, even if the schemes were commissioned by Bantus.

The employment of 40 or so trackers in the Park by the Dzanga-Sangha Park and Reserve has been of considerable benefit to the local BaAka, as a source of income, status in the community, and access to the albeit limited tourist trade.

**Bushmeat:** Conflicts over hunting and bushmeat are increasing as sources of meat become scarce, and trade in bushmeat has become organized and international, with poachers coming in to the region with heavy weapons, in addition to hunters from the in-migrant population of Bayanga.

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<sup>5</sup> Estimates vary. Forest Peoples Programme estimates 15,000 BaAka in the Congo Basin.

The designated traditional hunting areas within the Dzanga Sangha Reserve, originally intended for use by BaAka and Sangha-sangha, are now shared with Bantu villagers who originally came to the Bayanga to work in the sawmill or logging operations. Poaching with guns and metal snares has increased steadily in the last 12 years. For example, the BaAka in the village of Yandoumbe reported that many years earlier they had to travel 30 minutes to reach a forest area where they could be sure to find small game for dinner, such as porcupine, blue duiker. Now they must travel deep into the forest for half a day or more and even then are not guaranteed to find meat. This is due to the large numbers of immigrants in the area and the increasingly commercialized nature of the bushmeat trade.

The park guards are focused mostly on anti-poaching of the elephants and gorillas, and smaller animals vital to the BaAka's survival in the forest are being killed in unsustainable numbers.

**Education:** Education has been virtually non-existent for the BaAka of the region outside the Christian missionary organizations whose ideology often conflicts with BaAka animism and cultural traditions of song and dance. State-sponsored education for the logging families has been of poor quality and intermittent, and almost never has included girls as students.

Furthermore, combining BaAka and Bantu children in the same school has been problematic for the BaAka for several reasons: the Bantu dominate the meeker BaAka; the scheduled school year prevents the children from accompanying their parents on hunting/gathering excursions into the forest, thereby depriving them of learning important cultural practices; and the curriculum is not in any way adapted for their needs or beliefs. At the same time, with increasingly sedentary lifestyle and exposure to village culture, BaAka children are losing traditional knowledge and culture.

**Health Care:** As described above, the increasingly sedentary pattern of the BaAka's lifestyle and the ensuing increased interaction with outside immigrants has increased their health issues, from poor hygiene at their villages resulting in parasites, tuberculosis, and alcoholism, as well as the ever present threat of contracting HIV-Aids. The village diet of manioc is far less nutritious than the diverse forest meats, fruits and tubers that they used to harvest. At the same time, they are losing their traditional knowledge of medicinal and edible plants from the forest.

The Project has over the past decades provided some access to health care, establishing a clinic close to their village of Yandoumbe and even supplying a mobile doctor who traveled by motorbike to the villages. At present, the diseases plaguing the BaAka are common treatable ones, and much progress has been made already on digging wells for safe drinking water.

#### **Extractive Industries: Logging and Mining**

As cited above, extractive industries have had a largely destructive impact on the BaAka of the region. When the forests are logged, the animals the BaAka depend on are diminished, and the immigrant population compete for what remains. When the BaAka do get jobs in the logging industry they are of the least paid and most dangerous categories, such as climbing the tall Sapelli trees.

#### **V. International Legal context for Indigenous Rights in CAR**

On the domestic side, the CAR is in the process of adopting new legislation on forests and human rights that could potentially recognize indigenous rights. Previously a forest code that was signed in October 2008 was the first legislation that actually referred to "indigenous people" as well as containing language on free, prior and informed consent.

We congratulate the GCAR for making efforts on the national front. However the GCAR will now have to ensure that the national legislation conforms with its treaty obligations.

In terms of International Treaties that relate to indigenous rights, the GCAR has signed (1992) and ratified (1995) the Convention on Biological Diversity. The Convention on Biological Diversity contains a critical article 8 (J) which calls on states to:

“ respect, preserve and maintain knowledge, innovations, and practices of indigenous and local communities embodying traditional lifestyles, relevant to conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge [ ] and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.”

The GCAR also signed the UN Declaration on Indigenous Rights which is non-binding, but highly important in terms of the language and boosting the status of indigenous peoples.

Even more impressive, in April 2010, the GCAR ratified ILO 169. This premier indigenous rights treaty came into force in 1991, and has only been ratified by 22 countries. <sup>6</sup>CAR is the first African Country *ever* to ratify this treaty which we believe this will set a strong precedent in Central Africa and Africa wide. **We strongly congratulate the GCAR on this courageous move and encourage the new government to treat this commitment with a high priority.**

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<sup>6</sup> CAR has also ratified the Universal Declaration on Human Rights, the African Charter on Human and People Rights, and the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression.

The ILO 169 Convention covers a wide range of issues, including land rights, access to natural resources, health, education, vocational training, conditions of employment and contacts across borders. Its overarching principle is that indigenous and tribal peoples should be consulted and fully participant at all levels of decision-making processes that concern them.<sup>7</sup>

**Some of the critically articles to summarize include:**

- ✓ **Article 5** recognizes the social, cultural, religious and spiritual values and practices of indigenous people and requires that the integrity, practices and institutions of these peoples shall be respected.
- ✓ **Article 6** requires consultation with indigenous Peoples concerned through appropriate procedures and processes, and in particular through representative's institutions whenever consideration is being given to legislative or administrative measures which directly affect them. Articles 6 also requires government to establish means by which indigenous people can freely participate in all levels of decision making regarding programs that affect them.
- ✓ **Article 7** gives IPs the rights to decide their own priorities, and exercise control over their own economic, social and cultural development and also stipulates improvement of the conditions of life and work and levels of health and education with participation and cooperation. It also requires governments to take measures to protect and preserve the territories that IPs inhabits.
- ✓ **Article 8** recognizes the right of IPs to retain their own custom and institutions.
- ✓ **Articles 13-16** are critically important covenants regarding Indigenous land and land rights.
- ✓ **Article 14** recognizes the "rights of ownership and possession" of IPs land which they traditionally occupy. It stipulates that shall be taken to safeguard the right people to use the land not exclusively occupied by them but to which they have had access for their subsistence and traditional activities.
- ✓ **Article 15** stipulates the rights of IPs to not only use natural resources, but to participate in the use, management and conservation of these resources.
- ✓ **Article 25** states that governments shall ensure adequate health services are available to IPs and that resources will be provided to allows the IPs the design and deliver these services under their own control. Health services should also be community based.
- ✓ **Article 21-31** cover IP education and calls for programme and services to be delivered to IPs and to be developed and implemented in cooperation with the people themselves to address their special needs. Education should incorporate their histories, knowledge, value systems and their social, economic, and cultural aspirations. Governments should also the rights of IPs to establish their own institutions and facilities.

Finally ILO 169 also provides that the governmental authority responsible for the convention should ensure that agencies or other appropriate mechanisms exist to administer the programmes, and shall ensure that they have the resources necessary to fulfill the functions. *It calls for programs to include: planning, coordination, execution and evaluation in cooperation with IPs.*

The treaty also calls for proposing legislation and other measures to ensure there is oversight of the measures taken to implement the convention. The implementation of the Convention will be an endeavor that will require not only resources but also technical expertise, experience and considerable efforts. The Central African Republic is now expected to develop a coordinated and unprecedented system and action plan to protect the rights of its peoples and to establish appropriate and effective mechanisms for their consultation and full participation.

For an already struggling Central African country, the implementation of ILO 169 is certainly a tall order. However we have confidence that CAR government authorities are taking their ILO commitment seriously.

**V. Activities in CAR since Ratification of ILO 169**

In November 2010, the GCAR, ILO and local NGOs convened an ILO workshop in Bangui. The meeting was attended by CAR Government officials, including ministries, members of parliament and the judiciary, as well as indigenous peoples' representatives from inside CAR, Democratic Republic of Congo, Cameroon, Rwanda, Burundi, Gabon. Also attending were UN agencies, bilateral and multilateral and representatives of the African commission on Human and Peoples rights. The level of interest far exceeded the expected number of attendance and the last day close to 100 people attended.<sup>8</sup>

The purpose of the workshop was to:

- ✓ Consult the various stakeholders on the activities that need to be undertaken;
- ✓ Initiate a dialogue between stakeholders and GCAR on an action plan for ILO 169 and of the UN Declaration on Human Rights.

Challenges identified by the various stakeholders included:

- ✓ The lack of awareness of indigenous rights promoted by the convention
- ✓ The semi-nomadic nature of hunter gather indigenous people in CAR would cause a lack of recognition of land rights or land tenure.

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<sup>7</sup> International Labor Organization, C169 Indigenous and Tribal Peoples Convention, 1989, view at [www.ilo.org](http://www.ilo.org)

<sup>8</sup> Report about the ILO 169 workshop was submitted to Sacharuna by Mr. Jerome Sitamon, of the CAR NGO Maison de l'Enfant el de la Femme Pygmees.

- ✓ The need to change attitudes (which are often negative) towards indigenous people in the country;
- ✓ Promoting indigenous representation in various institutions;
- ✓ Reforming existing legislation to come into line with the ILO convention

While there was both praise and criticism of the workshop, it represents a first step in a long process.

The second activity is the formation of a Committee under the auspices of the CAR High Commissioner for Human Rights and Good Governance. The High Commissioner is forming a committee of experts, in the areas of culture, justice and governance. The mandate is to create a “road map” for implementing the treaty. Due to the recent elections and the new governments’ just taking office, as well as lack of funds, the Committee currently has no resources to conduct its activities.

#### VI. Recommendations:

##### Recommendations for GCAR Action Pursuant to implementation of ILO 169 Treaty:

- ✓ We commend the GCAR for forming a high level ILO 169 Committee (Reporting to High Commissioner for Human Rights) to provide oversight on implementation of these important articles of ILO 169. *In the spirit and letter of the treaty we strongly suggest that the process for identifying priorities be community based, participatory, inclusive, and use prior informed consent for all indigenous communities in the CAR.*
- ✓ As a preliminary measure, it will be very important to have an education piece, as most indigenous populations in the CAR will not know of or understand their rights under ILO 169. This will require workshops and informational seminars in the indigenous communities instead of city-based workshops.
- ✓ The highest priority should be given the concerns, issues, and priorities of the indigenous communities as expressed by their own people. Indigenous peoples in CAR must be given the opportunity to exercise control over their lives, resources and livelihoods. This should be the overarching principle of the Committee’s work.
- ✓ The ILO 169 Committee must have indigenous representatives from within CAR. It may be advantageous for CAR to include a person from the African Indigenous network. Non-indigenous members of the committee should be highly knowledgeable regarding indigenous rights issues and international agreements such as ILO 169.
- ✓ In addition to the indigenous component, composition of the committee should include government, NGOs, and one or 2 donor agencies. We also suggest representatives from the International Scientific Community who have worked for decades in the region in disciplines combining Indigenous and conservation communities.
- ✓ We hope the CAR will consider the following candidates for the committee:
  - Jean-Bernard Yarrisem, the Liaison Officer for WWF based in Bangui.
  - Serge Bahuchet or Alain Epelboin of France,
  - Anna Kretsinger of UK
  - Louis Sarno of CAR-Bayanga
  - Marcus Colchester, Forest People Program
- ✓ The Committee should commence a review of CAR codes and legislation dealing with forests, indigenous peoples and other relevant issues in order to ensure that its national legislation is in line with ILO 169 and its other international treaty commitments.

##### Recommendations specific to the BaAka, and the Sangha-Sangha peoples

- ✓ **BaAka Land, Resource and Hunting Rights:** Based on the expressed desire of the people in Dzanga-Sangha and other areas, we recommend an aggressive movement to a system of co-management with the indigenous residents in all conservation projects and regions. This will require a high degree of self-education and delicacy by the CAR government and fundamental changes in education of the BaAka, as their social system is non-hierarchical and non-representational.
- ✓ **Economic Viability:** Under this system of co-management, in our view the indigenous people’s economic standing should be more closely tied to the tourism revenues of the Park. At present in the Dzanga Sangha Park, 90% of all revenues are intended to be assigned “locally”, but the system of assigning those revenues has not functioned as intended and is unclear and not participatory. There should be incentives in place for the communities to make their livelihood from wildlife conservation, and for the conservation groups to include the indigenous peoples as stakeholders. One model for this on the African Continent is the LIFE or Namibian Natural Conservation Project, funded by USAID, where indigenous people run and benefit in the conservation effort.
- ✓ **Bushmeat Trade:** There must be a renewed international effort to eliminate poaching if the BaAka’s traditional lifestyle is to continue. Based on their own views and self-expressed aspirations, we recommend that the BaAka and other traditional peoples such as the Sangha-Sangha be given more jobs in the enforcement of the anti-poaching. These peoples are often victims of violence and incarceration from local officials and need to be provided greater protection. Generally, the justice system of CAR must be improved so that important poachers are punished and not automatically released to do more poaching.
- ✓ **Education/Health Care:** As CAR is in a group of the 6 poorest countries in the world, any efforts on behalf of indigenous peoples, including the BaAka, have to be funded through international donors. In order for an educational effort not to further assimilation of the indigenous BaAka into the dominant Bantu population, education must be designed and undertaken in the most participatory way possible. Given that functional literacy is at least a generation away from most of today’s children, a system of oral education or expression through the creation of a radio station in Bayanga where BaAka and all local groups can express themselves may be a useful and inexpensive step towards self-determination.

In addition to funding education, international donors should be encouraged to put additional resources into mobile health care services that also take into account the BaAka's semi-nomadic lifestyle. The strengthening of the health clinics in Bayanga will also help attract eco-tourists as an alternative to the extractive industries.

- ✓ **Extractive Industries:** We strongly believe that logging and other extractive industries are not compatible with the BaAka's continued hunter-gatherer existence, nor to their livelihoods, for all the reasons discussed above. ***Therefore we urge the CAR government and international donors to develop alternative businesses such as ecotourism and small-wood forest crafts and products after consultation with the affected communities.***
- ✓ **Inclusion of Sangha-Sangha Peoples in ILO 169 Implementation:** There are other traditional people living in the Dzanga Sangha Reserve called the Sangha-Sangha peoples. We recommend that they should be considered indigenous by GCAR for purposes of implementing ILO 169. Not including them could result in local discord.

**C. Resources Needed for Implementing ILO 169:** we strongly urge donors such as the World Bank, African Development Bank, bilateral agencies and United Nations Agencies to make funds available to the GCAR for implementation of ILO 169.

Cochairman McGOVERN. Well, thank you very much.

And I have just been notified I have a vote in the Agriculture Committee, but I have a few minutes. I have some questions. So if they are quick, it is just because I am trying to get as much in as I possibly can here.

Phillemon, let me ask you a question. Has any U.S. Government official, attached to the United States Embassy or otherwise, ever visited you in your home community or taken the initiative to reach out directly to you and get involved with you and your indigenous community on issues of mutual interest?

Mr. LOYELEI. No.

Cochairman McGOVERN. And why not -- do we know why not? It just seems to me that that is something, you know, when -- the story that you just told, you know, is not unique, in some respects, to some of the challenges that indigenous communities deal with all over the world. And it would seem to me that, if there are human rights issues that are arising, that one of the functions of our embassy should be to send somebody into the community to investigate and to help you defend yourself.

But you are saying that they have not, right?

Mr. LOYELEI. Yeah, they have not. Only the BBC television was the one who came, which we really --

Cochairman McGOVERN. I don't think BBC television is on our payroll.

Mr. LOYELEI. But they are the one -- of course, we first saw the place trying to reveal the problem of the community to the international community. Because there has been no one there who came to place. We had been expecting maybe some diplomat to come and see the situation.

Cochairman McGOVERN. Right.

Mr. LOYELEI. So the BBC had to shoot the people talking and then to shoot the international communities that, look, the government didn't say anything and these people are saying like this and the government is talking something different.

Cochairman McGOVERN. But after the BBC highlighted the situation, did any diplomats or anybody come?

Mr. LOYELEI. No.

Cochairman McGOVERN. No. Did you reach out at all and ask for any diplomats to come and to see for themselves?

Mr. LOYELEI. Well, when we were in Ethiopia, you know, we are afraid. If we approach either to U.S. embassy in Ethiopia, there might be some problem.

Cochairman McGOVERN. I appreciate that fact. It just seems to me -- I mean, I appreciate your candor, because that is one of the issues that I think we want -- you know, it goes back to one of the recommendations that Ms. Adamson made. You know, I mean, highlighting some of this stuff in the country report might compel, you know, a more affirmative response by some of our people on the ground.

So thank you very much for that.

Here is another question. Ms. Adamson, you talked about the example set by Kenya with respect to recognizing indigenous communities and anchoring their rights in the constitution. How many others are doing that?

I mean, Ms. Currier, you mentioned some of the stuff that is going on. But, I

mean, is this the beginning of a trend? Or do we --

Ms. ADAMSON. We hope it is. When we look at the trajectory of indigenous rights across the globe, Africa and Asia have been lagging. And so what has happened within Kenya is a remarkable step forward.

There are some countries in South America that have indigenous people mentioned in their constitutions. We have indigenous people mentioned in our Constitution. For the continent of Africa, this is an unprecedented step forward.

Cochairman McGOVERN. And let me ask whoever wants to answer this, or, you know, you all can answer it, I guess. But to the extent that countries like Kenya, you know, recognize indigenous peoples in their constitution, treaties have been signed, agreements have been reached -- you know, I have read some pretty incredible constitutions and treaties that say all wonderful things, but then, when push comes to shove, they are not implemented.

So for those that have -- you know, Kenya put it in its constitution. For those countries that have signed treaties and stuff, I mean, are they -- you know, we sign treaties in the United States that we don't follow. So I am just curious. They signed the agreements; is the follow-through there?

Ms. ADAMSON. I think what we are seeing is that there needs to be assistance. And USAID is in an incredible position to provide democracy-building assistance because there isn't a normative process to implement what is in place.

Our other witness, Mary Simat, was a Maasai from Kenya, and she wanted to speak especially to this -- she is in visa limbo. And she will be here in the next couple of days, and if you have time --

Cochairman McGOVERN. We would be happy to meet her. We would love to meet her.

Ms. ADAMSON. Okay. We will bring her back up to the Hill, then. She was very involved in getting the referendum through and representing indigenous peoples in that whole referendum process. And I think she would be able to tell you in more detail.

But there is a need for some capacity building around it, most definitely.

Cochairman McGOVERN. Let me ask you a question that has been raised on a number of occasions. And that is, how do we reconcile the rights of indigenous peoples with certain traditional practices, such as female genital mutilation or forced child marriage, which are in clear contradiction with human rights?

I mean, we are a human rights commission here, and there always comes that kind of confrontation between, you know, recognizing traditional practices, but some of these traditional practices are bad for women and they are bad for girls and they are, you know -- they are just bad.

So how do we reconcile those dilemmas?

Ms. ADAMSON. I will speak as an indigenous person, myself, in saying that I don't think any society is 100 percent right in some of their practices and some of the values. And I think that indigenous societies are none less perfect than any other society out there. I think there is a tremendous amount to be learned from indigenous peoples, but perfection probably isn't one of them.

And I don't think there is any excuse for not carrying a continual inclusive approach to human rights. And so I think it is a learning process in a lot of this. It is

education, it is learning. And what we have seen is indigenous groups coming together, and the ability in that exchange of stories and lessons is extremely powerful. And there would be other indigenous groups that say, this is not a good practice. And those kind of dialogues are invaluable.

But change is -- we are not living in a static -- we do change, as indigenous societies.

Cochairman McGOVERN. And before I yield to my colleague, Congressman Payne, let me just say, I want to say to you what I said to the previous panel, and that is, you know, we want to be -- and the recommendations that you gave us I think are things that, some of them, we could follow up on.

Ms. ADAMSON. Great.

Cochairman McGOVERN. But we want you to feel free to come to us with some suggestions on how we can be better advocates and, you know, encourage countries to do the right thing.

Obviously, the stuff in Ethiopia is of great concern to us, and we want to work with you on that issue, too. But we also want to make sure that our own government, our embassy, is sensitive to some of the human rights challenges and that, when they happen, that at least we are raising our voice, saying, "This is wrong," at a minimum. And to the extent that we can go and investigate firsthand what is happening, I mean, that is what we have human rights officers for. You know, we should empower our ambassador to go to the head of the country and say, you know, "I see this firsthand."

So I am going to leave to go to my Agriculture Committee hearing, but I am going to yield to Congressman Donald Payne of New Jersey, who probably is the expert on Africa in this Congress and is an unbelievable champion for human rights. He is on the Foreign Affairs Committee. He is the go-to guy.

So I am sorry to leave you, but you get a smarter guy than me here that is going to take over. So I appreciate very much your testimony, your being here. Thank you.

Mr. PAYNE. Well, thank you very much. Thank you for that gracious introduction.

And he is a Member of Congress, so don't believe a word he says.

Let me just say, it is certainly a pleasure to be here. And, as you can see, we have quite a bit on our plate every day, and I, unfortunately, was unable to be here earlier. I was at two other committee hearings before this particular hearing. But I certainly appreciate the testimony from the three witnesses here. I will get an opportunity to go through it more thoroughly as the day goes on, because I might have some follow-up questions that I would like to be in touch with you about.

But I do believe that the question of indigenous people, certainly, is a very, very important issue. And, as you know, there has really, over the course of the years, been a move to attempt to decrease the individual ethnic group's identity. What I mean by that is that we -- I firmly believe that people should continue to be proud of their indigenous heritage. However, by the same token, we find that ethnicity, in many parts of developing countries, because in many instances of scarce resources -- and if you are going to get ahead, your group has to be in control, and you therefore distribute the largesse of being in control to your ethnic group, which is sort of a downside of the pride in ethnicity.

And so, somehow we have to, in my opinion, have a balance between the closeness and the heritage of your ethnicity but also the fact that that should not be the number-one issue and that, as we move into a union, a state, a country, that there has to be sharing of all groups.

And so we find it seems sometimes incongruous to say, well, how can you say let's be proud and keep the traditions going, and then on the other hand you are saying that that tends to be a negative because sometimes it is only inclusive.

I just wonder if anyone has any comments on that.

Ms. ADAMSON. I think you raise a really profound issue in this, but I believe multiculturalism is a living reality, and not just for indigenous peoples but for the globe as a whole. We have to learn for our different societies and ethnic groups to get along.

One of these learning areas, I believe, and some of these solutions can come out of inclusiveness in practices that engage indigenous peoples in decision-making. And I think, as we go forward as a planet, we have to learn to build multicultural democracies. And these are the testing grounds and the ways that we can learn these lessons and begin sharing them.

So I agree that -- I mean, I agree that we have to come together and we have to have a common vision of the future. But I also believe that these differences are going to make us stronger. And making space for these differences is what the lesson needs to be, within a greater vision.

So I think there is a lot to learn in the African continent around multicultural democracies that could teach all of us, actually, Congressman.

Ms. CURRIER. Congressman, in terms of the BaAka, I think their cultural survival is their physical survival. Because, in their case, which is very particular because they are really the lowest people on the totem pole, so to speak, they cannot be assimilated in any dignified or mutually enhancing way. So I think that their cultural integrity is survival for them, in this regard.

Mr. PAYNE. Yeah, we do find that in various countries -- in Somalia, for example, they are an ethnic group that, centuries ago, came up from Central Africa, and they have been marginalized from day one. And we found that -- as a matter of fact, back about 15 years ago or so, I was able to have our immigration authorities grant the opportunity for them to come to the United States, a large, large number from Somalia to the U.S., primarily because of the seemingly total difficulty in having that ethnic group assimilated into the Somali culture. And we do find this problem.

And, of course, we have also seen, for example, in Australia, the terrible experiment with the aborigines, where children were taken from their parents, from their families, and brought into the cities because they -- just almost abducted, because the authorities in Australia felt that aborigines, the way they lived, this was not the way that these children should be brought up, although they were doing well, they were content, they had their own culture and society. But these children were simply taken away and brought to so-called civilization. And it was really a tragic experiment for the aborigines there in Australia.

We do find also that there is -- and I just might ask you, what do you think that we here in the U.S. Congress could do to assist? If you had some real wishes,

what is it that you think we could do?

And I would ask each of you.

Mr. LOYELEI. My name is Phillemon. I came from Ethiopia.

We do have a number of things in -- I am just from the minority group which are really much more marginalized, and they are really to the far east, southern part of Ethiopia. And maybe if anyone happened to be there, maybe you can think, like, okay, these people are really still -- how come the government exists in this country and these people are still living in such a life?

And people living such a life for a long time, and now the government is trying to grab all of their belongings, their lands, their ancestral land. And they are being displaced at all without even informing, and just bring in investor aid from Italy and say, okay, take this kind of plot of land and then just do whatever you want to do here, without prior consent of the community.

So the community were in a dilemma that, what is going on? And they couldn't really get anything because the government only talks with the local leaders who are there and finish all the agreement, whatever kind of agreement they do. And then they now take measures of taking land.

And a few of us who used to be educated and we came by chance to school and not really by permission by our parents, we accidentally go somewhere and then get to learn and learn that how -- I mean, I should fight for the people and find the voice or find the problem of these people heard in the international community so that they can come and see these people, the situation of these people, and give some pressures to the Ethiopian Government.

And also, because the government is benefiting from these people, and these people are not benefiting from the government itself. So these people are just remaining there, and the government trying to, the Government of Ethiopia, trying to get benefit from the soil of these people, and while they are starving from hunger and while they are starving from drought.

And also, the land, the river that they use to cultivate along the Omo riverbank, during the recession after the -- you know, overflowing and then when the river decrease and then they have to cultivate. And now this river doesn't anymore flow as before. And these people are totally now losing all this. And no response from the government.

And the government is bringing all the benefits and food they call the safety net program, I don't know from where. And this program just only for the groups to work for the government, to do what the government wants to do there for its own development, and they give people food. If you won't work, we can just give you food, instead of providing them with water pumps; that you, losing the river, so give you water pump, we want to support you.

And I just would like to say something, maybe, how could we really, the U.S. Congress, could approach the Ethiopian Government, and the Human Rights Commission also could really dig into this problem and send maybe a mission inside to these communities and see the situation, what I am talking here, you know, so that you can talk with the Ethiopian Government. Because we can't talk there in Ethiopian. You can't confront the government; you can't say to the government, "This is not good."

So we are kind of coming out of the Ethiopia and then providing the information to the Human Rights Commission and U.S. Congress so that you become our voice and represent us and go and talk to the Ethiopian Government on what is happening there.

Mr. PAYNE. Thank you.

Ms. ADAMSON. There is, very specifically, Congressman -- Chairman McGovern asked if anyone from the U.S. embassy had been out to visit Phillemon's community, and he had said, no, he had never heard from any. And we had, sort of, three specific recommendations. And one of them was to actually have the annual State Department human rights reports to include specifically a section that would ask, when appropriate, to have a section on indigenous peoples' rights in law and practice within each country and have our embassies maybe do that as a proceeding.

The other thing we would ask was also to look at submitting a request to GAO to audit and report on the human rights status of indigenous peoples in the countries that receive foreign aid.

And the third one was to look at recommending that the Human Rights and International Organizations Subcommittee be assigned legislative jurisdiction for indigenous peoples' concerns and issues.

Mr. PAYNE. Very good. Well, I am sure that the Commission will accept your recommendations and we will have a follow-up for that.

We have had discussions in the past regarding the situation in Ethiopia a number of years ago, and we are somewhat familiar with the situation there. However, the U.S., as you know, has very strong relations with Ethiopia. Several years ago, I had legislation that was critical of the Ethiopian Government in regard to the elections of, I guess it was maybe 1995 or 1997 when 140 people were killed by the military authorities after the elections when the ruling party of Prime Minister Meles lost the election in Addis, as a matter of fact. And the number of deputies increased from about 3 or 4 to about 90 or 100 from the opposition parties, and there was a tremendous amount of pushback from the Prime Minister.

And so we have had a recent report where there supposedly had been improvements in the government's behavior toward indigenous people. But, as you know, the big problem that certainly is addressed moreso is the problem in the Ogoden, where there has been a tremendous suppression of the Ogoden region that is, of course, primarily Somalis. And the OLF has been trying to -- for many years have been in opposition to the government because of the conditions in the Ogoden.

As a matter of fact, I visited a camp in Kenya, the Dadaab camp, where Ogodenese Somali refugees are in this large refugee camp and had the opportunity to interview some of the refugees who had just come across the border into the camp.

So there are certainly problems with the Ethiopian Government that we have raised.

There also is a law that they have passed, which we are trying to look in to, that no NGO can receive more than 10 percent of their funds from outside of the country, which, of course, weakens many of the NGOs. And so we are asking an inquiry into that also, to have our embassy question some of these new laws that have been, you know, introduced and passed in Ethiopia.

But I think those three points are well-taken, and we will -- I am sure

Mr. McGovern will have a follow-up mechanism for them.

Ms. ADAMSON. Also, one of our witnesses got hung up in visa limbo, Mary Simat, a Maasai. And she will make it here, but she will make it a couple days later. So we offered, if you want, we will call your offices and see if you would like to meet with her. She represents the Kenya 2010 new constitution that includes the section on indigenous peoples' rights. She was one of the leaders that worked on the public referendum on that. So we would just extend that invitation.

Mr. PAYNE. Yeah, that is very good. We certainly are very pleased that Kenya has adopted a new constitution. You know, the results of the flawed election where so many people were killed -- and, as a matter of fact, as you know, the International Criminal Court indicted five of their leaders and have gone to The Hague for initial, preliminary hearings. And so we are very concerned and pleased that the constitution has been approved.

But, believe it or not, we had a very strong intervention, I think, in a negative sense, from some of the right-wing conservatives to try to derail the constitution because they felt that the question of women's rights was not what they wanted or what they perceived it was. And, of course, they were totally wrong, because the new constitution did not change anything in that whole area. But they actually had a campaign to try to defeat the constitution because of the so-called right-to-choose and right-to-life provisions. And it was a very strong effort. However, we were able to see that that was overcome and that the people of Kenya approved the constitution in spite of this intervention to derail it on the part of some Members, actually, of Congress and evangelical groups.

So we have watched the constitution very carefully and noticed the changes in the constitution. And we are looking forward to the 2012 elections to be fair and free and, you know, without the tremendous problems that we saw in the last elections.

Ms. ADAMSON. Well, we know our American businesses applauded the Kenyan constitution and said that they felt that this was an indication that Kenya was truly on the right track. General Motors, FedEx, General Electric all came out in great praise of the Kenyan constitution.

Mr. PAYNE. Well, we had some Members of Congress and others go there to try to derail it. Fortunately, they were unable to influence the -- and, as a matter of fact, did try to influence a number of the religious groups and the churches with misinformation. But, once again, I think the fact that most of the leadership supported the new constitution, knew that if they did not have something in place before the 2012 elections, that the same problems that occurred after the last election could occur following the upcoming elections. And that was something that we did everything we could to prevent from happening.

So I think that we are on the right track in Kenya. They have changed substantially their form of government, sort of, actually, patterned after ours. I am not so sure that is the best thing, but anyway. No, seriously, I think that they will really move forward and be able to really have the fair and free elections. And I think Kenya will really move forward.

Of course, as you mentioned, there are problems that countries do have to contend with, like the Maasai, who move throughout borders. And that tends to be sort of an issue of modernity or modern days, as opposed to traditional behaviors, so

that we tend to see it several places. In Sudan, where you have herders versus farmers, the same kind of problems that we had in the U.S. 100 years ago or 150 years ago. So hopefully these -- they have been able to maintain a balance up to now, and we just hope that the tradition can continue to survive even though we are in a modern-day era.

Are there any parting comments that each of you would like to make in conclusion?

Ms. CURRIER. I just wanted to add, in the case of Central African Republic, what the U.S. Congress might do is to reach out and congratulate them on the ratification of the ILO 169, which is, as you know, a tall order for a country like Central Africa. And I think that the gap between the ratification and implementation is maybe larger than it is in other places. So I think some encouragement, in terms of congratulations and funding, would be great.

And, also, something that wasn't mentioned is that USAID has funded some very good programs in Namibia, where indigenous people are in control of their resources, their game parks, their animals, and it has worked quite well. And I think these are models for places like Central Africa and probably other African countries, as well. And I think these should be continued and expanded.

Mr. PAYNE. Sir, do you have any closing remarks you would like to make?

Mr. LOYELEI. Thank you.

Mr. PAYNE. You are fine? Okay.

Ms. ADAMSON. I would just request that you maintain your leadership on this issue and that the committee keep moving forward and keep raising our voice and visibility.

Mr. PAYNE. Very good. Thank you.

Well, let me certainly thank each of you -- and I understand there was a previous panel -- for your testimony.

We are pleased that the CAR is finally coming to some semblance of governance, and a number of elections held this year so far, some even very recent, are moving in the right direction. There will be a total of 16 elections in sub-Saharan African countries this year and maybe another 10 or 12, 8 or 10 next year, very important elections. The Democratic Republic of Congo and Senegal will have elections, and Liberia and Kenya.

And we have had elections this year, as you know, in Cote d'Ivoire, where we felt that there had to be a lot of pressure put on the loser, Gbagbo, to step down, and Outtara, who was deemed the winner, should assume the presidency. And we felt that, if that did not occur, it would send a bad omen for elections upcoming, where presidents who lose elections will determine that they can stay in office, you know.

As a matter of fact, I have not seen a more unified effort on the part of world bodies, as it related to the elections in the Cote d'Ivoire, where the African Union and ECOWAS and IGAD and SADC and the European Union and the U.S. and everyone were on the same page and said that -- and NATO, actually -- that Gbagbo should step down. And, finally, after 6 months of civil strife, he has finally not only stepped down but has been put under arrest for his actions.

So one of the notions that came up was that perhaps we could have a coalition government, which, of course, is sort of the new thing. If you lose the election, you

just say, "Well, let's share," as we saw in Zimbabwe with President Mugabe and Morgan Tsvangirai, and we even saw in Kenya, where they decided to have a shared government. But, in those instances, the former leader tends to maintain control, and it makes a farce of the election.

So we were very determined to ensure that President Gbagbo, former President Gbagbo, in Cote d'Ivoire was unable to remain in control. Because, like I said, with all these other elections coming up, it would send a bad signal to the other countries that, if you lose, just don't leave. You know, that is not what elections are all about.

So we are hoping to see fair and free elections for the remainder of 2011 and those coming up in 2012. And it looks like we are on the right trajectory right now, going in the right direction.

One final thing, though, when you mentioned the Central African Republic, you know, the Lord's Resistance Army and Kony, who has been in that area and throughout parts of Sudan and Chad, has to be stopped. There has to be some way to bring him to justice. And I made the statement just a week ago that, for a person who has terrorized people for over 20 years, there needs to be an effort where we bring in the right kind of -- whatever it takes to bring him to justice. It is a disgrace that he still roams around the central part of Africa.

Well, let me thank each of you again.

And the meeting stands adjourned.

[Whereupon, at 11:45 a.m., the Commission was adjourned.]

# **APPENDIX**

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MATERIAL SUBMITTED FOR THE HEARING RECORD



**Tom Lantos Human Rights Commission (TLHRC)  
Hearing Notice**

**Indigenous Peoples in Africa**

**Thursday, May 12  
10 a.m. – 11:30 p.m.  
2226 Rayburn HOB**

Please join the Tom Lantos Human Rights Commission for a hearing on indigenous peoples in Africa. According to the World Bank, indigenous peoples are among the world's poorest. Within their countries, they show disproportionately high levels of poverty, with even less access to education, health care and employment than other segments of the population. Their plight is especially dire in Africa, where an estimated 17 million, out of a total of 22 million indigenous peoples, are considered poor. Discrimination, the lack of political participation, denial of justice and forced displacement further perpetuates their marginalization.

In this context it is important that indigenous communities and their representatives become active players in the debates that concern them. The lack of adequate legal protections makes them more vulnerable to continuing abuses. While the U.N. Declaration of the Rights of Indigenous Peoples was an important step forward in recognizing the existence of their human rights, the impetus ultimately rests with the state to extend the protections enshrined in the declaration. The adoption of a new constitution in 2010 in Kenya was unprecedented because it explicitly recognizes the country's indigenous groups and anchors their rights.

This hearing will address the human rights situation of indigenous peoples on the African continent, with a particular focus on Kenya and Ethiopia. It will explore ways to engage indigenous peoples more directly and identify what particular roles, given their specific cultures, traditions and expertise they can play with respect to economic development.

**To discuss these issues we welcome the following witnesses:**

**Panel I:**

- Sharon Cromer, senior deputy assistant administrator for sub-Saharan Africa, U.S. Agency for International Development

**Panel II:**

- Rebecca Adamson, president and founder of First Peoples Worldwide
- Phillemon Nakali Loyelei, representative, Nyangatom Tribe (Ethiopia)
- Lavinia Currier, president, Sacharuna Foundation

If you have any questions, please contact Lars de Gier (Rep. McGovern) or Gary Oba (Rep. Wolf) at 202-225-3599.

James P. McGovern  
Member of Congress

Frank R. Wolf  
Member of Congress

Co-Chair, TLHRC

Co-Chair, TLHRC

**Testimony Submitted for the Record by Peter Poole**

**Becoming Contenders:  
Indigenous Community Conservancies in Africa**

Testimony to the Tom Lantos  
Human Rights Commisison Hearing:

**Indigenous Peoples in Africa**

Peter Poole, PhD

May 12 2011

Local Earth Observation  
Hudson, Quebec

## Becoming Contenders: Indigenous Community Conservancies in Africa

This testimony compares two strategies applied by conservation organisations at the interface between indigenous communities and protected areas: one based upon exclusion; the other on co-existence. Both began as top-down initiatives. One, typified by Integrated Conservation and Development Projects, was introduced by global conservation NGO's and focused upon securing new livelihoods for communities either expelled from or denied access to the protected areas the NGO's had introduced. The other, initiated by wildlife management agencies in Africa, based on co-existence, was also focused on livelihood but only when coupled to a measured transfer of authority and responsibility. The record shows that the greater that transfer, the greater the success. The top-down process that started with CAMPFIRE was well proven by the late 1990's and is now shifting into bottom-up mode, scaling up via networks for sharing and collective action which evolved in Africa but resonate with many similar indigenous stewardship initiatives and networks throughout the world

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The Mursi, Bodi and Suri Stewardship Initiative

Community Hunting Bans

Concluding Points

*It is commonly accepted that 70-80% of wildlife in Kenya lives outside formal protected areas. The Kenya Wildlife Service lacks the funds to run the existing system, let alone expand it. Many of the community conservancies adjoining parks and reserves are run by people whose parents had been evicted from those protected areas in the 1970's. While the national park estate remains frozen in time, the number of community conservancies steadily increases. Kenya's main hope for protecting that 75% of wildlife now rests with communities who had once been evicted from protected areas.*

## Marketing the Concept: Integrated Development Conservation Projects

ICDP's came into vogue in the late 1980's as a vehicle for reconciling conflicts between people and protected areas. As they began to fall out of fashion in the early 1990's, one programme manager allowed that "Establishing ICDP's that actually work has proven to be rather more challenging than marketing the concept and raising the funds." (Hughes et al 2001).

The concept had evolved from an earlier WWF project: the Wildlife and Human Needs Programme (WHNP) an innovative attempt to address people vs. parks issues by supporting the conservation projects of land-based communities conservation projects.

But hardcore conservationists within WWF disapproved of the WHNP; supporting community stewardship projects *for their own sake* was not part of the mission statement. This in-house strife may explain some of the curious asymmetries within ICDP's.

Although unproven, the concept was widely accepted as a formula for resolving conflicts between communities and protected areas. ICDP's were designed to deal with one dominant scenario: an exclusive protected area surrounded by 'buffer zone' in which approved compatible and sustainable livelihood practices would be allowed or introduced. The other part of the scenario, how the people in the buffer zones came to be there, is ignored: whether original residents or communities evicted from the buffered PA, they become 'locals'.

One inherent liability of ICDP's as conceived by the WWF, was the insistence that they were ultimately about biodiversity conservation as the final arbiter, to which the development function was subordinated. Difficult grounds for achieving 'integration'. "Local people and their livelihood practices, rather than 'external factors', comprise the most important threat to the biodiversity resources of the area in question." (Wells 2001).

The local people in question are those living in the buffer zones, and who had either been evicted from the adjacent protected area or had been denied access to their traditional resources within it.

The driving premise of ICDP's is based on the compensation principle. This can take the form of cash payments, or parcels of similar land or capacity-building to steer communities away from traditional resource-based economies. This in turn may take two directions. One, to obtain 'conservation revenues' from park employment or related tourism enterprises. The other towards land uses, such as agro-forestry or fish ponds deemed to be compatible with the biodiversity conservation criterion and suitable practices for dedicated buffer zones around PA's.

This economic benefit proposition certainly does hold true but is only half of the whole truth. Above all, earlier ICDP's contrived to ignore the whole question of secure tenure: a sure recipe for failure. They resolutely refused to countenance any semblance of tenure or community control of the projects, even in the language. ICDP practitioners taking care to avoid loaded terms such as homeland, indigenous, customary tenure, ancestral territory; all have all been subsumed under "local".

## CAMPFIRE - A Beacon Programme

The Communal Areas Management Programme for Indigenous Resources (CAMPFIRE) originated in Zimbabwe and was later emulated by ADMARE in Zambia and other expressions of 'Community-Based Natural Resource Management' (CBNRM) throughout Eastern and southern Africa. The enabling legislation for CAMPFIRE was the Zimbabwe Wild Life Conservation Act of 1960, which opened the door to the sustainable economic use of wildlife. At the time, these uses were largely confined to private game ranches. These enterprises proved an economic model, that wildlife populations in relatively small areas could be managed profitably. Between 1989 and 1993 the number of wards participating in CAMPFIRE rose from 16 to 70, households from 7,861 to 68,798, individual beneficiaries from 55K to 480K.

Like ICDP's these CBNRM projects were about enabling communities to generate conservation revenues from wildlife related enterprises, which in turn deliver conservation benefits. Unlike ICDP's, CAMPFIRE and the like entailed a significant degree of devolution, of authority over wildlife management, to the communities.

One of the critical outcomes of Campfire was the set of principles by which the programme was managed. In the initial stages of Campfire, and despite the legislative weaknesses that later allowed slippage, a strong and gentlemanly commitment to these principles ensured that the amount of revenues used at community level increased steadily. It was the justice, economic and institutional sophistication embedded in these principles, and the great hope and vigour that it gave communities, that propelled Campfire into the international limelight. It was also propelled by the powerful devolutionary impulse associated with these principles, and the remarkable consequences of entrusting communities with responsibility.

Several sets of overlapping theories come together in southern Africa's CBNRM philosophy. The first is concerned with empowerment, the second with organisational development and democratisation, and the third with market and pricing theory. Progress, where it has been made, has also been underpinned by sensible and liberalised economic policies, and a sound sense of ecological function. Where the macro-political environment has reneged on these principles, as in Zimbabwe, progress has reversed. The southern African experience suggests that empowerment consists of three primary components: that communities have the rights:

To retain the full benefits of their wildlife

To sell their wildlife to best advantage

To manage their wildlife, including the selling of quotas or

tourism joint ventures and the design of concession areas

In addition to formal rights, communities need to be aware and convinced of these rights, and to have the capacity to take advantage of them. This is where capacity building comes in. Capacity building is a necessary complement to enable communities to take advantage of these rights, and is invaluable for strengthening them. *However, in some cases implementing agencies have been unable to acquire rights for communities, and have spent a great deal of money on the assumption that capacity building will eventually bring about devolution.* Source Child, 2003

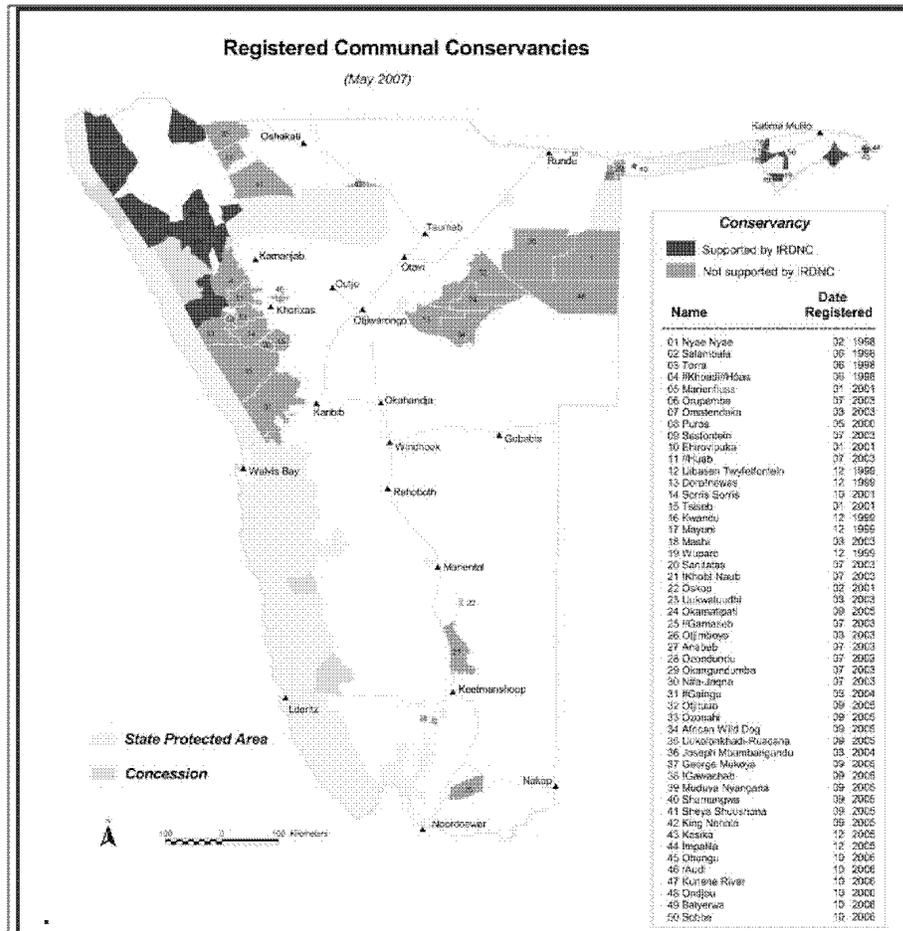
### Namibia: Integrated Rural Development and Nature Conservation (IRDNC)

IRDNC is a field-based NGO and registered trust. It evolved out of a pioneering partnership with community leaders in the early 1980s... The community game guard system - whereby local people were appointed by and responsible to their traditional leaders - was initiated in 1983...At independence the new Namibian Government embraced the community-based conservation model to democratise discriminatory aspects of the conservation legislation. An intensive consultation process by the Ministry of Environment and Tourism, with IRDNC and other partners, in five communal areas, gave communities who lived with wildlife the opportunity to have an input into a new policy. **In 1996 communal area dwellers received the same legal rights as freehold farmers through conservancies.** Thus IRDNC's focus changed from implementing community-based projects to providing a technical, logistic and financial support structure for communities themselves to implement conservation and development.

Conservancies are self-defined common property management and social units. These unfenced multiple use areas are zoned by members for their livelihood needs, including crop and livestock farming, mixed wild and domestic animal grazing and exclusive wildlife and tourism. In return for responsible management of wildlife, government gives a conservancy the rights over its consumptive and non-consumptive use. Conservancy members (share-holders) are required to elect a representative committee (board of directors) to manage natural resources and equitably distribute income derived from tourism and hunting. Most conservancies employ game guards, field officers and community activators. By the end of 2007, 50 communal area conservancies had been gazetted and a further 25 communities across the country were in the process of meeting the requirements for registration. Over 118,000 km<sup>2</sup> of land, incorporating more than 220,000 people, are currently in the national conservancy program. Wildlife numbers have continued to increase in the Kunene Region which has become a major eco-tourism destination. Caprivi's wildlife is also recovering and Community-based Natural Resource Management has started contributing significant income to rural communities.

Source: [www.irdnc.org.na](http://www.irdnc.org.na)

The first conservancy Nyae Nyae evolved from the Nyae Nyae Farmers Cooperative (and later, Foundation) set up in 1986 by the anthropologist and film-maker, John Marshall. The focus then, was ICDP-like; upon developing alternative livelihood for communities who had lost most of their lands. This proved extremely difficult and in 1994, the foundation was, somewhat controversially, effectively taken over by the WWF-US. The focus then shifted radically; away from agriculture and towards generating conservation revenues - as a community conservancy. The Nyae Nyae Conservancy was formally declared in 1998 and support from the WWF and USAID continued long enough for the conservancy network to become firmly established. It is arguable that the success of the Namibia conservancy network was to a degree based upon the absence of the standard ICDP requirement: that communities must pose a threat to the biodiversity in order to qualify for support.



As Brian Child (2003) pointed out, devolution is the key to success in community-driven stewardship, on the ground not just on paper. Ultimately, the readiness of conservation agencies to let go; to entrust communities with discretionary authority is critical. This effect is clearly illustrated in a comparison between Namibia and Botswana. Both neighbouring countries have policies in place that are explicitly supportive of CBNRM, and both these policies contemplate devolution. But, in what appears to be a basic difference in agency culture, Namibian resource managers have actually put devolution in effect, on the ground, and have relinquished to communities the authority needed to run their own community conservancies. Their counterparts in Botswana seem unable bring themselves to devolve equivalent responsibility to community authorities. As a result, Botswana lags behind Namibia in effectiveness and organisation of community conservancies.



## Conflict Resolution

The Northern Rangelands Trust has a Conflict Resolution Team appointed by the Executive Director and sanctioned by the Council of Elders. The team is led by a retired Senior Chief and nine veteran elders well known for their traditional skills in conflict resolution. The team periodically undergoes formal training in conflict mediation skills in order to address the wide diversity of issues that it has to reconcile.

Conflict arises over employment, leadership, resource use and other issues which can seriously threaten the success of a Community Conservancy. The team is therefore responsible for maintaining peace through mediation, dialogue and advice. Members are respected individuals who are tribally neutral.

Since the Trust started, the Conflict Resolution Team has been deployed on several occasions with extremely successful results including:

- Inter-tribal mediation between the Samburu and Rendille tribes over grazing areas. The outcome was consensus and the joint development of grazing by-laws between the two parties;
- Arbitration between the community and a Conservancy Board Chairman suspected of misappropriation of funds;
- Resolution of the long-standing conflict between the Samburu and Lekurruki communities on grazing. The team was able to meet separately with each group and then facilitate the election of a cross-border grazing committee made up of the two opposing parties. This resulted in the development of a grazing Memorandum of Understanding and finally led to the peaceful departure of the Samburu from Lekurruki grazing lands;
- Settling of the dispute between a Community Conservancy and its Traditional Community Structure where failure of the latter to register new community members of the Group Ranch led to individuals threatening the Conservancy's activities;
- Arbitration between the community and a tourism investor that did not honour the agreed payment owed to the community from business generated within the Community Conservancy;
- Arbitration over poor governance after a Group Ranch committee ignored some members of the Group Ranch who were offering benefits only to a section of its members. The ensuing livestock encroachment into the conservation area was resolved with the intervention of the Conflict Resolution Team;
- Inter-tribal intervention between the Pokot and Samburu tribes over the newly established Ltungai Conservancy where the Conflict Resolution Team provided an entry point to help the Pokot create their own Conservancy.

### Fast-Tracking Conservancies in South Omo, Ethiopia

In 2004 The Africa Parks Foundation contracted with the Ethiopian government to revive two National Parks: Nechisar and Omo, according to a 'business model' they had refined elsewhere in Africa. This followed the eviction of Guji communities from Nechisar and imposed restrictions upon the practices of the Mursi pastoralists who made seasonal use of riverine lands overlain by Omo park.

In June 2008 five Mursi visited seven community conservancies in Kenya managed by Rendille, Samburu and Maasai pastoral communities. The first six conservancies are members of the Northern Rangeland Trust. The trip ended at the Maasai-managed Koiyaki Guide School, in the Olare Orok conservancy - one of several Maasai and private conservancies adjoining the Masai Mara National Reserve

At each conservancy, the Mursi first heard from the management and then visited the member communities. Many families, or their parents had been evicted from the parks now adjoining the conservancies and related how they were at first suspicious about the motives behind the invitations to join, pointing out that, if they were successful, the conservancy would be upgraded to national park status and they would be once again be ejected. But this has not happened. Instead, community members have obtained jobs and conservancy revenues have been allocated to providing health, education, social services. The trip exposed the Mursi to another ways to deal with their situation; one they could put into effect themselves, immediately. Upon reaching the third conservancy, the Mursi leaders decided to recommend to their communities that they set up a Mursi conservancy. As one elder reasoned "We don't know how to do it, yet; but if they can, we can"

### The Mursi, Bodi and Suri Stewardship Initiative

Mursi response was swift and positive. After consulting with their communities, the leaders announced their intent to create a Mursi Community Conservancy and imposed a hunting ban throughout Mursi land. The response by pastoral and forest peoples in South Omo has been equally swift and largely positive. Some have joined, others keep watch.

After a series of four meetings the Bodi decided to create their own conservancy, alongside the Mursi conservancy. Soon after, the Kwegu agreed to stop hunting in Mursi territory. Recently, the Suri have joined the Mursi/Bodi conservation project, expressing a wish to map their territory, propose a CWCA, set up game guards and start tourism.

What commenced as a specific response to the Mursi in the Spring of 2007 is now acquiring a regional dimension. If this momentum can be maintained, it could lead to a network of community-driven conservation areas throughout South Omo.

And the responsibility for generating this network depends falls first upon traditional authorities, who are incubating a network of community conservancies, using shared conservation as an instrument for resolving old conflicts and anticipating new ones. Elders are also in the vanguard in persuading neighbours to not hunt in Mursi territory.

## Community Hunting Bans

The Mursi ban was imposed unilaterally and was emphatically not a response to pressure from park authorities; nor was it traded for any form of compensation. Although some observers have made that reasonable assumption, there is no evidence of compensation coming the Mursi way, and Mursi society is very transparent. The ban was more of a declaration of Mursi authority, over who may hunt, how, and where. It says: we may not own our territory in law but we control it in reality.

This is dramatically illustrated in Mago National Park, half of which is also half of Mursi land. With the end of Mursi hunting, the more numerous Hamar have intensified hunting in the Mursi sector. Animals are now reported to be leaving Mago Park for the relative security of Mursi territory outside. Recent anecdotal reports of increased animal sightings are attributed by Mursi to animals emerging from such refugia, not yet to natural increases.

Having imposed the ban, the Mursi proceeded to elaborate a scheme for managing their proposed conservancy, based upon traditional structures. Overall responsibility is vested in a council of eight recognised authorities, one from each village. Penalties are allocated according to membership in age sets. Where members of younger age sets offend, the entire age set is punished, for single offenders from older age sets, the penalty is a cow.

The Mursi then went on to organise a Game Guards unit. Now numbering 12-15 persons, the total operating/salaries cost for all Game Guards is \$10K. The Bodi and Mursi, are contemplating joint training of their two game guard units. Most recently, the Suri whose language is close to Mursi, have made a commitment to join the Mursi/Bodi project, and also asked for support for community-based game guards.

Aware that the hunting ban will be greeted with some skepticism, the Bodi and Mursi made it their first priority to measure its effects upon animal numbers and distribution. To that end, Mursi game guards are already reporting any changes in animal numbers and distribution, noted while on patrol. Recently, the Mursi revinced an interest in designing a methodology that will enable the game guards to multi-task and more systematically record the observations of animals needed to monitor the effects of the ban, using an icon-driven GPS/wireless/computer combine currently being field-tested by Mbenjeli colleagues in the Congo rainforest.

## CONCLUDING POINTS

### **1. Persistent correlation between degree of devolution and degree of success.**

Although many factors bear upon the performance of indigenous community conservancies, the most important ingredient for success, is community control. The readiness to trust communities displayed by Zimbabwean, Namibian and Kenyan conservation authorities was a major factor for success. To absent such trust from ICDP projects during the 1980's, was to court failure.

### **2. Comparative advantages in on-the-ground conservation, proven.**

Much of the science in science-based conservancies, however intrinsically significant, may not bear direct relevance to on-the-ground stewardship, 'in-situ conservation'. The monitoring, management and enforcement of protected areas and species regimes - calls for different and more practical talents and capacities, and herein lies a theoretical comparative advantage for community-based groups that have learned to gather, map and monitor environmental data. These acquired capacities enable communities to capitalize upon their other advantages: intimate familiarity with their habitat and a large store of knowledge on the attributes of their traditional assets. Indigenous stewards are best-placed to assume responsibilities for on-the-ground conservation: the identification and monitoring critical indicators of habitat and climate changes and the enforcement of stewardship codes of behaviour.

### **3. The cost-effectiveness of indigenous community conservancies**

There is compelling anecdotal evidence of the extremely low costs of indigenous stewardship community conservancies, enough to warrant a more systematic comparison with equivalent on the ground costs of formal conservation areas. The collective annual operational costs of the six Rendille, Samburu and Maasai Community Conservancies visited by Mursi leaders last year, as posted on the Northern Rangeland Trust web-site, totalled \$380,000 – less than the salary of the presidents of some global conservation NGO's. The current operating costs for all 15 NRT conservancies is less than \$1 million, for a combined coverage of 3 million acres. The total annual wage bill for 10 Game Guards, 1 Manager and 1 Technician managed by the Mursi over their territory proposed by the Mursi for their Wildlife Reserve was \$10,000. These very low costs tally with those reported by other community stewardship groups, in Belize, the Pacific and elsewhere in Africa.

### **4. Scaling up of successful conservancy projects is happening, from the ground upwards.**

Specifically in the form of inter-community networking for exchanging information and advice, training, conflict prevention, cost-effectives, and most of all in fund-raising, enabling networked stewardship groups to present collective proposals to rival those of global conservation NGO's.

### **5. Which are better defended: occupied or empty landscapes?**

Most of the pastoral communities managing conservancies share the objective of restoring or proving a stewardship agenda based upon co-existence rather than exclusion. Throughout Africa, protected areas and their wildlife have often suffered collateral damage from land invasions, armed conflict or serious environmental stress. Exacerbated by new pressures upon African lands, such events are likely to proliferate. In that context also, co-existence makes more sense.

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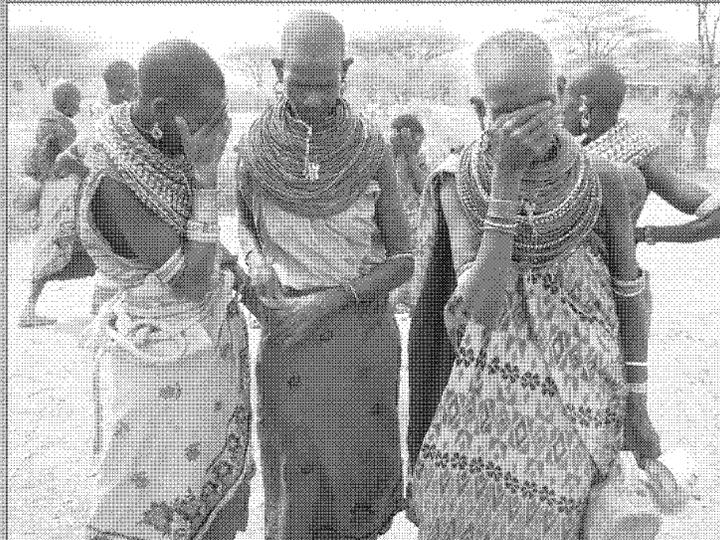
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Peter Poole directed national parks planning in the Canadian Arctic during the 1970's. Following that, he obtained a doctorate in geography from McGill, focusing on relationships between Inuit hunters and conservationists. Throughout the 1980's, he worked directly for Inuit and Dene communities on resource utilisation and stewardship projects across the circumpolar Arctic. In 1990, devised a GPS-based technique for communities to make scaled maps of their territories and used this to train indigenous community mapping teams in the Amazon, Southeast Asia and Russia towards cartographic self-sufficiency. Recently he has assisted indigenous communities and associations in Africa in developing and funding their own community mapping and stewardship projects, most recently, Mursi in Ethiopia and Ngok Dinka in Southern Sudan. For First Peoples Worldwide, he recently coordinated a series of five regional roundtables for indigenous stewardship practitioners, including one at the Maasai-managed Koiyaki Guide School in Kenya. He has also worked in Botswana, Tanzania, Uganda, Ghana, Algeria and Tunisia. He has published widely on indigenous community tenure mapping and biodiversity conservation.  
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## When the Police are the Perpetrators

An Investigation of Human Rights Violations by Police  
in Samburu East and Isiolo Districts, Kenya



Human Rights Research Delegation and Authors:  
Paula Palmer and Chris Allan

Cultural  Survival

# **When the Police are the Perpetrators**

An Investigation of Human Rights Violations by Police  
in Samburu East and Isiolo Districts, Kenya

February 2009 - January 2010

**A Report by Cultural Survival**

Human Rights Research Delegation and Authors:  
Paula Palmer and Chris Allan

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For the past 37 years, Cultural Survival has been a global leader in protecting Indigenous Peoples' lands, languages, and cultures around the world. In partnership with Indigenous Peoples, we advocate for Native communities that are under threat. The organization is based in Cambridge, Massachusetts; its board of directors includes some of the world's pre-eminent Indigenous leaders, as well as lawyers, anthropologists, business leaders, and philanthropists. In addition to advocacy and empowerment activities, Cultural Survival is a comprehensive source of information on Indigenous Peoples and their issues through its award-winning magazine and website. All of Cultural Survival's work is based on the UN Declaration on the Rights of Indigenous Peoples.

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February 12, 2010

## Dedication

**“We pray to Ngai that everything we have said is true. We are in pain about what the government has done. Bless this writing and this work.”**

— Samburu elder from Kirish

## 1. Overview

Beginning in February 2009, Cultural Survival received disturbing reports and photographs of widespread and systematic police violence against Indigenous Samburu communities in the Samburu East and Isiolo districts of Northern Kenya. In January 2010, a Cultural Survival research delegation spent two weeks in Kenya investigating those allegations. We recorded testimony from scores of Samburu survivors and witnesses from five villages (Lerata, Laresoro, Naishamunye, Loruko, and Kiltamany) that were attacked by police during 2009 and in January 2010. We also interviewed respected leaders of local and national NGOs, clergy, health workers, county councilors, the Samburu East Member of Parliament, and staff of the governmental Kenyan National Commission on Human Rights and the nongovernmental Kenyan Human Rights Commission.

Our research revealed a consistent and ongoing pattern of police brutality, extrajudicial killings, and gross human rights violations principally targeting the Samburu ethnic minority.

The Samburu are one of Kenya's seven main pastoralist tribes. Since the 15th century, they have raised and herded their cattle, camels, and goats on the high semi-arid northern plains. Periodically assailed by droughts and famine, they and their neighboring pastoralist tribes—the Turkana, Borana, Somali, Rendille, and Pokot—rotate their herds among the region's known water sources and pasturelands. Under pressure from the Kenyan government, the pastoralist peoples have settled into more or less permanent village sites, but they still move their cattle across the wide plains in search of water and pasture. Kenyan human rights workers report that pastoralists are generally held in low esteem by their fellow Kenyans who have assimilated and conformed to western development patterns, while the pastoralists maintain their traditional economy and cultures. In the popular media and common discourse, pastoralists routinely are portrayed as being primitive, backward, and violent.

Between January 17 and 24, 2010, the Cultural Survival research team interviewed survivors and witnesses of police attacks on five Samburu villages with populations between 150 and 1,500. The informants described very similar scenarios in each village. Around dawn, hundreds of police ground troops surrounded the village and fired into it with guns and mortars. Police helicopters swooped down on both cattle and people, terrifying them and preventing their escape. The ground troops then swarmed into the villages, brutally beating women, children, elders, and morans (young men) with heavy sticks and the butts of their rifles. In two of the five villages, police shot and killed Samburu men and women. In three villages, police raped women. In all of the villages, police ransacked the people's homes, emptying their stores of rice and maize flour and gourds of milk. They pried open the people's metal safe-boxes and stole cash, cell phones, watches, identification cards, and school papers. In one village they burned a *boma* (house) to the ground and set another on fire. Dozens of Samburu men and women were hospitalized for days, weeks, or months following the police attacks, and some are no longer able to provide for their families.

In these attacks, the police carried no arrest warrants. They assaulted young and old, men and women at random. They punished entire communities of innocent people who were charged with no offences and whose right to legal representation in a court of law was ignored. The police attacks violated both Kenyan law and international treaties to which Kenya is a party. Yet the police who participated in these attacks have not been charged, nor are they under investigation. In this atmosphere of impunity, there is no protection for the Samburu people who remain vulnerable and terrified. Every rumor of an impending police attack sends women fleeing to the bush with their children. Many women told us they prefer to take their chances with wild animals rather than face the Kenyan police who have inflicted death, injury, terror, severe economic and property loss, and vulnerability to famine and disease upon them.

Kenyan police attacked at least ten Samburu villages between February 2009 and January 2010. Police had been sent to the north to guard the borders, quell inter-tribal violence, resolve inter-tribal conflicts over stolen cattle, and recover illegal guns. The Kenyan government is justifiably concerned about these issues, all of which are contributing to increased violence and insecurity in the region. Kenya's neighbors—Somalia, Ethiopia, Sudan, and Uganda—are plagued with civil wars and unrest that can easily spill across unprotected borders. Small arms traders bring guns across those borders into Kenya, increasing the deadliness of inter-tribal conflicts. Bandits make roads so unsafe that last year the Catholic diocese of Maralal threatened to pull all the church's teachers, health workers, aid workers, and mission staff out of the region unless better security could be provided. Terrorists have already carried out devastating strikes in Nairobi and Mombasa, and they are most likely to enter Kenya from the vulnerable northern and eastern borders.

Our informants in Samburu East and Isiolo districts agreed that insecurity is a serious problem in north-central Kenya. Indeed, all the pastoralist communities are suffering from accelerating violence. For centuries, the Samburu, Turkana, Pokot, Borana, and Somali tribes of northern Kenya have competed for scarce water resources and pasture for their cattle, camels, and goats. Traditionally, they have raided each other's cattle to replenish their stocks after droughts and to exert dominance over prized water sources and grazing lands. When the raiding parties carried spears, few people were hurt or killed in these cattle raids. But since the mid-1990s, when arms traders from Somalia and Ethiopia made guns available, the raids have taken a greater toll in human lives.

The Kenyan government has contributed to the arms proliferation in the north by distributing arms to police reservists in the tribal communities and to wildlife conservancies for their anti-poaching programs. In February 2009, Isiolo's Member of Parliament, who also serves as Minister of Livestock, arranged for 300 guns to be distributed to his Borana, Somali, and Meru political allies in the region. These tribes are traditional cattle-raiding enemies of the Samburu and Turkana. The two camps are also split along political party lines. The Borana, Somali, and Meru generally support the Party of National Unity, which is the party of President Kibaki and the Isiolo Member of Parliament. The Samburu and Turkana, on the other hand, generally ally themselves with the Orange Democratic Movement, the party of Prime Minister Odinga. By arming the Borana, Somali, and Meru groups, the Isiolo Member of Parliament set off protests of reckless partisanship even from within his own political party. His gift of guns was widely interpreted as a

green light for "his" tribes to attack the Samburu and Turkana. Indeed, the first police attacks on Samburu villages took place within two weeks of the gun delivery.

In the police attacks of late February 2009, police not only assaulted Samburu villages, they also rounded up all the villagers' cattle—over 4,000 head—and redistributed the cattle among the Samburu's rival tribes, the Meru, Somali, and Borana. These tribes had clamored for the police to recover cattle that the Samburu had allegedly stolen from them. But the brutality of the police attacks shocked them, and they denounced the police for their excessive use of force against the Samburu. They also pointed out that the police had made no attempt to identify cows that had actually been stolen. Instead, the police confiscated all the cattle they could gather in these raids at random. The February 2009 attacks deprived Samburu communities of their only wealth and their primary source of food, rendering them vulnerable to famine at a time of severe drought.

Police remained camped out in Samburu East during the rest of 2009. Samburu women told Cultural Survival's researchers that throughout the year, individual police officers raped many women and accosted and robbed people at random. They said that the police presence kept the population in a constant state of fear.

In November 2009, President Kibaki ordered more police forces into the northern region to conduct a disarmament operation. Police attacks on the Samburu villages of Loruko in November and Lerata and Kiltimany in January 2010 took place during an official amnesty period when the pastoralist people were asked to voluntarily turn in any illegal weapons. Elders in the Samburu communities were cooperating with the voluntary disarmament program. The unprovoked and brutal police attacks during the amnesty period made people terrified of what might happen at the end of the amnesty period, which was scheduled for February 20, 2010.

While all our informants in Samburu East and Isiolo districts said they and their communities would cooperate with a program of universal, impartial disarmament, they also said that they had no confidence in the police's ability to carry out such a program. Certainly the police, given their brutal and criminal behavior, cannot effectively carry out disarmament and peace building among communities they have terrorized.

Everyone, from community mothers to elected county councilors to local NGOs to national human rights organizations, agreed to disarmament in principle and expressed faith that disarmament can succeed if it is

carried out under the guidance of the pastoralist tribes' traditional elders, the district peace committees, and human rights organizations. Furthermore, such a collaborative process of disarmament can lay a positive foundation for further peace-building processes among communities with histories of conflict. A prerequisite for such a process is the removal of the police from the process.

Gross violations of Kenyan citizens' human rights by Kenyan police in recent years have been documented by other investigators, including the Commission of Inquiry into Post-Election Violence (known as the Waki Commission), the report of the United Nations Special Rapporteur on Extrajudicial, Arbitrary or Summary Executions (known as the Alston Report), and the Kenyan National Commission on Human Rights. The police abuses against the Samburu communities may be seen as yet another instance that reflects a wider, well-documented pattern. It stands out, however, as a case where the police are targeting a specific minority for collective abuse in violation of their rights as an Indigenous People.

In sum, Cultural Survival's researchers documented a pattern of continuous gross human rights violations and crimes committed by Kenyan police forces against the Samburu as a whole, in an atmosphere of impunity and in violation of Kenyan and international law. The Kenyan government frames the police assaults on Samburu communities as legitimate efforts to stop inter-tribal cattle raiding, to disarm the pastoralist groups, and to restore security in northern Kenya. Our delegation, however, found that the police actions are creating greater insecurity and inciting increased violence throughout the region. Police brutality in Kenya dates back to colonial rule, but in this case widespread racial prejudice and discrimination against the Indigenous pastoralists creates a permissive atmosphere for extra-judicial killing, rape, assault, theft, and arson against the Samburu people as a whole. The Kenyan government contributes to this permissive atmosphere by shielding police from accountability, and the political parties manipulate and aggravate the inter-tribal conflicts for their own political ends. As a consequence, the Samburu people in Samburu East and Isiolo districts have suffered death, injury, economic loss, displacement, and increased vulnerability to disease and famine.

Cultural Survival's recommendations to the Kenya government are detailed in Section 6 of this report. We urge the Kenyan government to immediately withdraw police forces from Samburu East and Isiolo districts; authorize a universal disarmament process in northern Kenya to be carried out under the leadership and guidance of traditional community elders; recognize the right of

citizens to monitor human rights violations in their own communities and take immediate action to address any reported violations; implement the recommendations for police reform given in the Waki Commission Inquiry into Post-Election Violence and the report of the UN Special Rapporteur on Extrajudicial, Arbitrary and Summary Executions; and implement the United Nations Declaration on the Rights of Indigenous Peoples.

## 2. Research Methods

Between January 17 and 24, 2010, two Cultural Survival researchers conducted a series of interviews in Nairobi with representatives of the government's Kenyan National Commission on Human Rights, the Kenyan Human Rights Commission, the United States Embassy, the Samburu East Member of Parliament, a former Isiolo North Member of Parliament, and the Umoja Women's Group. The purpose of these interviews was to gain understanding of the historical and social context for the police assaults on Samburu communities; learn what roles each entity has played and intends to play in the effort to investigate human rights abuses in the North as well as to address the problems; and establish collaborative relationships in order to more effectively defend the human rights of Indigenous Kenyan communities.

The Cultural Survival research team also interviewed local government officials, organizations, and Samburu people in Samburu East and Isiolo districts. We drove to five villages—Lerata, Laresoro, Kiltamany, Loruko and Kirish—and asked residents to recount the police attacks they had suffered during 2009 and 2010. In Lerata we heard testimony about two separate police attacks, one in February 2009 and the other in January 2010. Except in the case of Laresoro, our interviews were conducted communally, with people volunteering to speak to us in the company of all the other villagers who were gathered together for the interview. Speakers frequently asked for and received confirmation or additional information from the other people. Both men and women were present, making the interview a collective experience. This collective re-telling underscored the fact that the police attacks had been unleashed on the communities as a whole, not on specific individuals.

Through a Samburu interpreter in each community, we explained our mission and told the residents how we would use the information we received to report human rights abuses to the Kenyan government, other governments, agencies of the United Nations, and the media. We assured them that their participation was completely voluntary, and we asked for and received permission to write down their testimonies in our notebooks and take photographs.

In Kiltamany, Kirish, and Loruko, men and women gathered with us just outside the *manyattas* (villages surrounded by a circular barrier made of thornbush branches). They sat on the ground in the shade of acacia trees, men grouped together and women sitting slightly



*Villagers gathered under acacia trees to offer their collective testimonies.*

apart with their children. Male elders were usually, but not always, the first to reply to our questions. As each person spoke, others offered additional details. Women brought physical evidence of the attacks for us to see and photograph. Injured people showed us their bandages and scars. In Kiltamany and Loruko, where villagers had carefully documented their injuries and property losses, they gave us copies of their reports.

In Lerata, we met first with the women at their manyattav and then drove to another location to meet with the male elders who were having a meeting to discuss the problems with the police. In the case of Laresoro, some witnesses, who were in Archer's Post for market day, were interviewed there in family groups.

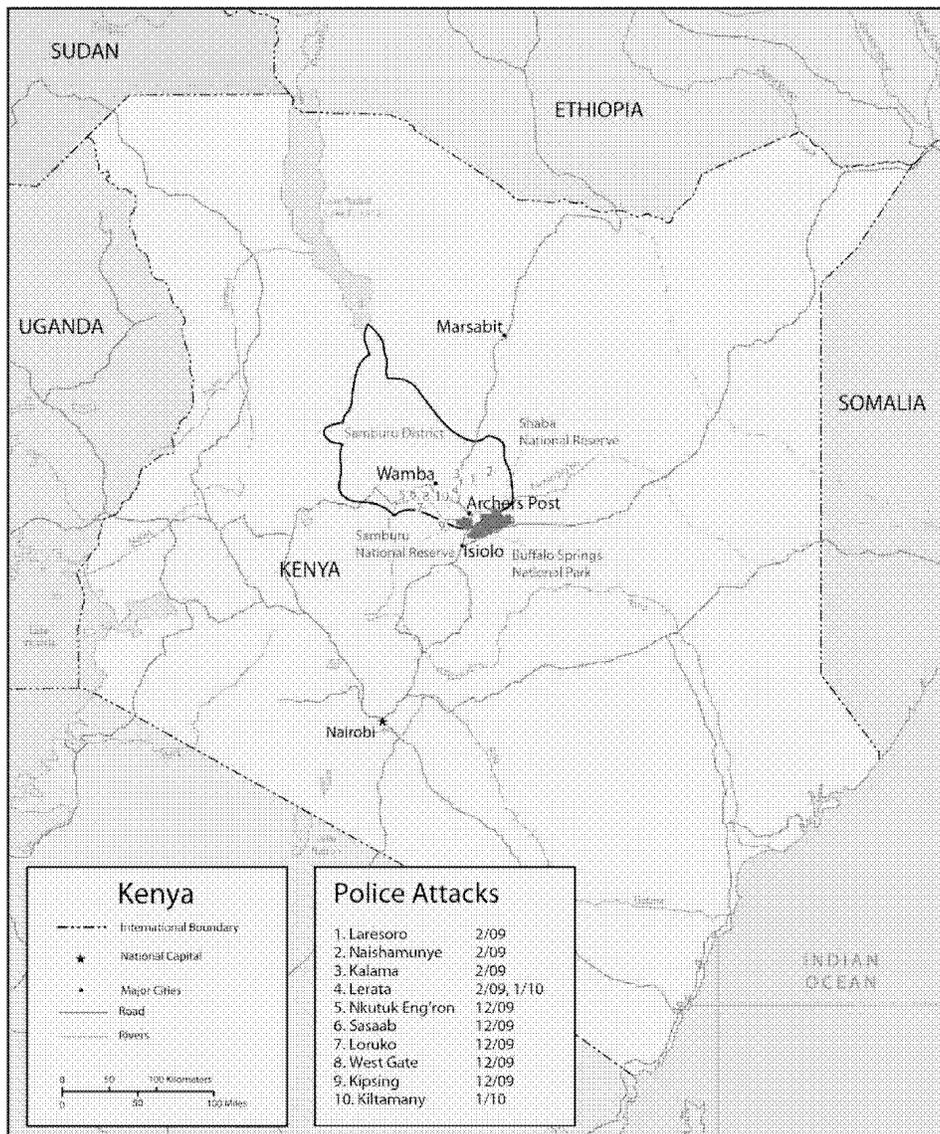
Given the danger of possible police retaliation against individuals, we chose not to name our informants in this report (details about individual informants are on file with Cultural Survival). It is worrisome enough that retaliation could be carried out against entire villages for their

testimonies. In the spirit of the communal nature of the testimonies, we report the collective experience of each village rather than human rights violations against specific individuals. The collective rights of the Samburu People are recognized by the United Nations Declaration on the Rights of Indigenous Peoples.

To supplement our interviews with the affected Samburu communities, we also interviewed a Catholic parish priest, two members of the district peace committee, two members of the regional human rights network, executive secretaries of the Catholic Justice and Peace Commissions of the Dioceses of Maralal and Isiolo, the director of the Archer's Post health clinic, staff of the Wamba hospital, the director of the Lerata health dispensary, the executive director of the Pastoralist Resource Exploitation, Management & Advocacy Programme, and four elected county councilors. We attended one public meeting with government officials including the District Officer, the District Commissioner, the Minister of Livestock, the District Police Chief, and seven county councilors. We chose not to interview police officers because of security concerns.

In preparing this report, we also closely reviewed Kenya's laws and constitution, recent relevant human rights reports, academic papers and books, press reports, and websites and blogs where accounts of police assaults on Samburu communities are posted.

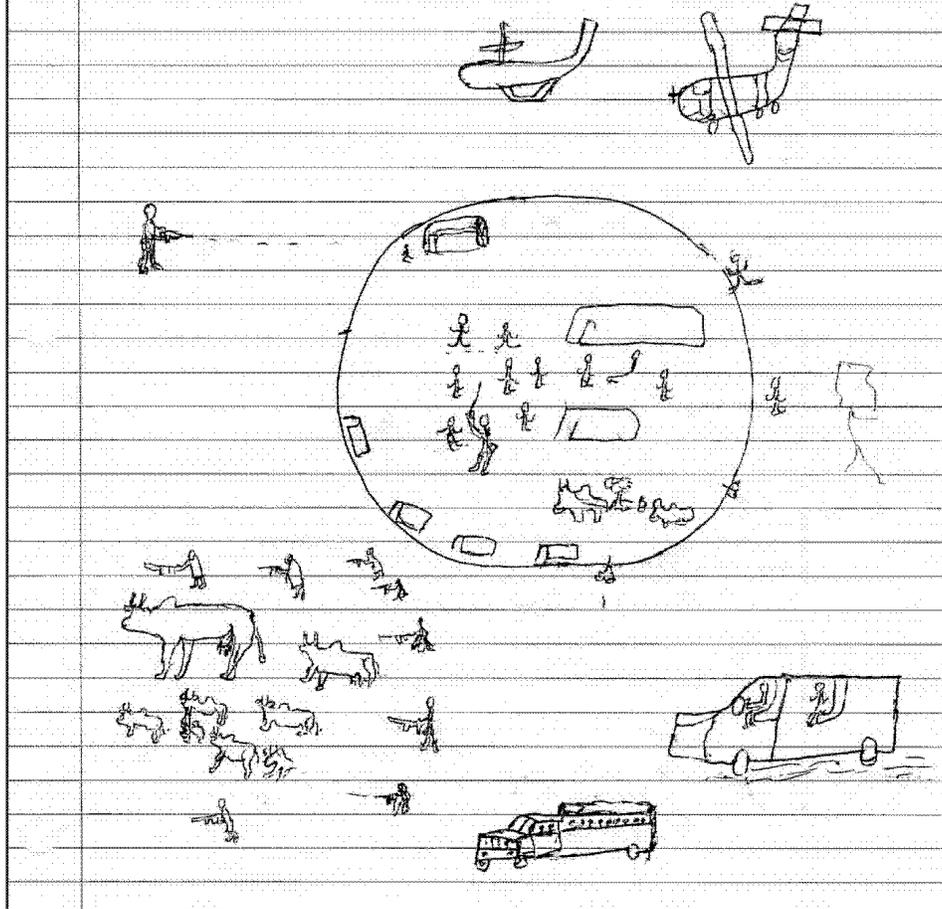
### 3. Maps



23 January 2010

Dear President Obama,

~~Hapi~~



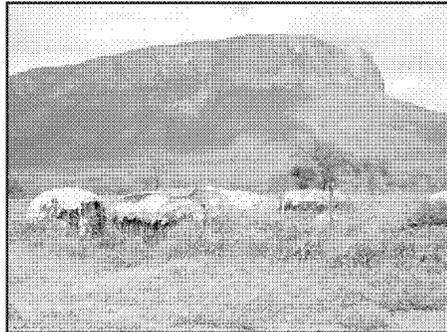
*A ten-year old boy in Lerata made this drawing of the February 23, 2009 attack on his village. He sent it to US President Obama, asking him to help stop the police attacks on the Samburu people.*

## 4. Context

### 4.1 Samburu Life and Culture

The Samburu migrated to modern-day north-central Kenya from Sudan in the 16th century. They are Maa speakers, sharing a mutually intelligible language with the Maasai who live farther south in Kenya and Tanzania. The Samburu have defended the key elements of their culture in the face of rapid Westernization that has swept across other parts of the country. Traditional forms of authority are still respected, traditional dress is the norm, and the age group system remains the principal means of social organization.

A number of changes have impacted this system: the creation of district borders has reduced the ability of communities to migrate in search of water and pasture, the creation of large commercial estates and national parks has reduced access to land, and the availability of outside employment has expanded opportunities, especially for younger people. Yet while many other ethnic groups to the south have transformed their cultures drastically in the last century, the Samburu and other pastoralists in northern Kenya continue to adapt their traditional values and practices to the current context without giving up its essential elements.

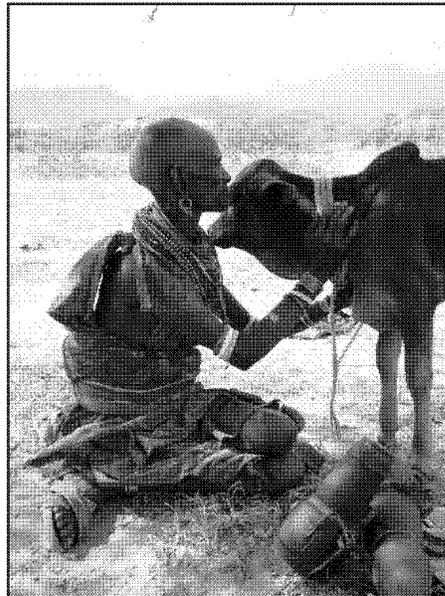


*Samburu bomas at the foot of the sacred Sabache Mountain.*

The Samburu rely on cattle, sheep, goats, and camels as their main means of livelihood in this arid and semi-arid area. People live in small settlements which vary from one family to 1,500 people. Families live in bomas, which are low, rounded houses of mud, sticks, and (in more recent times) cardboard and plastic roofing. Several bomas are

grouped together into manyattas, which are surrounded by acacia thorn fences to keep livestock in and wildlife out. Houses are built by women, and their husbands share them with them. Several manyattas may be grouped together into larger communities.

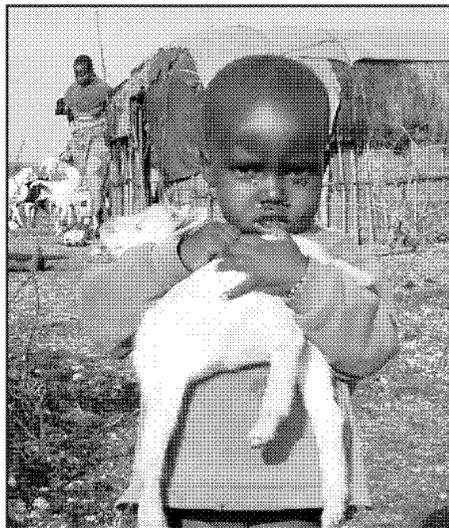
There are well-defined gender roles, with women responsible for raising the children and feeding them and the elders, as well as the domestic tasks of hauling water and collecting firewood. Men are responsible for the livestock and security. Within these definitions, however, families find a variety of ways to make a living: children and women often tend to the livestock, and women increasingly earn income by producing intricate beadwork for sale to tourists. Milk and blood are an important part of the diet, but people increasingly eat maize and rice purchased in the market. Meat is rarely eaten, and hunting is viewed with scorn.



*A Lerata mother with her calf.*

All Samburu are organized into age groups from the teenage years. Boys between the ages of 15 and 20 are

initiated into manhood through circumcision. They will remain in this age group for life. People keep track of history by the names of these age groups. At initiation boys become *morans*, or warriors. Morans are responsible for the security of the community, and strict restrictions ensure their loyalty to each other and their separation from their childhood relationships. Morans must eat with at least one other age mate, and are prohibited from eating certain foods seen by women. Given prohibitions on eating in their families' manyattas, morans rely on the entire community for food. Morans wear a variety of headdresses with feathers, beads, and other types of jewelry, and often grow their hair long and color it with ochre. Morans do not marry until about age 30 or later, at which point their age group moves on to the next stage, junior elders. Junior elders eventually become senior elders. Elders wield considerable power over the community, reinforced by their ability to curse community members who violate community decisions. While colonial and independence governments introduced the office of chief, the council of elders for each community is the ultimate traditional authority.



*Beginning at an early age, Samburu children care for their animals.*

Women usually marry in their teen years. Since the Samburu practice polygyny, a woman may have several co-wives. A woman's status rises through her life as she is

initiated, married, bears children, when her son becomes a moran, and when her son marries. Samburu women are known for their intricate beadwork, especially the colorful bands of beads worn around the neck.

The Samburu are surrounded by other pastoral groups: the Pokot to the West, Turkana to the north, Rendille to the North and East, and Borana and Somalis to the East and South. These groups also rely on livestock for a living, and are often in competition for pasture and water. Alliances have shifted over the years, but currently the most prominent alliances are between the Samburu and Turkana on the one hand the Borana and Somalis on the other. Religious differences tend to underline these ethnic differences, as the Samburu tend to practice either their own Indigenous religion or Catholicism, while the Borana and Somalis are more often Muslim. There are many subgroups of the Borana and Somalis, whose lands include a vast amount of territory in Kenya and Ethiopia (for the Borana) and Kenya and Somalia (for the Somalis). Two subgroups of Somalis prevalent in the Isiolo region are the Garre and Ajouran clans.

## 4.2 Prejudice and Discrimination

Kenyans often speak of two Kenyas: north and south. Colonial and post-colonial governments have consistently invested more in development of the south than the north. In many parts of northern Kenya, government presence is minimal, and communities continue to rely on traditional means of making a living, resolving disputes, and dealing with education and health care. In fact, for 25 years, until 1991, parts of northern Kenya were governed by separate emergency laws, that suspended many civil rights enjoyed in the rest of the country. In parts of the region people rely on churches to provide the only schools, clinics, and hospitals. Roads are few and in poor repair, clean water is hard to come by, and electricity and cell-phone access are scarce. Kenyan civil servants often consider it a punishment to be posted to northern Kenya, and few stay longer than necessary.

Cultural prejudice is common as well. Throughout the country, the pastoralist tribes of northern Kenya are widely viewed as primitive, violent, and lawless. Colonial and independence governments have devalued pastoralism as a means of livelihood, and provide little support for it in terms of water, pasture development, and veterinary or marketing services. In fact, alienation of historic pastoral areas by farmers, commercial ranchers, and wildlife reserves threatens the viability of pastoralism in this semi-arid and arid region.

### 4.3 Police Impunity

While ethnic prejudice and discrimination feed the criminal behavior of police toward the Samburu, police violence and impunity are national problems in Kenya. In February 2009, a United Nations report documented "systematic, widespread and carefully planned" extrajudicial killings by Kenya's police forces. This report, written by Philip Alston, the UN Special Rapporteur on Extrajudicial, Arbitrary or Summary Executions, was prepared at the request of the Government of Kenya to investigate allegations of unlawful killings by the police, violence in the western Mount Elgon district, and murders during the post-election violence. The report found widespread abuses by the police and military in combating rebels in the Mount Elgon area in 2008, and extrajudicial killings of dozens of suspected members of the Mungiki sect. While recognizing the legitimacy of police action against groups that commit acts of violence, Professor Alston emphasized that "A democratic Government operating under the rule of law does not respond to terror with more terror." He noted that there is "zero internal accountability." He concluded that "the Kenyan police are a law unto themselves and they kill often and with impunity, except in those rare instances where their actions are caught on film or otherwise recorded by outsiders in ways that cannot be dismissed."<sup>1</sup>

In 2008, the police responded in similar fashion during a disarmament operation in the Mandera Triangle near the Somali border. Human Rights Watch documented beatings, rapes, and theft in the police operation in October 2008 to reduce the number of arms in the area. The result was 1,200 people were injured, one was killed, and at least a dozen women were raped. Since the police insisted the operation would continue until people surrendered weapons, and because local leaders had no more guns to turn in, they actually crossed the border to Somalia to purchase guns so they could hand them over.<sup>2</sup>

The Kenyan National Commission on Human Rights documented approximately 500 people killed or

disappeared by police between June and October 2007. One witness in the police service witnessed 58 killings of subjects under arrest. That witness was murdered in October 2008.<sup>3</sup>

On March 6, 2009, after reporting on police brutality and police killings in Kenya, two human rights workers were shot and killed in broad daylight on the streets of Nairobi. During the protests that followed, police shot and killed a student. A coalition of civil society organizations released a statement blaming the police for the murders of the human rights workers. However, no arrests have been made in the case.

Inadequate police training and accountability were also a major theme of the Waki Commission (Commission of Inquiry into Post-Election Violence). The Commission found that during the period of post-election violence 2007-2008, the police response was "inconsistent in its application, jeopardized the lives of citizens, and was in many cases a grossly unjustified use of deadly force. Their actions resulted in the senseless death of scores of innocent citizens, which is in direct contravention of the Constitution of Kenya and the mandate of the Police Service, both of which clearly requires the police to preserve the peace and protect life."<sup>4</sup>

The Commission recommended "comprehensive reform of the Kenya Police Service and Administration Police,"<sup>5</sup> including its doctrines around the use of force, some of which date to colonial days. It also recommended that an Independent Police Conduct Authority be established with the legislative powers and authority to investigate police conduct and provide civilian oversight. The Commission went on to recommend the creation of a Special Tribunal to investigate post-election violence crimes and bring those responsible to justice.<sup>6</sup> The Commission said that if the government failed to create this Special Tribunal within 60 days, then the investigation should be turned over to the International Criminal Court in the Hague. Since no Special Tribunal was established, on March 30, the International Criminal Court's judges authorized the court's Chief Prosecutor to open a formal investigation of

<sup>1</sup> Press Statement by Professor Philip Alston, UN Special Rapporteur on extrajudicial, arbitrary or summary executions, Mission to Kenya 16-25 February 2009, [http://www.extrajudicial-executions.org/application/media/PRESS\\_STATEMENT\\_Kenya.pdf](http://www.extrajudicial-executions.org/application/media/PRESS_STATEMENT_Kenya.pdf)

<sup>2</sup> Human Rights Watch, "Bring the Gun or You'll Die": Torture, Rape and Other Serious Human Rights Violations by Kenyan Security Forces in the Mandera Triangle, 2009.

<sup>3</sup> Press Statement by Professor Philip Alston.

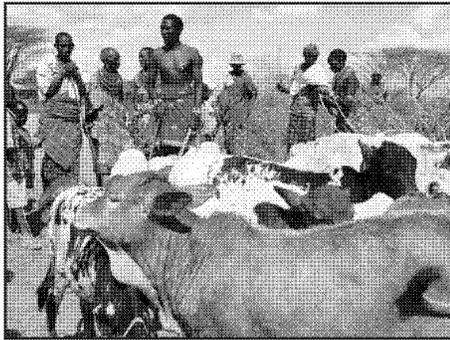
<sup>4</sup> Commission of Inquiry into Post-Election Violence, <http://www.communication.go.ke/media.asp?id=738>, October 16, 2008 p. 417.

<sup>5</sup> *Ibid.*, p. 478.

<sup>6</sup> *Ibid.*, pp. 472-473.

Kenya's post-election violence, raising the prospect that some of Kenya's top political leaders may face prosecution.

On the issue of police reform, there has been some movement. For example, Police Commissioner Major General Hussein Ali was removed in September 2009, as recommended in the Alston report. In January 2010 the government created a Police Reform Task Force, which recommended removal of more top police officials and the creation of a permanent civilian body to oversee reforms.



*Samburu elders with their cattle*

#### 4.4 Cattle Raiding

The recent police abuses in Samburu East and Isiolo districts were ostensibly committed in an attempt to curb cattle raiding in the region. There is a long history of cattle raiding throughout northern Kenya and neighboring Uganda, Sudan, Ethiopia, and Somalia. Cattle raiding was traditionally a means to a) restock herds after a drought, b) generate the bride price to allow a man to marry, c) increase the number of wives a man might have, and d) show courage of young men as part of a long rite of passage into manhood. While these factors are still important, the nature of cattle raiding has changed in recent years.

Today, cattle raiding has become commercialized. Instead of keeping the cattle captured in a raid, many are sold off to traders, and moved out of the region for slaughter elsewhere.<sup>7</sup>

Another change is that women and children are more frequently the victims of violence during raids. Traditionally raiding was an issue between men, and women and children were spared. Sometimes children tending cattle were carried off with raiders so that they could not sound the alarm, but they were eventually released. Increasingly, children are being killed in the raids. In one particularly disturbing incident in February 2009, two Samburu children abducted during a raid were later found skinned and hanging from a tree with their throats cut.

Moreover, since the mid-1990s, more and better arms are being used in raids. With civil wars taking place in every country bordering northern Kenya, the region is awash in small arms. In the Samburu/Isiolo area, weapons enter through Somalia and southern Ethiopia. The arms trade is dominated by Borana traders. The Government of Kenya has also distributed arms at various times in the region, for example by appointing and arming local Kenya police reservists. The reservists, also known as Home Guards, are supposed to help the police provide security in a sparsely populated region with little communication or transportation infrastructure. But the guns are also used in cattle raids. In February 2009, the government permitted the Isiolo Member of Parliament, Mohamed Kuti, to distribute 300 guns to tribes that support his political party (the party of the president). These tribes are traditional enemies of the Samburu and Turkana, who generally support the opposition party. Arming them was widely viewed as inciting violence against the Samburu and Turkana. Leaders of all ethnic groups in the area issued statements condemning this biased and provocative action.<sup>8</sup>

In addition to cattle raiding, battles over pasture and water can mean the difference between having a healthy herd of cattle and a landscape strewn with livestock corpses. Thousands of livestock across northern Kenya died in the 2009 drought. Climate change is expected to increase the frequency and severity of droughts in northern Kenya, intensifying the pastoralist groups' struggles for water and pasture in a parched landscape.

<sup>7</sup> Kennedy Agade Mkutu, *Guns and Governance in Rift Valley: Pastoral Conflict and Small Arms*, African Issues, James Curry, Oxford, 2008.

<sup>8</sup> "A Community Leaders' Memorandum to Hon. Prof. George Saitoti, The Minister, Internal Security and Provincial Administration, Arming of Civilians in Isiolo by the Government," February 16, 2009; "Petition by Turkana and Samburu Leaders to the Minister of Internal Security and Provincial Administration on the Security Situation in Isiolo," no date.

#### 4.5 Previous Efforts to Control Arms and Security

The government has made several attempts to disarm people in northern Kenya over the past decades. These exercises targeted the Pokot in 1984, 1986, and 2005, the Samburu in 1997 and 2005, and most recently Somalis near Mandera in 2008. The Pokot operation in 1984 included cooperation with the Ugandan and Kenyan militaries, with helicopters used on both sides of the border.<sup>9</sup> Some operations have collected more guns than others, but none solved the problem of violence and use of small arms in the region. According to Kenyan researcher Kennedy Agade Mkutu,

“The first problem inherent in the government’s approach is that the root cause of the demand for arms has not been addressed. . . . Small arms have become an economic asset and, unless alternatives are provided, disarmament will not work. Second, the reinforcement of border security has been inadequate, and arms still flow in from Ethiopia, Somalia, and Uganda. Third, [men] will take their arms and hide. . . , which means the government drive will achieve nothing. Fourth, disarming select communities exposes them to terrorization and threats from the other armed groups, thereby escalating communal resource conflicts, death, and loss of property, while also creating a localized arms race. Fifth, the government must address the marginalization of the [people]: with no police stations and no security, if the Home Guards and community are disarmed, [people] will be at the mercy of their enemies.”<sup>10</sup>

He goes on to argue that:

“Plans for any future disarmament effort need to involve community-based organizations, women’s groups, faith-based organizations, and local leaders. They need to incorporate provisions for ‘giving something back’ to the

communities, as well as compensation for individuals who surrender weapons. Disarmament should start with public awareness-raising programmes, but the cooperation with local people that is so vital to a positive outcome must be constructed carefully and creatively. . . . The modern state should not ignore the potential contribution offered by customary governance systems. Clearly policies of forceful disarmament, amnesties, and peace meetings have failed, yet they continue to guide current national and international debates on the management of small arms.”<sup>11</sup>

#### 4.6 Insecurity and Conflict in the Samburu/Isiolo Region

In the Samburu East and Isiolo Districts, insecurity increased in 2008-2009. Many inter-tribal murders, shootings, thefts, and kidnappings occurred during this period. From September 2008 through December 2009, over 50 people were killed in cattle raids, police raids, highway banditry, and kidnapping. Included in this total are two Samburu children who were kidnapped, had their throats cut, and were hung from trees. The actual death toll total is no doubt much higher since many crimes are not reported, but these 50 killings are documented by press reports and eyewitness accounts. Perpetrators were warriors from all the ethnic groups in the area, the police, and unknown assailants. Each act of violence made the overall situation worse, as people were increasingly polarized due to fear and anger. The only question on which all ethnic groups agreed was that the police completely failed to protect anyone. Moreover, in the case of attacks on the Samburu, the police were the perpetrators of some of the attacks.<sup>12</sup>

Adding to the atmosphere of fear and violence were inflammatory comments and actions from politicians. For example, on January 26, 2009, the Member of Parliament

<sup>9</sup> Mkutu, p. 119.

<sup>10</sup> Ibid., p. 124.

<sup>11</sup> Ibid., pp. 144-45.

<sup>12</sup> Integrated Regional Information Networks (IRIN), “Kenya: Hundreds displaced in ‘drought’ clashes,” 18 September 2008, available at: <http://www.unhcr.org/refworld/docid/48d74b6c1e.html> [accessed 9 February 2010]; “Petition by Turkana and Samburu Leaders to the Minister of Internal Security and Provincial Administration on the Security Situation in Isiolo,” undated; Integrated Regional Information Networks (IRIN), “Kenya: Drought exacerbating conflict among pastoralists,” 2 February 2009, available at: <http://www.unhcr.org/refworld/docid/498703a9c.html> [accessed 9 February 2010]; “Petition by Turkana and Samburu Leaders to the Minister of Internal Security and Provincial Administration on the Security Situation in Isiolo,” undated; Integrated Regional Information Networks (IRIN), “Kenya: Clashes leave nine dead, several injured,” 5 June 2009, available at: <http://www.unhcr.org/refworld/docid/4a2e1018e.html> [accessed 9 February 2010]; Mosuku Geoffrey, “The Dawn Attack That Left an Isiolo Village Mourning,” Nairobi Star, November 19, 2009; Hassan Huka, “11 Killed as Raiders Attack Village,” Daily Nation, November

for Isiolo North, Hon. Mohamed Abdi Kuti, led a delegation of Somali, Borana, and Meru residents to the Office of the President to request that he issue arms to Kenya Police Reserves in the district to deal with the rising violence. Three hundred guns were issued to members of the Somali, Borana, and Meru ethnic groups only. This move was condemned by local political, business, and religious leaders as a partisan move to favor the Member of Parliament's political supporters. A press statement from local leaders from a variety of parties and ethnic groups protested that the "arming of civilians allied to the said MP is arming one political camp against the opposing sides."<sup>13</sup>

Government efforts to rein in the violence were limited primarily to their punitive raids against three Samburu villages in February 2009, where police confiscated over 4,000 cows without making any attempt to ascertain whether the animals, in fact, had been stolen, or whether their owners had participated in any raiding. As the prevalence of raiding and banditry shows, the police actions against the Samburu were entirely ineffective in reducing the violence or reconciling the feuding communities. In fact, Samburu, Borana, Somali, and Meru people all lamented that it only increased the divisions among them. Samburu informants regularly mentioned the bitterness that the police confiscation of their cattle engendered, and members of the Borana, Somali, and Meru community pointed to its random and excessive nature. They feared that it would only force Samburu communities to initiate more raids in order to rebuild their police-depleted herds.

A statement issued by members of the Meru community of Isiolo, including members of the Meru council of elders, the Njuri Necheke, said that, "We strongly support the position of the Catholic dioceses of Isiolo and Maralal in condemning the excessive use of force on unarmed Samburu pastoralists during the ongoing operation to

recover the stolen livestock." They went on to say that the police exercise created "hatred and suspicion among the pastoralist neighbors... The political leaders'... inflammatory remarks for the purpose of gaining political mileage were equally damaging." They urged the provincial administration and political leaders to "dissolve the tension that has been created by the ongoing exercise."<sup>14</sup>

But the sense of fear and resentment in Samburu communities only increased in the following months when undisciplined police who were camped in the Archer's Post area routinely ransacked local shops, drank beer and refused to pay, coerced sex from local women, and in general terrorized the local community.

During this period, violence in the area also caused a huge drop in tourism, which is a major revenue producer. Sarova Shaba Hotel, for example, reported that it incurred losses amounting to \$70,000 US over six months due to cancellation of bookings and refunds to travel agencies at the height of insecurity in 2009.<sup>15</sup>

#### 4.7 Political Parties and Pressures

Most people in the area attribute the increase in violence to interference by politicians. According to many informants and a Parliamentary Select Committee, many of the violent incidents noted above cannot be attributed to "normal" cattle raiding alone, but instead have been encouraged by local politicians. On the one hand, the current Member of Parliament for Isiolo North, Hon. Mohamed Kuti, who is also the current Minister for Livestock, is accused by many of fomenting violence to drive Samburu and Turkana populations out of his constituency in order to solidify his seat for the next elections in 2012. That he is Borana (the strongest

16, 2009; Letter from Fr. Marko Prastaro, Vicar General, Catholic Diocese of Maralal, and Evans Onyiego, Executive Secretary, Catholic Justice and Peace Commission, Diocese of Maralal, November 23, 2009; "Where Every Man Uses a Gun as 'Walking Stick,'" East African Standard, January 7, 2010; Njuri Necheke Elders, Meru Business Community of Isiolo, Professionals, Religious Leaders, "Livestock Rustling Crisis among Communities in Isiolo District and its Environs," no date; Muchiri Gitonga and Hassan Huka, "Morans turn from cattle rustling to spearhead peace initiatives," Daily Nation, January 18, 2010, <http://www.nation.co.ke/magazines/smartcompany/-/1226/844806/-/r56b4xz/-/index.html>; Ramadhan Rajab and Ali Abdi, "10 Killed, Six Injured As Raiders Attack Village," East African Standard, November 16, 2009; Hassan Huka and Kibiwott Koross, "Isiolo unrest blamed on MPs," Daily Nation, November 19, 2009.

13 "Press Statement: Security Concerns by the Leaders of Isiolo," undated.

14 Njuri Necheke Elders, Meru Business Community of Isiolo, Professionals, Religious Leaders, "Livestock Rustling Crisis among Communities in Isiolo District and its Environs," no date

15 Muchiri Gitonga and Hassan Huka, "Morans turn from cattle rustling to spearhead peace initiatives," Daily Nation, January 18, 2010, <http://www.nation.co.ke/magazines/smartcompany/-/1226/844806/-/r56b4xz/-/index.html>

traditional enemy of the Samburu) and a member of the ruling Party of National Unity (PNU) only underlines the division between him and the majority of the Samburu and Turkana who support the opposition Orange Democratic Movement (ODM). Minister Kuti, for his part, accuses other unnamed politicians of doing the same thing, and accused the Minister of Internal Security of protecting Samburu raiders through inaction.<sup>16</sup>

The press reported that The Parliamentary Committee on Administration and National Security, chaired by Member of Parliament Fred Kapondi, concluded that "some sitting MPs eyeing the 2012 polls fear the growing number of members of communities that do not support them." Mr. Kapondi went on to criticize "one of the leading politicians in the area, Livestock Development Minister Mohamed Kuti, for doing little to resolve the clashes."<sup>17</sup>

In the 2007 elections, Samburu and Turkana communities voted for ODP candidates, while Borana and Somali voters in Isiolo supported Kuti, who ran under the PNU umbrella. The 2007 election was ethnically polarized, and killings and thefts since then have only served to reinforce ethnic divisions.

#### 4.8 Tourism and Economic Development

Through decades of government neglect, most of northern Kenya has lagged behind the rest of the country in economic development. Yet there are important signs that this is changing. First is the development of wildlife conservancies in Samburu East, which generate tourist income and employment in the tourist business. The Samburu, known for their protection of wildlife, especially elephants, enthusiastically participate in the conservancies' anti-poaching operations. Rival tribes say the Samburu are favored by the conservancies for employment and accuse Samburu employees of using the conservancies' guns, vehicles, and radios to assist in their cattle raids. Samburu speculate that the rival tribes are trying to destabilize the conservancies by returning to poaching, which, until recently, had been under control for several years. Samburu people also assert that while the conservancies offer employment, they are not managed by the Samburu themselves and outsiders take most of the profits. They

insist they should be permitted to run their own eco-tourism operations.

Another major development initiative is the paving of a road that extends north from Isiolo all the way to Moyale on the Ethiopian border. At the same time, oil exploration in northern Isiolo district near Merti began in September 2009 (after an unsuccessful exploration by a French company a few years before). Chinese contractors are managing both these projects. Borana communities, the first pastoralists to be directly affected by the oil project, are demanding their right to benefit from oil development on their land. If the Chinese explorations are promising, other communities will face off against oil companies, too.

All this comes in the context of the government's development plan, which calls for Isiolo to become a tourist center complete with casinos, hotels, upscale retail outlets, a modern airport and transport facilities. There is much speculation in the Samburu/Isiolo area that these developments are raising the stakes for political and economic control of the area. Many fear that the rights of pastoralist groups will be ignored and that they will be pushed aside to make way for development schemes that will benefit others at their expense.

#### 4.9 Kenya's Obligations Under International Law

At the international level, Kenya has ratified numerous international and regional treaties that categorically prohibit the conduct described in this report. These include the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Discrimination (CERD), and the African Charter on Human and Peoples' Rights. The Kenyan police actions documented by Cultural Survival violate these instruments including the right to life, the right to security of persons, the right to equality, and the right to equal protection of the law without any form of discrimination. In particular, they violate Article 5 of CERD which provides:

<sup>16</sup> "Prof Saitoti's focus is on 2012 and not to protect lives of citizens under his docket. He should be ejected from the office to save lives," Kuti said in news briefing... "This is politically motivated ethnic cleansing, I won't mince my words. Saitoti is squarely to blame for all this," an angry Kuti said." Ramadhan Rajab and Ali Abdi, "10 Killed, Six Injured As Raiders Attack Village," East African Standard, November 16, 2009

<sup>17</sup> Hassan Huka and Kibiwott Koross, "Isiolo unrest blamed on MPs", Daily Nation, November 19, 2009.

**“...Parties undertake to eliminate racial discrimination in all its forms and to guarantee to everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably the enjoyment of the following rights....**

**b. The right to security of the person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group, or institution.”**

In addition, Kenya is party to the African Charter on Human and Peoples' Rights which contains provisions relating to the protection of individual rights, including the rights to life and integrity of the person, and equality before the law. This treaty goes farther than most international conventions in that it specifically protects the rights of minority peoples to equal protection before the law, as well as their right to self-determination.

Furthermore, Kenya's treatment of the Samburu violates the recently adopted United Nations Declaration on the Rights of Indigenous Peoples. In his seminal report on Indigenous Peoples in 1984, José Martínez Cobo, UN Special Rapporteur on Discrimination against Indigenous Populations, offered this definition which was accepted by the Working Group on Indigenous Populations: “Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.”

Although no comprehensive universal definition of Indigenous Peoples has emerged, these characteristics well describe the Samburu, who self-identify as Indigenous.

More recently, in September 2007, the United Nations General Assembly adopted a new declaration: The United Nations Declaration on the Rights of Indigenous Peoples. This is the most comprehensive declarative statement from the United Nations on Indigenous Peoples' rights. It not only affirms that Indigenous Peoples have the same human rights recognized in the numerous international conventions as all other people, but they also have special collective rights by virtue of their status as Indigenous Peoples. In particular, the declaration provides that Indigenous Peoples “have the right to be free from any

kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.”

The police assaults against the Samburu, and the Kenyan government's unwillingness to discipline or prosecute those police and their commanders, political leaders, and senior government officials charged with taking action against rogue police officers, but who in fact do nothing, are clear violations of all of these treaties and declarations, which are binding on Kenya.

Moreover, Kenya's police, and the government officials who are responsible for overseeing them, are violating Kenya's Constitution, including articles 70(1) (right to life), 71(4) (rights against inhumane treatment), and 75(1) (right to property). The government's failure to respect the rule of law has previously been denounced in the Alston and Waki reports. The police rampages against the Samburu East communities suggest that rather than take action to strengthen the rule of law, the government of Kenya has adopted a policy of tolerance for excessive use of force against its pastoralist peoples living in the north of the country.

## 5. Testimonies of Survivors and Witnesses of Police Attacks

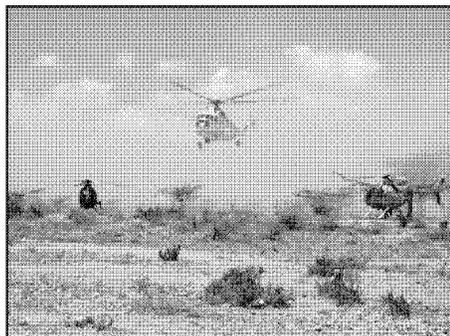
We recount these attacks in chronological order. They are in three groups: February 2009 attacks on Lerata, Laresoro, and Naishamunye; November/December 2009 attacks on Loruko, Daaba, Kawalash, Sasaab, Nkutuk Engron, and Westgate; and January 2010 attacks on Lerata and Kiltamany.

### 5.1 Lerata, February 23, 2009

The police attack on Lerata has been investigated and reported by members of the Kenyan press, the Kenyan National Commission on Human Rights, the Kenya Human Rights Commission, and the United States Embassy in Nairobi. We therefore did not ask witnesses to recount their personal experiences of this attack in detail. But during the interviews, people constantly referred to the Lerata attack because it was the first full-scale police attack on an entire Samburu community.

This operation was carried out by an estimated 600 police officers including Administrative Police, the General Service Unit, and regular police, who were dispatched to Lerata from Archer's Post on February 23, 2009, in an estimated 20 lorries (trucks) and three helicopters.

The helicopters swooped down over the cattle herds



*Police attack Lerata from the air.*

grazing in the Lerata region, firing as they circled to keep the animals together. Samburu herders, including children, were among the cows, and they were terrified. Armed police ground troops arrived in lorries. Some of the police set out on foot to help herd the cattle. Others forced their way into the Samburu bomas and ransacked them, stole

cell phones and cash, and brutally beat anyone in sight, including elders, women, and children, with sticks, clubs and even firewood. Severely injured and traumatized villagers were taken to the Archer's Post clinic for treatment of their wounds.

**"My mother was walking to the bore hole with my four-year-old sister and my ten-month-old brother who was wrapped on her back to water our goats and calves. She turned around to take my sister's hand and then the police came and told her to give him the calves and goats. When she pleaded with him that it was our only source of food, he began beating her with his club. When the baby started crying, he pushed my mother to the ground and began hitting her over and over again on her back until the baby stopped crying. My sister screamed and then he began beating her, too."**

— A 15-year old survivor in Lerata

Once the police had rounded up the cows, they herded them toward Archer's Post and impounded them.

During the next several days, the police mounted similar attacks on Laresoro and Naishamunye (reported below). They confiscated cattle from each of these areas and herded them into Archer's Post. There, the Samburu East Member of Parliament and the elected county councilors witnessed the District Commissioner divide the confiscated cattle into three groups to be distributed among the Samburu's rival tribes: the Meru, Borana, and Somali communities. The cattle were loaded into lorries and sent to Isiolo, where they were distributed.

Samburu elders made lists of the cattle lost by families in each manyatta. In all, 86 families lost a total of 4,115 cows—their primary source of nourishment, identity, pride, and wealth.

The February 2009 police raids on Lerata, Laresoro, and Naishamunye ostensibly sought to recover cattle that had been stolen by the Samburu over the previous years, and return them to their rightful owners, the Meru, Borana and Somali communities. But the police made no attempt to identify the cows by owner; they just took them all. Many people pointed out that the elders in all the tribes are quite efficient in identifying cows; in one instance elders from different tribes were asked to determine ownership of 400 cows under dispute, and they arrived at agreement on all but ten. Nevertheless, the police gave the elders no opportunity to resolve ownership of the confiscated cattle.

The arbitrary and punitive police operation in Lerata was criticized as excessive even by the rival tribal groups that benefited, but the cattle were not returned. Public statements from leaders in the Meru and Borana communities pointed out that this action only made it more likely that the Samburu would be pushed into further cattle rustling to attempt to restock, and that the severity of the operation destroyed any willingness to build peace. Many people told us that until the cattle were returned or compensation was delivered, the Samburu people would continue to feel the bitterness of injustice, and their anger might drive young warriors to acts of revenge. Drought followed the police attack, so with their herds greatly reduced the Samburu became vulnerable to famine.

**“The police are criminalizing entire Samburu communities and punishing all the people even though they have done nothing wrong. If there are thieves, the police should look for them, but they are not doing that. The thieves are not being punished so they can continue their thieving. This is bad for the community and bad for law and order.”**

— Samburu East Member of Parliament  
Raphael Letimalo

Throughout the region, people see the Lerata attack as the first in what became a year-long series of well-planned and brutally executed police assaults on Samburu communities. The Lerata attack haunts people's minds because it was a complete surprise that—was shocking in its brutality—and devastating in its impact on the Samburu people's livelihoods and health.

Samburu East Member of Parliament Raphael Letimalo said he filed complaints with the Permanent Secretary of Internal Security and met with the Prime Minister three times, demanding compensation for the confiscated cattle. In October 2009, the Minister of Internal Security promised to provide compensation, but this has not happened. The MP also engaged a lawyer who filed an injunction while the confiscated cattle were still in Isiolo, but the courts did not stop the operation. “I don't know how this conflict is going to end,” Letimalo said. “Kenya is turning into a police state.”

The Lerata police assault, followed in the next two days by similar assaults on Naishamunye and Laresoro, were also protested by the Bishops of the Catholic Dioceses of Isiolo and Marala, The Catholic Justice and Peace Commission, the Kenyan National Commission on Human Rights, the Meru Traditional Elders (Njuri Ncheke), and the Meru business community.

**“The government seems not to be conscious of the aftermath of this operation for they leave the communities around this region more divided than before.”**

— Statement of the Bishops of Isiolo and  
Maralal Dioceses, March 8, 2009

**“We strongly ...condemn the excessive use of force on un-armed Samburu pastoralists...The indiscriminate manner in which the deployed personnel confiscated the 'stolen' livestock leaves a lot to be desired because innocent families suffered the ordeal of not only losing their only source of livelihood, but were also subjected to both physical and psychological torture.”**

— Concerned Meru Community of Isiolo  
March 13, 2009

## 5.2 Naishamunye, February 24, 2009

The Samburu people living in the village of Naishamunye abandoned it out of fear and despair after a police attack there during the week of February 23, 2009. Our interview with this community was conducted on January 20, 2010, in Kirish, a new manyatta near Lerata, where many of the people of Naishamunye relocated after the Naishamunye police assault. Ironically, the Kirish region had just been abandoned by people who were so frightened after the police attack on nearby Lerata that they fled the Kirish region. Many walked as far as Wamba (approximately 40 km) to resettle. Some of these earlier residents of Kirish are now returning, which is likely to strain the area's scarce water resources.

Testimony in the village of Kirish was offered by two male elders, a young mother, and an elderly mother, in the company of several other women and their children. Most members of this community were absent on the day of the interview because they had been invited to Lerata to register to receive food supplements for underweight children under five years of age. This food aid is critical because almost all the people's cattle—some 800—were taken away during the February 2009 police raid, and the remaining cows died in the ensuing drought. Today they have only a few goats and sheep.

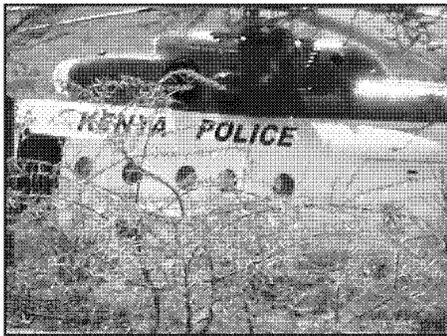
### Collective Testimony of Elders and Women:

We migrated here from Naishamunye and Chopulo because we were attacked first by Borana and Somalis, and then by police security forces. Our small boys were looking for their animals along the border . The

Somalis and Borana attacked the small boys and took the cows. No one was seriously injured. Mr.Kuti, the Borana Member of Parliament, falsely reported to the media that Samburu had crossed the border to steal Borana cattle. About 1,000 police came in with choppers and lorries. The choppers flew real low over our grazing area. They circled and fired guns into the cows to herd them all together.

Then hundreds of police came into the manyatta while the others went to take the cattle. In the manyatta, the police rushed into the houses and broke everything inside. They broke into the metal boxes and they took cell phones, swords, money, and *pangas* (small knives). The choppers were flying over the village to keep people from running away. The police beat everyone, even small kids. They beat us with anything, including heavy sticks and even firewood. They asked, "Where are the Borana and Somali cattle?" But they didn't find a single cow that belonged to the Boranas or Somalis. They took all our cattle and marched them to Archers Post, and from there they sent them away in lorries. None of those cows have been returned to us. We lost about 800 cows that day, almost every cow we had.

Some of our morans followed the police and their cattle into Archers Post to try to get them back. But the police turned around and told the morans to go home. Then they shot their guns and one moran named Loitu Lenaiyasa was killed right there.



*A police helicopter lands in Naishamunye.*

**"The man they killed was my best friend. I grew up with him in the same household. When the people told me I went to see for myself, and there he was lying in the road, dead. It is so sad for me; I don't want to remember it. He was just 18 years old, but he was the breadwinner for his mother and the smaller children. His poor mother lost him and she lost all her wealth - about 50 cows. She had to find a place to live in Archers Post."**

— A 19-year-old moran from Naishamunye,  
interviewed in Kirish

When the attack started, we had five boys out in the grazing area taking care of the cattle. Those boys are missing and we think they must be dead. We don't know if the police shot them or took them away, or if they ran away to the bush and wild animals killed them. The police have never told us anything about them. We phoned to the Member of Parliament and the area councilor, but they couldn't find out anything either.

The police left a few young cows behind without their mothers, and a few older cows were able to escape the choppers and get away. Afterward, because of the drought, they all died. Now we only have some goats.

After the attack, we stayed there one night to collect the cattle that had survived, and then we left that place. No one is living there now. It is abandoned. Some people came here, and others went to different places.

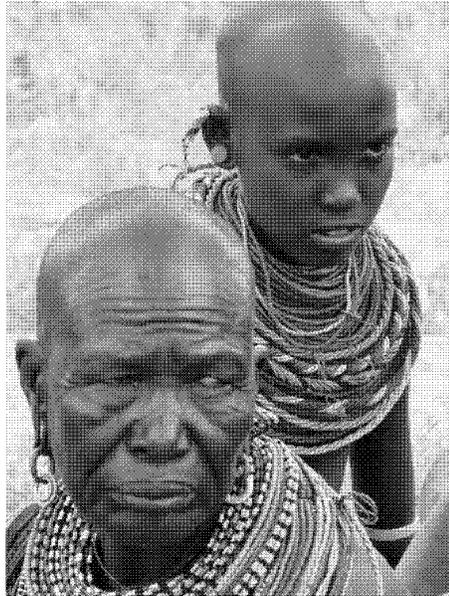
**"We are refugees now in our own country, so we are crying to you from our hearts because our government is against us."**

— Elder in Kirish

When the disarmament operation starts, we don't know what will happen to us. There are no guns in this community. We had one assigned gun from the government, but we gave it back voluntarily. This is not our home, but we would like to stay here if there can be peace. Still we would take our cattle for grazing in Naishamunye, because the pasture is better there.

**"I have nothing now. I lost everything. I only have what you see here and a few goats. Now we eat the roots and leaves of trees. We cook them with blood and milk from the goats. That is all we have to eat."**

— Elderly woman in Kirish



*Displacement, drought, and despair affect both the young and the old.*

### 5.3 Laresoro, February 24, 2009

On January 23, 2010, the Cultural Survival team interviewed 29 witnesses in Laresoro and in Archer's Post, where many from Laresoro were gathered that day for the market. Witnesses were consistent in their accounts of police operations of February 24, 2009.

#### Testimonies:

About 8 A.M. we saw police trucks, Land Cruisers, and helicopters headed from Archer's Post toward Naishamunye and Laresoro. Many did not think anything was amiss when the helicopters flew, since they were common sights at the nearby British Army training ground. However, those of us tending the cattle were surprised by the helicopters and police on foot as they started to round up the cattle. The police shot at anyone who attempted to control their cattle or approach the police to ask what was happening. The helicopters herded the cattle so they could be driven by the police on foot and the vehicles.

One woman recounted the following: "We were all in the manyatta in Laresoro. At about 8 A.M., we saw

vehicles passing to go to Naishamunye, and saw helicopters following. Then we saw the dust of cattle coming. We followed the cattle to town. On reaching town, we hid to see what was happening. We saw the cattle taken to the police station. In the evening someone told me my son had been killed. His name was Loyitu Lainayasa. He was just 18. Two children caring for the cattle disappeared, and have never been found."

One moran gave this account: "I let the cows out of the manyatta to go for water, and divided up the herd. Some morans returned to the manyatta, others stayed with the cattle. I saw one helicopter, and then I saw the police on the other side of a hill. The helicopter circled around, pushing the cattle toward the police on foot. I tried to prevent the cows from going, but I was fired on, and so I ran away. The children ran too. I saw police by the road, driving the cows. There were five morans who went on ahead to try to drive the cattle back, but police shot at them so they fled. None was hurt. The cattle slept on the road with the police."

Another man described the following: "My brother and I were taking care of the cattle when three helicopters, five trucks, and six Land Cruisers arrived at 1 P.M. The police grabbed my brother who is a moran, while I ran to hide. They beat my brother with heavy sticks and kicked him, asking him no questions. I ran home. The police left with the cattle, leaving my brother beaten on the ground, unable to move."

One man in Laresoro inquired if he could at least keep three cows to feed his family, and the police replied, "The cattle were yours this morning, but not now. Leave. If you don't leave, we will shoot you and you will sleep here."

Those who resisted were beaten or shot at. In total three morans were shot and killed by the police, and two children disappeared during the round-up.

The police then herded the cattle to Archer's Post. Many people followed the cattle to town, and many inquired of police what was happening and how they could get their cattle back. The police often responded with threats. One man looked for the operation commander, but was prevented by police officers who pointed guns at him. He tried to force his way in, but his friends held him back. He said, "I was a Senior Sergeant in the Kenya Army, and I have never stolen any cattle. I retired from the army, and have always been a 100 percent government person. I bought my cattle with my pension when I retired. The police took all 170 of my cattle. After 32 years of government service I feel bitter."

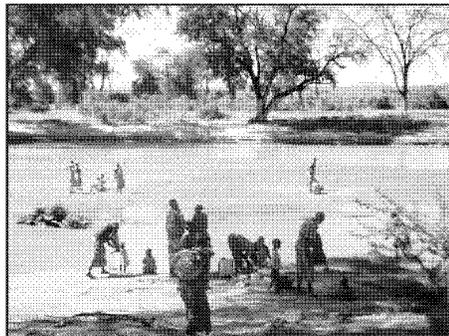
A group of women held a peaceful march to the police station, holding branches to show their peaceful intentions. As the police were loading the cattle onto trucks, the women asked them what they had done and how were they going to feed their children. Their appeals went unanswered.

Police gathered the cattle near the police station, letting the calves go without caring for them. The police slaughtered two bulls and ate them that evening. The next day they loaded some of the cattle onto trucks and drove away with them. They herded the rest of the cattle on foot toward Isiolo.

#### 5.4 Loruko, November 21, 2009

In Loruko, about 40 male elders between the ages of 30 and 90 gathered in the shade of a large tree on the banks of the Ewaso Ng'iro River. Six elders spoke, frequently consulting others to confirm details. Later, about 35 women with their young children gathered and gave their own testimony. One man and two women showed us their injuries: the man had been shot in the foot and was hospitalized for one month; his foot is still bandaged and he walked with difficulty. A mother of five had been shot in the arm; after two months in the hospital, her arm still was in a sling. We met the father, sister, and children of

Ndanait Lemantile, who was shot and killed by police in the attack on Loruko.



*The Ewaso Ng'iro River is Loruko's precious water source.*

The county councilor, Paul Mero, documented injuries and thefts in the Loruko attack, and gave us papers listing the names of 15 people who sustained injuries from "boot kicks, rifle butts, and gunshots;" 110 people from whom police stole a total of 1,014,700 Kenya shillings (approximately \$14,000) in cash; and 62 people from whom police stole ID cards, cell phones, food, and other items.

#### Testimony of the elders:

At about 5 A.M., the police arrived in about 14 lorries. They parked the lorries some distance from the manyatta and walked toward the village. They surrounded the village and started shooting into the bomas. They were Administrative Police, and there were hundreds of them. They threw hand grenades and shot mortars into the village from hand-held launchers. Some of these burst and some didn't. Later the police came back to the village and picked up the ones that didn't detonate.

At about 7 A.M., a chopper appeared over the village. The police didn't shoot from the chopper, they just flew around outside the village very close to the ground to keep us from running away and escaping. They used the choppers to herd people like cattle.

The police told us to come out of our houses and they took everyone out into a field, and then they looted the houses. There were hundreds of people out in the field, and the police told us to lie down and they stepped on us, kicked us, and caned us. They beat people with anything they had—sticks, knives, guns. There were pregnant ladies, children, and elders, and the police beat them all.

The other police went into the village and started looting. They pried open our metal boxes and took anything they wanted. They took cell phones, ID cards, clothes, everything the people had.

Then someone cried that a woman had been shot in her boma and was dead. The police ran inside and saw her, and then they ran to their lorries and left. That was about 10 A.M. They left the dead woman in her house.

Everyone rushed back to the village and found the dead woman and all the wounded. We took four wounded people to the Serena Lodge to get transportation to the hospital. A man was shot in the foot while he was sleeping in his house. Two toes were broken. He was in the Isiolo hospital for about a month, but he still can't walk properly. Seven children depend on him.

One man is still in Kenyatta National Hospital in Nairobi. His name is Lopeyok Lenkupae. He was running away from the manyatta carrying his two babies, trying to escape, when he was shot in the chest and in the hip. He was shot from the back. He has two children and he also takes care of his younger brothers and sisters because they are orphans. After he was shot, his wife ran away with the two children because she is afraid. She is staying in her family's home now in Archer's Post.

**"I heard bullets, so I rushed out of my house. I was only about five meters outside when a bullet hit me in the arm, just below the elbow. My children were screaming. I saw the police kicking and beating them. Everyone was running and crying. They took me to Isiolo Hospital and I had to stay there for two months. I just came home last week, but my arm still hurts and it is hard to take care of my children. I have five. When they see the police they run away; they are very frightened."**

—Wounded mother in Loruko

The local government, the county councilors, the chairman in Isiolo, and the park rangers always tell us to leave this place. Back in 1993 they told us to move away, but the people refused. Now they are telling us to move again, but this is our land and we will not



*A victim of the November 21, 2009 police attack on Loruko, with her five children.*

agree. We think that is why the police attacked us. The Samburu are a small ethnic minority in Isiolo district and the government doesn't help us.

Now the police have the disarmament operation and we worry that they will come to beat us again, but we have surrendered all our guns already.

#### **Testimony from Loruko women**

Three women spoke in the presence of about 35 other women:

The police came like enemies or thieves. It was very early and we were asleep with our children. When we heard bullets we had to lie down over our children to protect them. We heard the sound of the bullets ("piew! piew!") and we thought we would die. We were just waiting for death. The old men ran away, but we women cannot leave our children behind. The woman who was shot and killed was nursing her baby when she died. Nothing can make us leave our children behind. When the police made us leave the bomas, all the children followed us out and the police kicked and beat them.

The children of the lady who was killed came out of the house with blood on them. The biggest boy took the hand of the police and said, "You have killed my



Authors' Note: At a public meeting in Loruko on January 21, 2010, which Cultural Survival researcher Paula Palmer attended, Isiolo Member of Parliament and Minister of Livestock, Mohamed Kuti, acknowledged the excessive use of force in the November 2009 police attack on Loruko. He said he would pay the cost of recovering the deceased woman's body from the mortuary, where it has been since the attack, so that the people can bury her.

mother." When the police saw the children covered with blood, they blew their whistles and went away. We phoned to the councilor, Paul Mero, and he came. When he saw the dead mother and her children he called human rights organizations and they came and took photos. The dead woman's body stayed there until the police came back the next day and took it to Isiolo. We haven't seen her since. Now the old father of the woman is doing his best to take care of her children, and her sisters also help care for them.

**"This is the pain that women feel when we see our children beaten, when we hear them cry. Till now we are still afraid that the police will come again. We have heard about the rapes in other places. We can't sleep because of what we saw."**

— A mother in Loruko

Following the attack on Loruko, similar police attacks were reported in the Samburu villages of Sasaab, Nkutuk Engron, and Westgate. The director of a local NGO who witnessed the aftermath of the police attack on Loruko gave this testimony about subsequent attacks on two additional Samburu villages:

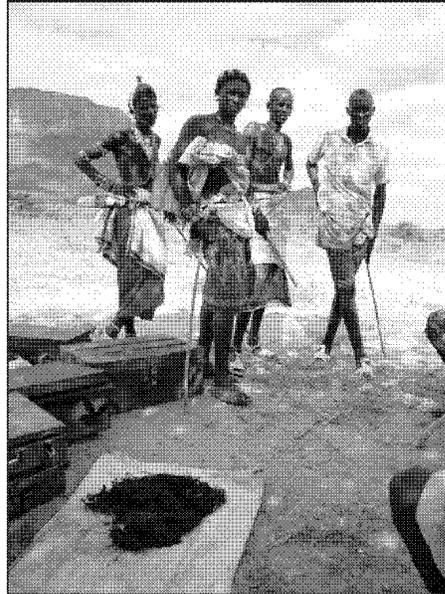
After the attack on Loruko, the police went to Daaba village, Ngaramara location, where they ambushed the village and beat a very old man. He was about 80 years old and he died from the beating. I went with the district police officer to Daaba afterward. He recorded the victims' statements, but nothing happened. The police never apologized or returned the money they stole from the people, and they didn't issue a public report.

Next, the police went to Kawalash, Kipsing location, where they beat women, young men and elders, and they stole money. Afterward, the area councilor appealed to the General Service Unit in Kipsing to make the police give back the people's money, and they did.

The police attacks are done by a combined force of General Service Unit, Administrative Police, and Anti-Stock Theft forces. These are not local police. They are far from home, staying in dusty tents. They are bored and tired of camp food, and they are far from their families. They don't get paid very well, either, so they are not very happy about being here. This is not an excuse for their aggression, but it is a good reason for the government to rely on local police and stop bringing in these men from far away who are so miserable here.

## 5.5 Lerata, January 10, 2010

On January 18, 2010, we interviewed seven Samburu women and two junior elders from one manyatta which is part of the larger Lerata community. Later, at a separate Lerata location where about 40 male elders were meeting to discuss the problems with police, five elders gave testimony in the presence of all the others.



*Morans who were beaten unconscious by police on January 10, view the mass of hair that a policeman chopped off one of them.*

### Testimony of the women and two junior elders:

About 200 uniformed police arrived from the west around 7:30 A.M. They came in two lorries and two Land Cruisers. They fanned out on foot and surrounded the manyatta. Some of the women and young boys were outside with their goats. Police picked up sticks and beat three of the women and a school girl. They came into the manyatta and pushed us women into our bomas. They came inside and broke into our metal boxes and took our money, beads, ID cards, watches, cell phones, legal gun certificates, and even personal mail like letters from Christian Childrens Fund sponsors. They destroyed our food by

mixing maize flour with rice and sand. They broke gourds of milk and poured the milk on the ground. They insulted and humiliated one woman who told them she was a widow; they taunted her about why she had a young baby if she was a widow. The police were mean and crude and they threatened us, but in this manyatta they didn't rape us. Since most of us don't speak Kiswahili we couldn't understand them.

The police beat up 11 moran and two junior elders. Five moran were beaten unconscious with their own sticks (rungus). One had a broken jaw, one had a broken hand, one was cut in the thigh with a knife. They had deep cuts on the tops of their heads. The police grabbed and pulled one moran's long ocher-died hair and cut it off with a machete. When the police finally left, they took three morans to jail and kept them there for three days without ever charging them. They left two morans on the ground, unconscious, and at first we thought they were dead. People improvised stretchers and carried the two morans to the clinic in Archer's Post. The other injured men could walk.

**"After the police attack, we women could not eat for three days, we just trembled. My children cried out in their sleep, and I couldn't sleep at all. We heard a rumor that the police would come again, so we took our children out to the bush at night, hiding. I am more afraid of the police than of the wild animals. If they come again, I will run away with my children."**

— Mother of five in Lerata

The elders here asked the District Administrator to come and receive two guns from this manyatta in December 2009. When he came, he issued certificates for the weapons, and now the morans carry these certificates with them at all times in case the police question them. We agree to disarmament, but all the tribes must be disarmed equally and the government should provide impartial security for all.

#### **Testimony of six Lerata elders:**

"We are busy people. We have many things to do. But now we have to spend our time at meetings like this, worrying and discussing what to do because the police are beating us."

"We are fighting two wars now - one against drought and famine, and one against the police. We have no government anymore. We have no country. The government is biased against us. Now our people are

frightened and they are leaving their homes and going as far away as they can to hide from the police."



*Lerata elder*

"We are old elders and we have never seen anything like this before. It feels like our life is coming to an end. This is government discrimination against a minority tribe. Our own government is punishing us. That is why we are calling out for international help."

"Seventy-five percent of people in Lerata and Archers Post have voluntarily surrendered any arms they had. There has been a good response to the disarmament order from the community. This brutal police repression is totally inhuman. No information was requested through the elders, which is the normal procedure. The police aren't attacking other communities, just here in Samburu. That is why we need international help to defend our rights."

"If the police are looking for stolen cows, all they have to do is come and speak to the elders. The elders have always solved these problems because all the young warriors respect them. But now the police come and

attack the whole village and take away all the cattle. I am 82 years old, and in all my life I have never seen anything as bad as this. The police say they want to collect illegal guns. The elders have a list of everyone here who has a gun, so all the police have to do is ask them. But instead they come and beat the women and the children, and steal their things. Women and children don't have guns, so why are they being raped and beaten?"

Authors' Note: The director of the Lerata dispensary (Ministry of Public Health and Sanitation), told us he treated 26 people on January 10 for injuries and sent two of them on to the Archer's Post clinic for further treatment. Sister Elisa, director of the Catholic mission health clinic in Archer's Post confirmed to us that six people from Lerata were treated at the clinic after the January 10, 2010, police attack.

In an independent investigation, the Kenyan National Commission on Human Rights documented five rapes of women in Lerata by police forces during the January 10 attack. Cultural Survival interviewed women from only one of the Lerata manyattas, where no rapes were reported.

## 5.6 Kiltamany, January 12, 2010

On January 19, 2010, we interviewed a mixed group of approximately 60 men and women in Kiltamany. Both men and women gave testimonies about the January 12 police attack. Later, Paula Palmer privately interviewed three women who had been raped by police during the attack. We also walked to a boma that had been set on fire and partially burned by the police; they burned another boma to the ground. Elders showed us broken rungus (heavy staffs carried by the elders) that police used to beat men and women. They also showed us metal safe boxes that had been pried open by police. Residents provided a list of items stolen by police from 46 different families in Kiltamany.

### Testimony of men and women together:

The police came around 9 A.M. They parked their four lorries and a Land Cruiser down the road and then came on foot toward the village. They herded all the camels and took them a little ways away from the village, along with some of the elders. In the village, they were beating the women and the elders and stealing whatever they could find in the bomas. They

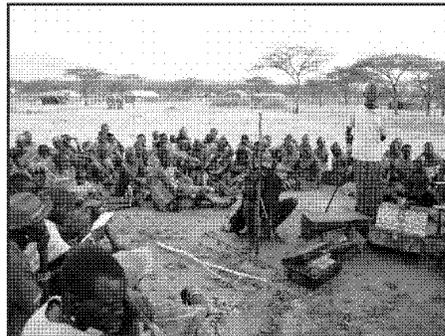
poured the milk and tea on the ground. They mixed the maize flour with tobacco and sand and poured it on the ground so we have nothing to eat.

**"We don't understand what the police came to do. They surrounded the place. They went into people's houses and took things out of the boxes, broke into closed houses, threw everything around. I was slapped three times. The police used their gun to hit me. Now we cannot sleep. We are too worried. We don't know why the government is using this force against us. This is the first time since I was born that I have seen anything like this."**

—Elder in Kiltamany

There is no bank nearby so we keep all our money and valuable things in locked metal boxes. The police forced open the boxes and took everything. Here we have a self-help women's group. They took all that group's money—38,000 shillings (approximately US\$550)—and some of this money was a loan to the group. They destroyed everything in the shops, too, so the shop owners lost all their stock.

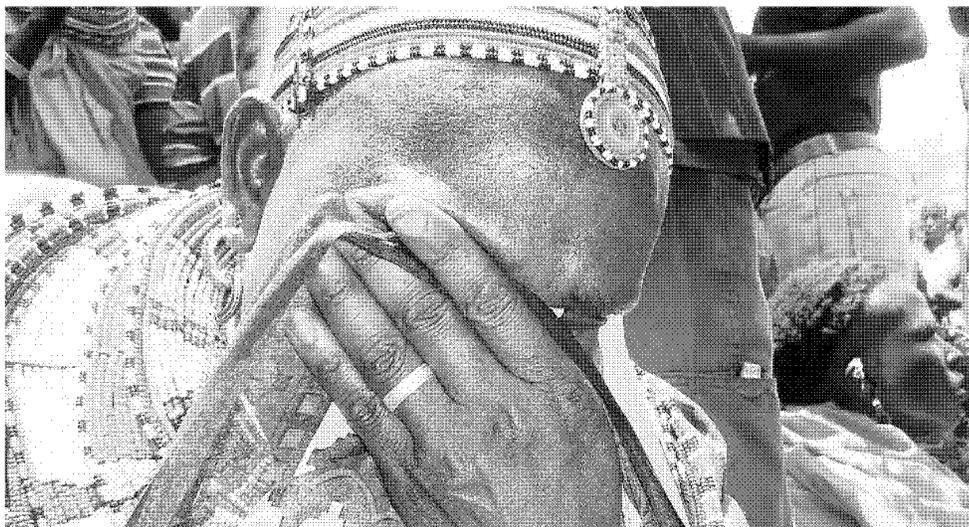
**"Is this our real government attacking us, or are they terrorists from somewhere else? Why are they attacking us? Some of our elders are still in**



*Police stole cash, cell phones, and other possessions from these metal safe-boxes in Kiltamany.*

**the hospital with their wounds. We have nothing left; the police took our cattle and our money and they poured our maize flour on the ground. They raped three mothers here in front of their children, and now will those mothers get sick? The government has taken everything from us."**

—Samburu woman in Kiltamany



They raped three mothers right in their bomas. They burned one house down to the ground, and they partly burned another house, but the women were able to put the fire out. They burned people's clothes. They took away four camels, two from the Langupai family and two from the Lakaleili family. One camel was nursing a one-month-old calf. They took the mother camel and left the calf to die. We fed the calf, but it died anyway.

Fifteen men from here were seriously injured, and two of them are still in the hospital.

Authors' Note: Sister Elisa at the Archer's Post Clinic confirmed that seven wounded people from Kiltamany were treated on January 12, 2010. The most seriously injured people were transferred to the hospital in Wamba for further treatment. The elders told us they don't like to stay in the clinic or hospital because it is easy for the police to find them there.

**Statements of three women who were raped by police January 12, 2010:**

"I am 48 years old and I have seven children. Now I am a widow. I was alone in the house when the policeman came. He pushed me and came on top of me and pulled my skirt. He said, 'I want to rape you.'

He had a knife. After he raped me he took my cell phone and 1,000 shillings and went away."

-----  
"I am 32 years old and I have five children. My husband was away working at the Lodge. I was alone in the house. A car came about 2 P.M., and someone shouted to me, 'Mother, mother, a car is here.' The policeman forced himself in. He said, 'Give me your snuff.' I said, 'I don't have any.' He said, 'Give me some sex, I want to rape you.' Another policeman was shouting, 'Catch the woman, catch her!' Then he raped me. Now I am worried, did that policeman have AIDS?"

-----  
"I am 30 years old and I have three children. I was inside the house. The police said, 'Come out of your house.' One policeman went in and found my cell phone and took it. Another one told me to go into the house and threw me on the mattress. He grabbed my skirt, where I had a belt with money. He took 10,000 shillings (US\$135) from the pouch, and raped me. He took my money and all my food. My three children were in school. Now my husband doesn't know if I am sick."

## 6. Conclusions and Recommendations

### 6.1 General Conclusions

During 2009 and 2010, Kenyan police forces conducted armed assaults on at least ten Samburu communities in Samburu East and Isiolo Districts. Police officers have committed extra-judicial killings, rapes, beatings, thefts, arson, and intimidation multiple times. Their actions have caused the Samburu people to suffer death, injury, terror, displacement, economic hardship, property loss, and vulnerability to disease and famine. These crimes have been reported and protested, but no action has been taken by the government of Kenya to investigate or prosecute the offending officers or their superiors. This lack of action is the very definition of impunity.

If the police operations in Isiolo and Samburu East were intended to bring greater security to the region, their effect has been the opposite. They have served to increase insecurity, hostility, and suffering.

The proliferation of small arms and the associated increase in violence among the pastoralist communities in the North are serious problems, and the communities are eager to resolve them and build peace. Resources for peace building are present within the communities and the region in the form of the traditional council of elders, government-appointed chiefs, district peace committees, and human rights organizations. These are the most promising resources for building lasting peace.

### 6.2 Recommendations

Based on our findings, Cultural Survival urges the Kenyan government to take the following actions:

In the Isiolo/Samburu region of northern Kenya, the government should:

- immediately withdraw those national police forces from Samburu East and Isiolo districts that are deployed to forcefully disarm the pastoralist communities, leaving locally-based police in place to perform ordinary police duties;
- authorize a universal disarmament process in northern Kenya to be carried out under the guidance of the pastoralist communities' traditional elders, government-appointed chiefs, district peace committees, and human rights organizations;

- authorize the development and implementation of a community-based process for resolving disputes over cattle raids and cattle ownership in northern Kenya;
- negotiate with all pastoralist community elders a fair and final resolution, including appropriate compensation, for police confiscation of cattle during 2009 and 2010;
- with the assistance of NGOs, explore ways to improve cattle ID systems, such as branding, ear tags, electronic chips, etc.;
- instruct local police officers to investigate and arrest individuals suspected of committing cattle theft and raids, and to cease conducting punitive assaults on entire communities and individuals at random;
- investigate and prosecute police officers suspected of authorizing and participating in the large-scale police attacks on Samburu communities during 2009 and 2010, as well as individual police officers suspected of injuring or violating the rights of Samburu individuals;
- recognize the right of citizens to monitor human rights violations in their own communities, guarantee their safety, and take immediate action to address any reports of human rights violations that they submit to the Minister of Internal Security.

At the national level, the Kenyan government should:

- implement the recommendations for police reform spelled out in the report of the Waki Commission of Inquiry into Post-Election Violence (CIPEV) and the report of the United Nations Special Rapporteur for Extrajudicial, Arbitrary or Summary Executions;
- implement the United Nations Declaration on the Rights of Indigenous Peoples;

- recognize the Indigenous pastoralist tribes' right to free, prior, and informed consent regarding any infrastructure or development project that would affect their lands, natural resources, property, cultural expression, and sacred sites;
- require all development projects, including the road construction, oil exploration and exploitation, and tourism development projects underway or planned in Samburu East and Isiolo districts, to meet the highest international standards and best practices in regard to their environmental and social impacts;
- support the Kenyan National Commission on Human Rights, the Kenyan Human Rights Commission, and other NGOs in their efforts to educate all Kenyans about human rights and to combat racial prejudice and discrimination against pastoralist tribes.

## Appendix I: Cultural Survival's letter to Kenyan government officials, February 12, 2010

February 12, 2010

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Rt. Hon. Mwai Kibaki, CGH, MP, President  
Rt. Hon. Raila Odinga, EGH, MP, Prime Minister  
Republic of Kenya

Re: Please Cancel Police Disarmament Operations and Institute Community-Based Disarmament Process in Northern Kenya

Your Excellencies:

For the past twelve months, Cultural Survival has received reports of widespread and systematic police violence against Samburu communities in Samburu East and Isiolo districts. Last month we sent a research delegation to investigate those allegations. We recorded testimony from scores of Samburu survivors and witnesses from five villages (Lerata, Laresoro, Naishamunyi, Loruko, and Kiltamany) that were attacked by police during 2009 and January 2010. Our researchers also interviewed respected leaders of local and national NGOs, clergy, health workers, county councilors, the Samburu East Member of Parliament, and staff of the Kenyan National Commission on Human Rights and the Kenyan Human Rights Commission.

Our research reveals a consistent and ongoing pattern of police brutality, human rights violations, and impunity. We appeal to you to correct this situation immediately by withdrawing all police forces and authorizing a community-based disarmament process.

Cultural Survival's full report (forthcoming) includes many detailed accounts of acts of violence committed by the Administrative Police, the Regular Police, the Anti-Stock Theft Unit, and the General Services Unit. These acts include extra-judicial killings, rapes, beatings, disappearances, theft, arson, and intimidation of unarmed Samburu men, women, and children. As a direct result of these attacks, the Samburu people suffered death, injury, terror, severe economic and property loss, and vulnerability to famine and disease.

For example, witnesses described how police helicopters and ground forces approached the sleeping village of Loruko on November 21, 2009. Ground forces fired their guns and mortars into the bomas, killing a woman as she nursed her infant.

Four villagers were hospitalized with serious gunshot wounds. Police forced women, men and children into an open area outside the village, where they kicked and beat them while other police looted their bomas.

In Lerata on January 10, 2010, some 200 police arrived in lorries and Land Cruisers and started beating women and young boys who were outside tending goats. The police then forced their way into the village where they stole everything of value in the bomas. They attacked nine young warriors and two junior elders, beating five of them unconscious. Injuries included broken bones and knife wounds to the thigh and head. Afterwards, fearing another attack, some villagers took their children to hide in the bush every night, saying, "We would rather take our chances with the wild animals than face the police again." (Independently, the Kenya National Commission on Human Rights reported that five Lerata women were raped in this police attack and afterward fled the region.)

In Kiltamany on January 12, 2010, similar attacks occurred, with police stealing everything of value,

beating elders, and raping three terrified women who now fear infection with HIV or other sexually transmitted diseases. The police burned one boma to the ground and set another on fire. Fifteen men and one woman were seriously injured and two were admitted to the clinic in Archers Post. The police gave no reason for the attack.

All of these attacks happened during a period of so-called amnesty, prior to a disarmament deadline, and they followed months of similar police attacks in the area. In addition, they exacerbated cattle-rustling and inter-ethnic tensions that are already high in the region at a time of very severe drought. In short, police actions are reducing rather than increasing security in the region. The attacks are crimes that have been widely reported by the Samburu East Member of Parliament, human rights organizations, and the press, but no criminal investigations or prosecutions against police officers alleged to have committed them have been initiated.

Now your government has announced that police disarmament operations will begin on February 20. Having already committed criminal behavior and gross human rights violations, the police forces that have been terrorizing Samburu people are incapable of carrying out effective, impartial, and orderly disarmament operations. Instead, they should be immediately withdrawn.

The people of Samburu East and Isiolo districts want to participate in a universal, effective, impartial, and lasting disarmament process. This process should be led by community elders, district peace committees, human rights network members, clergy, and NGOs such as Catholic Justice and Peace Commission and the National Muslim Leadership Forum. Based on our investigation, a community-based cooperative process is the only means by which disarmament can occur peacefully and remain permanent in the region.

In addition, the government should recognize the right of Kenyan citizens to monitor police behavior, and the Minister of Public Administration and Internal Security should take immediate action when human rights violations by police forces are reported.

We implore you to immediately withdraw all national police forces stationed in Samburu East and Isiolo districts and instead work with community leaders to establish a community-based process for disarmament throughout the North. Based on our investigation, this is the only means to achieve the security and disarmament goals desired by both your government and the local Samburu people.

We respectfully await your reply and prompt action.

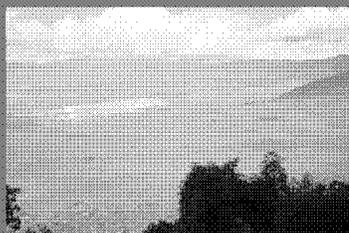
Sincerely yours,

Ellen L. Lutz  
Executive Director

CC:

Hon. Prof. George Saitoti, MP, Minister of Public Administration and Internal Security  
Francis T. Kimemia, CBS, Permanent Secretary of Public Administration and Internal Security  
Matthew Kirai Iteere CBS, EBS, OGW, Police Commissioner  
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Ambassador Michael E. Ranneberger, United States Ambassador to Kenya  
Ms. Navanethem Pillay, UN High Commissioner on Human Rights

## Ngorongoro



Broken promises –  
What price our heritage?

Dr James Bellini

January 2008

# Ngorongoro

Broken Promises –  
What price our heritage?

Prepared by Dr James Bellini

January 2008

### **About the author**

Dr James Bellini is a broadcaster, writer and futurologist with a strong interest in environmental and related public policy issues. He regards the preservation of our human and natural heritage as the critical challenge of this century.

### **Acknowledgements**

Copies of this publication can be obtained from PINGOS-Forum

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2 Ngorongoro

# 1 Introduction

**Are 50,000 Maasai, Tatoga and Hadza families and their herds to be evicted from their homeland in Tanzania in the name of conservation?**

**Are they the victims of the flawed idea that people and wildlife cannot co-exist?**

The government Ordinance that created the Ngorongoro Conservation Area in Tanzania confirmed the legal right of Maasai and other smaller tribes to live there as they have for generations. The Area has been granted World Heritage Site status in recognition of its pattern of multiple land use, where people, wildlife and habitat co-exist. But recent years have seen growing pressure to evict the inhabitants and destroy this unique phenomenon. Soon it may be too late.

So the question is a simple one. How do we treasure and preserve our global heritage for future generations but also meet the needs and respect the rights of people today?

UNESCO's 1972 World Heritage Convention calls on the international community to work together to protect our precious inheritance, both natural and human. Some 177 countries have ratified the Convention and pledged their support for its goals. The United Republic of Tanzania signed and ratified this Convention in February 1977.

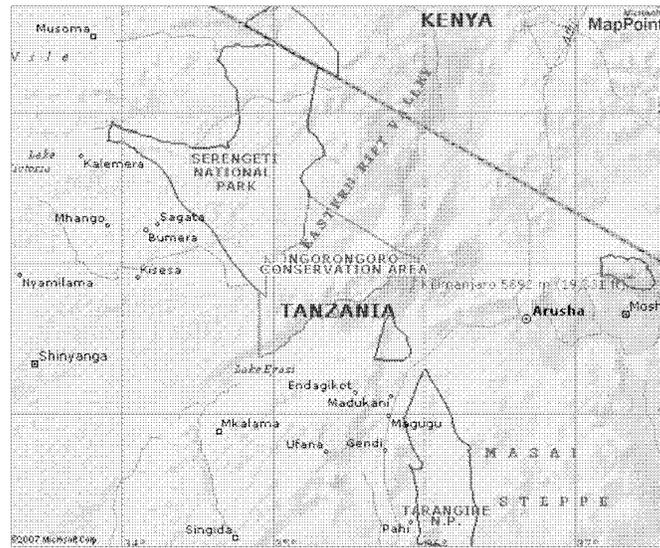
The Convention's key goal is protecting places, peoples and wildlife deemed to be of 'outstanding universal value' – irreplaceable, priceless, unique expressions of our world's cultural and natural history. There are now close to eight hundred properties on the World Heritage List. It's a remarkable catalogue and the loss of any would impoverish us all.

## **Box 1: World heritage list – A selection**

Great Barrier Reef	Great Wall of China	Galapagos Islands
Iguazu National Park	Tsodilo in Botswana	Timbuktu
Chartres Cathedral	Acropolis in Athens	Vatican City
Taj Mahal	Medina of Marrakesh	Petra
Kremlin and Red Square	Dja Reserve in Cameroon	Robben Island
Grand Canyon	Tower of London	Island of Mozambique

Broken promises – What price our heritage? 3

But who decides how should they be preserved? Who has the right to pick and choose which elements of a heritage site we elect to conserve? That right also gives a power that carries with it immense responsibility. Each property on the List possesses a unique mosaic of characteristics – natural, cultural, historical. It betrays the very spirit of the Convention – and our commitment to unbiased preservation – if some component part of any heritage property faces destruction, whether through ignorance, prejudice, neglect, commercial greed or lack of political will.



#### 4 Ngorongoro

## 2 Ngorongoro – A people's homeland

It is this very issue of power and responsibility that overshadows the inhabitants of the Ngorongoro Conservation Area (NCA) in north-east Tanzania. They have suffered a long war of attrition to evict them and thereby destroy their way of life. For them, time is running out fast.

Ngorongoro has been popularly described as 'the eighth wonder of the world' – the Garden of Eden. Neighbouring the Serengeti National Park in northern Tanzania, it is one of the biggest inactive, unbroken and unflooded calderas in the world – a vast basin carved out by volcanic action. The landscape is unusually beautiful, with key archaeological sites. The legendary anthropologists Louis and Mary Leakey discovered human relics in



**Ngorongoro crater seen from the rim**

Olduvai Gorge and with other fossils and artefacts they have produced a record of human evolution spanning four million years – the earliest clues to human genesis. It boasts one of the most important concentrations of wildlife on this planet, with some of the largest concentrations of plains herbivores seen anywhere. And it is home to a small group of black rhino, a threatened species dating back to an earlier geological age.

For centuries Ngorongoro has also been the homeland of more than 50,000 pastoralists and hunter gatherers.<sup>1</sup> Apart from small numbers of Tatoga and Hadzabe most are Maasai, who feature widely on tourist posters and brochures as the symbol of Tanzania. Pastoralism has been practised in Ngorongoro for at least 7000 years and the Maasai have lived there since the early 17th century.<sup>2</sup> Together with the area's wildlife they practice a pattern of land use increasingly recognised as the gold standard for the multiple land

1. NCA Draft Management Plan 2005-15 p. 6.

2. Lissu T, Policy and Legal Issues on Wildlife Management in Tanzania's Pastoral Lands in *Law, Social Justice and Global Development Journal*, Washington December 2000; also Geoff Taylor and Lars Johansson in *Forest, Trees and People Newsletter No 30 Source for 17th century is reference to Jacobs [1975] in Rugumayo p. 123.*

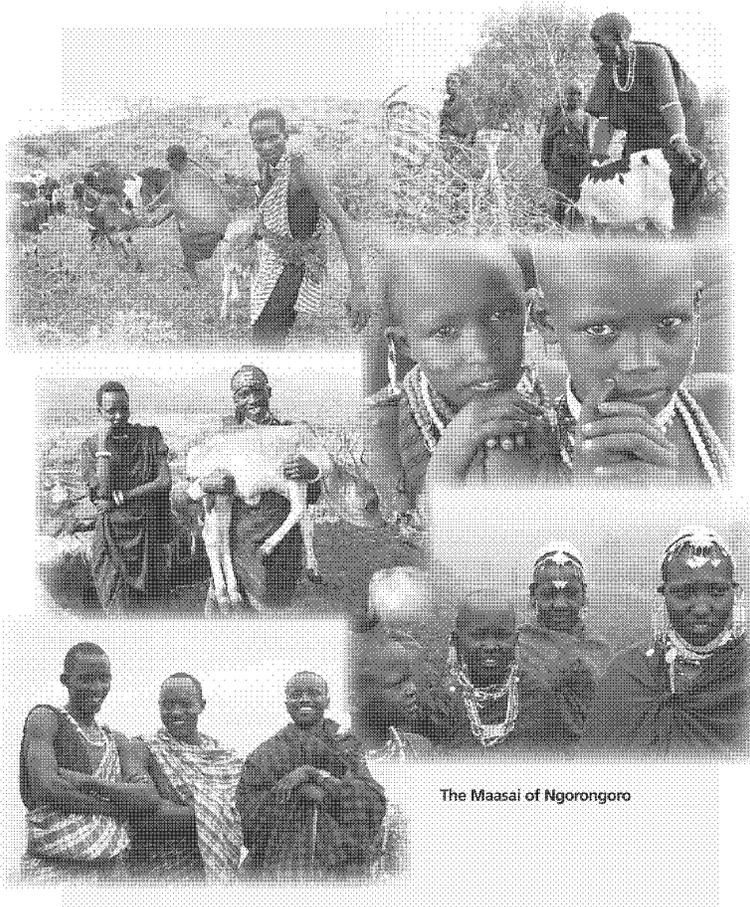
**Box 2: The natural treasures of Ngorongoro**

The NCA covers over 8000 square kilometres and has a rich diversity of landforms and climate that has created several distinct habitats. It teems with wildlife. In 1980, the number of wildebeest was estimated to be 1.06 million. Today, during the annual migration, the Area sustains the highest concentration of wildlife on earth when up to 1.3 million wildebeest, half a million gazelles and a quarter of a million zebra come into the Ngorongoro lowlands. The crater has the densest known population of lion while on the crater rim there are buffalo, elephant, mountain reedbuck and leopard. Birds include ostrich, kori bustard, Verreaux's eagle, Egyptian vulture, rosy-breasted longclaw, the lesser flamingo and varieties of sunbird.

Source: C. R. Rugumayo *The Politics of Conservation and Development* p 93

use concept while being environmentally sustainable. In recognition of this unique mix of wildlife and people, Ngorongoro was inscribed on the World Heritage List in 1979. It is also a UNESCO Biosphere Reserve. Yet despite a host of guarantees and protective laws, World Heritage Site and Biosphere status and widespread international support, the people of Ngorongoro face a battle for survival they are perilously close to losing.

But unlike the famines, epidemics and other disasters that have stalked so much of Africa down the years, this tragedy is not about the ravages of unpredictable Nature. It is about flawed conservation theories, human rights and responsible governance. If these flawed ideas succeed and the people of Ngorongoro are driven from their lands it would spell the end of multiple land use and NCA's claim to 'outstanding universal value'. It would also create a dangerous precedent for tinkering around with other special places around the world. Maybe replace crumbling bricks in the Great Wall with shiny new ones. Or remove street lamps from St Peter's Square on the grounds they were erected by Mussolini's fascists. Or allow fast-food joints in the Taj Mahal. That, too, would be madness. The injustice in Ngorongoro must be stopped.



The Maasai of Ngorongoro

## 3 An end to broken promises

This story is not only tragic, it is deeply ironic. The roots of this crisis lie in the creation and subsequent management of the Ngorongoro Conservation Area. As its very name implies – and its governing statutes confirm – it was set up to conserve everything that gives Ngorongoro its unique character: landscape, wildlife and the people with their herds. It has done nothing of the sort.

For decades the people of Ngorongoro have suffered steady erosion of their traditional rights by a succession of conservation programmes, even though those rights were formally recognised at every stage. The British colonial authorities first gazetted the area as a wildlife reserve. Then, in 1940 they declared it part of the greater Serengeti National Park. Official assurances about people's rights to live and raise cattle there

### Box 3: Promises on Maasai rights

*"On all grounds of equity and good faith no government could contemplate excluding the Maasai from the whole of the great game areas...the policy was altered to establishing the Park in the plains to the west, leaving the conservation of the Ngorongoro area to be built around the interests of its inhabitants."*

Address of the Governor to the Legislative Council 14 October 1958 quoted in Shivji and Kapinga, *Maasai Rights in Ngorongoro*, IIED, 1998, p10.

*"...the government intends to protect the game animals in the area, but should there be any conflict between the interests of the game and the human inhabitants, those of the latter must take precedent"*.

Speech by the Governor of Tanganyika to the Maasai Federal Council, 27 August 1959, quoted in Shivji and Kapinga, *op cit*, p 10.

*"Nothing in any rules made under this section shall operate so as to prohibit, restrict or control...the entry into or residence within the Conservation Area of any members of the Maasai tribe"*.

1959 Ordinance creating the NCA Authority, Section 6; quoted in Shivji and Kapinga, *op cit*, p 11.

were given by the colonial Governor to the country's Legislative Council and the Maasai Federal Council.

The Ngorongoro Conservation Area was created in 1959, on the eve of Tanzanian independence. A new Ngorongoro Conservation Area Authority (NCAA) was given a clear purpose: to ensure that 'the conservation of the Ngorongoro area be built round the interests of the inhabitants'. Further legal changes in 1975 reinforced this guarantee, giving NCAA a duty 'to safeguard and promote the interest of the Maasai citizens of the United Republic engaged in cattle ranching and the dairy industry within the Conservation Area'.<sup>3</sup>

Given this unambiguous mandate the Maasai were entitled to believe their ancient heritage was valued, encouraged and protected by law. But the Maasai were mistaken. Without their realising it, the goalposts had moved. In 1956, before the founding of NCAA, a Commission of Inquiry recommended Serengeti Park would be better protected from human activity if it were separated from the area that now forms NCAA. An agreement was signed with Maasai elders who consented to vacate the Serengeti on condition they 'retained rights of habitation, cultivation and socio-economic development'.<sup>4</sup> Because of this agreement, the entire Maasai community in Serengeti, along with their livestock were moved. There was partial resistance and some were forcibly evicted.

To compensate the Maasai it was agreed to provide them with a package of social and other services within NCAA and regular investment in water supply projects. This compensation deal has not been honoured. As the authorities admit, though there were initial water development projects 'most are currently non-functional'.<sup>5</sup>

Worse still, the Maasai soon discovered they were not welcome in the NCAA, either. Instead, the NCAA has seen its chief priority as the preservation of wildlife, despite its clearly defined obligation to promote multiple land use. For many years the Authority has been trying to evict the Maasai and other hunter-gatherer peoples. This first started in 1975 with an amendment of the NCAA Ordinance banning residents from living in the crater and around the crater rim. Under a new Section 9A cultivation was statutorily prohibited, a major blow to Maasai communities that had traditionally fallen back on subsistence cultivation in times of crisis. Small plantings of maize, beans and potatoes are essential to their survival and part of traditional Maasai practice for generations. Evidence of such planting goes back to at least the 1890s, while some studies point out that cultivation has a thousand year history in the NCAA.<sup>6</sup> Leading lawyers regard Section 9A as a fundamental breach of the Maasai right to life and livelihood. The NCAA takes a totally different view. It says their livestock herds destroy the environment and interact

3. Section 5A(c) of the Games Parks Laws Act 1975 – quoted in Shivji and Kapiga op cit, p15.

4. Charles Lane: *Ngorongoro Voices: Forests, Trees and People Working Paper* p 2 quoting from URT 1990:5.

5. Draft General Management Plan 2005-15 p9.

6. Rugumayo, p141.



badly with local wildlife. It regards their family farms as a blot on the landscape – an eyesore for tourists.

The 1975 ban on cultivation was not over-turned until 1991. During the ban Maasai families were forced to sell a higher proportion of their reproductive cows, further diminishing their vital pastoral assets.<sup>7</sup> A ban on grass burning is blamed for a growth of unpalatable species and an increase in tick infestation. Another device is to hinder livestock production. Olmoti Crater is a traditional dry season grazing area but now has restricted access and has been developed as an area for hiking safaris; residents need to get permission to go there. Livestock have been completely banned from the forests, a major source of feed in the dry season and critical for their well being and ability to endure the harsh dry season. The Crater also provides salt licks, very important for livestock diets, as well as high-value dry season grazing and permanent water. This is now denied the Maasai. As a result they have become unable to look after their animals properly; milk production has suffered, as have children's diets.

These factors have combined to undermine livestock numbers such that the livestock: human ratio declined to below subsistence level for 37 per cent of residents. Over 40 per cent of children suffer from malnutrition.<sup>8</sup> At present 58 per cent of the population

<sup>7</sup> Rugumayo, p141

<sup>8</sup> *Multiple Land Use in the NCA* Community Donor/Supporter Meeting, London August 1997, IIED p 1.

in the NCA are classified as 'destitute', 'very poor' or 'poor'.<sup>9</sup> Bizarrely, the NCAA today allows farms run by non-resident outsiders – including government and NCA employees – in the Endulen area, where crops are grown for profit using hired labour on plots twice the size of Maasai homesteads.<sup>10</sup>

Over the past few years the pressure to move residents out of the Area has been stepped up. In the early 1990s an indication of government policy can be seen in a summary of a meeting between the then Prime Minister and leaders of Ngorongoro District Authority. It refers to 'phasing out' cultivation over a two to three year period and persuading those who wished to continue cultivation to do so outside the NCA. When discussing long-term plans for the NCA the summary says: "Ngorongoro district council, in collaboration with the NCAA and the Ministry of Natural Resources, Tourism and Environment should prepare a plan to develop areas outside the conservation area, particularly Loliondo and Sale plains, for agriculture and pastoralism."<sup>11</sup>

This was only the beginning. In September 2001, during a visit to Ngorongoro, Tanzania's Prime Minister Frederick Sumaye announced subsistence cultivation would not be tolerated much longer. The country's President assured worried local people any ban only affected immigrants. But in October and November 2002 the NCAA wrote to councillors and village chairmen saying all cultivation is illegal and residents will have to relocate.<sup>12</sup>

The result is growing conflict between the Maasai and the Authority, with pastoralists painted as the unruly villains. It is a sad reflection on an area renowned for its bounteous natural riches and a magnet for tourist dollars that many of its indigenous inhabitants live on the edge of starvation. As one Norwegian study put it: '*Famished Maasai in a World Heritage site famous for its cultural heritage and rich wildlife resources are not only a contradiction, but a human tragedy on a grand scale.*'<sup>13</sup>

#### **Box 4: Evictions – The human rights and wrongs**

*"Evictions of Maasai from their ancestral territories on both sides of the [Kenya-Tanzania] border started during the colonial period and are continuing to the present. The famous fake treaties signed between the British and the Maasai in 1904 and 1911 to evict Maasai from their best land [in Kenya] to make room for colonial settlers have never been settled. In Tanzania a similar treaty was concocted to remove the Maasai from Serengeti without their consent. As late as 1988 they were again evicted from the Mkomazi Game Reserve by the government".*

Report of the African Commission of Human Rights and Peoples' Rights; Working Group on Minorities; Eleventh Session 30 May – 3 June 2005, p15.

9. Rugumayo, p 299.

10. Shijji and Kapinga *op cit*, p 40.

11. Summary of meeting in Dodoma on 17 September 1992 pp 2- 3.

12. *Haramata*, No 43 March 2003 p 16.

13. Rugumayo

# 4 Flawed arguments

The NCAA claims it has sound conservation reasons for wanting the Maasai out of Ngorongoro. Among its arguments it cites research by the University of California based on computer simulation modelling of interactions between livestock and wildlife. The study suggests the Area's wildlife and ecosystems – and its tourist industry – can only be preserved if the Maasai give up their pastoral way of life and either move out of the Area or find other ways to make a living. To quote from the study's summary: " Policy makers must search for means of limiting population growth within NCA, encourage emigration or provide more access to income sources other than through livestock raising".<sup>14</sup>

## Box 5: POLEYC – Key findings

Policy Options for Livestock-based livelihoods and Ecosystem Conservation

- The NCAA asked the researchers to address three questions:
  - a) How many animals can be supported in NCA?
  - b) What is the effect of cultivation on wildlife, livestock and people?
  - c) What are the likely effects of improved veterinary care?
- The answers:
  - a) It depends on the ratio of livestock to wildlife and the methods used to estimate them. One modelling approach in fact suggests the capacity of NCA is greater than the current level of livestock/wildlife
  - b) The study showed only 3967 hectares or 9800 acres were under cultivation – including non-Maasai areas, a minute percentage of the 8200 sq. kilometres covered by NCA. To quote: " Our simulation modelling suggested only modest changes to wildlife/livestock populations under current or increasing cultivation in its current distribution"
  - c) A marked increase in livestock populations and potential damage to the ecosystem, unless markets are available for the sale of livestock produce
- The study also asked questions of its own and reached conclusions highly detrimental to the Maasai desire to protect its pastoralist traditions. Using conservative estimates of Maasai population growth it concludes the 1999 population of 51,600 will grow to 100,000 by 2019 and 150,000 in 2030. Given that increased cultivation is politically difficult, the study says, growing numbers of Maasai will have to turn to wage labour outside NCA or become more involved in local tourism.

Source: POLEYC Project: <http://www.nrel.colostate.edu/projects>

14. Report of the POLEYC Project, June 2002, p45.

A closer look suggests the research has flaws and shows the perceived 'threat' to the NCA ecosystem may have been exaggerated. It points to 'the pattern of relatively stable resident livestock and wildlife populations in NCA over decades' and says the capacity of NCA is greater than current levels of stocking. But it also points out livestock numbers are way below the eight per person needed to lead a pastoral lifestyle; it currently stands at just 2.7 per person. To bring that level back up to only 6 per person, it says, would be more livestock than the Area could support. Ironically, the fall in livestock numbers can be attributed in part to the failure of NCAA to provide adequate veterinary services in the Area, something they were obliged to do under the 1956 agreement.

Of equal concern is how the study was conducted. Computer modelling is exactly that: the mechanical employment of computer simulation to analyse an immensely complex matrix of factors. Their comment about livestock ratios rising to levels beyond NCA capacity, for instance, is based on a modelling exercise. Yet such methods can't possibly capture the subtle socio-economic nuances between people and habitat that make Ngorongoro's multiple land use system so unique. As the study's authors admit, "Each of the analyses described includes limitations". For example, they use fifteen different methods for estimating appropriate stocking rates. The fifteen results range from 164,900 large herbivore units to 2.7 million, sixteen times greater.<sup>15</sup>

Moreover, their research brief was set exclusively by NCAA with no input from Maasai representatives. The questions they were asked to address omitted, for example, charting the effects of better management policies in the Area. The Authority stands accused of using the study to support its own unwritten agenda. It must also bear responsibility for its failure to protect wildlife and conservation in Ngorongoro, a key part of its mandate. On its own admission, poaching remains a challenge, with elephant and dikdik particularly vulnerable.<sup>16</sup> Other sources describe a more worrying trend towards commercial meat poaching for urban customers. In addition, according to the NCAA, there has been serious decline in numbers of certain wildlife species over the past thirty years, especially wild dog, oryx and lion.<sup>17</sup>

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15. *ibid*, p 20.

16. Draft Plan 2005-15 p 10.

17. Plan 2005-15 p 9.

## White hunter legacy

The current plight of the inhabitants must nevertheless be seen from a wider, and more menacing, perspective. The Maasai of Ngorongoro have fallen victim to what anthropologists and land use experts call 'Fortress Conservation'. This concept derives from a western colonial legacy focused exclusively on wildlife preservation. It ring-fences wildlife populations for the enjoyment of a largely international tourist elite while local peoples and their livestock are driven from homelands they have occupied for generations. Hemmed in, without access to traditional pastures, livestock numbers fall and livelihoods degenerate.

We know this from brutal experience. In 1988 the Tanzanian government decided to evict 8,000 Maasai and 75,000 cattle from the Mkomazi Game Reserve, even though when it was established in 1952 the law preserved pre-existing customary land rights. . They were moved – some at gunpoint – to a corridor of arable land on the edge of the Reserve. Villages were torched and resisters beaten. There was soon friction with local farmers and Maasai herdsmen were arrested and fined. Marginalised and intimidated, faced with overgrazing of remaining grasslands and the decline of their life-sustaining herds, most have suffered long-term distress and disease.<sup>18</sup>

In all some 100,000 Maasai have been displaced over the years by the establishment of protected areas in this part of Africa.<sup>19</sup> In human terms, fortress conservation has been a disaster.

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18. Simon Ward: *Boy Tarzan v Rambo of the Bush* In *The Southern African Trumpet* No 2, June 1997. Source for customary land rights: Ibrahim H Juma, Faculty of Law, University of Dar es Salaam: *Wildlife Conservation and customary land rights of pastoralists: Lessons from the Mkomazi Game Reserve Case* and also see: Peter Veit and Catherine Benson: *When Parks and People Collide in Human Rights Dialogue Series 2*, Number 11, Spring 2004.  
19. Veit and Benson *ibid*.

**Box 6: International law backs Masaai rights**

Discrimination, forced eviction, destitution, poverty and malnutrition, specifically widespread amongst the Maasai of Ngorongoro, raise many issues under human rights law. Tanzania is party to a number of international agreements that may provide a basis for a claim by indigenous and local communities against actions of the NCA, although the country has distanced itself from some key provisions. For instance, Tanzania has signed up to both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The two Covenants are legally binding multilateral treaties. Both the ICCPR and the ICESCR establish monitoring mechanisms in the form of reporting requirements. In addition, an Optional Protocol to the ICCPR empowers individuals and States to lodge complaints against violating States with the Human Rights Committee. But since Tanzania has not ratified the ICCPR protocol this option is not available to its citizens.

Tanzania is also party to specialized human rights treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), providing a set of rights relating to the non-discriminatory enjoyment of life. Again, complaints made by individual citizens or citizen groups against Tanzania for alleged violation of CERD are not possible because the Tanzanian government has not made a declaration recognizing the competence of CERD's monitoring committee to consider them.

At the regional level, Tanzania is party to the African Charter on Human and Peoples' Rights (ACHPR) – a comprehensive treaty providing civil, political, economic, social and cultural rights, as well as collective rights. The Charter establishes the African Commission on Human and Peoples' Rights, a quasi-judicial body modelled on the UN HRC. The Commission interprets the Charter, examines state reports and considers communications alleging violations, issued both by States and individuals. In 1997 a Protocol to the ACHPR establishes the African Court of Human and Peoples' Rights. This Protocol entered into force in 2004. While the Court has no rules of procedure yet, in July 2006 eleven judges were sworn in and Tanzania is likely to be the seat of the Court.

There is also a substantial casebook of decisions by international human rights bodies of direct relevance to the matter of Maasai land and other rights. A comprehensive assessment of the position in international law can be found in the Annexes.

## A price too high

And there is worse. NCAA has given no thought to the true costs of evicting the Maasai or to building a more workable socio-economic framework for the Area's future.

To begin with, fortress conservation is not cost free. Evicting over 50,000 pastoralists and their herds from Ngorongoro will have a devastating impact on the Maasai and the regional economy.<sup>20</sup> Will the Tanzanian government pay for this colossal people-moving exercise? Where do they go? Will local communities accept them? On the evidence of Mkomazi displaced Maasai communities will not prosper in restrictive new surroundings. Cynics say the government is not prepared to fund a properly managed migration; eviction without compensation is the cheapest solution.

Indeed, the Maasai are caught in a cruel catch-22 situation. Tanzanian law provides that if compensation is paid it should reflect the amount of investment in the development of the land. Since the founding Ordinance of the NCA prohibited pastoralists from investing in 'development' – fences, wells and so on – there is no inherent value that could justify any compensation. And the idea that pastoralism in itself contributes to the maintenance of a rich biosphere, the very reasoning behind Ngorongoro's World Heritage status, is unlikely to attract much sympathy within government or the NCAA.

There has never been any serious blueprint for helping the Maasai develop a sustainable future in their traditional homeland. Instead, there's been a progressive economic squeeze. Undertakings to invest in water supply projects, enshrined in the 1956 agreement, have not been kept. Twenty-six systems built between 1954 and 1962, plus other facilities, were to be continuously serviced. This has not happened. A recent – and comprehensive – study on the NCA notes that after a dam built in 1966 quickly silted up no comprehensive water projects were initiated in subsequent years.<sup>21</sup> Promised livestock services such as veterinary support have not materialised, despite persistent requests from pastoralists. Pastoral development has been meagre. Now they are to lose their land and villages as well.

How much thought has been given to the potential social, political and financial ramifications of a fortress policy? Thousands of displaced people will inevitably lead to

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<sup>20</sup>. Figures quoted in NCA Draft Plan 2005-15 p 6.

<sup>21</sup>. Rugumayo, p115.

friction with local farmers and the authorities. That certainly was the lesson of Mkomazi. The negative impact on tourism of driving out the Maasai has not been addressed – certainly, the travel brochures and posters carrying their colourful pictures will have to go. Nor do we know the potential effect on NCA's wildlife of radical changes in the Area's traditional grazing patterns after Maasai herds are evicted. Getting rid of the pastoralists to preserve wildlife could upset a long-established natural balance and produce the opposite result. In many other protected areas in east Africa species such as elephants, giraffes and lions have continued to decline.

Then there's the heritage of Ngorongoro – eviction will spell the end of multiple land use and the Area's claim to 'outstanding universal value'. It will be nothing more than a vast private zoo for the world's rich surrounded by an impoverished population of former residents.

## A people-friendly solution

There has to be a more enlightened approach to conservation that respects the originating duty of NCAA to support wildlife, landscape and indigenous peoples whilst fostering the Area's economic development. The current blinkered policies of NCAA are a rejection of its mandate and thousands of people face catastrophe as a result.

There is a better way. Respected anthropologists say fortress conservation is based on the misguided belief that humans and wildlife don't mix – that to be 'saved' a wilderness has to be devoid of people. They point to a very different approach centred on communal involvement – a people-friendly alternative to fortress conservation. At its core is the conviction that conservation goals will only be achieved if local people receive other benefits to compensate for reduced access to natural resources. Support for this idea gained momentum when research showed that climatic variability and drought were the key factors affecting rangelands and wildlife, not livestock levels and grazing pressures.

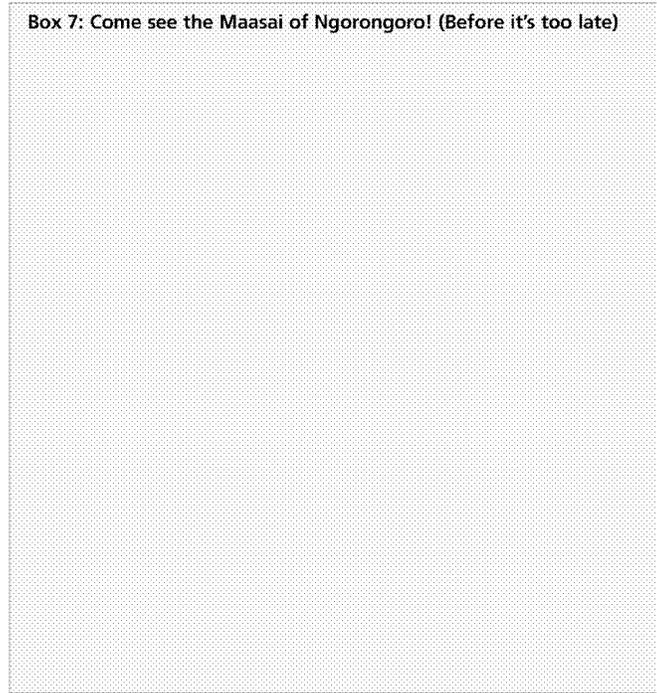
Community-based wildlife management relies on the regulated use of wildlife populations and eco-systems by local stakeholders. These stakeholders could be a village, a group of villages or individuals with a shared interest in those natural resources. Rather than separating wildlife conservation and sustainable community development, the communal solution brings them together. Local people can voice their preferences, needs and concerns about conservation policies and play their role in managing a micro-economy in which wildlife and pastoralism co-exist.

Although community-based conservation is not a panacea, there is no evidence the NCAA has considered this or any other alternative to the ring-fence option.<sup>22</sup> For the community-based approach to succeed there needs to be an effective planning system that involves all parties, including residents. This inclusive approach has never been followed in Ngorongoro. No proper, formalised dialogue between Maasai residents and Area authorities has ever been established. Significantly, only 5% of NCAA employees are Maasai. The NCAA did introduce a Pastoralist Council as a gesture towards involving local people, but the Council is merely advisory and has no say over the Authority's legislative activity.<sup>23</sup> Divisions within the different Maasai groups residing in Ngorongoro

22. Unequal power relations both within local communities and the external organisations with whom they collaborate make the sharing of benefits highly complex.

23. Shivji and Kapiga, p61.

**Box 7: Come see the Maasai of Ngorongoro! (Before it's too late)**



have not helped the situation either, and have been skilfully used by local politicians and the NCAA to ensure the absence of a common dissenting voice among the residents.

For over 40 years efforts to introduce effective, inclusive planning machinery have failed. Before the 1996 General Management Plan (GMP) was drafted, four previous plans were developed – in 1962, 1966, 1982 and 1990. The first three failed to establish formal mechanisms for Maasai involvement in the planning process. The 1990 exercise was not a plan at all but a report based on fourteen technical studies produced by an ad hoc ministerial committee. One of its recommendations was the creation of the Pastoral Council, which was promptly hijacked by the NCAA and given no authority whatsoever. The NCAA never took up other recommendations.

#### Box 8: Development failures in NCA

Though its original founding Ordinance and subsequent management plans have stressed the importance of development programmes in the NCA, the reality has fallen far short. In the 1960s the Catholic Church set up a hospital and primary school in Endulen. This was followed by more substantial relief efforts in the 1990s with the creation of the Arusha Diocese Development Office. This led to a debate about how to move from relief to development and the arrival of a Danish NGO, which tried to develop water and livestock services. The authorities threw them out, presumably over concerns such activities gave too strong a role to pastoralists. Since then DANIDA has supported two development projects. But externally sponsored programmes have had mixed success in addressing the sensitivities of different actors. The NCAA does not want its powers to be diluted. Trust has been eroded by cases of misused funds. And donors like the Frankfurt Zoological Society and NORAD, are accused of making no effort to include resident Maasai in their development projects.

Source: Rugumayo, p289

The GMP finalised in 1996 was widely seen as the last chance to preserve the multiple land use concept. It re-stated a commitment to the three elements of multiple land use: conservation, tourism and pastoralism. A key purpose of the NCA, the Plan makes clear, was "to safeguard and promote the rights of indigenous residents of the area to control their own economic and cultural development in a manner that leaves exceptional resources intact".<sup>24</sup>

So much for the official undertakings. As this paper demonstrates, the NCAA's practical agenda since then has shown a clear imbalance in favour of conservation and a bias towards letting the interests of nature prevail over those of residents. Despite that clearly worded commitment, the fortress conservation mentality still rules the future of Ngorongoro.

There is now a new Draft General Management Plan covering the years 2005 to 2015, produced by the Ministry of Natural Resources and Tourism. It reiterates the same responsibility of the NCA in playing 'a crucial role in supporting the pastoral land use of Ngorongoro District' as well as assurances about protecting the interests of residents and refers to the 1956 agreement to compensate Maasai for leaving Serengeti.<sup>25</sup> At the same time it is also a catalogue of serial failures by the NCAA in key areas: inadequate integration of scientific research, lack of information on vital water issues, non-functional water development projects, declining species, re-occurring and new animal diseases across the Area, poaching, forest destruction, soil erosion and other problems.<sup>26</sup> Given the history of NCA management planning over four decades the Draft can hardly inspire confidence amongst the Maasai community.

24. 1996 Gen Management Plan p 10.

25. Draft Plan p 6

26. Draft GMP *passim*.

## 8 Good heritage citizens

There is another option for the NCAA to meet its legal obligations towards wildlife and natural resources while preserving Maasai rights. It must formulate a forward strategy that includes pastoral communities in the long-term development of the Area. This strategy must involve local peoples as good heritage citizens working for the common future of all the elements that make up Ngorongoro.

There has been no lack of effort by the Maasai to become involved. Their fears of being marginalised in NCA affairs have prompted radical changes in how they approach the political process. Traditionally, they were never a single tribe with a unified political system, but were organised into sections and localities each with their own councils of elders. The coming of the NCA prompted the development of several local NGOs seeking to represent the interests of the local communities and gain a bigger voice. Though driven by noble objectives, these organisations lack the capacities to represent fully all local interests and engage effectively with the NCAA.

But if these efforts are to succeed attitudes elsewhere have to change. A first step is to treat these peoples as residents, not incidental nuisances who rely on handouts. This means streamlining NCAA to make it more transparent and giving the Maasai better representation. Land rights should be clarified to give pastoralists a sense of security and belonging. There is sound legal opinion that the Maasai have a 'deemed right of occupancy' not even NCAA enjoys. The Pastoral Council should be made fully independent from the NCAA, with its own funds and genuine powers to act as a watchdog and counterbalancing force. Yet, though the Draft Management Plan accepts that 'residents have felt a sense of powerlessness and resentment' and want to be more directly involved in managing the NCA, the Pastoral Council does not have a single mention.

A second step is to give Maasai a share in the economic future of Ngorongoro, particularly in tourism. World Heritage status has made the area Tanzania's most visited destination and its biggest earner of tourist foreign currency. Yet residents have been forced to bear the costs of conservation and receive very few of the benefits. As the Draft Plan notes: "*There have been few opportunities for indigenous residents to benefit directly from tourism in the NCA.*" Less than 25 per cent of the surplus from tourist spending is ploughed back into communities. One factor has been the high tax load imposed on the

NCAA by Tanzania's Treasury.<sup>27</sup> Meanwhile, tour operators make profits and hoteliers are given land – privileges currently denied the Maasai.

One idea is to help residents acquire shares in some of the tourist companies so they can influence how the industry develops. Another is a revenue-sharing arrangement that means residents see a clear link between conservation and their own livelihood. Or residents could be stimulated to work out sustainable and competitive cultural eco-tourism activities, from walking safaris to new ways for the Maasai to show off 'their' Ngorongoro to visitors. Qualified Maasai should be given positions within NCAA where their best skills can be put to work. Others could be employed as guides and wildlife wardens to prevent poaching, a practice alien to the Maasai, as is the eating of game.

Even so, tourism is not free of great risks for Ngorongoro and its inhabitants. Care must be taken to avoid destroying the unique beauty of the NCA through uncontrolled growth in the tourism industry. The Draft Plan notes that vehicle numbers coming into the NCA have climbed steeply. During high season it is common to see up to 200 vehicles at one time negotiating the crater. It also observes that human-caused soil erosion recorded in the NCA has been linked to 'concentrated off-road driving'.<sup>28</sup>

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<sup>27</sup> Rugumayo, p 301.

<sup>28</sup> Draft Plan p 20 and p 12.

## 9 The stark choice

If the NCAA's hidden agenda wins the day and – despite the endless promises – the people are expelled from Ngorongoro it will conclude a bitter history of discrimination, persecution and flagrant abuse of human and legal rights. Dispossessed peoples and shattered communities will face inexorable decline and slow absorption into urban and mechanised life. And we lose a precious fragment of our past that can never be recovered.

**What price our heritage then?**

## Annex

### NCA, the Maasai and International Human Rights Law

Discrimination, forced eviction, destitution, poverty and malnutrition, specifically widespread amongst the Maasai of Ngorongoro, raise many issues under human rights law. Tanzania is party to a number of international agreements that may provide a basis for a claim by indigenous and local communities against actions of the NCA.

For instance, Tanzania has signed up to both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The two Covenants are legally binding multilateral treaties implemented by Parties at the national level. Both the ICCPR and the ICESCR establish monitoring mechanisms in the form of reporting requirements. In addition, an Optional Protocol to the ICCPR empowers individuals and States to lodge complaints against violating States with the Human Rights Committee (HRC). But since Tanzania has not ratified the ICCPR protocol this option is not available to its citizens.

Tanzania is also party to specialised human rights treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), providing a set of rights relating to the non-discriminatory enjoyment of life. Under CERD, Tanzania has a duty to submit periodic reports and may be subject to state-to-state complaints. Again, complaints made by individual citizens or citizen groups against Tanzania for alleged violation of CERD are not possible because the Tanzanian government has not made a declaration recognizing the competence of CERD's monitoring committee to consider them.

At the regional level, Tanzania is party to the African Charter on Human and Peoples' Rights (ACHPR or the Charter). The ACHPR is a comprehensive treaty providing civil and political rights, economic, social and cultural rights, as well as collective rights. The Charter establishes the African Commission on Human and Peoples' Rights, a quasi-judicial body modelled on the UN HRC. The Commission interprets the Charter, examines state reports and considers communications alleging violations, issued both by States and individuals.

In addition, in 1997 a Protocol to the ACHPR establishes the African Court of Human and Peoples' Rights (the Court). This Protocol entered into force in 2004. While the Court has no rules of procedure yet, in July 2006 eleven judges were sworn in and Tanzania is likely to be the seat of the Court. The Court is endowed with adjudicatory and advisory powers and

it may make appropriate orders to remedy human rights violations, including the payment of fair compensation or reparation. The scope of the Court's jurisdiction extends to claims relying on *any relevant human rights instrument ratified by the State concerned*.

Nevertheless, the direct standing of individuals and NGOs before the Court will depend upon a State's declaration accepting the jurisdiction of the Court. Still, NGOs and individuals do have recourse to the Commission, and the Commission has the power to submit cases to the Court in its own right. This mechanism provides the people of Ngorongoro with a potentially powerful tool allowing them to sue the Tanzanian government for the widest possible range of human rights violations.

Human rights violations have been successfully invoked in several cases around the world that bear a strong resemblance to the case of the Maasai of Ngorongoro (See BOX 1). In particular, the destitution, impoverishment and subsequent malnutrition of the Maasai could be deemed a violation of their right to life. This right not only prohibits the arbitrary or negligent taking of human life by or on behalf of the State, but also entails a large set of positive obligations. The prohibition of torture and inhuman and degrading treatment also appears relevant here. However, to date this right has been adjudicated at the domestic level only.

Another substantive human right relevant to the case of the Maasai is their right to be protected against arbitrary or unlawful interference with privacy, family, home or correspondence. The obligations imposed by this right require States to adopt measures that prohibit interferences and / or attacks.

Along the same lines, the right of freedom of movement and the right to choose one's own place of residence provide protections against all forms of forced internal displacement and preclude preventing the entry or stay of persons in defined parts of a State's territory.

Most importantly, discrimination against the Maasai contradicts the prohibition against discrimination provided both by the ICCPR and the ACHPR, and, more specifically, by the CERD. These instruments prescribe that ethnic, religious or linguistic minorities must not be denied the right to enjoy their own culture, to profess and practice their own religion, or to use their own language. Positive measures of protection are required not only against the acts of the State party itself, but also against the acts of other persons in the State.

The right to self-determination, which entitles individuals to freely 'dispose of their natural wealth and resources', is also relevant in this case. However, the enforcement of this right is problematic and the HRC has consistently reiterated that it does not consider it sufficient grounds for a complaint. Nevertheless, the right to self-determination may be relevant to the interpretation of other rights protected by the Covenant.

The right to the highest attainable standard of health may have some bearing on the plight of the Maasai as it embraces a wide range of socio-economic factors that promote conditions in which people can lead healthy lives, extending to a variety of facilities, goods, services and conditions necessary to realise this right.

The right to adequate food provided in the ICESCR is associated with the State's adoption of appropriate economic, environmental and social policies for the eradication of poverty and the fulfilment of human needs. In particular, the notion of availability refers either to the ability to feed oneself directly from productive lands or other natural resources or to well-functioning distribution, processing and market systems that are capable of moving food from the site of production to where it is needed in accordance with demand. The connected right to adequate housing entails a degree of security of tenure and legal protection against forced eviction, harassment and other threats. According to the ICESCR Committee, forced evictions are *prima facie* incompatible with this right.

Finally, implicit in the right to a remedy are the procedural safeguards of access to justice, which requires competent judicial, administrative and lawmaking authority capable of providing relief for violations of the substantive rights just described.

#### Exhaustion of local remedies

The submission of complaints of alleged human rights violations to the African Commission and the African Court is subject to the exhaustion of local remedies. The Tanzanian Constitution provides certain fundamental rights, such as the right to equality; the right to life; the right to freedom of movement; the right to privacy and personal security, and the right to own property.

In 2001 the Tanzanian Government established the Commission for Human Rights and Good Governance. One of the functions of the Commission is to receive allegations and complaints of human rights violations and to conduct enquiries into matters involving the violation of human rights. The Commission is empowered to take steps to secure the remedy, correction, reversal or cessation of human rights violations, including the institution of legal proceedings. While the Human Rights Commission has issued injunction orders against eviction and has filed court cases to enforce rulings, there has been serious dissatisfaction with the Commission's effectiveness.

Equally, under Tanzanian law customary title to land may not be extinguished without following the provisions of the law that allow the State to acquire landed private property, (e.g. the Land Acquisition Act, 1967). Tanzanian courts have recognised community title to the commons (e.g. pasture land) upon proof of the existence of customary law which provides for ownership of the commons within a community. However, courts appear to have refused to recognise statutory corporate bodies, such as Village Councils, as customary holders of a collective deemed right of occupancy over the commons.

Tanzanian courts have been willing to apply the relevant legal provisions that protect the property rights of native residents in lands that are statutorily reserved for public purposes. The Mkornazi case is an example of this position. It is doubtful, however, whether the courts would be willing to subject the statutes to constitutional standards that guarantee basic rights to life, movement, and property.

**Box 1: Key decisions by international human rights bodies**

In *Chief Bernard Ominayak and the Lubicon Lake Band v Canada*, the UN Human Rights Committee established that the expropriation of the territory of the band and its subsequent use for oil and gas exploration and timber development threatened the way of life and culture of the Lubicon Lake Band, and constituted a violation of the prohibition of discrimination. (*Chief Bernard Ominayak and the Lubicon Lake Band v. Canada* Communication No. 167/1984, U.N. Doc. CCPR/C/38/D/167/1984 (1990)).

In *Maya Indigenous Communities of the Toledo District v Belize*, the Inter-American Commission found that Belize had violated the right to property to the detriment of the Maya people, by failing to take effective measures to recognise their communal property right to the lands that they had traditionally occupied and used, and by granting logging and oil concessions to third parties to utilise it, in the absence of effective consultations with and the informed consent of the Maya people. (*Maya Indigenous Communities of the Toledo District v Belize*, Case 12.053, IA C.H.R. Report 40/04 (2004) at 153, 194.)

In *Yanomani Indians v Brazil*, the Inter-American Commission considered that the construction of a trans-Amazonian highway crossing the territory where the Indians lived impaired their traditional lifestyle in such a way as to amount to a violation of their right to life, liberty, and personal security; the right to residence and movement; and the right to the preservation of health and to well-being. (*Yanomani Indians v Brazil*, Decision 7615, IACHR, Inter-American YB on Human Rights (1985), p. 264.) The same approach was endorsed in the decision on admissibility of the case of *Community of San Mateo de Huancho and its Members v Peru*, currently awaiting consideration on the merits. (Case 504/03, Report No. 69/04, IACHR, OEA/Ser.L/V/II.122 Doc. 5 rev. 1 at 487 (2004)).

In *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, the Inter-American Court found that Nicaragua had violated the right of the members of the Mayagna Awas Tingni Community to the use and enjoyment of their property by granting concessions to third parties to utilise the property and resources located in that area. (*Mayagna (Sumo) Awas Tingni Community Case* [2001] IACtHR 9, 31 August 2001, Series C, No. 79, para 149).

In *Social and Economic Rights Action Centre for Economic and Social Rights v. Nigeria*, the African Commission on Human and Peoples' Rights found that the Government of Nigeria facilitated the destruction of the Ogoniland, devastatingly affecting the well-being of the Ogonis, in violation of the right to non-discriminatory enjoyment of life; right to life; right to property; right to health; the right to adequate housing; right to a satisfactory environment; and the right of peoples to freely dispose of their wealth and natural resources. (*The Social and Economic Rights Action Centre for Economic and Social Rights v. Nigeria*, African Commission on Human and Peoples' Rights, Comm. No. 155/96 (2001)).

## **Box 2: Human and Peoples' Rights in the African Charter**

### **Article 2 (Right to non-discriminatory enjoyment of life)**

Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

### **Article 4 (Right to life)**

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

### **Article 5 (Prohibition of inhuman and degrading treatment)**

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

### **Article 7 (Right to a remedy)**

i) Every individual shall have the right to have his cause heard. This includes the right to an appeal to competent national organs against acts of violating his fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in force.  
ii) No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

### **Article 12 (Freedom of movement)**

Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality. A non-national legally admitted in a territory of a State party to the Charter may only be expelled from it by virtue of a decision taken in accordance with the law. The mass expulsion of non-nationals shall be prohibited. Mass expulsion is that which is aimed at national, racial, ethnic or religious groups.

### **Article 14 (Right to property)**

The right to property is guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

### **Article 16 (Right to health)**

Every individual shall have the right to enjoy the best attainable state of physical and mental health. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure they receive medical attention when they are sick.

**Article 20 (Right to self determination)**

All peoples shall have the right to existence. They have the unquestionable and inalienable right to self-determination. They may freely determine their political status and may pursue their economic and social development according to the policy they have freely chosen.

**Article 21 (Rights of peoples to freely dispose of their wealth and natural resources)**

All peoples have the right to freely dispose of their wealth and natural resources. This right is exercised in the exclusive interest of the people. In no case may people be deprived of it. Dispossessed people have the right to the lawful recovery of property as well as to adequate compensation.

**Article 22 (Right to development)**

All peoples have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind. [To date, the ACHPR is the only binding treaty to include an explicit provision on the right to development.]

**Article 24 (Right to a satisfactory environment)**

All peoples shall have the right to a general satisfactory environment favourable to their development.

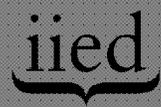
**Article 28 (Prohibition of discrimination)**

Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

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**Statement, findings and recommendations from the indigenous residents and stakeholders of Ngorongoro Conservation Area to decision makers, national and international organizations<sup>1</sup>**

On December 4<sup>th</sup> a large meeting was convened by the people of Ngorongoro and they agreed to the following:

We the people of Ngorongoro undersigned hereby declare that we are the rightful inhabitants and stakeholders of the Ngorongoro Conservation Area and we demand to be recognized as the custodians of the enormous cultural and natural values of the area. We have lived with wildlife since time immemorial and will continue to do this. Ngorongoro Conservation Area is a World Heritage Site, it is also a Man and Biosphere Reserve as well as a multiple land use area. It is high time that the local people are duly recognized as the central stakeholder in the area and that people-centred conservation and development is implemented in the area.

Below are the findings and recommendations produced by the people of Ngorongoro and presented to the IUCN/UNESCO World Heritage Site monitoring team to Ngorongoro Conservation Area in December 2008. The above statement and the findings and recommendations below are made in full agreement and signed by a large group of representatives of the people of Ngorongoro as serious concerns that need immediate attention.

**FINDINGS AND RECOMMENDATIONS FOR IUCN/UNESCO MISSION IN NGORONGORO 2008 FROM THE RESIDENTS AND STAKEHOLDERS OF NGORONGORO CONSERVATION AREA**

S/N	FINDINGS AND STATUS in relation to IUCN/UNESCO report 2007	RECOMMENDATIONS
1	<p>Re. recommendation no 1/ 2007 – <b>Relocation</b></p> <p>Relocation has been only partly voluntary, major problems of identification of illegal immigrants, major problems in terms of facilities and tenure and land in relocation areas</p>	<p>A new and transparent process of identification of illegal immigrants should be undertaken, better preparation of relocation sites and proper land size tenure security and agreements should be ensured. No denial of social services in any villages in NCA where people are identified to be relocated.</p>
2	<p>Re. recommendation no. 2/ 2007 – <b>Carrying Capacity</b></p> <p>There has been no scientifically proven carrying capacity study, the concept of carrying capacity in dynamic rangeland systems under mobile pastoralism is according to the new rangeland studies</p>	<p>Develop a participatory monitoring management feedback system to report on developments in natural resources trends, socio-economy and benefit sharing. Use this monitoring system to continuously assess and adjust developments and</p>

<sup>1</sup> These are people who participated in the IUCN/UNESCO meeting in NCA on 4<sup>th</sup> December 2008.

	not possible to establish in any fixed manner. Carrying capacity is dynamic and process oriented and should be covering wildlife, livestock and other uses of natural resources. There are no signs and no significant ecological damage to the area from overuse of the areas by the local communities although there has been above 50,000 people in the area for decades. A carrying capacity of 25,000 has absolutely no linkage to the reality on the ground.	conservation activities.
3	<p>Re. recommendation no 7/2007 - <b>Invasive species</b></p> <p>It should be recognized that traditional livestock grazing management has contributed to maintaining the area as a prime wildlife area. Invasive species has much to do with restrictions in traditional grazing and range management</p>	Allow traditional grazing and grazing management practices in all areas of the NCA, where it previously has undertaken.
	<b>FURTHER CRUCIAL FINDINGS AND STATUS</b>	<b>RECOMMENDATIONS</b>
4	<p><b>Participation of people</b></p> <p>Participation in NCA decision making bodies of local communities and local authorities is highly insufficient. People of NCA are not enjoying the same rights as other citizen of Tanzania.</p>	<p>Like many other forward looking protected areas in the World, the Board of NCA should develop a more equal representation of local and nationally elected representatives (50 % local and 50% national)</p> <p>Issues tabled at the board meetings should be much better consulted with local communities.</p> <p>Management systems and decision making bodies should respect the national and internationally recognized customary rights of inhabitants</p>
5	<p><b>Benefit sharing</b></p> <p>Local communities of NCA are still far from benefiting equally from the enormous revenues being generated in the area. Abject poverty still persists and increasing in the communities although the communities are the ones bearing the brunt of conservation restrictions.</p>	Revenues from NCA should be shared with local communities as a matter of a right for the inhabitants of NCA, the share going to support socio-economic development for local communities should be established by law and should initially be 5% and rising to 25 % during the coming 10 years.

		<p>A much more active local involvement in tourism enterprises should be promoted and priority should be given to local and community based tourism enterprises.</p> <p>A program for training of local inhabitants to take jobs in all sectors in NCA and not just in low level jobs should be established. A program that gives priority to hiring of local inhabitants in all types of jobs in the tourism and conservation sector should be promoted.</p>
6	<p><b>Land tenure</b> The original idea of NCA was that the land should belong to the people of NCA, however the way land ownership is interpreted by the Government now is that all land in NCA belongs to the State and that villages has no rights to land.</p>	<p>A process of registering rights of land ownership to villages in NCA like any other citizen of Tanzania should be initiated. Land should be managed by villages under the guidance of the NCA rules and regulation that has to be developed in a participatory way.</p>
7	<p><b>Right of association and consultation</b> At the moment the right of association of people is not the same as in other part of Tanzania. Consultative procedures are therefore not in place. No consultation with local people on the establishment of NCA as a World Heritage Site was undertaken.</p>	<p>The same procedures as is valid in other parts of Tanzania should be installed in NCA, this should be reflected in the Ordinance.</p>
8	<p><b>Cultivation in the area</b> Subsistence agriculture is absolute essential for the survival of people in the area. It can be controlled and should be looked at differently from small and large scale commercial agriculture</p>	<p>Establish clear and legally recognized procedures for allowing small-scale subsistence agriculture/gardens near to bomas and ensure that participatory monitoring of developments in this form for agriculture is established so that it can be managed in a sustainable way.</p>

In addition to the above findings and recommendations, which we had an opportunity to present to the IUCN/UNESCO team, we will like to present the following crucial finding and recommendation:

Finding and Status	Recommendation
<p>The people of Naiyobi Ward in Ngorongoro (around 11,000) are facing very immediate threats of being forcibly evicted from their villages due to the area being recommended to be declared a disaster zone from eruptions from the Lengai Volcano. The</p>	<p>Stop all plans and actions of eviction from Naiyobi Ward and instead develop early warning systems and evacuations plans that can be put in place if there are serious eruptions again. This would be in line with</p>

<p>people of Nanyobi Ward and all the people of Ngorongoro are strongly resisting this eviction and do not accept the reasons given by the Government. The people of Ngorongoro clearly understand this as part of a long term plan of the NCAA to clear the area for people to make room for major tourist development projects and generally reducing the number of people in NCA. The people have lived with the volcano for ages and not a single person has died from any of the eruption. The area is their homeland and they will continue to live in the area.</p>	<p>best practices in all other so-called disaster zones of the world. Ensure that social services are being provided again to the people of the Nanyobi Ward. Undertake an alternative study by independent specialists and with participation of local communities.</p>
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Signed and agreed on 4<sup>th</sup> December

	THE RESIDENTS AND STAKEHOLDERS OF NGORONGORO CONSERVATION AREA	Signature
1	SAMWEL NANGIRIA	
2	RICHARD K. NDASKOI	
3	EDWARD T. FOROKWA - Community Pioneer	
4	A. PAKAAY OLLONYORYE	
5	KOIS TUNDAN	
6	WILLIAM ORMETILI	
7	MATINGOI TAUWO	
8	NGATAIT LERUG	
9	SAMBEKE SAIGURAN	
10	JULIAS KITAKA	
11	TEPLIT OLE SAITOTI	
12	MELEJI OLESIKOONY	
13	MEPUKORI NCOILENYA	
14	NASIKARE SHUJAKA	
15	LENDORIA P. LENGET	
16	NGASHUMU SAITOTI	
17	PARIMTORO KASIARO	

18	LERIFO TUNG'UNGWA	<i>Unuqoo</i>
19	NUJPAI OLLONYOKIE	<i>Unuqoo</i>
20	MORINGE PARKIPUNY	<i>Unuqoo</i>
21	ALAIS LENDII	<i>Unuqoo</i>
22	MOSES SANGALE	<i>Unuqoo</i>
23	MERUOYO OLE NASHIBA	<i>Unuqoo</i>
24	FLORA OLTUMO	<i>Unuqoo</i>
25	LAZARO S. SAITOTI	<i>Unuqoo</i>
26	RAPHAEL NDOOKI	<i>Unuqoo</i>
27	SAITOTI LEMAYAN	<i>Unuqoo</i>
28	FRANCIS OLE SYAPA	<i>Unuqoo</i>
29	METUI OLE SHAUBO	<i>Unuqoo</i>
30	SANINGO OLE TELELT (MP)	<i>Unuqoo</i>
31	MOSES NDIYAINI	<i>Unuqoo</i>
32	JAMES MORINGE	<i>Unuqoo</i>
33	MOSES OLE SEKI	<i>Unuqoo</i>
34	WILLIAM OLE ENJOE	<i>Unuqoo</i>
35	ELIAS NANGUU	<i>Unuqoo</i>
36	EMMANUEL KOTIKA	<i>Unuqoo</i>
37	EDNA MNDEME	<i>Unuqoo</i>
38	OLDIKIRI NDUYOTO	<i>Unuqoo</i>
39	YANNICK NDOINYO	<i>Unuqoo</i>

	THE RESIDENTS AND STAKEHOLDERS OF NGORONGORO CONSERVATION AREA	Organization	Title
1	SAMWEL NANGIRIA	Ngorongoro NGO Network ( Ngonet)	Coordinator
2	RICHARD K. NDASKOI	Oxfam GB Ngorongoro	Programme Manager
3	EDWARD T. POROKWA	PINGOS Forum	Coordinator
4	A. PAKAAY OLLONYOKYE	Ngorongoro Pastoral Council and Endulen Ward	Secretary, ward councilor, traditional leader
5	KOIS TUNDAN	Ngorongoro Pastoral Council and Nainokanooka village	Pastoral council member and village chairman
6	WILLIAM ORMETILI	Ngorongoro Pastoral Council and Nainokanooka Ward	Vice chairman Pastoral council and ward councilor
7	MATINGOI TAUWO	Ngorongoro Pastoral Council	Pastoral council member and traditional leader
8	NGATAIT LERUG	Olorobi Village	Traditional leader
9	SAMBEKE SAIGURAN	Ngorongoro Pastoral Council and Naiyobi Ward	Pastoral council member and ward councilor
10	JULIAS KITAIIKA	Endulen village	Traditional Leader
11	TEPILIT OLE SAITOTI	Olbalbal Ward	Traditional Leader
12	MELEJI OLESIKOONY	Ngorongoro Pastoral Council Naiyobi village	Pastoral council member and village chairman
13	MEPUKORI NGOILENYA	Naiyobi Village	Traditional Leader
14	NASIKARE SHUJAKA	Naiyobi Village	Women
15	LENDORIA P. LENGET	Naiyobi Village	Youth
16	NGASHUMU SAITOTI	Ngorongoro Pastoral Council	Accountant
17	PARIMITORO KASIARO	Ngorongoro Pastoral Council and Olorobi Village	Pastoral council member and Chairman village
18	LERIRO TUNG'UNG'WA	Ngorongoro Pastoral Council and Irkeepusi Village	Pastoral council member and Chairman village
19	NJIPAI OLLONYOKIE	Ngorongoro Pastoral Council	Ward coordinator
20	MORINGE PARKIPUNY	Scholar	Maasai Elder
21	ALAIS LENDII	Naiyobi Village	Maasai Elder
22	MOSES SANGALE	Tanzania Pastoralist Hunters and Gatherers Organisation (TAPHGO)	Coordinator
23	MERUOYO OLE NASHIBA	Ngorongoro Pastoral Council	Pastoral council member
24	FLORA OLTUMO	Ngorongoro Pastoral Council	Pastoral council member
25	LAZARO S. SAITOTI	Olbalbal Ward	CCM District Youth Chairman
26	RAPHAEL NDOOKI	Ngorongoro Pastoral Council and Ngoile Village	Pastoral council member and Village Chairman
27	SAITOTI LEMAYAN	Ngorongoro Pastoral Council and Meshili Village	Pastoral council member and Village Chairman
28	FRANCIS OLE SYAPA	Ngorongoro Pastoral Council and Ngorongoro Ward	Pastoral council member and ward councilor
29	METUI OLE SHAUDO	Ngorongoro Pastoral Council and Olbalbal councilor	Pastoral council Chairman and Ward Councilor
30	SANINGO OLE TELELE (MP)	Ngorongoro Constituency	Ngorongoro Member of Parliament (MP)
31	MOSSES NDIYAINI	Indigenous Heartland Organization	Director
32	JAMES MORINGE	Endulen Village	CCM Chairman Endulen Ward
33	MOSES OLE SEKI	Ngorongoro Pastoral Council and Endulen Village	Pastoral council member and Village Chairman
34	WILLIAM OLENGO	Ngorongoro Pastoral Council	Pastoral council Treasurer and Kakesio ward youth repr.

35	ELIAS NANGUU	Ngorongoro Pastoral Council and Kakesio Village	Pastoral council member and chairman village
36	EMMANUEL KOTIKA	Ngorongoro Pastoral Council and Kakesio Ward	Pastoral council member and Ward councilor
37	EDNAH MNDEME	Oxfam GB Ngorongoro	Programme officer Governance
38	OLDIKIRI NDUYOTO	Olbalbal Ward	Traditional Leader
39	YANNICK NDOINYO	Frankfurt Zoological Society	Community Development Officer