

Observations on the State of Indigenous Human Rights in Light of the Declaration on the Rights of Indigenous Peoples

Kenya

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CULTURAL SURVIVAL

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EXECUTIVE SUMMARY

Kenya has had a deplorable record of honoring the rights of its Indigenous citizens, both during colonization and after. For most of 2009 the government's treatment of its Indigenous populations has been especially egregious, with massive and well-organized attacks on Samburu villages by combined police and military forces and the use of government-funded mercenaries from Somalia. The government used helicopters, bombs, apparent chemical weapons, and ground forces on unarmed villagers, and they confiscated the people's only food source, their cattle, prompting a famine that killed hundreds more people. The mercenaries hired by the government have kidnapped and murdered children, beheaded sleeping adults, and seized even more cattle. All of this violence and intimidation appears to be motivated by government oil leases recently awarded to Chinese companies to drill on Samburu land in violation of their rights.

Kenya's record with regard to its indigenous peoples—mostly consisting of pastoralists and hunter-gatherers—has reflected its colonial past, with laws and structures favoring agricultural peoples and commercial interests. In addition to passive discrimination, the government has at various times egregiously violated Indigenous Peoples' human rights.

The most recent example concerns the Samburu people, pastoralists living in the northern part of the country. Cattle provide the Samburu with 90 percent of their food and represent virtually all of their economy, serving as currency.

On February 21, 2009, Borana tribal members and Oromo raiders from Somalia (the Borana are related to the Somali Oromo peoples) stole 300 cows from a Samburu community called Naishamuni in the eastern part of Samburu District. They also kidnapped two children. The Samburu *moran* (warriors) went in pursuit of their cattle and the children, and when they could not be recovered, impounded 200 Borana cattle in retaliation, to use as a negotiating tool. They then contacted the police and the Borana tribe to notify them that they would release the cattle when their stolen children and cattle were returned, and demanded police help to look for these children. There was no response. The Samburu reported the incident immediately to their Member of Parliament, Raphael Letimelo, who made a statement on a local news station pleading to have the children returned immediately. The police, however, made no investigation or attempt to find them.

On February 22, a police officer and two Samburu security officers from the nearby village of Archer's Post used the Kalama Wildlife Conservancy vehicle to search for the cattle and the missing children. (The conservancies, which are run by the Samburu, provide the region's only security patrols for poaching, but also are used to investigate cattle rustling or other disturbances). The vehicle was ambushed by Borana bandits and the Borana shot the two conservancy officers. The Borana notified a Nairobi official that the Samburu had confiscated 200 cows, but did not report why.

Fourteen hours later, the Kenya Government deployed a Special Security Force to Samburu. They did not pursue the Borana or Somali who initiated the first raid or search for the missing children. Instead, they deployed thousands of police from the Regular Police Force, District Administrative Police Force, and General Service Unit, and troops from the Kenyan Army in a well-orchestrated surprise attack on the villages of Kalama and Lerata villages and communities, including Lerata and Kalama, where they opened fire on innocent villagers in *bomas* (homesteads with enclosures for cattle), schools, clinics, and water holes, and on children herding goats and cattle. The attack included helicopters that strafed unarmed villagers, at least seven bombs dropped on villagers, and aerial discharge of some kind of caustic liquid that severely burned several children.

“At first, the community thought the police were here to help us find our lost children and we ran out to greet them,” stated Sammy Lepurdati. “When they

initially started shooting, everyone tried to convince them they were making a mistake, but instead the police kept circling the *bomas* and fired deliberately at innocent people. It was a nightmare. People were screaming, running in every direction. Those who survived fled to the bush and nearby mountains.”

Ground forces then moved in, beating people with clubs. Police beat over 30 women, children, and elderly people with clubs, according to one witness, who asked to remain anonymous. “My mother was walking to the bore hole with my four-year-old sister and ten-month-old brother who was wrapped on her back, to water our goats and calves,” the 15 year-old reported. “She turned around to take my sister’s hand when police approached her, told her to give over the calves and goats to him and, 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.” All three sustained life-threatening injuries according to the rural dispensary’s nurse practitioner, Edward Letalama.

The police then used their helicopters to round up the Samburus’ cattle. Forty trucks arrived to transport the cattle; others were herded by foot and helicopter to Archer's post and impounded. They were later sold in Nairobi. The profits were kept by the police officers who had confiscated them. More than 2,000 cattle were confiscated in the initial attacks.

The two children, 7 and 8, were found, dead and hanging from a tree with their throats cut and their bodies skinned.

In the two days after the initial attacks, as the assault spread to other villages, the police refused to conduct a proper investigation, take statements from witnesses, negotiate a cease-fire, or come to any agreements with local officers, who included Member of Parliament Raphael Letimelo, 16 regional councilors, two local councilors, and County Council officers. All local wildlife conservancy communication and anti-poaching equipment was seized from Namunyak, Westgate, Sera Lipi, and Kalama Wildlife Conservancies, all in the same region. Altogether in these attacks more than 6,000 head of cattle were confiscated, removed, and sold, with a value of more than US \$5 million.

The MP Raphael Letimelo was twice told in front of witnesses that he would be shot and executed immediately if he continued to speak against the attacks. He then returned to Nairobi to seek assistance from the president's office. President Kibaki closed his telephone, refused to discuss the situation, or to allow an appointment to be arranged with MP Letimelo, and when Letimelo tried to see the President without an appointment, he was twice told that the president had left through a side door. Letimelo also spoke with the Internal Security Minister George Saitoti, Prime Minister Raila Odinga, Human Rights Watch, the US Embassy, and many others, with little result.

Government officials claimed that the operation was in response to the Samburu cattle raid, a claim that would seem unlikely given the scale and organization of the response, as well as its timing. Military documents provided by an army lieutenant indicate instead that the attacks had been planned months ahead of time and that the aim was to drive the Samburu off their land and end their way of life. The helicopters were requisitioned weeks in advance.

On March 7, two human rights workers, Oscar Kamau Kingara and John Paul Oulu, who had recently returned from an investigation into the attacks, were executed in Nairobi hours before they were to make public announcements about the Samburu situation.

On March 11, in response to a request for a hearing by MP Letimelo, a Nairobi court ordered a ceasefire. The police remained in the area honoring the ceasefire only insofar as they used clubs to beat people instead of using firearms. They also looted local businesses and raped village women.

On June 6, Borana and Somali bandits approached Samburu herdsman from the village of Kipsing and tried to take their cattle. When the Samburu resisted, the bandits contacted the police in Isiolo to assist them. The Somali, Borana, and police then attacked the village. In the fighting that ensued, the Samburu moran shot and killed 5 raiders, 6 police, and seriously wounded 19 other police. Following this incident, Raphael Letimelo said he received threats from government officials of possible mass executions and removal of Indigenous Peoples from their traditional homelands throughout the Samburu District. Neither of those things happened, however.

On June 15, 400 Kenyan National Police were permanently stationed in Archer's Post and began Operation Walk and Shoot, in which they harassed community members and randomly shot into the community from a distance.

Through the month of July there were a series of attacks by Borana and Somali bandits on Samburu and Turkana villages. (The bandits said they were attacking the Turkana because they supported the Samburu.) The attacks included beheadings, shooting people in their sleep, and, on July 13, the kidnapping of two more children, 8 and 9, who were again found hanging from a tree with their throats cut and their bodies skinned. The extreme nature of these attacks (and the repetition of the murdered children) suggests that they were intended to provoke the Samburu into an equally extreme response that could, in turn, be used to justify an extreme government response.

The Samburu did not respond in kind, but instead sent a petition for redress to the Internal Security Minister. They received no response.

On August 15, three hundred uniformed troops attacked Samburu communities, killing two and injuring several others and confiscating more cattle. It is not clear

whether these were Kenyan military, police, or others. On August 20 mercenary troops from Somalia and the Oromo Liberation Front entered Kenya to attack Samburu communities and those of any other pastoralist groups that supported the Samburu. Through the month of September there were multiple attacks by these forces, against both Samburu and the related Pokot pastoralists, who also supported the Samburu.

On September 5, hired forces attacked the village of Losesia, killing two Samburu, injuring several others, and confiscating almost 4,000 head of cattle and 2,600 goats. On September 15, OLF forces killed 30 Pokot and injured 16 more near the village of Naibor. The Member of Parliament for the Isiolo District said that he had funded the OLF, and Prime Minister Odinga, referring to the ongoing attacks by Borana and Somalis, admitted that the government had been supplying arms to Borana and Somalis along the border who were then killing Samburu.

The confiscation of cattle has robbed Samburu of their food source, and famine has set in, exacerbated by the drought. Hundreds of Samburu have died of starvation as a result. The government has taken no steps to alleviate the famine, nor has it offered the Samburu restitution. On the contrary, it seems bent on increasing the assault on Samburu communities.

On October 12, the Kenyan government announced that it had awarded a \$26 million lease to a Chinese firm to drill for oil in the center of Samburu territory, suggesting a motivation for the all the aggression against the Samburu. It is the first of eighteen contracts the government is negotiating with Chinese firms for oil.

All of these acts violate provisions of the International Covenant on Civil and Political Rights, African Charter on Human and Peoples Rights and the UN Declaration on the Rights of Indigenous Peoples.