



KENYA

STATEMENT BY

AMBASSADOR PHILIP R. O. OWADE

**AT THE FOURTH SESSION OF THE
HUMAN RIGHTS COUNCIL**

ON THE

**REPORT OF THE SPECIAL RAPPORTEUR
ON THE SITUATION OF HUMAN
RIGHTS AND FUNDAMENTAL FREEDOMS
OF INDIGENOUS PEOPLE - MR.
RODOLFO STRAVENHAGEN,**

GENEVA, 20th MARCH 2007

Mr. President,

We commend you for the effective manner in which you continue to preside over the work of the Council.

The Kenya delegation commends the Special Rapporteur for the comprehensive report following his visit to Kenya last December.

We wish to make the following comments:

1. The Rapporteur has acknowledged the special efforts the Government has made in addressing the situation of vulnerable groups in the country. We welcome the Special Rapporteur's appreciation of our reservations on the use of the term "indigenous" in reference to people of African origin. Suffice to say that all Kenyans of African origin are indigenous. To refer to some communities as indigenous to the exclusion of others is in itself discriminatory and could lead to disastrous consequences, which may not have been intended. We therefore encourage the use of the terminology "minorities" or "marginalized" or "vulnerable communities".
2. In addition to the measures mentioned by the Rapporteur, a number of specific interventions have recently been made by the government to improve the livelihood of nomadic, semi nomadic and pastoralist groups. These include:
 - National policy for sustainable development of arid and semi arid lands (ASAL 2005 – 2011);
 - Universal primary education with mobile schools for the nomadic people;
 - School feeding programs;
 - Affirmative action in accessing national facilities and
 - The re-opening of the Kenya Meat Commission which is of immediate economic benefit as it assures the pastoralists of a ready market for their livestock.
3. A comprehensive land policy launched last year is expected to pave way for, among other things, the ownership of land by marginalized communities. This policy will address such issues as rights to communal ownership as it relates to minority groups, gender, inheritance, etc.
4. Some of the issues highlighted by the Special Rapporteur such as marginalization or discrimination against women are not specific to marginalized communities but are of common application. Specific policy and legislative measures have been put in place to address the specific problems pertaining to women in different categories.
5. The issue of transitional justice is misplaced. Since the Mutua Commission recommended a Truth and Reconciliation Commission some four years ago, a lot of water has passed under the bridge. Transition democracy is no longer a priority, considering that the Government has already taken a number of measures to address historical injustices, some of which are acknowledged by the Rapporteur.
6. The report does not differentiate between access to game reserves – which are managed by local authorities on behalf of the local communities – and access to game parks. Local communities have access to game reserves especially for grazing, water for their animals and medicinal herbs.
7. With regard to the issue of registration of persons living along borders, Kenya like other countries, has procedures for conferring citizenship. Citizenship is not bestowed to groups of people but to individuals. Every claim for citizenship is therefore considered on a case by case basis.
8. Contrary to the Rapporteur's assertion, customary law is recognized in Kenya in civil matters where one of the parties is subject to or affected by it. The application of customary law in personal matters is expressly provided for under the Constitution. A famous case which went up to the Court of Appeal was determined on the basis of customary law.

Finally Mr. President, the Special Rapporteur has made a number of constructive recommendations which the Government will take into account as we continue to improve the living conditions of our people. *Thank you.*