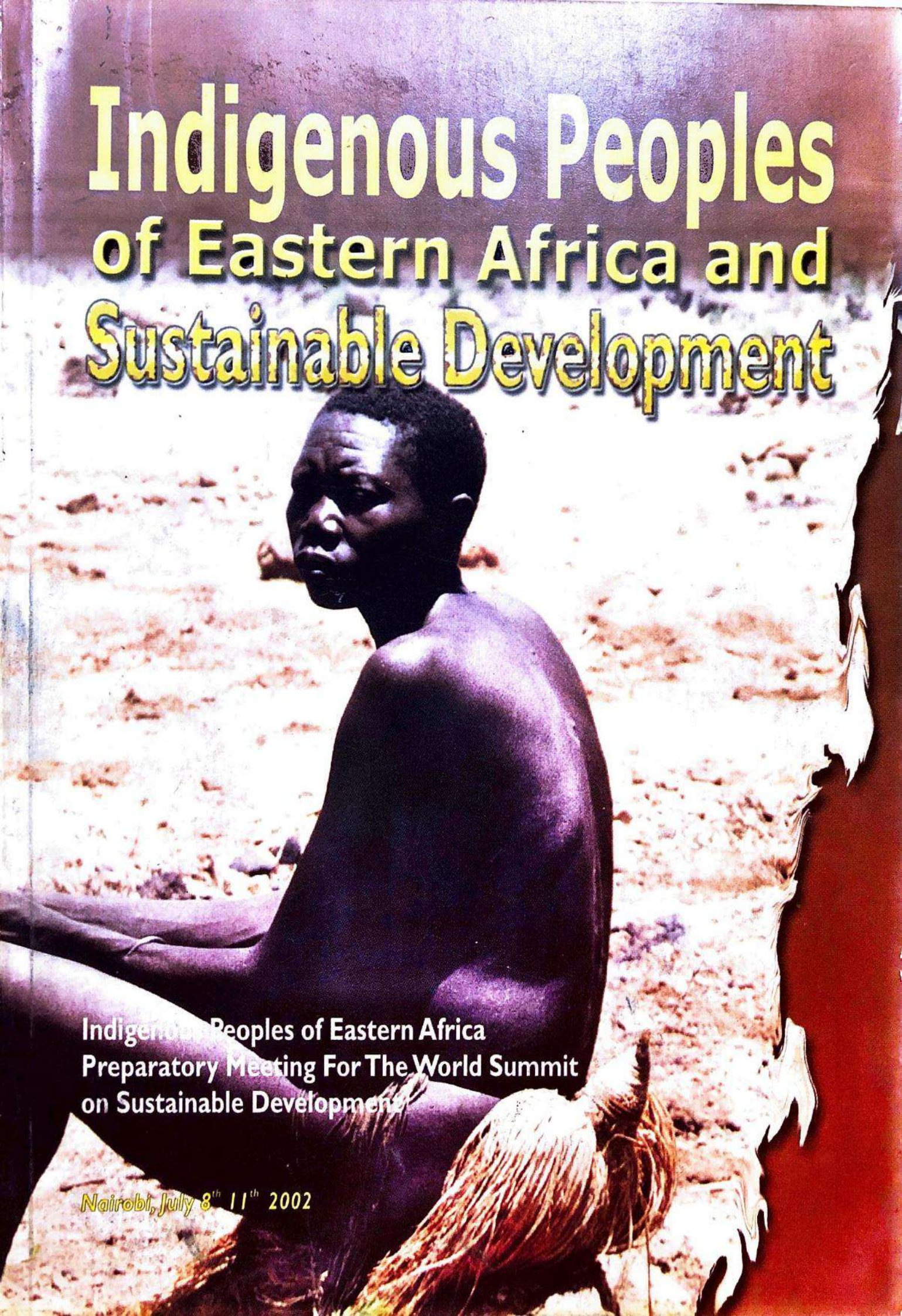


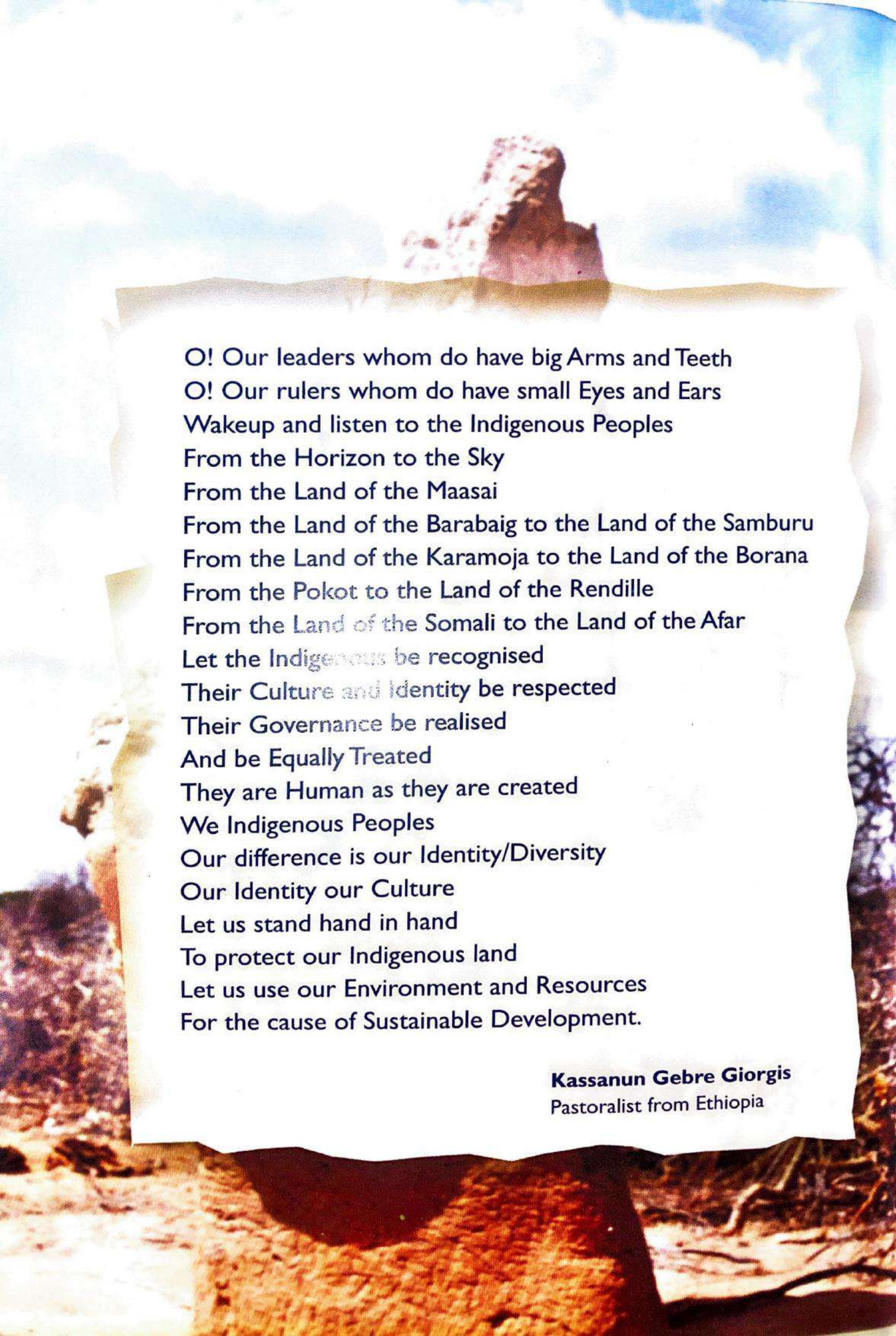
# Indigenous Peoples of Eastern Africa and Sustainable Development



Indigenous Peoples of Eastern Africa  
Preparatory Meeting For The World Summit  
on Sustainable Development

Nairobi, July 8<sup>th</sup> - 11<sup>th</sup> 2002



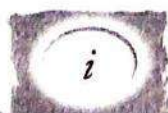


O! Our leaders whom do have big Arms and Teeth  
O! Our rulers whom do have small Eyes and Ears  
Wakeup and listen to the Indigenous Peoples  
From the Horizon to the Sky  
From the Land of the Maasai  
From the Land of the Barabaig to the Land of the Samburu  
From the Land of the Karamoja to the Land of the Borana  
From the Pokot to the Land of the Rendille  
From the Land of the Somali to the Land of the Afar  
Let the Indigenous be recognised  
Their Culture and Identity be respected  
Their Governance be realised  
And be Equally Treated  
They are Human as they are created  
We Indigenous Peoples  
Our difference is our Identity/Diversity  
Our Identity our Culture  
Let us stand hand in hand  
To protect our Indigenous land  
Let us use our Environment and Resources  
For the cause of Sustainable Development.

**Kassanun Gebre Giorgis**  
Pastoralist from Ethiopia

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# Acronomy

- WSSD : World Summit on Sustainable Development  
IIN : Indigenous Information Network  
ILO : International Labour Organisation  
EIA : Environmental Impact Assessment  
NGO : Non-Governmental Organisation  
UNCED : United Nations Centre for Environment and Development  
CSD : Commission on Sustainable Development  
ASAL : Arid and Semi-Arid Lands  
AFC : Agricultural Finance Corporation  
GLA : Government Land Act  
CIPDP : Chepkitala Indigenous People Development  
ISD : Institute for Sustainable Development  
UNESCO : United Nations Education Scientific and Cultural Organisation  
IPR : Intellectual Property Rights  
NEPAD : New partnership for Africa's Development  
CODES : Community Organisation for Development Support  
CBO : Community – Based Organisations  
KISP&D : Karamoja Initiative for Sustainable Peace and Development  
AWE-UNC : Association for World Education – Uganda National Chapter  
ANV : Association for Napata Volunteers  
PARAN : Poverty Alleviation Recovery Awareness and Nutrition  
MDO : Maa Development Organisation  
SIMOO : Simba Maasai Outreach organisation  
NCKK : National Council of Churches of Kenya  
TULIA : Tujitegemee Livestock Association



# Acknowledgement

**Lucy Mulenkei**

*Indigenous Information Network*

Indigenous Information Network takes this opportunity to thank all the Participants who attended and participated effectively in the Eastern Africa Preparatory Workshop for the World Summit on Sustainable Development. It was very clear that the issue of participation is very crucial for Indigenous Peoples of Africa. Indigenous Information Network is happy that by and by we are achieving our goals by organising this few but very productive gatherings, which we believe are a learning process for many Indigenous Peoples of this region. The entire workshop would not have taken place if it were not for the assistance of good friends of the Indigenous Peoples: *Netherlands Centre for Indigenous Peoples (NCIV), International Work Group for Indigenous Affairs, (IWGIA) World Council of Churches (WCC) Indigenous Peoples Programme.*

Indigenous Information Network will not forget to express sincere gratitude to Trocaire for providing the funds to publish this report.

Most of the time Indigenous Peoples have been marginalized and ignored and not included in different processes. Ten Years after the 1992 Earth Summit in Rio de Janeiro Brazil, the issue of participation is still a thorny issue for Indigenous Peoples. Governments made commitments and now its time to review. In Johannesburg we will see the outcome. For Indigenous Peoples it's another United Nations World Conference for Governments to repeat the same issues. The process has been frustrating for civil society and we are yet to see the outcome. Despite all this there is an increase of concern for including Indigenous Peoples in different activities. This has been through the hard lobby work for Indigenous Peoples worldwide. In Africa the process has been difficult for Indigenous Peoples as the issue of the Indigenous is still a thorn in the flesh for many governments and different stakeholders. So far the issue is creating an impact and here in Kenya like a few other African countries, our government is slowly accepting and recognising the





need to integrate Indigenous Peoples in the process. This was very clear when the Minister of Environment and Natural Resources gave a keynote address to the participants, who came from Kenya, Uganda, Tanzania, Ethiopia, Sudan and Somalia. Working together as partners is the only solution to save our environment. The Indigenous Peoples whose land is being degraded, and alienated without their consent feel cheated and would like to be involved in all stages from the planning level up to the monitoring and evaluation levels of any given project or activity in their respective lands. We are grateful to the Minister for having shown concern and encouragement.

The solidarity shared by Indigenous Peoples from different parts of the world is very encouraging. The International Indigenous Peoples Committee formed to help advance the process for Indigenous Peoples has continued working closely with all partners encouraging each other in the process. To all of you, a big thank you. The Saami Council and Tebtebba Foundation, your documentations provided very valuable insight to the Indigenous Peoples of whom some were totally new in the process. Joji Carino from Tebtebba your coming to Nairobi was timely. Your participation gave the participants great information on the global process. For our Resources Persons, your presentations on key issues that affect Indigenous Peoples were very motivating. Their contribution thereafter was an indication of hope for the future. Your encouraging words taught each and every participant something. As you are all part of civil society we encourage you to ensure encouraging words participation in different processes. Let me not forget all the interns and volunteers of Indigenous Information Network for helping put together the report within a very short time.



*Jane from Uganda and  
Nancy Pere from Kenya*



# Introduction

The workshop was convened by the Indigenous Information Network. The participants were drawn from Ethiopia, Kenya, Uganda, Tanzania, Sudan, and Somalia.

The main objective of the workshop was to strengthen the contributions of Indigenous Peoples to sustainable development through their participation at the Indigenous Peoples Earth Summit at Kimberly and the forthcoming World Summit on Sustainable Development (Rio +10) to be held in Johannesburg and beyond.

Other specific objectives included:

- To discuss the effective participation of Indigenous Peoples at the Indigenous Peoples Earth Summit Kimberly and the World Summit on Sustainable
- Development in Johannesburg and beyond, in order to achieve parity.
- To brainstorm on environmental issues affecting the Indigenous Peoples that are to be fully represented in the forthcoming World Summit on Sustainable Development 2002 conference.
- To identify other problems and principal actions required by the Indigenous Peoples for the implementation of sustainable development beyond Johannesburg.

The participants also had a number of expectations, which included:

- To get to know about the World Earth Summit on Sustainable Development and how it is linked to Indigenous Peoples.
- Discuss environmental issues affecting Indigenous Peoples in the countries represented in the workshop and exchange ideas and experiences on how they manage the environment in their different settings.
- Learn about the encroachment of forests.
- Get to know who the Indigenous Peoples are, their distinct qualifications, factors affecting their lives and, how to develop them, analyse their problems and map out the way forward.



- Know the sustainable approaches that the Government is taking for Indigenous Peoples and local Communities.
- Know the role of the government in terms of Indigenous Peoples.
- Know how to secure the land for the Indigenous Peoples.
- Come up with resolutions on how small groups can reclaim ownership of resources.
- Know the declarations that affect the Indigenous Peoples and how they can pursue them to their benefit.
- IIN should continue preparing and providing information and briefs on the declarations for the Indigenous Peoples.
- How IIN should continue to create awareness among Indigenous Peoples.
- Identify the charters and instruments that can be found for the benefit of the Indigenous Peoples.
- Make friends with each other.
- Know when the Indigenous movement began and if there are any successes and failures. If so, build on the successes and learn from the failures to ensure that there will be only success.
- That beyond this workshop, there would be a stronger network of Indigenous Peoples.
- Reports of the workshop to be sent to the participants.
- Hoped that the forum would be a starting point for Africans to be one, starting with Indigenous Peoples.
- Know the rights of Indigenous Peoples and make strategies as they fight for their rights.
- Know how best the Indigenous Peoples represented in this workshop are placed in their countries.
- Know how to handle initiatives, ways or approaches that Indigenous Peoples would want in their countries with the help of neighbouring countries and partners.



- Know the Indigenous Peoples from the various countries, as it is not clear in some countries, for instance Somalia, who is Indigenous.
- Know if Indigenous Peoples are treated the same way as other people in the different countries and what other people think about them.



*Barbaig, Maasai, Pokomo, Borona, Somali are all from different parts of the world, but we are one people.*

Apart from the key presentations, there were different group discussions that resulted in the identification of emerging issues and recommendations after which the participants concluded with a declaration, which are also included in this report. In addition, according to the evaluation forms, all indicated that their expectations were met.



# *Indigenous Peoples' Declaration*

*Nairobi, Kenya July 11<sup>th</sup>, 2002*

Recognising the growing global concern to address issues pertaining to the environment and sustainable development;

Being mindful of what the Rio Declaration and instruments subsequent thereto call to give effect to sustainable development and the environment;

Taking into account the global recognition of Indigenous Peoples as being integral and important stakeholders in the implementation of the Rio process;

Recalling the requirements of agenda 21 on the need to recognise Indigenous Peoples' values, traditional resource management practices and their participation in the making of laws and policies to achieve sustainable development and environmental conservation;

Taking into account the requirements on article 8j of the Convention on Biological Diversity: For states to respect, preserve and maintain knowledge, innovations and practices of Indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices;

Reaffirming the commitments made by states in the Rio Declaration and other instruments made thereafter on the need to carry out legal and policy reforms for achieving sustainable development and environmental conservation;

Considering that Article 5 of the Declaration on the Right to Development (1986) states that "the refusal to recognise the fundamental right of Peoples to self-determination" as a fundamental injustice against which the States should take resolute steps;

Recognising the global need to empower, strengthen and build the capacity of Indigenous Peoples and local communities to equip them with the necessary knowledge they require to meaningfully advocate for their own cause;



Taking into account that the right to development is a collective right of peoples as well as of individuals, and that the Right to Food forms a part of the development process, creating conditions for the enjoyment of all human rights, fundamental freedoms and well-being;

The growing imposition of the use of pesticides and chemical fertilizers that poison Mother Earth, the communities that work and the food resources on which Indigenous Peoples depend world-wide, affecting food production and hence nutrition and health, and increasing morbidity and mortality rates in particular for our women and children;

Realising that the once rich Africa ecosystems are on the verge of extinction;

Recognising the continued marginalization of Indigenous Peoples in Africa and other parts of the world;

Now therefore, we the Indigenous Peoples of Eastern Africa (Kenya, Uganda, Tanzania, Sudan, Somalia and Ethiopia), meeting in Nairobi on this 11<sup>th</sup> day of July 2002, having consulted and analysed the situation faced by Indigenous Peoples with respect to their Environment and other aspects related to the life and the development of Indigenous Peoples of Africa, we adopt this declaration and recommendations for the assembly of governments attending the WSSD to evaluate the Rio+10, and demand the following:

## **Recognition**

1. African Governments should recognise the existence of Indigenous Peoples in their respective territories.
2. African Governments should work closely with other Governments on Indigenous and Human Rights issues by supporting the immediate adoption of the original text of the Draft Declaration on the Rights of Indigenous Peoples, currently being discussed at the United Nations and ratify other United Nations Instruments for Indigenous Peoples like the ILO 169.
3. National Governments should take deliberate efforts to recognise, preserve, protect and maintain Indigenous knowledge systems; their cultural practices, their languages and ways of livelihood.



## **Governance**

4. African Governments should take affirmative action to make sure that Indigenous Peoples are represented at all levels of governance.
5. Governments should ensure meaningful participation of Indigenous Peoples in the making and implementation of laws and policies aimed at achieving sustainable development and environmental conservation.

## **Land and Natural Resources**

6. That deliberate policy actions are taken to ensure that Indigenous Peoples have access to equitable sharing of the benefits accruing from their land and other natural resources.
7. That Governments put in place participatory management and implementation mechanisms to give Indigenous Peoples and other marginalized groups the opportunity to participate and implement the same.
8. The land of the Indigenous Peoples that has been alienated by governments, corporations or individuals to be reverted to its rightful owners.

## **Education**

9. African Governments should ensure that the Indigenous Peoples have access to formal education.
10. Incorporate Indigenous Peoples' unique lifestyles into the education systems.
11. Provision of adult education to those who cannot attend normal school programmes.

## **Environment**

11. Laws be adopted to make sure that development of projects can only take off after proper Environmental Impact Assessment (EIA) has been conducted and constant audit and monitoring be done to ensure the existence of a healthy environment.
12. That the consultation and prior consent of Indigenous Peoples are always sought before any development projects are undertaken.



13. African Governments should know the extension of intellectual property rights in favour of multinational corporations that has increased bio-piracy and the illicit appropriation of our biological diversity and traditional knowledge; and the introduction of genetically altered food, which is causing the loss of our traditional foods, of our health and of our relationship with Mother Earth.

## **Advocacy**

14. The need to empower and strengthen the capacity of Indigenous Peoples for effective lobbying and advocacy for their common cause.
15. Donors and international NGOs should ensure that African Indigenous Peoples are facilitated financially to enable them contact training on advocacy, leadership and human rights.

## **Food security and poverty alleviation**

16. Recognise and strengthen the traditional economic systems as viable economic activities.
17. Respect the spirituality and traditional religions of Indigenous Peoples as an essential part of the development and exercise of our rights, particularly the ceremonial practices related to our knowledge regarding crops production, food security and food sovereignty.
18. Recommend that the World Summit on Sustainable Development and the States parties prioritise as fundamental the rights to food, health and education, from the perspective of the values and world-views of the Indigenous Peoples in the development process.
19. Remind the African Governments that food sovereignty is the right of Peoples to define their own policies and strategies for the sustainable production, distribution, and consumption of food, with respect for their own cultures and their own systems of managing natural resources and rural areas, and is considered as a precondition for Food Security.

Constant monitoring and evaluation mechanism to be put in place to check the progress of WSSD process and Indigenous Peoples participation.





## **Emerging Issues**

1. Governance: The issue of governance among the Indigenous Peoples communities is limited and even lacking in some cases.
2. Gender relations: Disruption of traditional structures leading to internal strife.
3. Language: Cultural conflicts due to modernisation, loss of identity due to non-utilisation of own language, and negative attitudes towards and by Indigenous communities.
4. Land: Unfavourable land policies concerning land tenure system, systematic land alienation and continuous degradation of the environment.
5. Natural resources: Access to and equitable sharing of the natural resources benefits denied; indifference of respective governments; and lack or limited development to sustain Indigenous communities. Unfavourable government policies on natural resources.
6. Advocacy: Inadequate among the Indigenous Peoples.
7. Education: The Indigenous Peoples have been marginalized especially on education systems. For example, the Garbatulla High School in Kenya that was once a national school closed down due to inadequate funds.
8. Lack of recognition and identity by the government.
9. Cultural discrimination and exploitation e.g. tourism.
10. Exclusion from the decision-making process e.g. political representation.

## **Recommendations**

1. Sensitise Indigenous Peoples on self-governance for them to understand who serves them and why there is need for equitable representation.
2. Gender relations: Education for both men and women at all levels to create informed and enlightened communities; to fight for their rights; to participate in modern economy and for sustainability of Indigenous communities.



3. Language and culture: Incorporate teaching of Indigenous languages in formal education system; establish cultural centres to preserve and perpetuate cultural heritage;
4. African philanthropy for social security to give identity to the homeless, reduce on street children; recognise rights of children through adherence to international conventions and ratification by governments; rehabilitation programmes for street and needy children; and recognise and respect traditional beliefs of Indigenous communities.
5. Land and natural resources: Recognise Indigenous land tenure system and customary laws related to land. Be involved in all decisions pertaining to, and manage all, natural resources and use them for sustainable development within Indigenous communities.
6. The governments should recognise existence of Indigenous Peoples through ratification of international instruments e.g. ILO 169.
7. The Indigenous Peoples should lobby for their identification and network in order to empower themselves.
8. The Indigenous Peoples should be given a chance to speak for themselves and design their own destiny instead of things being done on their "behalf".
9. Policies on Indigenous Peoples should be participatory and involve Indigenous Peoples so that they can effectively apply to the situation.
10. Governments should accord Indigenous Peoples the rights to access and equitable sharing of resources available in their territories.
11. Recognition and protection of Indigenous knowledge and integration of the same in the development process.
12. Indigenous Peoples should have special representation in the political system.
13. The United Nations should come up with a mechanism to make sure that the countries ratify the instruments that they establish.



14. The role of Indigenous women should be recognised and incorporated into the decision-making process and rights accorded to them in the effect of property ownership and leadership.
15. Indigenous Peoples should have a right to access information regarding the conventions in the languages they easily understand.
16. Indigenous Peoples should not be subjected to abuse of human rights i.e. they also have a right to life e.g. the issue of landmines in Samburu and Laikipia has been detrimental to their lives.
17. Indigenous Peoples should be empowered and allowed to decide on how to protect their own environment in ways suitable to them.
18. The culture and practices of Indigenous Peoples should be recognised and respected.
19. Customary laws of the Indigenous Peoples should be recognised and strengthened.
20. Indigenous Peoples livelihood systems should be recognised and strengthened as a viable economic activity in order to address food insecurity and poverty e.g. pastoralism, hunting and gathering.
21. The international community and governments should adopt an affirmative action on education systems and employment opportunities, which is applicable to the unique lifestyle of Indigenous Peoples.
22. Indigenous Peoples should have a right to security in regards to peace and harmonious co-existence with others.
23. Indigenous Information Network should make sure that Indigenous Communities in the region are informed of different activities and on different forums.
24. Donors should recognise Indigenous Peoples of Africa and ensure to support them in development activities.



# Keynote Address

*Statement by The Minister for Environment, Hon. J.J. Kamotho, EGH, MP at the official opening of The Eastern Africa Indigenous People's Earth Summit 2002, Workshop in Nairobi – July 7<sup>th</sup> to 11<sup>th</sup>, 2002 at 10.00 am*

*Mr. Chairman,  
Distinguished Participants  
Ladies and Gentlemen*

It gives me great pleasure to be here today to officiate the opening of this very important sub-regional workshop. Let me first of all take this opportunity to welcome participants from outside Kenya to our country and hope you enjoy your stay while here.

*Mr Chairman,*

I note that the main objective of the workshop is to strengthen contributions of Indigenous Peoples to sustainable development through their participation in the forthcoming World Summit on Sustainable Development to be held in Johannesburg later this year.



*Guest of honour, Mr. Kinuthia Mbugua presenting keynote address.*



As you are aware, the Johannesburg Summit will be a forum to take stock of the progress the world has made towards achieving the goals set in Rio de Janeiro 10 years ago. It will also identify any impediments that may hinder the achievement of those goals with a view to seeking solutions to the obstacles. The Summit will also aim to come up with new strategies to achieve sustainable development throughout the globe.

It is therefore crucial for countries to go to the summit fully prepared to ensure their interests are incorporated and addressed in whatever decisions that are to be made at the summit. In doing so, countries should not forget that the issues to be discussed are not peculiar to any one country but similarities between countries do exist and therefore the need for sub-regional consultations in order to develop common approaches to the issues. Such an approach will strengthen countries' positions and therefore have a better chance of being taken up and incorporated in the outcomes of the summit. It is for this reason that I consider this workshop to be very important, as it will help the Eastern Africa sub-region identify issues of common concern with regard to Indigenous Peoples and strategies to champion those concerns at the summit.

*Ladies and Gentlemen,*

The Rio Summit in 1992 did recognise the important role Indigenous Peoples play in conservation and sustainable use of natural resources and the environment in general. Chapter 26 of Agenda 21 set out a number of actions required to strengthen the role of Indigenous Peoples in sustainable development activities. Among them was the need for countries to adopt national laws and policies to preserve customary practices and protect Indigenous property including ideas and knowledge; the need to allow Indigenous Peoples to actively participate in shaping national laws and policies on the management of resources and other development processes that affect them. The summit also recognises the values, traditional knowledge and resource management practices that Indigenous Peoples use to manage their environment.

While the Rio Summit did identify these actions, it was upon individual countries to take them up and initiate processes to



implement them as appropriate. Towards this end, a lot of steps have been taken by international initiatives and countries to implement the goals set by Agenda 2. For example, several environment related international agreements such as the Convention on Climate Change, the Convention to Combat Desertification and the Convention on Biological Diversity have incorporated within their strategies provisions for the promotion, use and protection of Indigenous knowledge, practices and innovations for sustainable use and conservation of natural resources and the environment in general. Different countries have taken steps to implement measures that strengthen the role of Indigenous Peoples in sustainable development. This includes development of national legislation and/or policies to preserve and use Indigenous knowledge, practices and innovations. Other countries are yet to take any concrete measures to preserve and use Indigenous Peoples knowledge and practices in sustainable development processes.

*Mr. Chairman*

The Government of Kenya recognises the important role Indigenous Peoples play in conservation and sustainable use of natural resources. We recognise that Indigenous Peoples possess Indigenous knowledge that is an embodiment of the accumulation of knowledge, which has been time-tested and used by Indigenous Peoples for many years. This knowledge is applied and used in different spheres of life ranging from conservation and utilisation of natural resources production of food and medicinal herbs. Utilisation of such knowledge can be a very effective tool towards sustainable development and poverty reduction. The government recognises that giving Indigenous Peoples the necessary support and conducive environment can make them key players and contributors to sustainable development.

With this in mind, my Ministry in collaboration with other key stakeholders recently initiated a process to develop a national Indigenous Knowledge strategy to provide a framework upon which issues of Indigenous and local communities will be approached. Some progress has been made and a proposal for funding has been developed and submitted to the World Bank for consideration. I am



sure the other countries represented here have also done something towards strengthening the role of Indigenous Peoples in sustainable development processes.

*Ladies and Gentlemen*

Evaluating the implementation of the Rio Agreement 10 years later will allow Indigenous Peoples to identify the successes, failures, obstacles and lessons learnt in realising the twin related goals of self-determination and sustainable development, based on their own experiences and perspective.

As you are aware, the World Summit on Sustainable Development (WSSD) will result in the following outcomes: -

- The Global Review of Implementation of Agenda 21;
- The political document or Global Commitment towards sustainable development;
- Record of commitments and partnerships to be announced in partnership events for official inclusion in WSSD outcomes;

It is therefore timely that you have the opportunity as Indigenous organisations to discuss and agree on strategic decisions that you would want to see resulting from the summit.

By working together in close co-ordination and with a clear strategy, Indigenous Peoples can make central contributions to the summit.

In conclusion, I am aware that Indigenous Peoples from different parts of the world have been participating fully in the WSSD process and Africa has not been left behind. The Indigenous Information Network has played a lead role in the process for the region. As you come from areas affected by different environmental problems, it is my hope that you will be able to come up with strategies and recommendations that can be shared with different stakeholders. I hope that by the end of this workshop, you will have identified specific issues that you will take to Johannesburg that are likely to be incorporated in the final outcome.

With those few remarks, it is my humble duty and privilege to declare this workshop of the Eastern Africa Indigenous Peoples Earth Summit 2002 officially open.



# Closing message

By Joji Carino – Tebtebba

## WSSD opportunities for Indigenous Peoples

How can the World Summit on Sustainable Development be made relevant and open to Indigenous peoples?

The World Summit on Sustainable Development will result in the following outcomes:

- The Global Review of Implementation of Agenda 21;
- The Political Document or Global Commitment towards Sustainable Development (Programme of Action towards sustainable development until 2012);
- Record of Commitments and Partnerships to be announced in partnership events for official inclusion in WSSD outcomes (List of initiatives, practical measures and implementing partnerships that do not require negotiations among all states).

Evaluating the implementation of the Rio Agreement ten years on from UNCED allows Indigenous Peoples to identify the successes, failures, obstacles and lessons learnt in realising the twin and related



*Amina Adan receiving a certificate of participation from Joji Carino of Tebtebba Foundation, while Joseph Lepareyio looks on.*



goals of self-determination and sustainable development, based on our own experiences and from our own perspective.

Because the WSSD process is local, national regional and global, it lends itself to a programme of activities at local-global levels, as well as geographical or ecosystem-based activities (e.g. drylands, Arctic region, Amazon basin or marine and coastal zones), sectoral and cross-sectoral activities (e.g. forests, energy, freshwater) as well as global and crosscutting activities (e.g. traditional knowledge or Indigenous peoples' human rights). Based on our review of experiences, it was timely for Indigenous organisations to discuss and agree on the strategic decisions they would want to see resulting from the World Summit on Sustainable Development, as well as the financing of Indigenous preparations and concrete projects and actions that can make a difference to Indigenous communities. Its is very encouraging to see all your participation here showing the solidarity of Indigenous Peoples world wide.

The WSSD and related activities can be used as a mechanism by Indigenous peoples to further their long-term objectives and priority actions. Therefore, significant political actions to be undertaken in the lead up WSSD can include:

- Indigenous Review of local, national, regional and international Implementation of Agenda 21 from our perspectives and concrete conditions;
- The identification of targets and actions for inclusion in the Programme of Action for Sustainable Development; and
- The building of partnership within the Indigenous Peoples movement and with international organisations, governments and other civil society actors to be listed in the action agenda for sustainable development for the next ten years.

By working together in close coordination and with a clear strategy, Indigenous Peoples can make a central contribution to the World Summit on Sustainable Development.

The recognition of Indigenous Peoples as a major group by the UN Conference on Environment and Development (UNCED) held in 1992, was a breakthrough enabling the political participation of Indigenous Peoples in various processes relating to sustainable



development. However, translating this political recognition into concrete advances locally, nationally, regionally and internationally remains a big challenge for Indigenous Peoples.

Ten years on from UNCED, the world now prepares for the World Summit on Sustainable Development (WSSD), to be held in South Africa later this year, and which will assess progress and identify future priorities and partnerships for achieving sustainable development. Recognised as a major group, Indigenous Peoples are called upon to provide their own assessment of the implementation of sustainable development over the last ten years, and state which priorities and partnerships will be their contributions over the coming ten years.

A common criticism of international policy processes is their remoteness from local community realities, and that good international policies do not necessarily result in good implementation. Whether or not to participate in particular UN processes and international meetings, and for what objectives, are decisions that Indigenous organisations must continually reassess and plan for, in order to make the best use of energy and resources in our varied activities.

It is time for Indigenous Peoples to reflect on the relevance of participation in various international conferences in terms of the advancement of Indigenous Peoples' rights and welfare.

The key areas have been

- Human rights and social development
- Environment and sustainable development
- Economics, trade and finance

## **Human rights and social development**

1980's the United Nations established a body to work with Indigenous Peoples. The United Nations Working Group on Indigenous Population and the Working Group on the draft declaration on the rights of Indigenous Peoples.

1995-2004 United Nations declared the decade, for Indigenous Peoples.



Which has two goals:

- i. To adopt a declaration on the rights of Indigenous Peoples – countries have to sign.
- ii. Permanent Forum to follow-up of Indigenous Peoples issues
  - Indigenous Peoples have been calling for rights to self-determination.
  - Respect for land rights and cultural aspects.
  - 1997 UNCED (WSSD) – Rio Summit
  - Agenda 21 – had Rio principles, forest principles, environmental agreements, CBD (Convention on Climate Change), CCD, UNFCCC, etc.
  - Indigenous Peoples are supposed to be fully participating in environment issues.

## **Economics, trade and finance**

- World Bank and World Trade Organisations promote entry of foreign investment into our countries.
- World bank and IMF have given so many loans that now our countries owe them a lot of money.
- They are pushing the governments for privatisation of the companies.
- The danger of privatisation of natural resources.

## **Indigenous Peoples participation in WSSD**

- They are recognised as a major group.
- In what ways have they been participating?
- Indigenous Peoples Caucus – has selected a coordinating committee and has membership regionally.
- WSSD – review of 10 years, governance and capacity building and partnership.



## *– Resource Persons Presentations*

### **I. Forests In Kenya, 10 Years After Rio: Threats and Opportunities**

*By Dominic Walubengo*

#### **I.0 Introduction**

The Earth Summit held in Rio de Janeiro in 1992 did not elaborate a convention of forests. However the main document of the Summit, Agenda 21 dedicated the whole Chapter II to combating deforestation. We are now heading to the World Summit on Sustainable Development (WSSD), 10 years after Rio. It is therefore right to review the status of our forests since the Earth Summit.

#### **I.1 Brief history of the WSSD**

The WSSD is being held 10 years after the UN Conference on Environment and Development (UNCED). UNCED (the Rio Summit) or the Earth Summit took place from June 3 to 14, 1992 at Rio de Janeiro, Brazil. The main outputs from the Earth Summit included: Agenda 21, a 40 chapter programme of action, the UN Framework Convention on Climate Change, the Convention on Biological Diversity and the Forest Principles. After Rio, the United Nations created the Commission on Sustainable Development (CSD) to ensure effective follow-up on the decisions of the Earth Summit.

In December 2000, the United Nations General Assembly decided to embark on a ten-year review of UNCED. It was then agreed that a World Summit on Sustainable Development (WSSD) should be held in August/September in Johannesburg, South Africa. However, before the Summit could be held, the governments agreed that they would produce a comprehensive assessment of progress achieved in the implementation of Agenda 21.



## 1.2 Forests in WSSD

The governments, working through the CSD have produced a "draft plan of implementation for the World Summit on Sustainable Development". In this document, forests are dealt with in Chapter IV: "Protecting and managing the natural resource base of economic and social development". Paragraph 41 of this chapter states that:

"Sustainable forest management of both natural and planted forests and for timber and non-timber forest products is essential to achieving sustainable development and is a critical means to eradicate poverty, significantly reduce deforestation and halt the loss of forest biodiversity and land and resource degradation, and improve food security and access to safe drinking water and affordable energy, highlights the multiple benefits of both natural and planted forest and trees and contributes to the well-being of the planet and humanity. Achievement of sustainable forest management, nationally and globally, including through partnerships among interested governments and stakeholders, including the private sector, Indigenous and local communities and non-governmental organisations, is an essential goal of sustainable development."

From the foregoing, it is clear that governments recognise that forests:

- (a) Are political;
- (b) Have products which are traded in;
- (c) Need a law to protect them and to ensure sustainable use;
- (d) Must be managed under some institutional arrangements;
- (e) Are necessary for our survival and enjoyment;
- (f) Can be used for poverty alleviation;
- (g) Receive competition from other land uses;
- (h) Need human and financial resources to manage;
- (i) Are useful for the conservation of biodiversity;
- (j) Have to be managed with the participation of Indigenous and local communities





*Participants planting trees in the Indigenous Peoples Garden in Simoo.*

## **2.0 Status of Kenya's forests**

Kenya's forests fall into two main categories: Natural forests and plantations. The natural forests can be further sub-divided thus:

- Rain forests,
- Montane forests,
- Dry-land forests, and
- Coastal forests.

Administratively, forests in Kenya fall under two broad categories thus:

- Gazetted and
- Un-gazetted.

Kenya's forest cover in 2000 was 17,096.000ha. Of this, 40 percent was under protected areas. In 1990, the forest cover was 18,027,000ha. This represents an annual loss of 93,000ha. Reduction of forest cover is attributed to: expansion of agriculture and the growth of the urban areas.



### **3.0 What are the main threats to Kenya's forests?**

As pointed out above in 1.2, forests have many facets. In Kenya, forests are threatened by four main activities. These are: culture, agriculture/pastoralism, economics and politics.

#### **3.1 Culture**

Many people in Kenya come from cultures that expect every male adult to own land. Indeed, many Kenyan societies expect fathers to bequeath land to their male offspring. This places a lot of pressure on adult males. Those who do not already own land end up encroaching on forestland if they can.

#### **3.2 Agriculture/pastoralism**

The majority of Kenyans practice either agriculture or pastoralism for their subsistence. Land is needed for these activities. Whilst most pastoralists live in the arid and semi-arid districts of the country, agriculture is practiced in those areas with adequate rainfall. As the population increases, there is need for more land to produce more food and to rear livestock. Forests are seen as an easy target into which to expand either for agriculture or for grazing.

#### **3.3 Economics**

In the recent past, economics has played a major role in sharpening the appetite of Kenyans for land. This is especially the case in the urban areas and among farmers who want to produce cash crops for export. If we take the urban areas first, the euphemistic "developers" seem to be everywhere. They want more land on which to construct housing schemes for the urban population. They need land for office blocks and for car-parking bays. Land is also needed for social amenities like schools, shopping malls and playgrounds. While on many occasions the "developers" take more than they need, there is no question that the urban population is growing at a high rate.

The expansion of urban areas is a major threat to forests. If we look at a few examples: Nairobi city is a threat to Ngong and Karura forests; Kakamega town is a threat to Kakamega forest; Kapsokwony



is a threat to Kaberua forest, and Nakuru is threatening Menengai forest.

As for cash-crop producing farmers, they are a threat to forests all over the country. These farmers may wish to plant more tea and coffee. However, the latest threat comes from those farmers who have invested in flowers for export. For this reason, the Mau forest complex is under threat as is Mt. Kenya and Kakamega forests. Flower farmers have moved into the arid and semi-arid lands too, for example Kajiado district.

Economics is also directly responsible for deforestation as forest industries exploit forests without replanting. This can be seen in Mt. Kenya, Mau, Kakamega and Mt. Elgon forests.

### **3.4 Politics**

The political angle to the destruction of forests take two main forms: the demand for voters for subsistence land; and the wish by politicians to obtain enough funds to finance election campaigns.

The demand from voters is usually expressed openly. Indeed, many politicians are on record as demanding that a certain forest be degazetted and handed over to squatters from their constituencies. Mau forest in Nakuru/Kericho/Narok; Kitale forest in Trans Nzoia and Mt. Elgon forest offer some examples of this.

The wish to use land to finance political campaigns is more subtle. No self-respecting politicians would publicise such a demand.

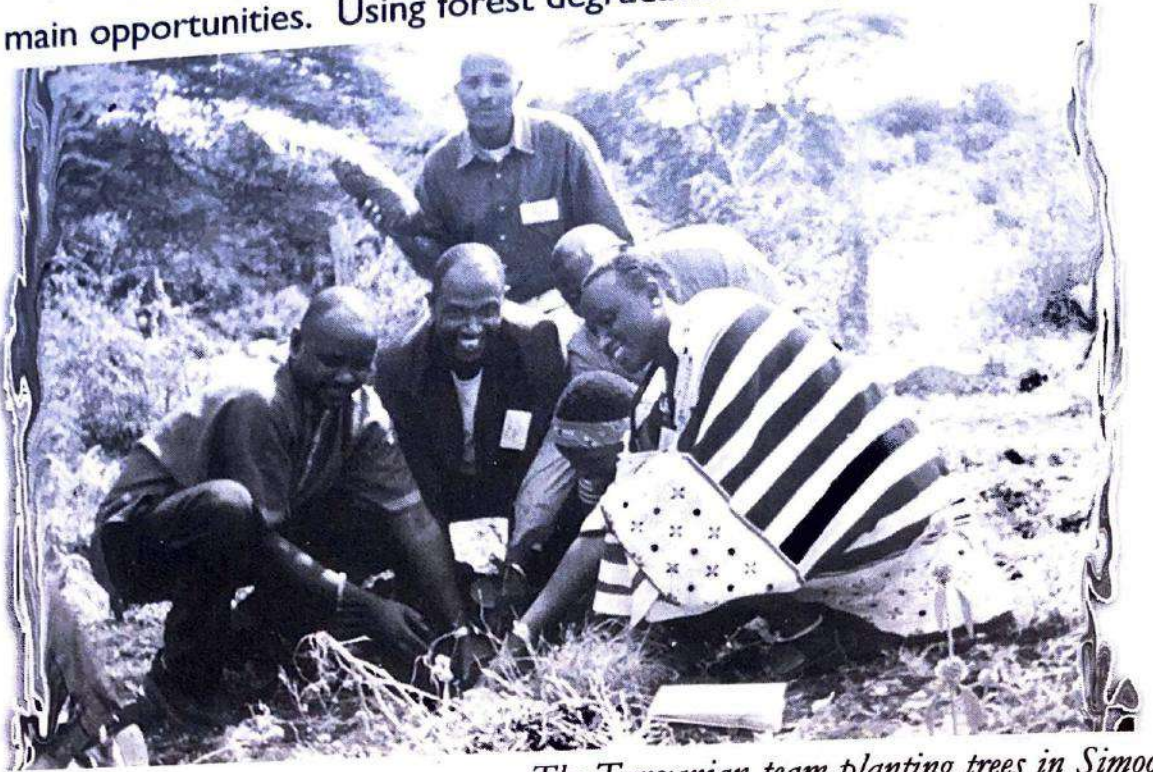
## **4.0 What can Indigenous communities do?**

Many Indigenous communities depend on forests for various services including:

- (a) Living in the forest
- (b) Depending on rivers which emanate from forests
- (c) Depending on jobs generated by forests
- (d) Depending on food and medicines from forests



This dependence on forest offers Indigenous communities two main opportunities. Using forest degradation as a part of departure,



*The Tanzanian team planting trees in Simoo*

Indigenous communities can assert the cultural rights to live inside or in close proximity to a healthy forest. In addition to this, the Indigenous communities can assert their political right and insist on good governance of the country.

#### **4.1 Cultural rights**

Ever since the Rio Earth Summit, governments have recognised the right of Indigenous communities to their cultural rights. If forests are destroyed, these communities will not be able to perform their culture and religious rites as they have done since time immemorial. Further, a healthy forest also ensures that there is enough medicine, food and water for the Indigenous communities.

#### **4.2 Political Space**

Good governance is a major plank in the WSSD process. Indeed, the whole concept of sustainable development is based on the assumption that there will be good governance. Indigenous communities can therefore demand for the good governance not only



of the country but also of the forests. This political statement can be best made through the, local parliamentary elections. Further, the Indigenous communities can demand to participate in the management of forests in which they live or adjacent to where they live. This is provided for in the forthcoming forests law.

## **2. Land Rights For Indigenous Peoples**

*By Lucas ole Naikuni*

Advocate of the High Court of Kenya

### **1.0 Introduction and background information;**

Indigenous Peoples have been defined as any person, community or being that has inhabited a particular region or place for a long time.

These are long resident people with strong customary ties to their lands that are dominated by element of national society.

Internationally, these have been deemed as being the Indigenous Peoples: Aborigines, Hotentots and the Red Indians of the American origin.

In the Eastern Africa, the pastoralists would easily be held as being the Indigenous Peoples of the region. Pastoralism has been recognised as a way of life. It encompasses livestock keeping, grazing, nomadism and utilisation of the natural resources by the people and their animals. The pastoralist people are essentially the MAA speaking – the Maasai, Illarusa, Samburu, Njemps and Ilmolo; the Somali; Borana speaking – Gabra, Sakuye, Warta, Orma and Wardei; Rendille; Turkana and Ogieks.

### **2.0 The Pastoral Land Rights;**

The fact that pastoralists are highly dependent on livestock for their livelihood, the following have been earmarked as fundamental pastoral rights. These are:

- a) Grazing rights;
- b) Water;
- c) Saltlick;

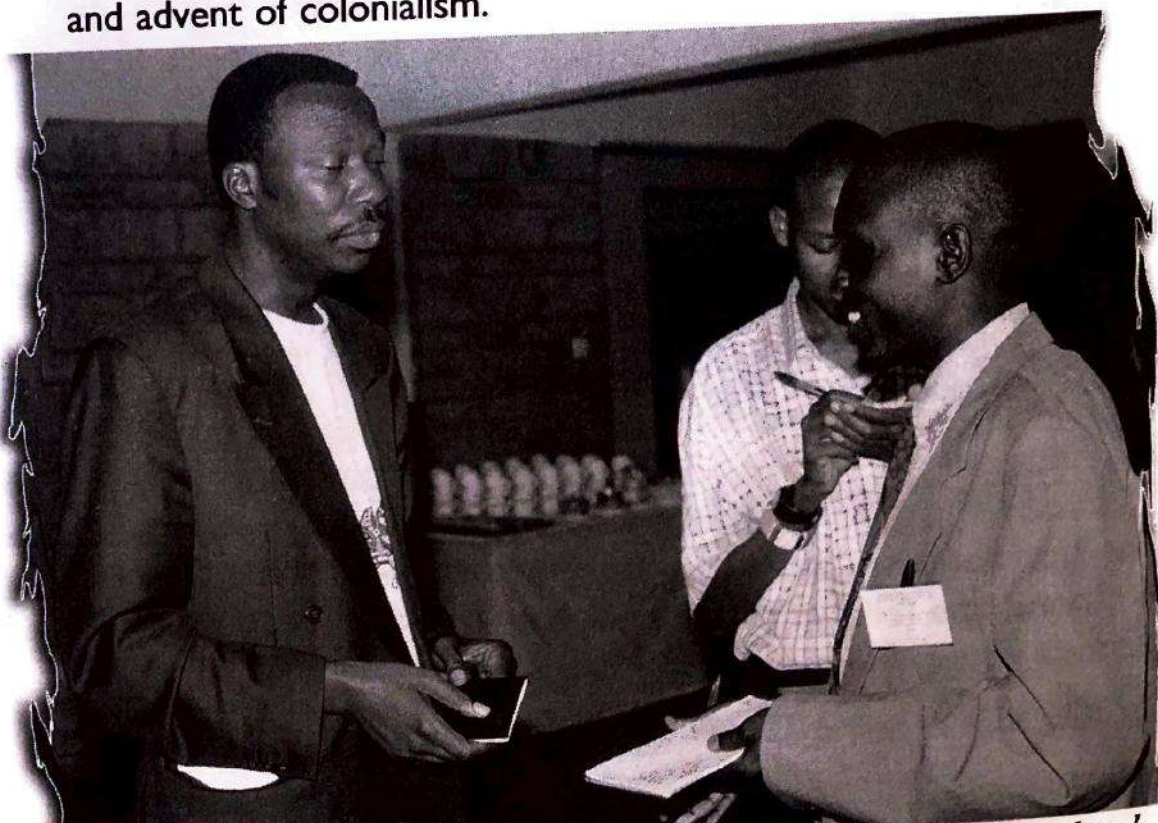


- d) Natural resources – forests; minerals; wildlife and tourism;
- e) Fundamental basic human rights – civil, political and socio – economic rights (life, education; shelter; food; health; infrastructure etc);
- f) Security;
- g) Gender.

### 3.0 The historical wrongs

- The historical wrongs afflicted to the Maa speaking community is drawn from in-depth historical analogy and the consequences thereto.

- a) Dismantling of the communal traditions by colonial policies:  
The historical wrongs afflicting the Maa speaking people revolve around marginalization and deprivation of the pastoral rights. These have been mainly on the land and their natural resources. The wrongs can be traced from the scramble for Africa in 1886 and advent of colonialism.



*Smoking Wanjala discussing with Simon Tinga during a break*



Consequently, the colonialists used law as a powerful weapon in acquisition of land and the imposition of foreign property laws in Kenya. Under pressure to award land to the white settlers, the colonial government with prompting from Sir Charles Elliot, enacted the 1897 East Africa Order in Council. The colonial government in order to pursue its objectives had to make decisions on how to acquire formal jurisdiction of land in Kenya.

The British Crown was given power by virtue of the Foreign Jurisdiction Act, 1890. This Act had been amended to give the Crown powers to control deposited waste and unoccupied land in the protectorate where there was no settled form of Government and where the local sovereign or individuals had not appropriated the land.

This power was extended to Kenya through two instruments:

- i) The 1901 East Africa (Lands) Order in Council; and
- ii) The 1902 East African Lands – orders in Council.

Land acquired under this orders was only to be used for such things as public purposes e.g. building of railway. Such designated Crown Lands were vested in the Commissioner of the Protectorate in trust of Her Majesty, the Queen of England, but the Commissioner (Governor) used these powers to lease land to the white settler.

b) Acquisition of land for private development use:

In order to attract private developers, it was necessary to guarantee ownership of land in the interior. The Commissioner (Governor) would only give certificate of occupancy to the settlers first for 21 years and then later for 33 years only. The settlers were not happy with these terms and some of them purported to buy land from the natives. In 1901, the colonial government passed the 1901 and 1902 Crown Lands Ordinances. By these ordinances the following inferences were made:

- All waste and unoccupied land belonged to the Crown;



- Land in actual occupation of the natives was not Crown land. Where such occupation ceased, that land could be alienated;
  - Rights on occupied land by the natives was at licensee level, once occupation ceased anything could happen.
- c) The Colonialist policies and legislatures:

i) *The Crown Lands Ordinance 1915:*

It is in 1915 that the famous Crown Lands Ordinance was pronounced. Under this Ordinance all the land in the territory became Crown Land according to the colonial government!

“... all lands occupied by the native tribes of the Protectorate and lands reserved for the use of members of any tribe...”

Further, the Ordinance went on to decree the creation of Native Reserves. Section 54 of the 1915 Ordinance stated that:

“...The Governor in Council shall . . . reserve from sale, lease or other disposal . . . any Crown land which in his opinion is required for use or support of the members of the native tribes of the Protectorate”.

This decree legalised, in accordance with the colonist will and desire, the native reserves that had already been set aside as outlying district boundaries. From this time onwards, the Indigenous Kenyan cultural nationalities ceased supposedly and according to the British law, to be free and sovereign people in their own land!

The 1915 and 1919 Crown Land Ordinances; The effects of the 1915 Crown Land Ordinance were:

- The colonial authorities secured title in the whole of the colony;
- The natives had land in terms of occupation;
- The vacancy of land resulting in evacuation by natives meant white settlement;
- Natives had no rights of alienating land in the reserve;



- The natives were reduced to peasants. The accumulation of this effect was more disputes.

In *Isaka Wainaina versus – Murito & the Attorney General* 1922, 239. 9KLR 102

It was held: "... In my view, the effect of 1915 Crown Land Ordinance and the Kenya (Annexation) Order in Council of 1920 by which no native private rights were reserved, was clearly to vest inter alia land for the use of the Natives in Crown ... if that be so all natives rights in such reserved land whatsoever they were disappeared and natives in occupation of such Crown lands became Tenants – at – will of the Crown"

Thus Africans having been declared Tenants at Will were therefore in colonial jurisprudence and therefore in provision of substantial rights.

By this Ordinance, the Crown Lands were to include:

Thus, the Ordinance declared all the land in the protectorate to be Crown land subject to the Governor's power of alienation. It declared that Crown land:

"... shall mean all public lands in the Protectorate which for the time being subject to the control of His Majesty by virtue of any treaty, convention or agreement or by virtue of His Majesty and Protectorate and all lands which shall have been acquired by His Majesty for the public service or otherwise howsoever and shall include all land occupied by the native tribes of the protectorate and all the lands reserved for the use of the members of the native tribes ..."

They became not owners of their Indigenous heritage but mere "Tenants of the Crown". This fact was well brought out by a court ruling in the much-celebrated case of *Isaac Wainaina and another Versus Murito wa Ndangara and another*. The judge summed up his ruling stating that in his opinion, the effect of the Crown Lands Ordinance of 1915, and the Annexation of Kenya Order – in – Council of 1920 meant that:



“All native rights in such reserved land (in the native reserves) whatever they were . . . disappeared and natives in occupation of such Crown Land became tenants – at – will of the Crown”

What this ruling meant is that in all essence, the Indigenous African had no right to land – either individually or collectively as a community. It also meant that even what were so called native reserves were holding grounds for African populations and the land could be taken away at the whims of the white colonist's wishes. The owners of the land became mere occupants and the invaders became the *de jure* owners. With such draconian decree, the African was left with no legal redress but to resistance as the means to free his occupied land. The white people were blinded by the greed to acquire colonial territory and to dominate others.

ii) 1919 Registration of Titles Ordinance:

The Ordinance was introduced to supersede all existing regimes throughout the country. A Certificate of title issued under the new law was declared to be....

“ . . . conclusive evidence that the person named therein as a proprietor of the land is absolute and indefeasible owner thereof, subject to the conditions and agreement expressed or implied in the original grant and the subsequent transfer or transmission and the title of such proprietor shall not be subject to challenge except on the ground of fraud or misrepresentation to which he is proved to be party”

In the case of *Isaka Wainaina & Another versus Muritu Idangara & 2 others* (1922) 9 KLR 112 – Chief Justice Barth declared that the effect of the Crown Lands Ordinance, 1915 coupled with the change of the Protectorate to colony status in 1920, was to render Africans mere Tenants at Will of the Crown. He added

“ . . . if that be so then all native rights in such reserved land whatever they were . . . disappeared and natives in occupation of such Crown of the land actually occupied which would presumably include land on which huts were being built with their appurtenances and land cultivated by occupier...”



Clearly from the 1919 Ordinance, the Africans were disinherited from their land by the colonial law framework. By 1920, the settlers had transformed themselves and their interests into *raison d'être* of imperial policy in Kenya. The land they needed was available and with favourable property systems to back it up.

The 1915 Ordinance is today the Government Land Act Cap. 280 and the Registered Titles Act, Cap. 281 of the Laws of Kenya.

- iii) The Native Lands Trust Ordinance, 1938: - Trust Land Act. Cap. 288 originates from the Native Lands Trust Ordinance 1938 which re-designated "native lands" as all the land formally known as "native reserves" and removes them from the Crown Lands Ordinances, 1915.

Thus, in modern parlance, Trust Land really refers to the Government Lands that have been re-designated as trust land and vested in various County Councils.

- iv) The 1938 Native Trust Land Ordinances – For the first time African Agrarian and pastoralists activities began to encounter problems due to scarcity of land and poor quality of land rescued for Africans and the increase of livestock on limited land worsened the soil problems and fragmentation of land by Africans began to emerge.

In 1938, the Government enacted The Lands Natives Ordinance where all areas formally known as Native Reserves were re-designated Native Land and removed from the framework of 1915 Crown Lands Ordinance.

The Government attempted to enact various policies in the Reserves. These were:

- It enacted and enforced preservation orders which required owners of land to farm their lands in a particular manner;
- Orders controlling the number of livestock and requiring culling of cattle and disposal of surplus cattle;
- Orders charging fees for grazing within specific reserves;



Not all these policies were bearing fruits. The scarcity of land increased and the tribes and families could not be guaranteed land. The government seriously began to think in terms of introducing title and certificates to lands owned by Africans in the belief this would motivate Africans to improve their farming methods.

The so called experts argued that the disarray in African land holding and use was caused by the African land tenure system which was argued caused fragmentation, disputes and sub-economic parcellation hence impounding improper land use and agricultural development.

In 1954, on the publication of the Swynertton Plan it became government policy to issue African farmers with indefeasible titles to their holdings. To intensify the development of African land in Kenya, the Plan highlighted the need for Agricultural development to take active step. He noted:

“... Every African farmer must be provided with such security of tenure through an indefeasible title as it will encourage him to invest his labour and profit into the development of his farm and as will enable him to offer as security to such financial credit as he may wish to secure from such sources as may be opened to him”.

It recommended where African farmers were severely fragmented and particularly in densely populated areas a proper system of fragmentation and establishment of rights to holding of property through special courts be introduced.

It further recommended that in the less populated areas in the communally owned land, the process of enclosure of individual farming be a carried out.

Amongst the products of these were the Land Consolidation Ordinance, 1959; the Land Adjudication Act, 1968 and The Registered Land Act, 1963.

The first legal instrument enacted to put these policies into effect was – The Native Tenure Rules – 1956. These rules



preceded the Land Consolidated Ordinance and the African Courts (Supervision of Lands suits) Ordinance 1956. The purpose for this was that no suit was moved to court. They set out principles, reforms and the staying of all litigation in respect of the affected areas. All pending cases in court were stayed.

## **The Nature of Customary Land Tenure in Kenya**

In customary law, land means the soil. The doctrine of fixture is unknown, but one can own a building and not the soil where it stands. In *Saleh Versus Eljofri* 24 KLR PTI – land was given a wider concept that it is known in the African land concept or understood in the English land concept. Under customary law, land was seen as a gift from God and was communally owned. What was referred to as communal ownership was communal access to resources on land.

The individual concept of ownership of land was unknown in African tenure system. The elders constituted the political authority that foresaw equal access of land to all persons. They were therefore not the owners of land.

### **The Concept of Property Ownership:**

The 1954 - Swynnerton Plan – This marked the turning point of the African customary law in Kenya. Within the white highland – the English Land Law Tenure was already in application. The Government's policy was now to model the African Customary Land Law Tenure into the English land tenure system and gradually the African law tenure to diminish and disappear.

Significantly, a major contributory factor to the atrocities and the marginalization of the pastoralists and especially the Maa speaking, is the contents and the provision of the existing laws and the national policies. On the whole, the Constitution of Kenya fails to recognise the existence and the important aspirations, values and traditions of the pastoralists in its preamble. The Constitution of Kenya only makes reference to land in Section 75 but only to the extent of safeguarding the sanctity of individual property.

Chapter IX of the Constitution makes provisions for the Trust land in as far making the county councils trustees to the land where its situated on behalf of the ordinary residents of the said area.



## **The Policy of Individual Land Tenure:**

Generally, there are three types of land tenure currently obtained in Kenya:

- a) The African customary land system;
- b) Private (individual) land system and
- c) The public land ownership.

We are mainly concerned with the private land ownership.

The harmonization of the complex land law seems to aim to favour the individual land tenure system. The individual or private land tenure is a consequence of the imposition by the colonial regime of English notions of land ownership through the law. This type of tenure confers the individual or corporate entity an indefeasible and exclusive title to a specified estate in land. Individual ownership of land is based on both freehold and leasehold systems.

Since independence, the policy of the Government has been to encourage the granting of individual titles to land as a prerequisite to effective development of land. In order to do this, it has been necessary to set up machinery to adjudicate individual claims to land and to give to those whose claims are successful a free alienable title.

To avoid uncertainty and to regulate transactions, the machinery has had to be set up to register individual titles and all subsequent transaction relating thereto.

That is to say, the current land policy advocates for the subdivision of the land into small economically viable portions. In order to do this it has been necessary to set up machinery to adjudicate, consolidate, reparcel and reallocate individual claims to land and to give those whose claims are successful a free alienable title.

## **Recommendations For Reform On The Constitution And Substantive**

Land Law.

### **I. Redressing the historical wrongs afflicted to the Maa speaking people:**

There should be a special Commission established to study and address issues of historical wrongs, injustices and claims afflicted to the Maa speaking people.



This Commission should as well look into appropriate options of action to redress and settle the same. The Commission should further deal with various boundary disputes between communities and ethnic groups revolving around land and territorial claims.

Remedies such as compensation (from the British and government of Kenya), restitution, reverting of the land resources to the Maa speaking community who are ordinarily residents of the area, etc should be considered. For instance, there is still vast land in Laikipia etc, which could be considered for this venture.

## **2. Recognition, Upgrading and Enforcement of the African Customary Laws to be like other substantive laws:**

Traditionally, land was communally owned by the tribe, clan, or ethnic group - that is African customary tenure. This land tenure was not transformed through adjudication, consolidation and registration. It was by the African Customary Laws, norms and customs.

The principles of customary law in Kenya originate from habitual practices, habits, customs, conventions, norms, values and traditions of the particular people. During the colonial rule, the English laws were imported ('received laws') in Kenya on August 12<sup>th</sup>, 1897. These laws were to be used alongside:

- a). The Indigenous customary laws of the various African tribes;
- b). Religious laws, such as the Islamic laws, confined to personal matters e.g. marriage, divorce, maintenance or dowry.

After independence in 1963 to date, the customary laws of Kenya were accorded full recognition as a source of law. The African Customary Laws are enacted under the Judicature Act, No. 16 of



1967 (Cap. 8) of the laws of Kenya. Section 3 of the Judicature Act, sets forth the sources of laws in Kenya as being:

1. The Constitution of Kenya;
2. All other written laws including the Acts of Parliament of Kenya;
3. The substance of Common law and the doctrine of Equity;
4. The African Customary Law.

The section inter alia states that:

“The High Court and all subordinate courts shall apply and be guided by African Customary Law in Civil cases in which one or more of the parties subject to it or affected by it is an African and is not repugnant to justice and morality or inconsistent with any written law, and shall decide all such cases according to substantial justice without undue regard to technicalities of procedure and without any delay”.

Section 3 (2) of the Act gives African Customary Law very limited scope. It means that African Customary Law only applies: -

In Civil matters i.e. where the dispute is between individuals and individuals on one hand and/or individuals and the State on the other hand as parties.

However, Customary Law does not apply in criminal cases. It is not repugnant to natural justice, equity, conscience and morality. It is not inconsistent with any written laws of Kenya. This means that the Native Laws (African Customary) apply in so far as it is applicable and is not inconsistent with any written law.

Unfortunately, it cannot be said that the laws in Kenya have embodied African Customary laws. For instance, most of the Agrarian Legislation has not done so. The explanation to this is that the land laws in Kenya are not a direct development from Customary Law to Statute Law. It is intertwined with the English settlement in Kenya from the end of 19<sup>th</sup> Century. It is also connected with the Arab settlement at the Coast from early historical times.

As a result the written laws or received laws relating to land have until recently only been of concern to the interest of a small



section of the community - the white settlers and the influential individuals.

### **Recommendations**

- ♦ There should be a comprehensive reform of the entire land legislature. The African Customary Laws should be recognised, upgraded and made superior like all other substantive laws.
- ♦ There will be need to amend the Judicature Act, No. 16 of 1967 (Cap. 8) of the laws of Kenya.

### **3. Recognition of Pastoral Rights and Protection of Traditional Communal Patterns and Institutions.**

- a) **Pre-Colonial Era:** Before the coming of the colonists and the scramble for Africa, the African traditional institutions, systems and principles of democracy and governance were active and thriving. Colonists destroyed these patterns with their rude and forced introduction of systems and ways of governance, democracy and resource management – tenure rights, utilisation and ownership.
- b) **Pastoral Rights:** The reviewed constitution should recognise pastoral rights. These rights are tangible and quantifiable. They revolve around livestock management, access and exploitation of natural resources. These include:
  - i. Grazing;
  - ii. Water;
  - iii. Salt lick;
  - iv. Natural resource;
  - v. Security and
  - vi. Gender.
- c) **Land is not for sale' concept:** African culture employed communal systems of resources tenure and governance. Land and the natural resources obtaining upon it was managed and



governed as a resource for all in the community. Traditions, norms and taboos provided a strict code of conduct on how land and other resources were to be accessed, utilised and managed. Land meant the soil. The doctrine of fixtures was unknown, but one could own a building and not the soil where it stood as soil belonged to God.

For instance, among the Meru no one was allowed, until recently, to fell trees without permission from the Njuri Ncheke (council of elders). Natural springs were zones of high respect, and many communities had taboos prohibiting the clearing of vegetation around catchment zones of the springs.

- d) **The Traditional Methods:** The traditional methods for resolving disputes and conflicts within and between tribes should be reinforced. The police system and magistrates' courts should not take control on land disputes.

**Aboriginal Titles:** The Aboriginal titles or land rights laws in Australia should be applied. It allows for the grant of land to Indigenous Australians under various conditions. A successful land rights claim usually results in a special grant of freehold title or perpetual lease. A title document of land is issued. This title is normally held by a community or an organisation, but not by individuals.

There are usually some special restrictions on selling and dealing with land that has been granted in a land rights claim. Normally, the land will be passed down to future generations in a way that recognises the community's traditional connection to that country.

Among the Maasai, there existed a Council of Elders in charge of conflict resolution and management of communal traditional life – livestock. The Maasai, like most other African communities, carefully regulated as a shared resources, access to pasture



e) **Eradication of sub- division and Alienation of Land.**

There should be immediate discontinuation of all the sub-division and alienation of land in the ASAL region. The sub-division is already distorting the economic potential of this area by encouraging land fragmentation and human/wildlife conflict through incompatible land use patterns. This has had adverse effect on the pastoralist lifestyle.

**The effects of the Sub-Division of land have been:**

- (a) Breaking of the traditional and customary land tenure systems. This has led to scarcity in grazing land due to the sub-division of the ranches into small uneconomic and not ecologically fit units.
- (b) Alienation of land to non-residential inhabitants;
- (c) Fencing of farms and even eventual complete individual ranches to protect the crops from wildlife and livestock. The free movement of livestock will be further curtailed.
- (d) Lack of ability to undertake in development initiatives by the illiterate owners of sub-divided land;
- (e) Selling of non-existent land or land that belongs to the group ranches by dishonest speculators e.g. Ololua Forest. Illegal acquisition of land by influential persons – Iloodo Ariak; Loita Enaimina Enkiyio Forest in Narok District, Shatuka group ranch in Trans Mara district;
- (f) Willing buyer, willing seller concept: Prospective buyers are taking advantage of this concept to buy private property and the level of illiteracy in many areas. Justification of Section 75 of the Constitution, which safeguards the sanctity of private property.
- (g) Investments and loan repayment: The loans are mainly from Agricultural Finance Corporation (AFC). The rate of loan repayment by the group ranches has been dismal. Many



problems keep on arising such as drought, expensive spare parts, machinery not being properly maintained, time consuming repairs hence breaking down; dry boreholes which have been drilled on site without water layer; loss of livestock, cattle rustling; the increment of the interest rates by the financial institutions. This has become a burden for a loan that was meant to be promotional in nature. As a result of the difficulties in loan repayment, other group ranches that are ready for financing become reluctant to take loans. Consequently, the infrastructural development has slowed down.

- (h) The implementation of the boundaries of the group ranches and the imposition of stock quotas has been overly criticised. These were intended as a balance between the carrying capacity of the ranches and the number of stock allowed to graze on the land. Due to the failure of the rainfall or short rains, many members have been leaving the ranches in search of greener pastures and water elsewhere. For instance, the invasion of the Maasai in the Nairobi city outskirts (2000 - 2001).
- (i) There is lack of marketing structure e.g. low prices offered, price controls, lack of functioning holding grounds, slaughterhouses and low level of commercialised livestock production in the southern rangelands.
- (j) Alienation of the individual ranches: The inability to repay loans has led to owners having their land auctioned for recovery of the borrowed money. In most cases, the borrowers do not appreciate the nature of loan interest rates or the value of land. The auction which takes place at the fall of the hammer is normally at a throw away price.
- (k) Increase in overgrazing: Overgrazing is on the increase as those with title deeds are borrowing money and increasing livestock in their small ranches. There is high loss of livestock rendering the owners to poverty and landlessness.



#### **4. The Chapter IX of the Constitution of Kenya and The Trust land Act Cap. 288.**

In general, Trust Land is that land which was in communal reserves or was specially set aside for the use by Africans during the colonial period.

In independent Kenya, the situation changed with the enactment of the Trust Lands Act Cap 290 of the Laws of Kenya and Chapter IX, section 114 and 115 of the Constitution of Kenya. By these statutes, all Trust lands were vested in the County Council within the area of jurisdiction it is situated and each County Council holds the Trust land vested in it for the benefit (that is in "default of") the persons ordinarily residents on that land. The County Council holds the Trust Land vested in it for the benefit, that is in "trust" of the persons ordinarily resident in its jurisdiction.

In Trust lands "the legal ownership" is vested in the County Council while "the beneficial ownership" is in those persons ordinarily residents on that land in whose benefits the land is held. However, this ownership excludes any body of water, which belonged to any person or the government, and any mineral oils.

### **Recommendations**

Based on the history of dispossession of communities living within trust land areas through multiple administration system involving the County Councils, the President and Commissioner of Lands, it is recommended that the new Constitution should declare that:

- Any Trust land that has been irregularly and fraudulently allocated or acquired contrary to the provisions of the prevailing law of the land to be immediately reverted back to the community of the specific region.
- Customary/collective tenure has potential as a basis of modern economic change and should be recognised and affirmed in the constitution and other legal and policy instruments.



- All land, which is upto now unadjudicated and not registered be owned and controlled by well-established local community governance structures known as "The Olosho" land. All such land which is inhabited or unoccupied by local residents who are ordinarily residents of the area and from which they derive their livelihood be reverted to the community.
- The Trust Land regime should be converted to customary or any other common property regime held under community land trust deed, administered and managed by community land boards. Depending on prevailing circumstances such land, occupied by the local residents of the areas shall be vested in them.
- There should be clearly defined individual access rights and procedures of transaction within customary regime and as such there is need for legislative instrument for customary tenure that shall ensure decentralisation of resources management and governance, recognise community based property rights and empower local institutions to give effect to local experiences and realities in decision-making. The Customary Law shall take into account such issues and principles of gender equity in access, ownership or succession or inheritance.
- Communal land under one community trust deed should be kept under the custody of a relevant office or bank to be determined by the community.
- There should be community based judicial structures provided for in law to deal with land matters including dispute settlement at the local community level
- In them on the basis of first the customary ("The Olosho") land tenure and secondly private.
- The community must be consulted and compensated accordingly in case of acquisition or setting part of communal land for public purposes. Once acquired for the said purposes the land must be used for the particular purpose intended, failure of which it reverts to the community.



## **5. The Land (Group Representatives) Act Chapter 287;**

### **The objective and aim of the Act:**

The Land (Group Representatives) Act, Chapter 287 of the laws of Kenya is the legislative instrument that governs communal land in pastoral areas. The legislation is aimed at providing for the incorporation of representatives of groups who have been recorded as owners of land under the Land Adjudication Act Chapter 284 of the Laws of Kenya. The legal authority concerning group ranches is based upon the Land Adjudication Act and Land (Group Representatives) Act.

The Adjudication Act governs the creation of the group rights and the consequent registration of title under the Registered Land Act. The Groups Representatives Act deals with the operations and administration of the groups. These Acts had to be introduced as the Land Consolidation Act and Registered Land Act contained no provisions for the ascertainment and registration of group rights.

## **Recommendations**

- i. Development of modern pastoralism and commercial ranching: There is need to have new land policies and laws which aim at modernising resource management systems. These should also aim at increasing productivity in semi-arid pastoral areas mainly centred on the transformation of nomadic pastoralism.
- ii. Common property models: This is where there is organised collective action aimed at sharing resources. A social bond is distinguished of respective communities in which the resources are used commonly. The model would be tried out particularly on some of the abandoned ranches belonging to 'telephone' or 'absentee' ranchers.

It would be implemented in areas of common grazing. There is a 'free' or 'open' access regime where there are completely no rules regulating individuals use rights. This is quite distinct from



property relations on rangelands where individual's rights are regulated within particular societies according to rules or norms agreed upon by all those who belong to particular organisations. This means the refining and modernising the Land (Group Representatives) Act.

- iii. Introducing effective and efficient democratic ideals:  
In order to quell the frequent leadership wrangles and other land disputes with the group ranches, effective and efficient democratic ideals need to be introduced. The leaders need to adopt attitudes that are sensitive to communal model of property ownership as opposed to the 'laissez faire' (capitalists) principles of individual land ownership and use.
  - iv. Constitutional and democratic principles within the ranches:  
The Constitutional review process to embody the following specific threshold principles regarding pastoralist land use, rights, rangelands and natural resources.
    - Balance land tenure and land use priorities i.e. the nexus between land ownership and its use;
    - Reassert the land rights of the registered proprietors acquired through the 'willing seller – willing buyer' principle or upon first registration;
    - Declare all Trust Land as belonging to the area residents according to Customary Law, thereby reasserting the superiority of claims by the people vis-a-vis the local authorities;
    - Declare the principle of community participation in natural resources management through percolation of tangible benefits.
6. The Amendment or repealing of Constitution of Kenya Section 75 – The Concept of Private (Individual) Property.
- Section 75 of the Constitution should be amended or repealed to have the sanctity of both individual and communally owed property
- Section 75 (1) of the Constitution states that:



"No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied:

- a) The taking of possession or acquisition necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or development or utilisation of property as to promote the public benefit; and
  - b) The necessity thereof is such as to afford reasonable justification for the causing of hardship that may result to any person having in or right over the property; and
1. No property, right, interest of any description shall be compulsorily taken possession of or acquired:
  2. The property shall only be taken possession of and/or the rights/interests acquired under these circumstances:
    - The negative aspects of section 75 are that it does not guarantee every citizen the right to have property. Rather after a citizen has acquired property, the steps into guarantee property cannot be taken away without compensation.
    - The Constitution provides for full protection of property once acquired but does not concern itself with how such land is acquired thereby abating free and unchecked corruption and irregularity in land administration and management in Kenya.

Thus the moment an individual has property, the Constitution attempts to guarantee the sanctity and protection of such property; ensuring that the property cannot be arbitrarily and compulsorily acquired or taken possession of except for definite laid-down reasons. In such an event, full and prompt compensation is guaranteed.

- The Section has no provision for those who do not have property. Generally, the provision of the section only



propagates the principles of 'laissez faire' – the policies of capitalism.

- Section 75 of the Constitution should be reviewed to prevent land grabbing and cases of landlessness. Instead, it should safeguard the sanctity of communal ownership of land where an individual can secure the rights through the community.

## 7. The Registered Land Act – Cap 300;

Objective and aim of the Act:

The Registered Land Act. (RLA) Cap 300 law aims at making further and better provisions for the registration of title to land, and for the regulation of dealings in land so registered.

Unfortunately, certain provisions of this Act do put more emphasis on individualisation of land tenure. The communal land ownership has no place in this Act yet all the land laws are aimed at eventually being harmonised and governed by RLA.

The reviewed Constitution needs to take the following consideration:

- a) Amendment of Sections 27, 28 and 30 (Overriding Interests) of the Act:

Section 27 and 28 reads:

Section 27:

- a) The registration of land shall vest the absolute ownership (emphasis is ours) of that land together with all rights and privileges belonging or appurtenant thereto;
- b) The registration of a person as the proprietor of a lease shall vest in the person the leasehold described in the lease, together with all implied and express rights and privileges belonging or appurtenant thereto (emphasis is ours) and subject to all implied and expressed agreement, liabilities and incidents of the lease.



Section 28 on the other hand provides that:

“The rights of a proprietor whether acquired subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto free from all other interest and claims whatsoever” (emphasis is ours)

By virtue of Section 27 and 28, a person is conferred absolute proprietorship to land. The person acquires the absolute and indefeasible title, rights and interest subject only to certain class of rights and interests specified in section 30 of the Act as overriding interests. Section 30 (g) provides for the right of a person in possession or actual occupation of land to which he is entitled in right only of such possession or occupation.

In other words, upon registration of a person as a proprietor of land shall vest in that person absolute ownership of that land together with all the rights and privileges belonging or appurtenances thereto. The right of such a person shall not be indefeasible. The court may rule that any other occupants of the land as trespassers.

The essence of absolute proprietorship lies in its finality in declaring the right of a registered proprietor impervious to challenge except in the manner and method in prescribe whilst in other instances especially with regard to first registration, such title is not open to challenge on any ground however serious.

## Recommendations

- 1) Repealing of the aspects of “absolute proprietorship’ in Section 27 and 28 of RLA: The rigours of absolute proprietorship created by Section 27 and 28 need to be repealed from the RLA. So long as the land belongs to the community section 27 and 28 should not apply.



ii) **Overriding Interest Section 30 (g):**

In Kenya, there is nothing in RLA, which prevents a Declaration of Trust in respect of registered land even if it is a first registration.

Section 28 and 143 of RLA do not restrict the Court's power to make Declarations of Trusts.

iii) **Application of the Customary Law on Land Matter:** Land in Kenya should be held under customary and/or private tenure systems. The principles enshrined here is that of individual ownership of land at the expense of communally owned land. The sections need to be amended to appreciate the communal land ownership, which is susceptible to the pastoral land rights and lifestyle. The natural interpretation of Section 30 (g) of RLA – the Overriding interests – should be applied.

iv) **Application of the Natural interpretation of the law:** In variance to the literal (positivist) interpretation of the law and in bid to equity considerations, the courts have on a number of decisions/ precedents interpreted the law to mean that the land belongs to the large group of people/community/clan from generation to generation. This is what is termed as "The Natural Interpretation of the Law".

It means that statutory Law does not necessarily have to extinguish the application of Customary Law. Hence, the land should be adjudicated in accordance to the interest and considerations of the people/community/clan inhabiting the communal land and not on individual traits/benefits. In the case of Allan Kiama versus Ndia & Others Court of Appeal No. 342 Of 1978 the late Justice Madan held.

"... land is held by the community on the basis of the existing rights under Section 30 of RLA. This is the subject to the overriding interests ... The Overriding interest which arises in right or actual occupation without legal title are equitable rights which is binding on the land and therefore on the registered owner ...".



Here it was proved that the Customary Law would be ascertained as an over riding interest on the land. Hence the over riding interests were seen as encumbrances arising from the Customary Law on the land which would not be extinguished by the mere act of registration of the land.

Therefore, for these reasons the land cannot be disposed of by a whim of an individual. Definitely, this ruling favours the landless, squatters and the peasants who have lived on a parcel of land for a long duration.

The reviewed constitution should guarantee private land ownership rights subject to such rules and conditions that may be prescribed by law which are sensitive and designed by the community situated in the area where it is applied for efficient, sustainable and maximum use.

There is need to qualify the provision of first registration under the Registered Land Act and the indivisibility of title and the Registration of Titles Act by providing the basis to repossess fraudulently obtained titles.

b) Repealing of Section 143 of RLA on the Issue of 'First Registration':

Section 143 needs to be repealed. According to the Registered Land Act, Section 143 states thus:

- (1) "The court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration (other than a First Registration) has been obtained, made or omitted by fraud or mistake.
- (2) The Register shall not be rectified so as to affect the title of a proprietor who is in possession and acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of omission, fraud or mistake in consequence of which the rectification is sought...."



The section 143 of RLA recognises an absolute proprietorship of land on the 'First Registration' basis of the title deeds notwithstanding whether the registration was obtained by omission, fraud and/or mistake. The section denies the court to direct the rectification – cancellation or amendment – of the register to the title deed issued in such manner. Section 143 – "first Registration" should be repealed.

- c) Eradication of the concept of "Willing Buyer, Willing Seller: On several policy statements, the Government has reiterated its commitment to streamline the management of land and land based resources. The effect that Section 143 has been viewed as being outdated and not sensitive to African Customary Laws. (In place of the dictum "Willing Buyer Willing Seller' is "Manipulated Seller Anxious Buyer"). This done at the expense of the illiteracy and poverty level of the Maasai people.

The position has been upheld by the respectable Attorney General of Kenya, Hon. Amos Wako. He has strongly castigated the sustainability of Section 143 of Registered Land Act (RLA) and recommended the need for its eventual review.

- d) Outlaw the use of Title Deed as a Collateral: Registration of land and the issuance of title deeds as a proof of ownership of land has been the practice. Title deeds have been used as collateral security to obtain finances and loans from financial and credit institutions. This inadvertently encouraged greed, quest for land grabbing, arbitrarily and corrupt practice and abuse of office at all cost to obtain the title deeds. It has led to numerous cases of landlessness and poverty thereof. The use of title deed as collateral security should be henceforth outlawed.

## **9. The Land Control Act - Cap. 302**

**Objective and Aim of the Act:** The main objective of this Act is to "... provide for the controlling transactions in agricultural land". It is held that no controlled transaction will be registered unless the consent of the Land Control Board for the area or division in which the land is situated has been sought and granted.



Section 6 of the Act spells out all the controlled transaction upon which the consent of the Board should be sought. These are:

- a) The sale, transfer, lease, mortgage, exchange, partition or other disposal of or dealing with any agricultural land which is situated within a land control area;
- b) The division of any such agricultural land into two or more parcels to be under separate titles, other than the division of an area less than twenty acres into plots in an area to which the development and Use of Land (Planning) Regulations, 1961 for the time being apply;
- c) The issue, sale, transfer, mortgage or any other disposal of or dealing with any share in a private company or co-operative society which for the time being owns agricultural land situated within a land control area.

Consents are not required in land control area where:

- Transaction of land is in transmission under testacy – will;
- Testacy of a deceased person to the beneficiaries;
- The government is a party to the transaction.

**A Land Control area** – This means in a particular area the Minister for Lands and Settlement has applied this Act – in which all the above transactions are controlled.

**The appointment of the Board:** According to section 5 of the Act, the Minister by notice in the Gazette establishes a land control Board for every area or, where it is divided into divisions, for each division. It is composed of the following membership:

- a) The District Commissioner of the district in which the land control area or division is situated, or a District Officer deputed by him in writing who is the Chairman;
- b) Not more than two other public officers;  
Two persons nominated by the County Council having jurisdiction within the area of jurisdiction of the Board;



- c) Not less than three and not more than seven persons resident within the area of jurisdiction of the board, all appointed by the Minister for Lands and Settlement.

The Board is a quasi-judicial body. It may take evidence but it is guided by certain principles in Section 9 of the Act. For example, consent ought generally to be refused if the person to whom the land transacted is not:

- Unlikely to firm the land well and develop it adequately;
- Already has sufficient land;
- Already has sufficient share in the bank, private company or co-operative society;
- Where the intention is oppressive;
- Where a subdivision is underway and is an economic;
- A person is not a citizen of Kenya.

## Recommendations

- a) Outlawing the "Special Land Control Boards": Ordinarily, a board ought to hold its meeting once a month, to assess the applications submitted and make decisions thereof. Interestingly, there seems to be a creation of another organ known as "special" land control board, which has taken upon itself the powers and responsibilities to unilaterally execute and make final decisions on behalf of the board. This has encouraged abuse of office, arbitrariness and corruption as applicants are asked to give a higher fee for the transaction and no receipts are issued. Explanation given is that the money is meant for developmental purposes. The "special Land Control Boards" should be outlawed.
- b) Repealing of Land Control Act: The Land Control Act has lost its purpose and the objectives upon which it was intended. It has been manipulated and used arbitrarily.
- c) Community Land Control Board: The Land Control Act should be repealed and replaced by a Community Land Control Board.



## **10. The enactment of the Land Adjudication (Amendment) Bill 1999 into Law;**

The Land Adjudication Act. Cap. 284: The main aim for this Act is to provide for the ascertainment and recording of rights and interests in Trust land. The discretion to apply the Act to a given trust land is a matter for the Minister for Lands and Settlement.

This is when he considers it opportune that a particular area is ready for determining the rights and interests of the inhabitants with a view to restriction of the title. First, there is a recording of the existing rights under "Records of Existing Rights". This is followed by "Adjudication Register". As the rights are adjudicated, the land is demarcated.

The process for adjudication is long and mandatory. However, this one is manipulated with arbitrariness, greed, corruption and abuse of office by officials assigned to conduct the adjudication.

### **Recommendations**

The Land Adjudication (Amendment) Bill 1999 should be enacted into law.

The main objective of the Bill is to amend the Land Adjudication Act. The Land Adjudication Act, 1968 Cap. 284 is hereinafter referred to as "The Principal Act". The Bill aims at amending the Principal Act in order to cancel certain Title Deeds to land that were irregularly registered in Iloodo – Ariak and Mosiro land Adjudication Section in Kajiado District. Further, the Bill empowers the Minister to delegate his powers of hearing appeals under the Act to Tribunals appointed by him in order to facilitate the disposal of the heavy backlog pending appeals in various districts in the country.

The opponents have vested interests in the area and may raise the legal and technical issues of Section 75 of the Constitution of Kenya, which sanctifies private property, and Section 143 of the Registered Land Act, which protects and sustains the holders of the title deeds through the principle of "First Registration".

As already indicated, these outsiders are mostly influential people. They have not settled on the land and only a few know where



the land is situated. No development has been made on the land. The acquired title deeds have been utilised for collateral reasons to obtain loans from financial institutions and the money borrowed from the banks (it is stated that over KSh14.5 billion) used to develop other places outside Maasai land. Some of these financial institutions where the titles have been charged are Kenya Commercial bank; Barclays Bank of Kenya Limited; Standard Chartered Bank; ICDC; Post Bank; Consolidated Finance Limited and Agricultural Finance Corporation.

There is now fear in the community that should the charged title deeds not be redeemed, these financial institutions will invoke the power of sale of the charged property.

## **II. The Government Land Act, Cap. 280;**

This law governed all the different categories of land. This law came into force in 1915. It gives the President powers to manage Government land, including the allocation of such land. Section 3 of the Act.

The President has empowered the Commissioner of Lands through Section 5 of the GLA including the powers of managing agricultural land to the Commissioner. The procedures for the allocation of land are provided for in Sections 9, 13, 15, 20, 21, and 27 of GLA. These sections also explain how leasing of land is to be carried out.

## **Recommendations**

The GLA should be reviewed to reflect the following recommendations:

- There is need to distinguish the role of government as a land owner and its trusteeship must be clearly defined in the constitution for the benefit and interest of all Kenyans.
- The Constitution must state very clearly and unambiguously that public land belongs to the people of Kenya
- Provide a clear Public Land regime in the Constitution with well-defined procedures and mechanisms of making public land available for private use.



- All unclaimed land and shared resources shall be held as “public land” by the State in trust for the people of Kenya and shall be banked or used for the community purposes and in the community interest. If irregularly acquired, public land shall immediately revert to the community.

**12. Establishment of Land Claims Courts:** The law has not been able to effectively and efficiently administer the land related cases filed here. A land claims courts should be established to specifically deal and handle all land related disputes and matters in depth, skill and expertise.

### **13. The Management, Conservation and Control of Natural Resources:**

There are two types of natural resources – Human and Non-human. The latter includes water, land, wildlife, forests and minerals. The law on land is divided into public land; private land; Trust land and Group ranches.

#### *a). The Water Act. Cap. 372.*

Under Section 3 to 7 of the Water Act, ownership and control of water is vested in the Government. Section 3 states that the water and every body of water under or upon any land is vested in the Government subject to any rights of the user in respect thereof which by or under the Act or any other written law have been or are granted or recognised as being vested in any other person.

There should be provision where the community is vested with power in as far as control, use and management of the water resources is concerned. The community needs be allowed to own, control and manage water matters.

#### *b). The Mining Act. Cap 301;*

Minerals – The Mining Act, Cap 306 of the Laws of Kenya governs the exploration and management of minerals in Kenya. The Act came into force in 1940. Section 4 of the Act states that all unextracted



minerals (other than common minerals) under or upon any land are vested in the Government of Kenya. It is the Government of Kenya through the Commissioner of Mines who can authorise an individual or company to prospect or even mine minerals.

The community should have the right in terms of use, ownership, management and control of the minerals. For instance, within the Maasai area there are a lot of minerals being extracted by private companies such as Magadi Soda, Kenya Marble Quarry, Lime stone, sand etc. The community never gets to enjoy from the proceeds obtained from these minerals.

*c). The Wildlife and Natural Resources;*

The Conservation and Management Act Cap. 376 of the Laws of Kenya provides the legal framework for the protection, management, preservation, conservation and wise use of Kenya' wildlife. The Act came into being on February 13<sup>th</sup>, 1976. The Act, among other things, gives the Minister responsible of wildlife the power to declare when any National Park shall stop being a Park.

Victims by the atrocities caused by wildlife should be compensated through the traditional means and methods.

*d). Provisions on Ownership rights, Use, Conservation, Protection and Management of the natural resources.*

All natural resources within the lands of the marginalized people belong in common to them and their future generations. The State should protect such resources including land, water, flora, fauna and the mineral resources for the benefit of all the marginalized people and other Kenyans.

The State should involve the people in the formulation, implementation and evaluation of all spheres of development plans and programmes e.g. natural resources. The people should be made to benefit from the proceeds extracted. For instance the Magadi Soda Company; Kenya Marble Quarry, Amboseli National Park; East African Portland Authority projects etc should improve the welfare of the people. The project should be undertaken in phases – Planning period, Commissioning and operational period with each period taking the welfare of the people at heart.



e). The adoption of the recommendation by the Presidential Commission of Inquiry on Land Laws and systems in Kenya. The Constitution should adopt the report and suitable recommendations made by the Presidential Commission of Inquiry on Land Law Systems in Kenya.

This important commission was appointed on November 26<sup>th</sup>, 1999 by the President of the Republic of Kenya, Daniel arap Moi and is chaired by former Attorney General, Mr. Charles Njonjo. The appointment is under the Commission of Inquiry Act (Cap 102) the Laws of Kenya.

The Presidential commission of inquiry on land laws and systems in Kenya was established to examine the land laws and make recommendations on reforms.

At a Press conference held immediately after the swearing in ceremony of the eight (8) honourable Commissioners, on January 25<sup>th</sup>, 2000, it was reported that the Land Commission would strive to clean up the mess in the country's land system. That the Commission will also work towards streamlining issuance of the title deeds, illegal allocations of land and other irregularities. Specifically, the Chairman Mr Njonjo explicitly and graphically pointed out the crux of the matter. Without mincing words, Mr Njonjo impressively had this to say verbatim:

"The Land System (in Kenya) had been brought into disrepute by greed, dishonesty and incompetence of public officials. This (Presidential) Commission is here to put things right. We want our titles and registration systems once again to be best in Africa. We intend to see our objectives achieved.

Our aim is to bring back the lost glory. We shall try to clean the system so that a title deed can mean what it is supposed to be. In my opinion, the public should see a marked improvement within the next few weeks.

We all know that some government officers and local government officers have abused the law and the system to benefit themselves and their friends. When asked as to why they were breaking the law, if they bother to answer at all, they would



be acting on instructions from higher authorities. This practice is going to stop.

It is my pledge to the public that all those title deeds obtained or acquired otherwise than in the strict accordance with the legal procedures will be cancelled....”.

It is recommended that the report and the recommendations made that affect the Maa community be adopted as whole in the reviewed Constitution of Kenya.

#### **14. Integration of Women in land matters, law and policy;**

To advocate for the elimination of discrimination of women's right to access land, ownership and inheritance rights and ensuring security of tenure for women. There should be positive action by the government to ensure that women are enabled to participate fully in planning and implementing land reform projects, as it is women who labour most on land. Because women have less power and authority to land than men, much more attention must be directed to meeting women's land needs and concerns.

Women are the majority of the population (52 percent) and form the backbone of land-based economy yet only 5 percent are registered as landowners. This gross disparity is not sustainable.

One of the factors that has contributed to under-utilisation of land among the Maasai people is the exclusion of women from land ownership, use and management. This has meant that over 50 percent of the community plays no role in how the land is used and managed!

There should be no gender inequities in the allocation of land. They should be empowered to issues of access, exploitation of resources and the rights, use, control and management of land. At all stages of life – before marriage, during marriage (marital) and at the dissolution of marriage.



- Section 82 (4) (b), (5), (6) and (9) of the Constitutions: Repealing of Section 82 (4), (5), (6) and (9) which has aspects of discrimination in as far as matters on personal law – divorce, marriage, adoption and succession is concerned.
- Provide legislation that defines women's rights on land including equal access and ownership such as co-ownership of title deed by spouses.
- Review laws of succession to enable women have greater access to family and matrimonial property including land.

**15. Ratification and domestication of international convention on Indigenous people: There is need to ratify and domesticate all the international convention on the rights of pastoralists and Indigenous Peoples into the reviewed Constitution. These international instruments are:**

- International Labour Organisation (ILO) No. 169 and 170 - Articles - 14, 15, 16, 17, and 30.
- The Australian Native Land Rights – The Aboriginal titles that vests on the traditional people the right and restriction on the use, ownership and management of the natural resources.



### **3. Environmental laws that affect Indigenous Peoples**

**By Smoking Wanjala - CLARION**

Environmental issues have created a lot of concern and become critical due to the current destructions that have been witnessed in the last century.

Environmental laws can be easily categorised into three:

- Land tenure regimes;
- Natural resource regimes
- Intellectual property regimes

#### **1. Land tenure regimes;**

This consists of laws passed by the Government which determines who has access to certain rights. For example in Kenya once land is registered customary law is irrelevant hence marginalization comes in.

#### **2. Natural resource regimes;**

Their main characteristic is to determine who owns the natural resources and who benefits from them. Natural resources regimes are those that deal with specific resources in society e.g. forests, water, minerals and wildlife. Where there is a resource, there is a tendency for the Government to own that resource. The Government has power to regulate and determine the manner in which that resource is to be used.

For example when it comes to forest there are forest laws. There exists Acts that declare that all gazetted forests belong to the Governments. The Government may issue licenses to any person to clear forest cover making it easy for anyone to access to such a resource. Forests are very critical for Indigenous Peoples because they depend on them for existence. When forests belong to the governments, Indigenous Peoples lose their natural rights over that resource.

In the case of minerals there are mineral acts. If there is any mineral in a certain area, the Government can acquire that area and compensate the individual or move the person to another place.



#### Problems:

- Displacement of people.
- Disruption of social, cultural lifestyle.
- Environmental degradation since according to international trade laws, the companies get great profits at the smallest cost possible. They have no concern for local peoples' interests. This leads to health hazards.
- Marginalization of Indigenous Peoples in management of natural resources and the Indigenous Peoples are not involved in decisions regarding these resources.
- The laws do not adequately advocate for economic regards of Indigenous Peoples e.g. wildlife. Profits accrued from wildlife do not trickle back Indigenous Peoples.

### **3. Intellectual property regimes;**

Laws that seek to protect invention discoveries (scientific and artistic). Some communities occupy areas with unique flora and fauna, genetic resources that are used to extract important industrial substances. People do not take into account that Indigenous Peoples who have conserved these natural resources have an intellectual property rights. There is no recognition of the role played by the Indigenous peoples from generation to generation in conserving these natural resources.

#### Conservation convention;

The objectives of the conservation convention include

- Conservation of biodiversity;
- Sustainable use of that diversity;
- Fair and equitable sharing of benefits including appropriate transfer of technology.
- Most of the conventions do not recognise roles, duties and rights of Indigenous Peoples in conservation of natural resources.

There are two important laws;

1. Environmental management and co ordination law.  
This was passed because there were bits and pieces of legislation that were bringing in conflicts. The convention on biological diversity was not featuring well. Right now the environment law;



- (a) Provides that every person in Kenya is entitled to a clean and healthy environment.
- (b) Grants a right to every person in Kenya to go to a court of law if he/she thinks that some conditions are degrading e.g. destruction of forests.
- (c) Establishes a number of institutions that are charged with enforcing what the law says. For example the National Environmental Council, national management authority, provincial and district environmental committees and public complain committee.

The strategy adopted;

- (i) Environmental planning
- (ii) Environmental protection and conservation.
- (iii) Environment audit and planning.

Environmental planning:

Before any development project is undertaken, there must be future planning at all levels and mapping the environmental future.

Environmental protection:

The environment should not be polluted, destroyed or degraded.

Public complaint's committee:

It comprises of seven people who represent several interests e.g. chairperson appointed by a High Court of Kenya, Attorney General's representative, Law Society of Kenya representative, NGO's representative; Business community representative and two members appointed by the minister.

The roles:

The functions of the Public Complainant Committee:

- To investigate any allegation or complain from the public with regards to environment.
- It must make a report and recommendations of what must be done. The law is quiet about the action to be taken against the committee if it fails to take action.
- Power to summon anyone to answer questions in regard to the environment and punish offenders (fine penalties).



## **4. Pastoralism & Sustainable Development**

*By Melakou Tegegn - Ethiopian Pastoralism Forum*

The Government in Ethiopia like many other countries in Africa, tries to work independently without involving the communities and civil society.

Unless both the State and the civil society tackle the challenges facing the society then sustainable development will not be attained.

**The Role of Pastoral Society:**

For sustainable development to be achieved, the pastoral society has to look deeply into the following factors;

1. The context upon which this evolution passes through. That is globalisation.
2. Environment & dimensions.
3. Emancipation & Empowerment of Pastoral Societies.
4. Gender perspective
5. Instruments for Pastoral strategies to attain sustainable development.

### **Globalisation**

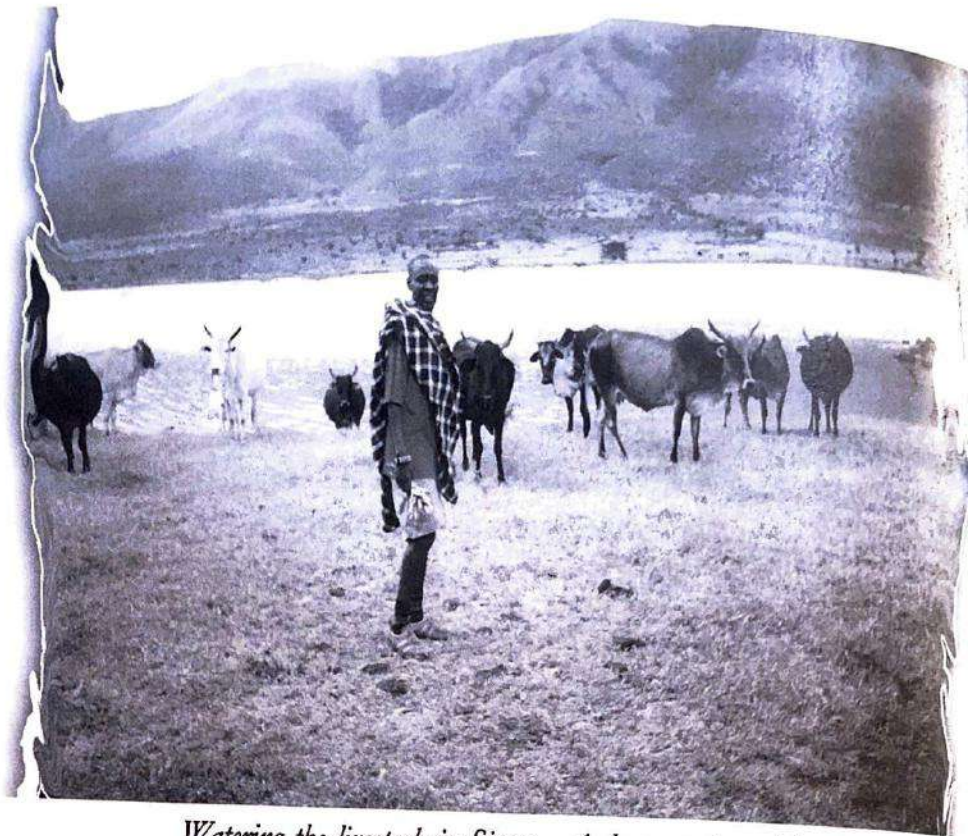
Pastoral problems began when states were formed with the colonial governments and they continued up to today.

The global context today affects everyone. There is no society in the world whose life is not affected by globalisation.

Globalisation is a two way process. The dominant process is the globalisation of the market (capitalism). Problems of poverty, under development are no longer local issues. So many networks have been put in place to tackle these problems. This reflects the local effort to address the issues. For this process the only way out is to "Think globally but act locally". The issue of poverty and under development affect the Indigenous Peoples globally.

Pastoralist people are not alone in their problems. Pastoralist communities have to broaden their way of thinking so that their problems can be solved globally.





*Watering the livestock in Simoo - A dam constructed by the community*

### **Environment issues**

It is a well-known fact that Pastoralist communities have natural affinity to the environment. They cannot exist without preserving the environment and the environment cannot be sustained without the pastoralists and Indigenous Knowledge systems.

For the Indigenous Peoples conservation of nature is at the core of our thinking.

### **Self-determination**

There are major problems with self-determination in Africa.

The issue of ethnicity or nationalism has been construed by people who want to grab power in any way (legally or illegally). This right has been connected to the right of succession. Many governments are afraid of the right of succession of Indigenous Peoples.

The Indigenous communities are not interested in political power.

For them land is crucial for their existence as it is fundamental for pastoral development.



With the emergence of colonialism, the colonial government didn't allow pastoralists to continue their way of life. From then on all governments failed to recognise pastoralism as a viable way of life. They do not recognise pastoral products as an economic aspect nationally.

Pastoralism is a tradition system yet it is common knowledge that most governments are discriminative when it comes to human development.

Indigenous Peoples are always expected to change their way of life. In Ethiopia with the introduction of mobile schools the pastoral communities will benefit from development if their way of life is incorporated into the national economic activities.

## **Strategic notions of change**

There is need for transformation of governance into civil society. The issue of Succession has been misconstrued. Governments must be made to understand that communities want the right to determine their own development. The Indigenous Peoples would also like marginalization to end.

Unless the people change (internally), we cannot attain the kind of radical change needed in society. Our perceptions also must change. There is need for the Indigenous Peoples to sift the best traditions and leave out the harmful or bad ones.

## **Gender issues**

Gender relations and perceptions must also radically change for the better of the Indigenous Peoples. It is sad for example, that in Ethiopia women are not allowed to own property.

The Female Genital Mutilation is also one aspect of tradition that is harmful and should be changed. There are other ways that girls can be initiated without being cut.

Early and forced marriages for young girls who are still going to school should be discouraged.

There is major gap of inequality between men and women and this should be decreased.

Indigenous Peoples must admit their own weaknesses and clean up.



## **Development Paradigm**

The Government stepped in the shoes of colonial power yet no African country has ever succeeded to attain the goal of Industrialisation.

African states have not even resolved the issue of conflicts. For example in the DR Congo (DRC), the rule of the late Mobutu Sese Seko was marred by violence and civil war and this has continued even in the new regimes. It has failed to end conflicts, poverty and has failed to bring development.

It is not in the DRC alone. Most African countries are not stable. The fundamental problem is that the governance does everything without involving the civil society. It is a one-way process. There can only be stability when the issue of governance becomes a two way process involving the government and civil societies.

## **Meaning of Development to Africa**

We are in a desperate situation. Africa needs to go back to square one and think in terms of development. Social change must be decided by the Indigenous People and not outsiders.

This is where the right of self-determination begins. World Bank and International monetary Fund had structural adjustment programmes that would have ended the pastoralism view of gender relations and women rights.

When we think in terms of change, we must change ourselves radically.

## **Huge Task**

There is the onus of bringing the marginalization of pastoralists communities to an end. It is hard but is not impossible.

## **Advocacy & Lobbying**

The issues of pastoralists' rights are very fundamental. It is in three levels.

1. Local level - Parliamentary
2. At regional level e.g. OAU
3. Global level e.g. UN



Indigenous Peoples must claim their rights at all levels.

For instance, it is quiet in order to demand to know what the MPs are doing. Are they representing pastoralists' issues?

In global advocacy most governments are dictated by developed countries.

## **Suggestions/Recommendations**

We need more training skills on advocacy.

Reactions from the audience

1. Majimboism is the only way for self-determination for Indigenous Peoples (Federation).
2. A new majimbo that will recognise the rights and cultural values of each community is required. Take the powers of decision making to the village (bottom-up approach)
3. Radical transformation. To do away with the colonial legacy. We cannot do away with our past completely; progressive transformation is a bit better. Simply continue with that transformation, no matter how small it is.

## **Presenters' Comments**

We're talking about Pastoralists' community development. The pastoralists' communities should determine the type of development they want.

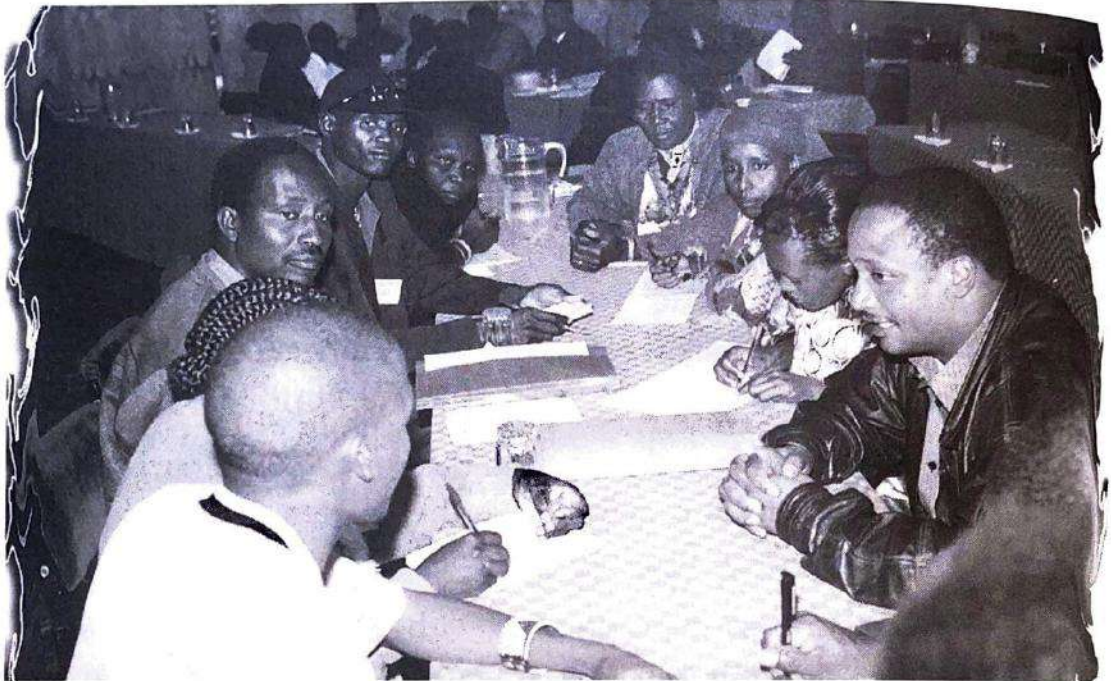
Self-determination is not recognised by most Governments. It is possible for governments to adopt the principle of self-determination if the civic groups advocate for it.

Transformation is basically on the Pastoralists Communities. Social transformation postulated in the presentation has nothing to do with socialism and Marxism. Social transformation in the pastoralist communities is required if backwardness and poverty is to be eliminated.

We need a dynamic civil society with their own freedoms.



## Summary of participants presentations



*Working together to save the environment*

### **I. Land tenure resource management and development among Maasai pastoralists**

**By Joseph Miaron**

*Amboseli/Tsavo Group Ranches Conservation Association (Kenya)*

#### **Historical Overview**

When the Europeans arrived in Kenya, the Maasai community occupied large tracts of land that extended from Lorochoi plateau in the North, to Kibaya in modern Tanzania, in the South. In 1904, the British started the formation of the native reserves with the aim of creating settlement schemes for the settler population. A greater portion of this was focused on the highlands and plains where commercial livestock and cereal production would be feasible under large-scale operations.

This led to the disorientation of the Maasai community and disruption of their migratory patterns. By 1913, the land occupied by



the pastoral Maasai had been reduced, through this aggression, by more than 70 percent within a period of nine years.

Under the National Parks Ordinance of 1945, the Maasai community further lost access to their important grazing areas due to the creation of National Parks and Reserves e.g. Amboseli (3,248 sq km.), Kitengela game conservation area (583 sq. km.) and West Chyulu (362 sq. km.) restricting the use of these areas by the Maasai. Other sections alienated during the same period included the Maasai Mara and parts of Samburu and Isiolo districts.

Following the attainment of independence in 1963, the government promoted Africanisation of lands previously held by the Europeans. This was done in the high potential areas through the programme of land settlement and land transfer and by 1970, about 1.2 million hectares of land was mainly given to the landless, unemployed and "progressive" African farmers, and was never returned to the traditional owners. The land losses incurred by the Maasai during the colonial period were to be reoccupied come independence.

In 1964, more than 8,000 hectares of the best dry-season grazing areas around Ngong had been adjudicated into small farms and between 1966 and 1969 more than 16,000 hectares on the higher potential slopes of Mt Kilimanjaro in Loitokitok division were adjudicated, legalising the loss of this important dry-season grazing area. Latter land tenure reform was introduced without the participation of the Maasai, which dismantled the institutional framework of pastoralism thereby undermining its viability by destroying the very basis of its survival – communal ownership of land. This policy was enacted into law under which group ranches were created.

### **Group Ranches**

The idea of group ranches schemes, emanated to some extent, out of the British colonial administration of the 1930's, which tried to control grazing on pastoral lands. The idea had good intentions on political and economic approach. Politically the planners saw the group ranches as a continuation of communal ownership of land that preserved the common heritage for the future generation. From an



economic angle, common watering points and large tracts of land would allow for economical grazing given the low carrying capacity of the land.

The establishment of group ranches by an Act of Parliament – the Land Group Representatives Act (Cap 287) of 1968 (revised 1970) – brought about changes in property rights, specifically in land ownership. Ownership rights were transferred from the originally larger community to a smaller group of registered members.

Government objectives behind the formation of group ranches:

The group ranches were formed mainly to:

- Increase productivity of pastoral lands through increased off-takes.
- Improve earning capacity of pastoralists.
- Pre-empt the emergence of landlessness among pastoralists due to haphazard allocation of individual ranches to some pastoralists.
- To stem environmental degradation brought about by overstocking and overgrazing on communal.
- To prevent spread of livestock diseases and control through dipping, vaccination and quarantine.
- Introduction of improved stock for upgrading improved husbandry practices to guarantee regular off-take of quality beef and milk.

### **What went wrong with the group ranches**

The group ranch concept did not entirely achieve its objective because of the following reasons:

- Ownership of cattle continued to be individual rather than collective.
- Poor management of group ranch resources by the “elected” committee members.
- High rate of human population increase.

Those who were born after the establishment of the group ranches are not registered members. This implies that they are not eligible for individual land parcel when sub-division is effected.



As a consequence of the above, there was a request for sub-division of the group ranches and today most group ranches around Ngong, Central, Mashuuru and Namanga divisions of Kajiado have been subdivided.

### **What has been the effect of group ranches sub-division**

Traditionally, the Maasai sectors (Iloshon) owned land while individual members of the respective Olosho had user rights. With the advent of land adjudication and introduction of individual land ownership, coupled with intricate land laws, poverty and overwhelming pressure from rich and politically well-positioned people, there have been increasing cases of land sales and fraudulent land transfer targeting uninformed Maasai pastoralists. For example in Loodoariak and Mosiro group ranches where land was allocated to hundreds of outsiders leaving the Indigenous Peoples virtually landless.

This is further aggravated by existing land laws that do not provide for challenging a registration of land once it has been done. Due to the semi-arid condition in most parts of Kajiado district and the size of membership of the group ranches in retrospect, the sub-division of group ranches has not been a wise strategy from economic, social and ecological perspectives.

Sub-division of land has to a great extent affected the traditional extensive livestock management system.

The subdivision has led to a diminishing pastoral resource base by inhibiting the traditional knowledge and coping mechanisms established by the Maasai over the years. The Maasai traditional knowledge on utilisation and management of range resources cannot apply to small fragmented plots.

Diminishing pastoral resource base due to subdivision of group ranches and sale of land is leading to increased poverty among pastoralists. Land sold out by pastoralists is mainly in the high and medium potential areas, thus pushing the pastoralists to the drier areas of the district.

Sale of land by the Maasai has reduced communal grazing lands and water resources by approximately 30 percent. This has subsequently pushed pastoralists to live under subsistence levels. Many do not have money to provide for family needs and other basic requirements.



### **Effect of group ranches subdivision**

The group ranches in Loitokitok division have also started the process of subdivision. However, with the lessons learnt from the already subdivided lands, it is clear that group ranch subdivision will have a profound impact on the lives of the pastoralist Maasai people.

The following are some of the outcomes of group ranch subdivision:

- Increasing land fragmentation and sales among Maasai pastoralists has led to diminishing pastoral resource base. This implies that the number of livestock that can be supported by the available land resources will become less and less with time.
- As a consequence of diminishing land resource base, there is an increase in land degradation due to grazing pressure and agriculture. This will lead to a decline in both livestock and crop productivity and hence poverty.

### **Opportunities**

- To arrest the trend of increasing poverty, it is necessary to support projects that will cushion the pastoralists against the negative impacts of land fragmentation and unviable land use system and increasing poverty. An example is to promote sustainable livestock production projects and programmes aimed at high meat and milk production. Such projects/ programmes should also promote marketing of livestock and livestock products.
- Sustainable utilisation of local natural resources is another alternative of keeping the land heritage to the local people under productive utilisation. Some group ranches in Loitokitok and Shompole have taken to wildlife conservation as an alternative land use system. Usually this has combined well with the development of eco-tourism enterprises. Due to lack of benefits from tourism, group ranches see this as a possible avenue of complimenting their livestock production system as well as a sustainable way of conserving natural resources.



## **Threats and challenges facing the Maasai people today**

### **1. Poverty**

The remaining land for the Maasai today is limited and inadequate considering the increased population. There is also the problem of arid land. The decline in the land area available for livestock means a reduced livestock population, which translates to less and less livestock available per household. Reduced numbers of livestock and a depleted resource base in the form of land has exposed the Maasai to accelerating poverty.

### **2. Illiteracy**

Income opportunities are limited for the Maasai since the majority of them never had the education necessary for job employment. Illiteracy and poverty predispose the Maasai to more marginalisation and vulnerability to exploitation and abuse of their basic human rights.

### **3. Culture**

Due to separation of Maasai into groups distant from each other and infiltration of their land by outsiders, the Maasai culture is threatened.

### **4. Separation**

The geographical separation of the Maasai groups from one another has weakened their political solidarity and threatens their cultural norms.

### **5. Land tenure and resource rights**

The total land lost by the Maasai is about 60 percent of their original land. The process of Maasai land alienation is still going on and at a very fast rate. The natural resources including biodiversity especially wildlife is diminishing due to rampant exploitation by non-Indigenous invaders. This is in the backdrop of a thriving tourism industry. Tourism earns the country billions of shillings yet very little is ploughed back in the form of development for the Maasai people who over the years have tolerated and appreciated nature and its flora and fauna. For the lovers of biodiversity and conservation, this is payback time for the Maasai people for keeping God's covenant of



conserving nature at the community's expense. Land legislation in Kenya and the right of access to resources is biased towards the Maasai people as their resources are exploited by outsiders who in the end are the ones who benefit.



*John Pulei in the traditional rigalia with some of the women participants*

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Poverty, target groups and governance environment in Kajiado District, Kenya.



## **2 Chepkitale Indigenous Peoples of Mt. Elgon region in Kenya**

*By Dr. Johnson Changeiywo*

Chepkitale Indigenous Peoples of Mt. Kenya region have been a case of mistaken identity since the advent of the colonial period. They have been given all sorts of names at various forums for reasons they do not know.

It should be taken note of that the Chepkitale people are Indigenous dwellers of Mt. Elgon forested areas where they have lived since time immemorial.

They have survived the test time by on a livelihood dependent on hunting and gathering until the era of colonialism when they were forced by circumstances beyond their control to practice pastoralism. Like many other Indigenous Peoples, their way of life started changing dramatically with the application of colonial and post-colonial administration and laws governing land management and practices.

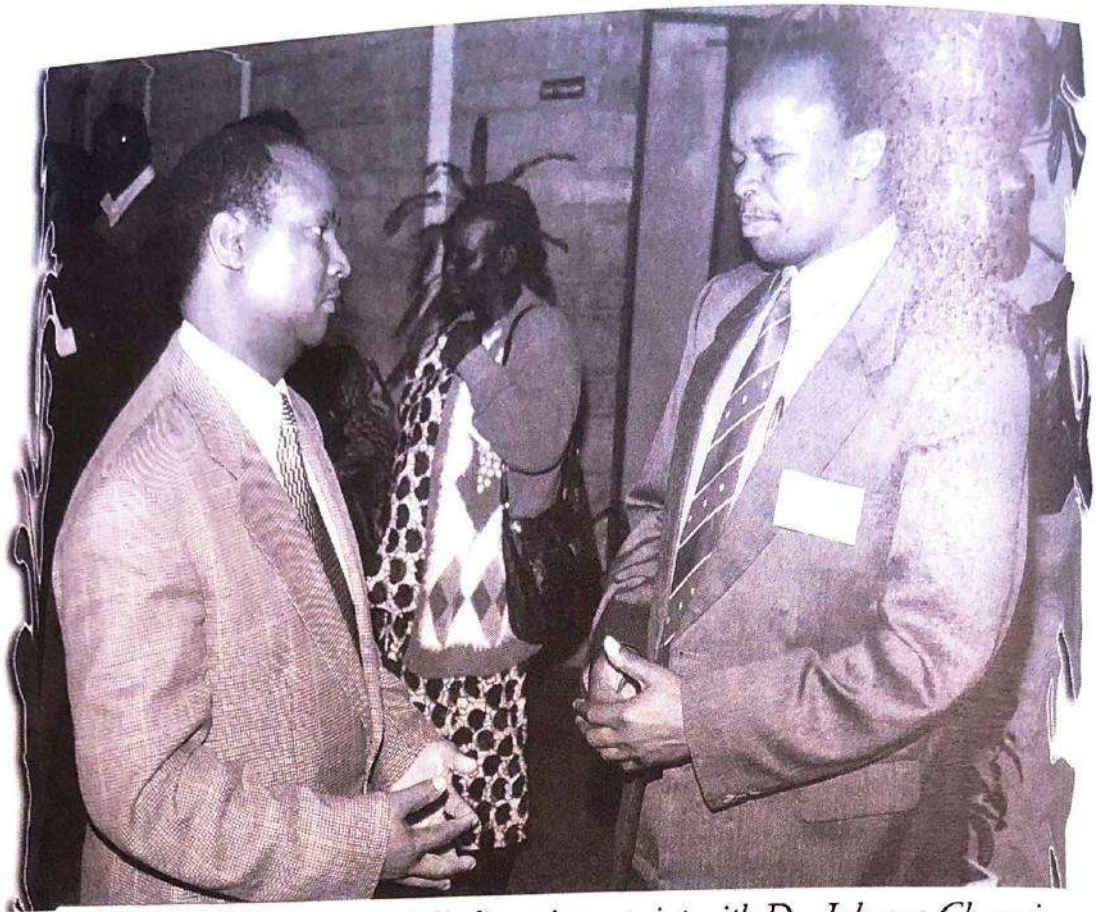
When the colonial administrators banned the Chepkitale people from hunting and gathering, they turned to livestock keeping. This is when they started keeping cows, sheep and goats as well as dogs.

After independence, the Chepkitale people were encouraged to settle in the area around the Mt. Elgon thick-forested areas known as Chepyuk. However, since 1970, they have not been settled in the said area due to politics and land grabbing practices. Right now they are still practicing pastoralism and a bit of hunting and gathering on the top slopes of Mt. Elgon.

It is important to note that when the colonial government was looking for land to settle the Europeans in Kenya, the Chepkitale people were robbed of their land that was fertile and ideal for farming. This is the present day Trans Nzoia. They were pushed to the top slopes of Mt. Elgon, which was unsuitable for livestock compared to the warm lowlands around Eudekess and its neighbourhood.

The Chepkitale people did not take it kindly to their land being taken away for white settlements. This is evidenced in the Cater Land Commission of 1932. In the Commission's report, there is





*Mr. Kinuthia (left) discussing a point with Dr. Johnson Changeiywo*

evidence given by Kasisi Col. Watkins among others, which proves the Chepkitale people had a right to their ancestral land claims.

It was after this complaints that the colonial government set aside about 80,000 acres of land on the top slopes of Mt. Elgon that is now known as Chepkitale Nature Reserve. The Chepkitale people lived there and had their own administrative structure until recently when the present government wanted and forced them out of the place to give room for game reserve establishment.

Land speculators and politicians in Mt. Elgon region started claiming that Chepkitale people needed to be resettled in the lower part of Mt. Elgon thick forested area. They approached the Government and the land was set aside. In the 1968-70 period, the documentation for resettlement programme was started and the Chepkitale people were counted and found to be 600 families, which was erroneous.

The settlement exercise started in 1971 in Chepyuk and todate no proper and genuine settlement has taken place. The land speculators and politicians have been telling the Government that the



exercise of settling the Chepkitale has not been completed since 1971. Every politician and administrator wishes to participate in settling exercise. The resettlement is done on the settled land or by curving out land from the forest next to Chepyuk. During this continuous settling and resettling exercise, the Chepkitale people have been victims of circumstances and have been used as bargaining tools.

Since 1971, the Chepkitale people have experienced a lot of cultural degradation in addition to the environmental aspects. This has occurred because the Chepkitale people are not in their ancestral land or well settled in the proposed land for a longer time. Politically instigated eviction of the Chepkitale people is frequent and constantly features in their ancestral land. The Chepkitale people have resisted such unwarranted evictions and would like to go back to settle on their ancestral lands.

The Mt. Elgon County Council has colluded with the Kenya Wildlife Service to change Chepkitale Natural Resource/Chepkitale Trust Land to National Game Reserve. They succeeded on June 6, 2000 to convince the Minister of State in the Office of the President to approve this. This exercise was done without consultation and against the wishes of the Chepkitale people, who registered their disapproval but have not been physically violent.

Destruction of the environment in Mt Elgon is evident and is done under the pretext of settling the Chepkitale people, which is not the case. The Chepkitale People wish to inform all that they have lived in harmony with the environment since time immemorial.

The Chepkitale community is now appealing to the Government and all well-wishers to stop destruction of Mt Elgon forested area and allow them live and have sustainable development in their ancestral land that is specified under Chepkitale Trust Land (formerly Chepkitale Nature Reserve).

The Chepkitale people have formed an organisation to look into ways of solving their problems. It is known as Chepkitale Indigenous Peoples Development Project (CIPDP).

My God, hear the cries and wishes of Chepkitale Indigenous Peoples.



### **3. Discovering the value of Cultural Biodiversity practices in Ethiopia**

**By Hailu Araya**

*Forum for Environment (ISD)*

#### **1. Introduction**

Human kind is part of the world's biodiversity, and is itself very diverse. This is expressed through people's culture, which involves both material and spiritual elements of the world around and inside us.

Thus, through our different cultures, we are all part of the earth's biodiversity. If we can respect the cultures of others and ourselves, we also learn to respect biological diversity. Respect includes knowing, understanding and the interest to learn. It has also been shown in many parts of the world, including Ethiopia, that where development accommodates the local culture as expressed through traditional knowledge, it is likely to bring about improvements which are more fairly distributed and sustainable than development coming from outside the local system.

Human cultural diversity is threatened on an unprecedented scale. As languages are considered one of the major indicators of cultural diversity, linguists estimate that between 5,000 and 7,000 languages are spoken today. Yet, an estimated half of the world's languages – the codifications, intellectual heritages and frameworks for each society's unique understanding of life – will disappear within a century. Of these nearly 2,500 languages are in immediate danger of extinction; and an even higher number are losing the ecological contexts that keep them as vibrant languages.

If one uses language as an indicator of cultural diversity, then six of the nine countries that account for 60 percent of all human languages are also areas of biological "megadiversity" teeming with plant and animal species so numerous a multitude remains uncounted. In terms of biomass, tropical rainforest are known to be the richest and most varied habitats on the planet. They are also the most culturally diverse regions, home to as many as half of the world's Indigenous Peoples.

Indigenous and traditional peoples, providing with an inextricable link between biological and cultural diversity, inhibit





*Group work-working together to save the environment*

many of the areas of highest biological diversity on the planet. Inevitably, a large volume on cultural and spiritual diversity will dwell upon the beliefs and practices of Indigenous and traditional peoples in relation to their use and conservation of biodiversity. According to UNESCO 4,000 to 5,000 of the 6,000 languages in the world are spoken by Indigenous Peoples, implying that Indigenous groups still constitute most of the world's cultural diversity.

Indigenous is defined by UNESCO as 'Indigenous Communities, Peoples and nations are those which, having a historical continuity with pre-invasion and societies that have developed on their territories, considered 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 ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems. "Generally the



Indigenous refers to those who, while retaining totally or partially traditional languages, institutions and lifestyles which distinguish them from the dominant society, occupied a particular area before other population groups arrived.

If many areas Indigenous groups once lived for long in relative balance with their environments but what happened to it and who changed the condition now. Indigenous Peoples face mounting pressures from outside due encroachment by those practicing agribusiness. They also face a growing internal challenge as their population densities increase and the market economy undermines subsistence strategies and the cultural traditions that supported them. Unfortunately, one of the negative impacts of 'modern' development, including 'modern' and particularly globalisation has been ignoring or covering up of traditional knowledge and lifestyles - the cultures of which we all are a part of.

An English proverb says that 'familiarity breeds contempt' and, through modern education, it is all too easy to learn to despise the culture around us and blame it for all the problems we face. But it is the traditional cultures, particularly those of local communities of Africa that continue to feed everyone, provide housing for the majority, and clothing for many. And it is the local cultures that will continue to be the backbone of both survival and sustainable development in the future.

## **2. Valuing Cultural Biodiversity**

### **2.1 Cultural context**

Rural communities are dependent on their immediate environments to cover their basic needs. This is because they have achieved little purchasing power and cannot thus have access to resources produced in distant environments. Over the millennia since humankind evolved in Africa, its people have developed numerous cultural strategies to use their resources sustainably. The farmers, particularly women, have developed a wide range of food crops and know which wild plants can be collected in times of food shortages.

Traditional healers have identified plants and other materials for treating both minor ailments and major illnesses. All the materials for building houses, for making clothing, bedding and containers for



transport, are taken from the natural resources available in the local ecosystem. The management of these resources by the local community ensures that no one individual can exploit a resource to the detriment of the whole community. There is thus a built-in equity in the management of resources by local communities.

Ethiopia is a land of diverse cultures with over 80 ethnic groups and thus languages are generally recognised. Each society has its own language and traditional systems of using the biological resources in its surrounding to provide food, health care, clothing and shelter. Very little has been studied and documented about the relationship of the different cultures with their local biodiversity.

## **2.2 Socio-economic context**

The integrated and holistic livelihood systems of local communities are usually dismissed under the term “subsistence economies”, and the rich store of traditional knowledge and practices that supports them is rendered invisible. Although Africa has rich natural resources but has the highest number of poorest countries, the result is a paradox.

Numerous recipes from outside have been offered to Africa and several have been tried, most of which have resulted in increasing the divide between the very few wealthy individuals and the vast numbers of poor and deprived. One of the reasons for this paradox is that development has ignored the traditional knowledge, technology and practices of local communities, and used solely in the entrenchment of private rights, especially the private as community intellectual property rights (IPRs) regimes, as the basis for development. Private rights and IPRs are thus inherently against equity and therefore disruptive of the well-established functions of local communities. Recipes that disrupt social organisation cannot bring about all-enfolding development.

The poor have to use the natural resources around them to sustain their livelihoods and earn an income. They do this in a setting in which their systems of co-operation are being constantly disrupted. This makes them environmentally vulnerable.

Over the last 100 years, environmental degradation (soil erosion, decreasing natural soil fertility, degraded rangelands, drying up of springs and lakes, accelerated loss of biodiversity, etc.) mostly



resulting from uninformed government interference and misdirected development programmes has been undermining the livelihoods of millions of rural households, causing more poverty and continued food insecurity. For example, the displacement of drought and insect pest resistant sorghum by drought and insect pest vulnerable maize in many countries has increased food insecurity for millions of rural families.

The last 20 years has also seen the emergence of the HIV/AIDS pandemic with the people of Africa the most severely affected in the world. On the other hand, the natural resource base and particularly in the traditional crops of Africa, if appropriately managed, offer diverse opportunities for employment and income-generation, leading to food security and sustainable poverty reduction.

The best place to look for these sustainable systems of using natural resources is in the traditional systems developed over the millennia by Africa's rural communities. However, the AIDS pandemic is making this a matter of urgency as the most vulnerable section of the population is composed of youth and reproductively active adults. The adults are teachers of the next generation, and traditional knowledge and practices are dying with them.

Because the poor are the most affected by environmental problems, efforts to improve the environment will have a significant impact on reducing poverty. Valuing biodiversity can provide an enabling framework for pro-poor sustainable development policies that help them provide for their basic needs, reduce health risks, increase economic opportunities and reduce vulnerability, and thus empower them.

At the same time, the best from scientific knowledge can be incorporated to improve the traditional systems for the effective conservation and sustainable use of their natural resources. When local communities are empowered, they are able to choose for themselves how to combine the traditional with the modern. Ethiopia is facing enormous challenges to develop its resources in order for all its citizens to improve their lives. The haste to develop is making all that exists look ineffective. Under these conditions, the traditional systems of food production and living are often categorised as "backward" and unproductive. There is an imminent danger that



much valuable knowledge and many important skills will be lost before they are even studied, and their value and role in local societies understood.

In many other countries, it has already been shown that improving traditional practices and lifestyles is often more sustainable than bringing in completely unknown technologies. It is, thus, important that students should have the opportunity to study and appreciate their own cultural traditions while they are also learning much new science and new skills.

## **2.3 Political context**

Over the last ten years, “globalisation” in terms of “free trade” has been promoted as the basis for economic growth and development. The political support for this comes from one model of living – that of the West or the North – and this is being perceived by the youth in South as the model to follow.

The strongest voices in this process are the media and an educational system that separates the student from his/her traditional background. This leads to young people belittling their own cultural heritage and results in the erosion of traditional knowledge and practices that have sustained communities and maintained biodiversity over millennia.

The New Partnership for Africa's Development (NEPAD) is now being promoted as an African-driven initiative to alleviate poverty and improve the living conditions of Africa's peoples. There are several critiques of this process and this includes those who fear that NEPAD will lead to a further disempowerment of Africa's local communities, particularly its youth. There is an urgent need to have instruments that can help build resistance to the further destruction of Africa's cultural biodiversity and livelihoods.

In order to retain the best from traditional knowledge and practices it is essential to have local communities decide on all aspects that affect their livelihoods. It is also essential that educational institutions incorporate traditional knowledge and practices in both formal and informal teaching so that students can make informed choices that are relevant to both their socio-economic and environmental backgrounds. This will contribute to the decolonisation of the African mind.



Protecting the rights of African local communities has been taken up as a political agenda by the African Union (formerly OAU – Organisation of African Unity) through the African model Law for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to biological Resources. The draft model law was sponsored by the Government of Ethiopia and tabled for discussion at the 68<sup>th</sup> Ordinary Session of the Council of Ministers of the OAU held in Ouagadougou, Burkina Faso, in June 1998.

The Council of Ministers recommended that Governments of Member States adopt the Model Law and initiate the process of enacting it into national law. As regards the spread of modern biotechnology and the promotion of genetically engineered (GE) products, especially seeds, the African group leads the developing countries in upholding the “precautionary principle” in the development and use of all genetically engineered organisms and their products in the negotiations of the Cartagena Protocol on Biosafety.

Before the negotiations were finalised, the African Union developed an African Model Law on Safety in Biotechnology. This was endorsed by the Lusaka Summit of July 2001, which recommended to its Member States that the Model Law be used as the basis for their national laws on bio-safety.

The Ethiopian Government has made a political decision to devolve decision-making for development to the lowest administrative units of the country. There are nine autonomous regions and two autonomous city administrations. Each of these regions and cities has its own administrative structure that includes bureaus for environment, culture and education. Up to now, the schools were not much involved in the issues related to their immediate environment and cultures, and were unable to assist in the improvement of local livelihoods. This has also made them a fertile ground for cultural globalisation, which has aggravated the problem of the AIDS pandemic.

By involving young people and their leaders, including teachers, in the discovery of the value of their own cultural biodiversity, they will be able to learn the best in their traditions and want to have a productive and healthy lifestyle. This will help them



make decisions to protect themselves from becoming infected with HIV/AIDS. As decision-makers in their own communities, they will be able to make informed choices for development, improve their local livelihoods and resist the worst aspects of globalisation.

## **2.4 Work done so far**

A one-week workshop was held, July 16-20, 2001, in Holetta, a small town 40 kilometres west of Addis Ababa, to introduce the concept of "cultural biodiversity" to teachers selected from 17 schools from different regions of Ethiopia. They were to be trained on basic methods for interviewing and documentation. Representatives from the local administration and education offices also joined the workshop. At the start of the workshop, the participants visited the National History Museum and National Herbarium in Addis Ababa University. On the last day, they went to the Institute for Biodiversity Conservation and Research (IBCR).

These visits were to familiarise the teachers with the wealth of biodiversity that Ethiopia has and to show them how plant, animal and crop specimens are collected, preserved and studied by these institutions. The central part of the workshop started with background papers and general discussions on cultural biodiversity, the challenges to maintaining biodiversity and the importance of recognising gender in order to identify the different roles of men and women in traditional lifestyles and their use of biodiversity.

The participants were then given training in techniques of interviewing, Participatory Rural Appraisal, plant collection and preparation of plant specimens. They practiced interviewing each other and discovered that 12 different languages as mother tongues were represented.

Working groups visited local artisans and farmers from the community in and around Holetta town and then presented their findings. Much interest was generated by these activities and this led to a vigorous discussion on follow-up strategies by the teachers and their environmental club members in the schools.

### **Follow-up:**

After the school year had started, in October 2001, a circular was sent to all 17 schools that had participated in the workshop and some responded asking for advice and materials. This confirmed the



importance of making follow-up visits and a team of experts travelled to all 17 schools during November and December 2001.

The team observed that:

- Most of the schools had trained their students in the basic techniques and they had started to write and collect stories and poems related to biodiversity.
- Students had collected plant materials, particularly those used for simple ailments, and pressed and mounted them to start a mini herbarium
- Many students had collected artefacts and information from their own homes and reported that their parents were both surprised and happy that their children are getting curious about their traditions and local knowledge.

It was obvious from the visits that the enthusiasm and interest in "valuing the role of biodiversity for sustainable livelihoods sparked off in the Holetta workshop had been carried over to the students, and a lot of material was being brought together in the schools. This was much more than could be accommodated in a formal publication, schools together to exchange experiences and celebrate their achievements.

The Gaia Foundation based in London has supported this initial work.

Preparing for the Celebration of the Value of Cultural Biodiversity:

The Gaia Foundation and the Third World Network have agreed to contribute towards the celebration.

Based on these promises, the Forum for Environment, an umbrella group of organisations and individuals concerned about the environment, agreed that the Institute for Sustainable Development (ISD) could go ahead with both completing the documentation of the first year's experiences and with preparing for a celebration for the Earth Summit to coincide with the end of the school year in July 2002.

Throughout April, May and the first week of June, 2002, two staff members from the Institute for Sustainable Development visited all the 17 schools. They were equipped with a digital video recorder as well as cameras so that both colour, and black and white photographs



could be taken. They also took along additional materials for the schools so that they could prepare displays of their collections.

The materials from these visits consist of photographs and videotapes, stories and poems. The photographs are used to make posters, a media/press kit, a calendar and illustrations for a book of stories and poems. The stories and poems have been screened with over 50 of the best being prepared for publication in a book. The ten best are being translated into English for an international collection of children's stories.

Each school has been asked to select 10 students and a teacher to bring their materials to make a display at the celebration. The site for the celebration is a small town, Wolliso, where the environmental club of the secondary school is commemorating 10 years of activities. The local high school and the town are the hosts for the celebration. The town has offered a good site with a large hall and space for around 30 small tents.

The President of Ethiopia has agreed to open the celebration: He is the country's first parliamentarian to get his seat on a "green" agenda and is a founder member of the Forum for Environment. He will also commemorate a new park for the town where Indigenous trees will be planted by himself and accompanying important guests. After opening and visiting the displays in the exhibition centre, there will be a short opening ceremony and lunch will be followed by a cultural show.

On the second day, groups of visiting students will visit local families to learn more about the local cultural biodiversity. There will also be environmental activities in the town. The last day will end with all students contributing to a cultural show to celebrate their diversity.

We hope that this celebration will also mark the start of a longer-term project to reinforce the outcome of this first year's work, to widen and improve the activities in the participating schools, and to involve more schools and youth groups in both Ethiopia and other African countries.

## **2.5 Relationship with other NGOs**

ISD and Gaia have been supporting and facilitating the African Biodiversity Network since 1996. The Network organised a meeting in South Africa in March 2002 where 12 countries were represented. The



aim was to develop a three-year strategy to strengthen African livelihood systems and defend them from forces that create poverty and destabilisation.

Those who participated were from NGOs and CBOs in Kenya (Green Belt Movement, Action Aid and others), Uganda (Action Aid and East African Wildlife Society), Ghana (a CBO working with youth), Botswana (a CBO working with the regional NGO, PELUM), South Africa (Somoho – Soweto Mountain of hope, a CBO, Biowatch, a Food Security Network and others) and Zambia (a member of PELUM and adviser to farmer groups).

In other African countries, the degree of involvement varies: in Botswana and Ghana, young people and communities are already working together, in Kenya and Uganda, a consultative process has taken place since March.

ISD is a founder member of the Forum for Environment in Ethiopia. The Forum is an advocacy group of individuals and organisations (both governmental and non-governmental) concerned with the Ethiopian environment, particularly the effective implementation of the Environmental policy of Ethiopia.

As part of the preparation for Rio+10, the Forum has organised monthly meetings on issues selected out of Agenda 21. Over 190 NGOs and government institutions have been represented in these discussions. This has enabled both the Forum and ISD to create linkages with a wide cross-section of institutions. For instance, the workshop "Discovering the value of cultural biodiversity" was organised with three other NGOs (Ethiopian Wildlife and Natural History Society, Centre for Human Environment and ENDA – Ethiopia), and also the government institution, the Institute for Biodiversity Conservation and research.

Since 1998, ISD has worked with environmental clubs and youth groups to promote the growing of Indigenous trees, local farmers' varieties of crops, vegetables and medicinal plants, and to make and use compost. These activities have created a great deal of interest in the students, youth groups, their leaders and parents. It was, therefore, considered appropriate to widen these activities to include all aspects of biodiversity that can be used to support local lifestyles and livelihoods so that a project on cultural biodiversity could be developed.



## **4. Community Organisation for Development Support (CODES)**

*By Joseph Lepareyio*

### **Origin**

In 1997, a Dutch funded project established a team of local technical people to train communities on management of water systems. In 1998, the team registered as a technical group of eight members and continued to provide technical services to organisations working in the district. It mainly engaged in training of communities on water and environment management, project management and gender issues as contracted by organisations.

In the year 2000, due to experiences and lessons learnt, the team sought to register as a CBO. The first step was to enlist participation of community groups that it was already working with as well as that of local leaders. A management board was formed that comprised representatives of the community groups and opinion local leaders. CODES registered in May 2000, with the Department of Social Services in Samburu. This was to ensure that communities not only participated in, but also owned a strong organisation that can provide the necessary capacity for them to undertake development initiatives in a sustainable manner.

Located in Maralal, Samburu District, CODES is an umbrella organisation formed by three main community groups and the membership is likely to expand in the near future. Its area of operation includes Wamba (Lpus), Lkishaki (Lorroki), Longewan (Lorroki) and Lpartuk (Kirisia Division).

The organisation's vision is to have an empowered Samburu society with ability to initiate, steer and sustain the process of their development. The mission is that CODES exists to facilitate a process of participatory development that enables people to take a lead role in determining their future.

What does CODES do to accomplish its mission:

- Enhance community participation at all levels of project development.



- Focus on the vulnerable groups within the community.

### **Capacity building for community institutions**

The programmes that CODES is currently undertaking include;

#### **1. Community Based Natural Resource Management (CBNRM)**

The objectives here are:

- To create awareness on the role of communities in management of their natural resources.
- To strengthen capacity of communities in sustainable management and utilisation of the natural resources – Focus here is mainly on water, forests and wildlife.

#### **2. Community Based Disaster Mitigation (CBDM) Programme**

The objectives here are:

- To reduce vulnerability to risk posed by hazard to the pastoralist communities.
- To strengthen community capacity to cope with adverse effects of natural and man-made hazards.

#### **3. Education and Advocacy**

The objectives here are:

- To create awareness on community and individual rights among the Samburu pastoralists.
- To strengthen capacity of the community to advocate for their own rights.

What are the achievements of CODES;

It has been able to

- Train communities on sustainable management of water supply system – two link communities)
- Training of community forest management committee.
- Development of training manual for community disaster mitigation planning (not yet published).



- Community contingency plans for two communities have been developed.
- Training of organisation staff on community based disaster mitigation planning processes.
- Formation of community disaster management committees for two communities.
- Creation of awareness and training on HIV/AIDS.
- Participation in civic education and community mobilisation for civic education.
- Creation of awareness on land based issues.
- Mobilised communities to present views on land issues and natural resources to the Constitution of Kenya Review Commission.

What are the constraints CODES encountered:

- Insecurity and drought in the region have been a major setback to development in the area. Communities have had often to shift their priorities in response to these factors.
- Lack of adequate resources at community and organisation level.

Future plans of the organisation include:

- Increased participation of the three communities in programme activities (Implementation of activities).
- Establish stronger linkages with the like-minded partners to spearhead the cause of the pastoralists' people.
- Solidify the concept of disaster management among partners and communities.
- Develop and strengthen community-based advocacy structures so that people can agitate for their own rights.



## 5. Hadzabe People

By Mariamu Anyawire – TAZAMA

Hadzabe people are a small tribe that lives in three regions in Tanzania, namely Arusha, Singida and Shinyanga regions.

In Arusha, they live in Karatu district, in Shinyanga they live in Meatu district and in Singida they live in Irambe district.

For their livelihood, the Hadzabe mainly rely on hunting and gathering. They also dig some edible roots that look like cassava roots. They are always on the move from one place to the other in their search for food.

This movement in search of food is a major undoing for the Hadzabe because whenever they move, other people come and settle on their land, and when they come back they find they have no place to settle. This is because they do not build permanent houses that should be a landmark to show they own the place.

In addition to this, Hadzabe people really need education and they really need help for their land in order to overcome their problems.

Other than this, the Hadzabe also suffer another setback because their land and other natural resources like trees and wild animals are appropriated by the State and professional hunters without their consent. They also do not get profit from the tourist industry in which they are important part of.

Conservation policies have made it difficult for the Hadzabe to access their sources of livelihood. Hunting and gathering of wild fruits and roots are prohibited.

As an alternative, the Hadzabe have started to be involved in livestock keeping and farming. This is however a problem because the Hadzabe do not understand this system of life.

Due to these problems, the population of the Hadzabe keeps increasing day after day. These are even concerns that the Hadzabe might disappear from the face of the earth as serious efforts are not taken to solve their problems.

To address these problems, the Hadzabe with the assistance of friends have formed "Mongo wa Mono" programme to fight for the development and human rights of the Hadzabe.



## **6 The Karamoja Initiative For Sustainable Peace and Development (Kisp&D) and the Association For World Education (AWE-UNC)**

*By Losur Sisto*

### **A brief background about Karamoja**

Karamoja is a region found in North-Eastern Uganda and is the least populated region in the country with absolutely no modern communication systems like telephone systems, FM stations, tarmac roads and infrastructure.

The Karamoja region comprises of three districts: Kotido, Moroto and the newly created district Nakapiripirit (formerly South Karamoja).

Karamoja has so many Indigenous ethnic groups of people, notably:

- Matheniko, Bokora and Pian who are referred to as "Proper Karamojong"
- Tepeth living on the slopes of Mt Moroto
- Ugandan-Pokot referred to as Upe, occupying the area along the Uganda-Kenya boarder in Amudat in South Karamoja, now Nakapiripirit district
- The Jie of Kotido and Luo ethnic group called Ethur of Laburor County in Kotido district (North Karamoja)
- Dodoth of Kotido district
- IK (Teuso) living in Ituri forest next to Kenya on Uganda-Kenya border
- Ngangia and Napore of extreme North Karamoja (Kidepo, Karenga areas)

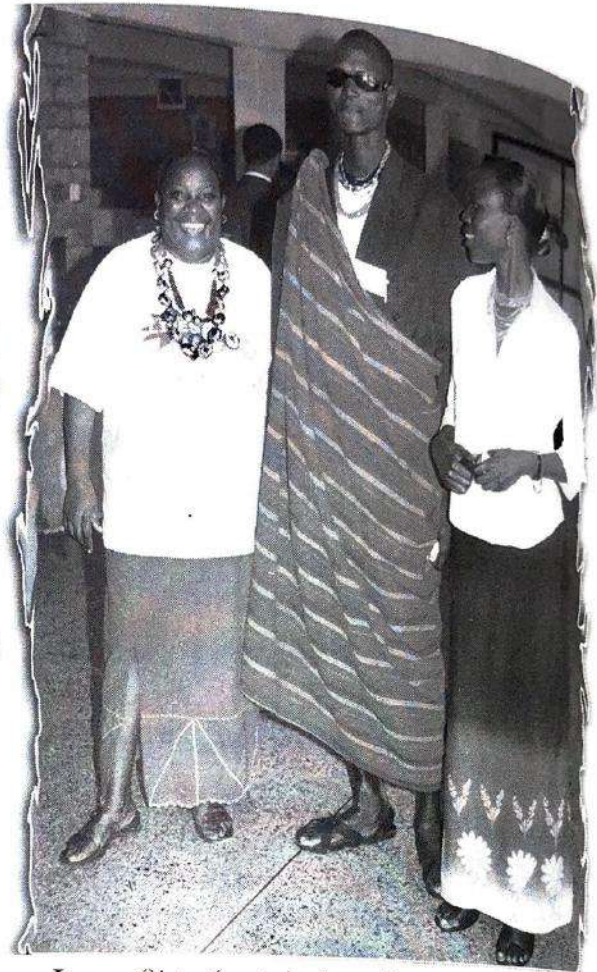
Karamoja has trailed behind other regions in development because of the following reasons:

- 1) The reduction of grazing land because of forest reserve; land fenced for vegetation restoration; game sanctuaries for tourists



2) Re-adjustment of administrative boundaries by colonialists has resulted in loss of Chemoroyit; Teso and Sebei borders moved into Karamoja; loss of dry weather grazing lands

3) Isolationist policy by the colonial government led to: restriction of entry into Karamoja; police patrols – zoo policy (Karamoja as a human zoo: Ref; Mario Cisternino – Karamoja the Human Zoo); military roadblocks (1970s and 1980s) on major roads leading to Karamoja; harassment of Karamojong road travellers by successive post-colonial governments (“All Karamojongs down”); lack of economic development in Karamoja from colonial times up to date; substitution of traditional cattle-keeping modern ranches which failed; restriction of trading opportunities with neighbours;



*Losur Sisto (centre) from Karamoja shares a light moment with L. Mulenkei (left) and M. Akong*

- 4) Political instability in Uganda and Sudan leading to: Dissolution of armies, police, coups; Proliferation of firearms in the region (Karamoja, Sudan, horn of Africa and Kenya); Rebel activities in neighbouring districts (Teso rebellion in 1988-90, LRA rebellion in Acholi land); Heightening of ethnic conflict Teso-Karamojong vs. Pokot; Pokot vs. Turkana; Karamojong vs. Sebei, Bagisu;
- 5) Lack of internal cohesion hence numerous Indigenous ethnic groups within Karamoja struggling for survival.
- 6) Ineffective administration leading to: Administration convening a geographical area but not holding grip of its subjects; Lack of integration/co-ordination between informal and formal administrative institutions;



- 7) Ineffective security system for example, last month, during the disarmament exercise in Karamoja region, the army division commander assigned to disarm Karamojongs failed to successfully disarm some communities in Karamoja hence making other communities like the Pian prone to attacks from bandits from Bokora, Matheniko and Pokot who have not handed over all the guns to the government forces.

In summary, the basic causes of underdevelopment of the Karamoja are:

- Lack of informed and objective leadership;
- Poor resource management and control in Karamoja;
- Political and socio-economic policies on Karamoja;
- Ecological constraints such as lack of pasture, permanent watering areas and desertification;

Results of these causes include:

- Constant state of warfare;
- Massive loss of human and livestock economic resources;
- Increased impoverishment;
- Reduced food production/famine outbreaks;
- Pressure and degradation of land around settlements;
- State of landlessness and breakdown of social discipline;
- Marginalisation of the region due to insecurity; "They should be wiped out or assisted to finish off each other". "We shall not for Karamoja to develop".

These forced the Karamojongs to think of solving their own problems by collectively putting their heads together to form Indigenous organisations like Karamoja Initiative for Sustainable Peace and Development (KISP&D), Karamoja Peace and Environmental Protection Service (KAPEPS) based in Kotido (North Karamojong) and networking with AWE-UNC and Pokot Karamojong Turkana and Sabinu peace building project (POKATUSA), cutting across borders in order to solve problems like insecurity which is both a cause and a consequence of underdevelopment in Karamoja.

Karamoja Initiative for Sustainable Peace and Development was formed in 1998 by a group of elders from all countries in Karamoja districts and registered as a CBO in 2000. This community-based



organisation was formed at a time when the Karamoja were tilting towards genocide between intra-Karamojong warring communities.

The organisation was formed:

- 1) To combat the security problem within Karamoja and the neighbouring districts across the border of Kenya: Pokot, Turkana, Toposa and Dinka of Sudan.
- 2) To find sustainable solutions for alleviation of poverty.
- 3) To reduce illiteracy levels among Karamojong communities.
- 4) To sensitise Karamojong on the need to revive the leadership of elders council and recognise their role/effort in solving conflicts through traditional methods which was the most effective than Government system.
- 5) To combat desertification through conservation of existing forests and reforestation.
- 6) To advocate for equitable allocation of resources from the government.

Some achievements of KISP&D include:

- 1) In all the processes of peace mobilisation, the KISP&D team managed to cover all counties in Karamoja without any guards and yet more peacefully without any threats and accidents of any kind but with God's providence as we believed that our peace mission was God-ordained and during this period, there was a lot of chaos, insecurity, rampant cattle rustling, highway thuggery and other crimes.
- 2) Despite the prevalent insecurity, which had gone out of control in this region, the situation has drastically changed and has calmed down irrespective of very minor cases. This has made us to firmly believe that the Karamojong have been lacking a proper teacher and approach as dialogue has proved the method of approaching the Karamojong about their problems.



- 3) As a result of KISP&D peace mobilisation in the area, the Karamojong traditional elders have taken up the issue of sensitising the people in whatever traditional ceremonies including their public gatherings and animal feasts.
- 4) Through the recommendations of KISP&D to reduce illiteracy rates in Karamoja, the government of Uganda designed a programme for Karamoja called Accelerated Basic Education for Karamoja (ABEK) which is Functional Adult Literacy (FAL) currently functional in Kotido, Moroto and Nakapiripirit districts, for adults, elders (women inclusive) and youth especially shepherds that cannot attend Universal Primary Education (UPE).
- 5) To reduce poverty and unemployment, KISP&D has managed to convince other NGOs to come to Karamoja. Examples: AWE-UNC is in partnership with KISP&D and KAPEB. And just last month, KISP&D managed to persuade ACORD, an NGO operating in only Gulu, North Uganda, to come and open an office in Namalu, Karamoja.

### **Future plans**

- 1) KISP&D in collaboration with AWE-UNC intend to encourage youth to form groups, which shall carry various activities like raising nurseries for agro forestry/reforestation and craft making/strengthening, the traditional capacities.
- 2) We also intend to involve women organisations in conservation and environmental protection.
- 3) We intend to encourage Karamojong communities to conserve the existing forest and plant trees on the shrines.
- 4) KISP&D together with AWE-UNC intend to encourage Indigenous Peoples of Karamoja to form peace choirs and also compose songs about environment conservation, degradation and others.
- 5) KISP&D in collaboration with AWE-UNC also want to encourage sporting activities within Karamoja and the neighbouring Sironko, Mbale and Kapchuru districts and even across the border (Kenya).



## 7. The Indigenous Peoples of Nuba Mountains

*By Mary Kuku*

The Nuba people of Sudan live in Central Sudan and that basically separates southern Sudan from northern Sudan, which makes it a belt of the current civil war.

The Nuba Mountains cover 30,000 square miles with around 52 Indigenous languages, which can be reduced to 10 main groups. But now you find that the Nuba languages and their culture are under threat and that goes back to the history.



*Sudan - planting trees*



The Nuba people were subjected to Arab culture and their religions, and then moved from their own land in Northern Sudan to the mountains in Central Sudan. Nuba people and their children are not allowed to speak their own languages in school, if they are in school, which means they are the unlucky ones. This went on even after the independence of Sudan in 1956. That way, so many of them were forced to renounce their African and Christian faith to embrace Islam and Arabisation.

The Nuba are Indigenous Peoples of the mountains and they are nomads and agriculturists. They are not educated due to lack of schools. Their health suffers a great deal due to lack of medical facilities. They also lack other basic infrastructure.

In the current political crisis in Sudan, the Nuba people have been seriously confronting a fatal and destructive civil war since 1983. The impact of the war on the Nuba is just too much and it includes:

- Looting of livestock and properties
- Raids of slave trade especially for children and women by Arab tribes
- Abduction and rape
- Land grabbing and displacement of the Indigenous Peoples.

Because of the above tragic situation, the governments of USA and the Federal Republic of Switzerland realised the humanitarian suffering and helped bring about a cease-fire in the Nuba Mountains for the Nuba people only in the Sudan. Though the situation is not good, there is at least peace in the mountains after a long time. However, more still needs to be done by the international community.

For the development in Nuba, there is need for education, health and communication facilities as lack of these are a threat to the Nuba people.



## **8. The Juer Beli Minority**

*By Lois Agum Ruben - Association of Napata Volunteers (ANV)*

The Juer Beli people live in the central part of Southern Sudan (in Western Equatorial and the Southern part of the Lakes Province. Their language belongs to the Bongo (Baka group) of the Nilo Sahara family.

The Juer people are made up of seven clans. There is no fixed estimate of the total number of the population.

Since Sudan is a large country not much is heard about some of its ethnic groups, especially the minority groups. The Juer is one of the groups that little is heard of as far as history is concerned.

The rare mention of this group has had an effect of misrepresentations. The Juer are surrounded by the larger ethnic groups who have dominated the social and political scene in the region.

The root cause of the neglect of the Juer people can be traced back to Turko-Egyptian rule in the Sudan in 18<sup>th</sup> Century, no administration or any other services are provided to the area.

### **The Impact of the Division**

The neglect of minority groups by colonial power has cost the country dearly. The foundation of education and development was laid amongst the major ethnic and language groups South of Sudan.

The Juer community search for education by sending their children to the government or missionary schools in the areas of the larger neighbouring groups, whereby these children have to face discrimination and adapt different attitude.

### **Displacement and Migrants**

Due to the current civil war in Southern Sudan, the displacement and migrant of the larger pastoralists group to the minority areas is another element that has been a great threat.

The local people often find that they have no traditional right to access and land use. The scenario has been that it is outsiders who are exploiting their land. Their culture, language and tradition are under threat.

The civil war in Sudan has also had its impact by uniting the Juer community under one administrative county as from last year. This is after a period of more than half a century.



## **Historical background of ANV**

The Association of Napata Volunteers was founded in October 1993 by a group of Sudanese citizens. It became operational after March 28, 1994 when it obtained a letter of recognition from the Sudan Relief and Rehabilitation Association (SRRA). Thereafter it became a member of the UN/NGO Consortium that monitors relief and development activities in the South Sudan, when it signed a memorandum of understanding with UN/OLS in the same year. ANV has been in the project area since 1994 with the initial support from OLS, it implemented a distribution of seeds and tools.

ANV focused its food security activities on the introduction of the ox-plough technology and cut itself a niche as the organisation that successfully introduced ox-plough technology in Rumbek and Cueibet Countries. The inception of ox-plough technology in the project area goes back to 1975 when the Sudan Council of Churches tried unsuccessfully to introduce the technology.

The main barrier to the earlier attempts was the attachment to cattle by the Dinka tribe and the lack of cattle and especially among the Jurbele tribe. While the Dinka considered the use of ox-plough pulled by the bulls as the utmost cruelty to the bulls, the Jurbele had no resources with which to acquire the bulls in the first place. In all the subsequent years, however, people received ox-ploughs free while they were slowly changing their attitudes towards the use of bulls for ploughing.

In the year 2000, ANV and partners introduced the cost-recovery payment as sustainable kit to the project.

In the years 1995 – 1998, ANV distributed 750 ploughs and 2,250 farmers plus 1,500 bulls were trained. The ox-plough project was put on hold in the year 1999 as ANV went through management crisis. In the past two years (2000 – 2001), ANV distributed 885 ox-ploughs in Rumbek and Cueibet Counties and trained more than 2,500 farmers and over 1,700 bulls.

Trocaire provided funding for the manufacture of 700 ox-ploughs, Oxfam G.B. bought and transported 145 ox-ploughs and gave it to ANV for training and distribution and CRS–Sudan contributed 40 ox-ploughs).



### **ANV's capacity**

ANV's organisational structures give it a typical outlook of a people's organisation. The General Assembly, the Board of Directors, the Management and the Field Staff are all from Rumbek, Yirol and Cueibet Counties. ANV has strong links with the local community and a

community-based approach to needs identification and project planning which ensures that interventions are designed in such a way as to respond and provide best solutions to community's needs. In 1998 – 1999, ANV went through a management crisis which damaged the reputation of the organisation and almost brought to a standstill all of ANV's activities.

Trocaire took a leading role in supporting the revival of the ANV; this resulted in the appointment of a new management team in 1999. With assistance from CRS–Sudan, the new management team held a strategic workshop in mid 2000, which brought the development of a three-year plan.



The strategic goals formulated for the organisational development were:

i. Organisational Development

Institute management systems and policies that ensure efficient use of resources and timely implementation of project activities.

ii. Program Development

- Build on the field experience so far gained from the promotion of ox-plough technology to increase community participation and consolidate food security activities around ox-traction, for the achievement of enhanced food security and efficiency in programming.
- Exploit the strong sense of community ownership of ANV to identify initiatives that strengthen community structures and build the capacity of farmers towards the realisation of increased agricultural production, and equitable distribution of resources.
- Create outlets for agricultural produce as a way of ensuring economic viability of increased agricultural production.

iii. Sustainability

Identify activities that will lead to faster progress in the achievement of ANV's sustainability (autonomous development) and the subsequent reduction of dependence on external support.

iv. Partner liaison

Take advantage of the existing access to financial resources and the prevailing moral support and encouragement by partners to strengthen regular contracts and collaboration.

In the year 2001, Trocaire supported the impact assessment and survey with objectives to study the farming systems in the project area, assess the impact of the interventions and to make recommendations for future interventions aimed at improving food security.



## 9. The Pokot Youth Development Group

By Simeon L.Ting'aa

The Pokot Youth Development Group is a community-based organisation operating in Chesegon division of West Pokot District, Kenya. The youth organisation was founded in the year 2000, with an objective of helping ward off attacks by the Marakwet people.

Before any action could be taken against the Marakwet, the Pokot youth had to first get funds. This they did by pooling together resources which they were to use to counteract the actions by the Marakwet community. While brain storming on why the Marakwet were always attacking the Pokot and stealing their cattle, it was realised the reason behind lawless activities like cattle rustling was poverty.

The Pokot youth hence decided to direct their efforts towards the fight against poverty. The youth realised that they could pool their resources together to wage war against poverty instead of waging a war against their poor neighbours who are also faced with the same problem.

Since it was established, the group has been organising seminars and workshops on peace initiatives. They also strive on initiatives aimed at fighting poverty. There have also been seminars with the objective of discussing how the environment can be controlled to produce food to sustain the ever increasing population. The group has been working at getting everyone participate by sharing ideas guided by the motto "where people take ownership of the plan".

The youth have sought assistance from the Government and other donor organisations on how they can go about in order to achieve sustainable economic development. Research carried out by the youth reveals that lack of essential services has led to increased poverty and an increase in lawlessness and crime. It has been a major factor contributing to cattle rustling which is prevalent. This is evidence during the Pokot-Marakwet raids when Pokot raiders advance against the Marakwet, women and children from the Pokot community collect valuables while torching the houses.

Pokot youth are also lobbying for the government to provide essential services like infrastructure. For instance, If a person fell sick, they are forced to walk over 50 kilometres to reach the nearest road before they can get to hospital.



## **10. Tujitegemee Livestock Association Marsabit**

*By Samuel Seki*

Marsabit district is in the North Eastern Province and inhabited by the Rendille, Borana and Somali. The district falls under the arid and semi-arid lands and is frequently afflicted by conflicts over pasture, land and water points. The only fertile areas are to be found over the Marsabit hills.

Due to frequent and prolonged drought there is always conflict in the scramble for scarce resources that are diminishing. This coupled with population increase has forced the three neighbouring communities to come up with the conflict resolution mechanism. There is the Mogadashe Declaration, which states that if you kill a person you pay 100 cows and if you steal a cow you pay 15 cows. This has proved to be very effective.

You may then ask yourself how many cows are paid when a woman is killed? The fine for such a crime is 50 cows with the rationale being that there are lesser chances of a woman being killed since women don't participate in raids.

Tujitegemee Livestock Group was formed by a group young elites in the community. Their main objective was community involvement in environment management and the integration of the socio-economic community-based affairs into the Kenyan mainstream.

Education is a major development setback and the organisation has started activities that are seeking to help solve the problem by checking out on dropouts and getting them go back to school through guidance and counselling. They also secure scholarships for those who are unable to pay school fees. They have also initiated out of school programmes by starting evening classes for those who are not able to attend full time classes. This programme has proved popular with the herders.

In order to alleviate poverty and reduce environmental degradation, the organisation has started training members of the communities on different aspects of development using easily available resources.

They also train women's groups on business management skills. Their involvement in civic education has enhanced advocacy and created a lot of awareness among the communities.



## **II. Maendeleo ya Wanawake, Tana River**

*By Sera Verna Wande*

Tana River is mainly made up of two communities. They are the Pokomo who are mainly farmers and the Orma who are pastoralists. The district is located in a semi arid zone.

Tana River is a district that lacks essential infrastructure. It has no electricity and neither does it have tarmacked roads. In simple words one can say that it is one of the districts that have been forgotten in terms of development.

Tana River is a floods prone zone that has had profound effects of soil erosion and environment degradation.

Due to diminishing resources such as water and grazing fields, there is often conflict between the two communities over grazing and farming land. The result of the clashes has been loss of human lives especially that of the youth and productive people.

The land in Tana River is communal land. This means that on record no single person owns land. This also means that there are no title deeds for land ownership. However it is not strange to find some people holding land title deeds.

*Tree planting*





## **12. The Tanzania Maasai Group**

*By Peter Kiroya Toima – Inyuat E Maa*

This paper seeks to highlight issues affecting the Maasai in the areas of environment and sustainable development.

While we all know that the International Labour Organisation's Agenda 21 recognises Indigenous Peoples, their values and knowledge, the Tanzanian government has not taken any step to recognise the Maasai.

The Tanzania Maasai have taken legislative processes to participate in the Rio+10 despite the Indigenous Peoples not being given an opportunity.

This is because there is no capacity building for the Maasai at all. Tanzania does not recognise the Maasai as Indigenous Peoples and neither does the government consult them to participate in decision-making.

The Indigenous Knowledge is fast disappearing because the Indigenous Peoples do not benefit from conservation processes.

### **Problems of the Maasai**

The Maasai have been alienated from their land. They do not participate in decisions that are taken when making laws.

Their rights as a people have been abused as a result of tourism where they can only pose to have their pictures taken with the visitors.

They lack the most basic facilities like schools, health centres, piped water, electricity and accessible roads.

It is unfortunate that the Maasai have been marginalized due to modernisation and globalisation. They also lack information on issues affecting them.

### **Suggestions**

The Maasai of Tanzania would like to see recognition of Indigenous Peoples voices and ideas. They would also like to see African governments allow Indigenous Peoples to participate meaningfully in valuation of the processes.



### 13. The youth perspective of the Amboseli/Tsavo Group Ranches Association

By Daudi Ole Kaanki

The Amboseli/Tsavo group ranches are located in Kajiado district in the area bordering Tanzania in the slopes of Mt Kilimanjaro. The Amboseli/Tsavo Group Ranches Association comprises of six group ranches that are surrounded by the Tsavo and Amboseli National Parks.

The group ranches hosts 75 per cent of the wildlife.

#### Objectives

The group was formed to facilitate development within the group ranches with an aim of lobbying or advocating for resource allocation from the wildlife.

This was to be done through community-based resource management and especially of wildlife based on Maasai traditional norms.

The group would also try to re-introduce extinct species of wildlife e.g. white rhino, in its bid to improve the eco-tourism concept on wildlife and bird shooting in order to meet the community needs. They have formed a protection and surveillance committee which takes care of wildlife in the group ranches.

The Youth Group has been charged with the task of sensitising the community on education, health, environment and culture.

It also works towards creating awareness on meaningful utilisation of resources.

The youth also advocate for girl-child education.



*William Tate Olenasha from Pingos, Tanzania being interviewed by one of the television stations during the meeting*



## **14. Poverty Alleviation Recovery Awareness & Nutrition**

**By Mohammed Leresh – Archer's Post (Paran)**

The arid and semi arid lands (ASAL) of Kenya have more than not been described as hardship areas. With scarce and sparsely distributed population, low rainfall and minimal infrastructure facilities, the ASAL have continued to be viewed as wastelands.

However, it has been realised that despite being arid, these zones have resource potentials. There is need therefore to tap. Indigenous technology relevant to development process of these areas. For instance the Ewaso division (programme area) is a very dry region with pastoralism and conservation of wildlife being the only viable activities to be carried out. Any programme to develop this area definitely calls for investigation of the potential of pastoral and conservation lifestyles. Support of such lifestyles would be the only option regional developers have and the pastoral communities participation is therefore very crucial.

PARAN, a community based organisation was started basically to support community initiatives and lifestyles with a view to improving and strengthening their capacity and help to raise their standards of living. This could only be done in a manner that is acceptable and can be used by the community to help eradicate or reduce poverty.

In the Samburu language, the word PARAN simply means the process by which the have-nots seek assistance or support from the haves.

The programme works with the Government of Kenya, supportive non-governmental organisations and other funding agencies as local implementing/partner agency.

The area of operations – Ewaso Division – consists of a large difficult terrain with hard weather. This explains the absence of NGO's and other funding agencies.

Several groups and associations have failed to meet their expectations because of no or little follow-ups by funding agencies. The programme plays the co-ordinating role in the collaboration between these organisations and funding agencies within the programme area. It acts as an umbrella-networking vehicle. This network will make funding agencies engage in outreach activities and make co-ordination work easier.



PARAN is a community-based organisation (CBO) registered with Culture and Social Services. The major problem that PARAN is addressing, among others, is lack of resources and need for all resources to be controlled by the community in the programme area. The few, if any, development agencies working within this area in most cases have no tangible interventions. The programme's intentions are therefore to bridge this gap.

The long-term objective of the programme is to increase household incomes so as to improve the community's standards of living, which in the end will lead to improved security.

To achieve this, the programme with participation of the community is engaged with the following projects in priority order depending on availability of funds and mandate/scope of intervention by funding agencies;

Provision of water, education facilities and sponsorship of children from poor families, health facilities, drugs and creation of awareness in nutrition, eradication of harmful traditional practices (HTP) and increased awareness on diseases such as HIV/AIDS, and creating awareness on means to reduce poverty. They are also working on improved livestock and livestock products, production and marketing; Wildlife conservation and ecotourism with a bias towards income generation activities (IGA); Advocacy against continued military training and use of live ammunition; Rehabilitation of those maimed by land mines; Introduction of alternative sources of energy and appropriate technology and encourage use of Indigenous skills. At the same time the organisation seeks to create awareness on enhanced consumption of traditional and balanced diets (wild fruits, roots, leaves, tree backs, milk, meat and honey). It is also looking into ways of improve communication network particularly on the roads.

Some of the major concerns among the communities working with PARAN are;

- The fertile land has been taken away by the Government for military training and reservation of wildlife resources. This has shown that wildlife has been given priority over human beings.
- Many people have been maimed and others killed by land mines left behind after military trainings.



- There has been continuous marginalization in the name of insecurity which has denied the community development profits e.g. Kenya Meat Commission which was meant to be in Samburu was brought to Nairobi.

## **15. Centre for Rights and Development - Somali Bantu minority.**

*By Mohamed Mamow and Salad Mohammed Barrow*

The Centre for Rights and Development was established in 1997 in partnership with founder in Dr. Yusuf Abdi Saleh. It was formed at a time when the country of Somalia was engaged heavily transpose in a civil war. The war has been going on for the past decade since the toppling of the government of the late Siad Barre. From that time until now there has been no government sitting in Somalia.

The Somali Bantu were not involved in the war but it had profound effects on them that has had a negative impact.

The Indigenous group from Somalia is not similar to other groups in the region. The minority groups' land was been taken away from them by pastoralist Somalis. This is because the past government played a big role in contributing towards the discrimination of the minorities.

The dominant Somalis regard the Somali Bantus as a low group in the social class.

The reason for this is that the Somali fear that the Somali Bantus can gain much by interacting with their kinsmen in the region. They are constantly watched to avoid this kind of interaction.

Due to this discrimination the peoples from the Bantu Somali community have now appealed to international institutions to resettle them in their countries of origin that is Malawi and Mozambique. In Somalia today, those who belong to Somali Bantu are regarded as slaves.

Since the fall of the Barre government, Somalia has not known peace. It is country that has faced a lot in terms of land being looted. Because of the discrimination that they face, the Somali Bantus do not have access to international jobs.



## **16. Environmental issues affecting the Indigenous Peoples – The Narok District experience**

*By David ole Tamooch - Maa Development Association*

### **Introduction**

Maa Development Organisation (MDO) is an umbrella organisation for community-based organisations (CBO's) operating in Narok District. MDO's purpose statement in self-determination for the Maasai Indigenous Peoples "...on issues pertaining to land rights, human rights, education, health, environment, culture, communication and networking.

MDO therefore needs to continue working with the community to articulate its vision, mission, goals and objectives.

### **Abstract**

The natural resources through out the Rift Valley, and Narok in particular, are threatened due to increased encroachment by the non-Indigenous populations. The resources that were introduced by the non-Indigenous Peoples with the aim of creating wealth have turned out to be negative socio-economic activities that have ended up creating poverty instead.

Currently most of the forests and other resources are under increasing threat from human activities, which are causing degradation to most of them.

Human activities arise from recent settlement of people in the main forest are since the 1980s. Wanton and extensive deforestation for agriculture and other anthropogenic activities such as human settlement, development of urban centres and road construction has been going on since the onset of settlement and is still underway in our forests; thus reducing the forested areas. This decline is evidence that prevailing approach to Biodiversity management is not sufficient and does not guarantee sustainable natural resource management. A new participatory approach for the resource management that empowers the community to share responsibility and be custodians of our deteriorating resources must be introduced.



## **Diminishing resources**

Environmental challenges facing developing countries are not merely natural or biophysical. Human beings are instrumental in the contemporary environmental changes. Almost every human activity affects the biophysical environment in some way often destroying the existing equilibrium or accelerating natural rates of change. The accelerating changes to environment are being driven by growth in the human population, the increasing level of anthropogenic resource consumption and changes in technology and socio-political organisation.

In Narok, it is now established that there is a close relationship between human population growth, environmental degradation and poverty. Poverty derives ecological degradation when desperate people "over" exploit their resource base, sacrificing the future to salvage the present. Ecological degeneration, in turn perpetuates poverty, as degraded ecosystems offer diminishing yields e.g. (river drying) to their poor inhabitants.

This paper discusses the causes and the consequences of environmental degradation, with specific reference to the Mau Forest complex.

The communities here totally rely on the Mau Forest for provision of water for their domestic, wildlife and agricultural needs, building materials, fuel wood and authentic reasons.

With most rivers such as Mara, Narok, Uaso Nyiro and Siyiapei being seasonal due to inappropriate agricultural practices and clearing of the forest, the Indigenous community is left without alternative sources of resources.

Despite its ecological, hydrological and economic importance, the Mau Forest is facing environmental problems that threaten its existence. The lives of the local inhabitants are therefore threatened as they rely on the forest for the resources for domestic use, livestock, wildlife and crops.

## **Causes of environmental degradation**

The main causes of environmental degradation in Mau Forest is related to population pressure. This pressure has generated the need to expand agricultural land and space for human settlement through charcoal burning, logging for timber and even forest fires.

Indirectly, this often leads to deforestation by opening up previously inaccessible areas to anthropogenic activities. It is believed that deforestation leads to poverty of individuals and even nations.



The main problem is unregulated clear cutting and totally destruction of high elevation forest through burning over the past five years. The forests are often cleared for agriculture, settlement and wood products especially timber, cedar posts, firewood and charcoal. This has resulted in deforestation of most parts of Mau Forest hence noted water shortages and reduced rainfall.

The current situation in Narok Forest is not sustainable. The current "laissez faire" approach neither protects the environment nor involves or protects the Indigenous land uses that have persisted for ages.

### **Consequences of environmental degradation**

The recent settlement by thousands of people in parts of Mau Forest has caused concern among the local Indigenous communities as well as with the environmental conservationists because of wanton destruction of the environment. Deforestation has greatly affected the hydrological patterns. Rivers that were once permanent are now intermittent with long cessation of flow.

The reckless clearing of vegetation in the forest has reduced the deep infiltration of water into the underground aquifers and greatly lowered the water table of the catchments areas.

Soil erosion is on the increase and subsequent massive input of sediments into the rivers ultimately reduce river depths, forcing an increase in river width leading to the risk of increased potential evaporation.

Loss of forest cover leads to depletion of nutrients from a watershed, through removal of vegetation, exposure of soil surface and replacement of forests and vegetation by depletion subsistence. Agriculture perpetuates the export of eroded soils and loss of pasture.

### **Conclusion**

The Mau Forest complex plays an important role in the hydrology of the drainage systems within it, controls storm flow thus maintaining water tables during dry spells and in protecting against erosion and sediment downstream.

The ultimate stakeholders over land, and the arbiters are the Indigenous Peoples occupying the land. They should play a large part in the determination of resource allocation of the land they are occupying. This means that the Maasai must determine what and how their land occupied by the Mau Forest complex must be used.



All the land surrounding the forest and the forest itself belongs to the community. These people should be at the forefront and be involved in every step during the planning of the land use here. The ecosystem also belongs to Kenya and Kenyans should offer their assistance to the community to ensure continued survival of the forests.

The conclusion therefore is that "The Biodiversity value of Mau Forest depends on its continued management as a wilderness for the owners".

## **Way forward and recommendations**

No one can predict the future with certainty. Present trends of degradation of the environment are scary and a big threat not only to the efforts put towards poverty alleviation in the district but to our own survival.

There are reasons to be both pessimistic and optimistic about the future of our natural resources.

Pessimism comes from the projection of the current trends, most of which imply serious environmental damage that is rapidly reducing our resources. Optimism comes from the prospects and hope for increased fora – to discuss environmental issues like this one.

Conservation efforts particularly at a local level must be made for increasing awareness through environmental education and at regional and international level through collaborative efforts of research funded by our governments and international organisations.

All efforts should be made to stop the self-feeding downward spiral of economic deprivation and ecological degradation that seems to be taking hold on the utilisation, conservation and management of our meagre natural resources.

Local communities, especially women/women groups must be involved in any strategy related to research, utilisation, conservation and management of natural resources. The community should realise that we are custodians of these resources on behalf of humanity, both the current generation and posterity.

The Maasai should be at the forefront here. They should also be the ones to extract the resources in this area. It is therefore right to say that unless the community does something nobody else is expected to do it better for them. Everyone should appreciate the need for total dedication to conservation, in such a way that the behaviour of each member of the community will be predictable as he/she carries out his/her day-to-day socio-economic activities.



Above all, to be able to enhance community participation we need to reduce, educate or totally do away with the many statutes that have been used to circumvent the community to dubious land deals.

## **17. Fighting a harsh environment - “Ted Wii Women Group”**

**By Mercy Akong’o**

*Ted Wii* is derived from a Luo word, which means Be Innovative. *Ted Wii* is a women’s group made up of Indigenous Women who decided to come together with an aim of fighting a harsh environment that they, as women, face every day. The women’s group was founded on May 22<sup>nd</sup> 2002, in Labwor after the women had attended a three weeks conference at the mobile Mandela Africans Peoples College that was conducted for by Akong’o. M. Mercy, a community facilitator.

After the workshop the women felt that with the knowledge and the ideas that they had received, they could not just sit and watch things remain the same. They decided to form the women’s group, “*Ted Wii*” which they intend to use as the vehicle to awaken the rest of the women within their community.

### **Aims/Objectives**

1. To awaken the women and help them recognise their rights and especially against conflicts that women of Labwor community face.
2. To promote girl-child education through educating the community on the importance of girl-child education, and giving other support like lending loans after they have been well established.
3. To create an environment that provides peace and good relationship especially among the women within their community and how they can create an environment that is conducive for sustainable development.



4. To promote craftsmanship and to revive some of the Indigenous tool/values that they think are important, but have been ignored and if possible improve on them.
5. To fight poverty and underdevelopment that surrounds them.
6. To reduce redundancy and idleness among the Indigenous Women especially within Labwor community.

### **Activities carried out**

They do knitting, make different types of table clothes, tablemats, etc. They also weave floor mats and baskets. They hand sewing their dresses and for their children.

### **Source of funding**

This group has not yet received any grant from outside. The members contributed the money they started with from proceeds from the sale of their farm products.

*Their Motto: **Striving for a sustainable development.***

### **NB:**

Labwor is country in Kotido district in Karamoja. The people there are Luo speakers and practice agro-pastoralism.

## **18. Simba Maaasai Outreach Organisation - Group**

***By Daniel Salau***

Simoo is community-based organisation that was originally started in the early seventies, but collapsed in the early nineties.

After it was revived in the mid-nineties it started with a few objectives that included rehabilitation of the dead projects. This was to be done by mobilising the community and involving everyone the in the development agenda in order to attain sustainable development.

Right now Simoo is involved in quiet a number of activities that include issues related to Environment, livestock improvement, agriculture, health, education, empowerment, advocacy, capacity building, steer fattening project, rehabilitation of dams where the



community contributed 25 per cent, protect springs, build tanks and lay pipelines in villages, an Indigenous tree nursery, planting trees and fighting against charcoal burning.

The group deals with cultural issues that include conservation of Indigenous Knowledge. It has also come up with a Maa cultural museum. There are school programmes for cultural education and documentation on the Indigenous Knowledge and medicinal Indigenous trees and herbs.

The issue of food insecurity and poverty is of great concern to Simoo. The group has introduced crop farming (short-term intervention), establishing demonstration gardens and training the community in planning, harvesting and preservation.

## **19. Maasai Women Development Organisation -Arusha**

*By Penina Kisipan*

The Maasai Women Development Organisation is a group that values strength of women and supports women empowerment.

Right now the organisation concentrates most of its efforts on issues like health. It organises workshops that help in creating HIV/ Aids awareness.

The group is fighting to alleviate poverty by working towards empowering the women economically. This it does through a women's entrepreneurship programme.

The organisation also focuses on gender sensitisation and human rights issues. There are trying to make the question of inequality to be reduced to minimum levels in and make the community realise that women also have a right to own property. The women are involved in a vigorous campaign against female genital mutilation.

Right now the organisation covers a very small area that leaves out other places like Ngorongoro districts but the Maasai Women Development Organisation plans to extend its borders to cover a wider area once they get sufficient funds.



## **20. Garbatulla Catholic Mission Organisation - Isiolo Group**

*By Amina Adan*

CordAid sponsors the Garbatulla Catholic Mission Organisation. It originally started with 10 girls but they have now increased to 87 girls.

The people of Wuaso Boran rely on relief food aid but the organisation mainly works towards ensuring food security. They provide cereal reserves and seeds for planting. Since education is very low in this area they work towards education training and advocacy). Bursaries are also provided for girls to enable them go to school as this is an area where the boy child will always be given preference. As we are nearing the general elections there is a lot of civic education being given to the community through this organisation to educate them on their rights as voters. This process has also included their contribution towards the constitution review process. In the health sector the organisation helps by educating the community on the need for living in a hygienic environment. It helps them in construction of pit latrines and access to clean water.

It also tries to help empower the residents economically by giving access to credit facilities to both men and women livestock traders.

The only national school in this region is the Garbatulla High School. It was constructed by National Council of Churches of Kenya (NCCCK). Originally it had a capacity of 600 students and international teachers. But all this has been lost mainly due to political insecurity. Right now the number of students has reduced to 44 students. A major fund raising is planned for September in aid of the school to help uplift its standard and restore its lost glory.

It is a pity that Garbatulla High School – a national school – collapsed in a pathetic state. The area residents are trying to use their legislator to lobby for the revival of the school.

The government has not done much and this has led to the causes of the collapse of School. Other than that there has been the issue of poor administration. There is also the problem of insecurity because of bandits. Due to the nomadic way of life and lack of school fees students don't perform well.



## 21. Osiligi– Laikipia

*By Joseph Shuel*

The Osiligi Group was originally started as a self-help group for those who live in Laikipia district.

It's mainly focused on women and youth to participate in community development. They were to act as a voice for the community.

The group's activities include Lobbying and advocacy; Livestock production; Health issues – HIV/AIDS awareness, and Education.

There are problems that are experienced in this region. The land that belongs to the community has been taken in for eco-tourism and conservation areas. This is the work of politicians who have vested interests and is not community driven. There has been a lot of destruction of their land. One such big problem is the British military practise that has degraded the environment. Apart from that they left the life bombs which have caused a lot of damage not only on human where many have been maimed but also the loss of lives, domestic animals and wildlife. Osiligi is working very hard to ensure the security and the compensation for this communities. The laikipia maasai live with many other communities and because of them being minorities, they have been marginalized a lot and it has become a hard way to try and create visibility even among other Indigenous Communities. In Laikipia we find the Ogiek and Dorobo who have been alienated from their land and are suffering the problem of being assimilated by the dominant communities. The Dorobo and Ogiek are two different and distinct groups. Right now these two groups are lobbying and advocating for their land to be returned.



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# Activities



*Diana Dulu interviewing Samuel Seki*



*Good to be here - conference participants from Kenya and Tanzania*



*Sharing together on our success at Oloishoibor*



*For our environment we plant trees to our land*



*Daniel Salau receiving a certificate of participation from Joji Carino, while Joseph Lepariyo looks on*



*Left - Mr Ndonye of MENR discusses a point with Hailu Araya from Ethiopia*





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