

Indigenous Peoples' Rights, Conflict and Peace Building: Experiences from East Africa

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I. Background

Indigenous Peoples in Africa, as in many parts of the world, experience human rights violations of all kinds, such that these violations have become persistent in their daily lives. Violations include discrimination; encroachment on and expropriation of their lands, territories and resources leading to tenure insecurity; political and social exclusion; violence, including forced relocations, killings, intimidation and maltreatment; deprivation of all means of livelihood; rape of women and young girls; destruction of communities and cultural heritage; psychological torture; and other gross violations of human rights.

Experiences vary from one country and community to another but in almost every case, the result is conflict of one form or another. In Kenya, during the colonial administration, hunter-gatherers were not recognized as distinct peoples. Instead, they were pressured to identify with their neighbors of the majority population. While this non-recognition amounted to discrimination and was clearly a violation of their civil and political rights, it has continued to date. The struggle for recognition has been a major struggle for Indigenous peoples, even many decades after independence. Similar to hunter-gatherers, pastoralists are continuously losing their lands and territories through encroachment by other economic activities sanctioned and encouraged by the state. This results in conflict over grazing, salt licks, water and other resources between the state and pastoralists, between pastoralists and farming communities, and, sometimes, among Indigenous communities themselves over scarce resources exacerbated in recent years by climate change.

Despite the seriousness of the violence associated with such conflicts and their frequency, many of these situations are rarely covered in national or international media hence they persist. In some cases, when the media does cover them, the style of reporting makes the violations lose the seriousness they deserve. Where peace initiatives have been

attempted, some measure of success has been realized, but the potential for Indigenous peace building institutions has yet to be fully realized.

This essay examines the experiences of Indigenous Peoples in East Africa in respect to violations of their human rights and ensuing conflict. It examines the mechanisms used to address and resolve these conflicts at the local and regional levels. It further assesses the efficacy of these methods of conflict resolution in the face of other peace building possibilities that have been attempted in the region in addressing and resolving persistent conflict involving Indigenous Peoples.

II. Indigenous Peoples of Eastern Africa

The peoples of Eastern Africa who identify with the international Indigenous Peoples' movement are mainly but not exclusively hunter-gatherers and pastoralists. The hunting-gathering and some small fishing communities include the Hadzabe and Akiye of Tanzania, the Ogiek, Sengwer, Yaaku, Elmolo, Waata, and Aweer of Kenya and the Batwa, Benet, and Ik of Uganda. These peoples claim to pre-date the migration of Bantu and agro-pastoralist peoples into their particular regions. The transhumant pastoralist peoples of the region include the Barbaig (and the wider Datoga), Baraguyu, Maasai, Samburu, Turkana, Rendille, Pokot, Borana, Endorois as well as the Basongora and the Karamojong of Uganda.¹ In Rwanda and Burundi, it is the hunting-gathering Batwa who have identified themselves as Indigenous. South Sudan, the newest member of the East African community, is said to have one of the largest livestock populations in Africa. These are raised by more than 85% of the country's almost 10 million inhabitants who

1. "Report of the African Commission's Working Group of Experts in Indigenous Populations/Communities," International Work Group for Indigenous Affairs and African Commission on Human and Peoples' Rights (2005), http://www.iwgia.org/iwgia_files_publications_files/African_Commission_book.pdf; "Research and Information Visit Report to Uganda," International Work Group for Indigenous Affairs and African Commission on Human and Peoples' Rights (2009), http://www.achpr.org/files/sessions/43rd/mission-reports/uganda/misrep_specmec_indig_uganda_2006_eng.pdf; "Research and Information Visit Report to the United Republic of Tanzania," International Work Group for Indigenous Affairs and African Commission on Human and Peoples' Rights (2015), http://www.iwgia.org/iwgia_files_publications_files/0719_TANZANIA-ENGELSK.pdf

are engaged in the care of livestock.² Some of the most well known pure pastoralists of South Sudan include the Toposa and the Murle.

III. Resources and rights of Indigenous Peoples

Human rights violations affecting Indigenous Peoples center specifically on lands and resources. In Africa, as in many other parts of the world, much of the natural resources including oil, natural gas, bio fuels, timber and other minerals, lie within and beneath lands occupied by Indigenous Peoples.³ Agribusiness and nature conservation also offer investment opportunities that often target Indigenous Peoples' lands. The scramble for resources for immediate use or for speculation has also exacerbated violation of Indigenous Peoples' rights.

In East Africa, the recent discovery of raw materials for extraction in nearly all the countries of the region⁴ and the possibility that more remain to be discovered, coupled with what seems to be a global increase in the demand for food crops, has led to increased pressure for land—particularly Indigenous Peoples' land. This discovery has also involved subsequent and rapid expansion of infrastructure to facilitate the transportation and eventual export of these newly found products hence the extension of road and rail networks through some parts of Indigenous Peoples' territories. While this has been going on, wildlife, forests and nature reserves have also been experiencing pressure. All these factors have had negative impacts on Indigenous Peoples in general and specifically on women and children in these communities.

Following encroachment and expansion of development projects onto their lands and territories, Indigenous Peoples have resisted and asserted their rights, often triggering violent confrontations with

2. "The role of education among pastoralists in South Sudan," Comboni Missionaries of South Sudan (2014), <http://combonisouthsudan.org/the-role-of-education-among-pastoralists-in-south-sudan/>
3. Martin Mowforth, *Environmental Crises and Human Rights of Abuses in Central America*, (London, United Kingdom: Pluto Press, 2014).
4. In Kenya, oil has been discovered in areas belonging to the Turkana Indigenous pastoralists and the best locations for wind power in the country are located in areas occupied by the Maasai. The same is true with bio gas. In Tanzania, the home of the unique Tanzanite is Simanjiro District, home to the Maasai. In Uganda, the areas occupied by the Karamojong have also been discovered to harbor oil and natural gas.

state operatives. At times, investors have also been attacked in the ensuing confrontations. The root of the conflict centers on ideological differences and expectations of development paradigms from opposing parties. While states wish to implement projects that benefit broad national interests, Indigenous Peoples, with their specific experiences of exclusion and marginalization, prefer projects that do not exacerbate their already precarious situation. In the process, Indigenous Peoples are perceived as somewhat resisting development and, in doing so, are perceived as denying their respective countries a chance to achieve development visions or to emerge into middle-income economies. Some examples are highlighted below.

In Kenya, the discovery of oil and the potential for wind energy, geothermal power and other renewable energy are all located in the ancestral territories of Indigenous Peoples. Some of them include the Ngong Hills and Kipeto wind power projects as well as other wind energy projects of Olkaria, Longonot (Loonong'ot) and Suswa geothermal sites on the Great Rift Valley. All of these are located in Narok and Laikipia counties, which are ancestral territories of the Maasai people. The Lake Turkana Wind Power and geothermal sites in Turkana, Rendille, Borana and Samburu respectively are in ancestral territories of Indigenous Peoples going by those names; the Bogoria-Silali site is in the ancestral area of the Endorois and many others.

While many of the projects are in their initial stages of prospecting and extraction, so far the wind energy has already led to evictions and inhumane treatment of Indigenous Peoples in the areas concerned. Some people suffered attacks, including houses burnt to the ground along with all their property. Some were intimidated so they would move out of the area. At the end of the harassment, some negotiations took place and some families received compensation in the form of modern houses, although some people are still complaining that their lives are now far worse than before.⁵

In Tanzania, the Parakuyio (Baraguyu) Maasai of Morogoro have been evicted from lands they have occupied for close to one hundred

5. Kanyinge Sena, "Report number 21: Renewable energy projects and the right of marginalized/indigenous communities in Kenya," International Work Group for Indigenous Affairs (2015).

years so that sugarcane can be produced from the corridor of the Kilomero Valley, a project code-named the Southern Agricultural Corridor of Tanzania (SACGOT) that is sponsored by the World Bank.⁶ The Maasai of Ngorongoro have similarly been violently evicted and their rights violated many times in order to provide space for a hunting concession for the royal family of the United Arab Emirates.⁷

The Barbaig pastoralists of Tanzania have, in a similar vein, been removed from their ancestral territory to make room for wheat production sponsored by Canada.⁸ Even long after the project ended, their lands were never returned to the Barbaig, but rather distributed to other Tanzanians and a portion to yet another investor to grow wheat yet again.⁹

A common narrative in Tanzania is that Indigenous Peoples are destructive to the environment and that they cause conflict even in cases where this is not the case.¹⁰ This justifies their evictions even from environments they created and nurtured for decades to create the world-famous wildlife sanctuaries of the region. All the famous wildlife parks have been carved out of the best parts of Indigenous Peoples' ancestral territories.¹¹

In Uganda, the Batwa in the southwest corner of the country have been evicted from lands they have always occupied in order to make room for exclusive wildlife parks and supposedly to facilitate the

6. Mowforth, *supra* note 3.

7. "Research and Information visit to the United Republic of Tanzania," *supra* note 1.

8. Lane Charles, "Pastures Lost: alienation of Barabaig land in the context of land policy and legislation in Tanzania," *Nomadic Peoples* 34/35 (1994): 81–94.

9. "Research and Information visit to the United Republic of Tanzania," *supra* note 1.

10. Ringo Tenga et al., "A study on options for pastoralists to secure their livelihoods in Tanzania: Current policy, legal and economic issues" (2008), <https://www.scribd.com/document/14146287/A-Study-on-Options-for-Pastoralists-to-Secure-their-Livelihoods-in-Tanzania-Current-Policy-Legal-and-Economic-Issues>. See also Feminist Activist Coalition (FemAct), www.tgnp.org, and Pastoralist Forum Press Release about gross violations of human rights and citizenship rights in Ngorongoro District (TZ) carried out on behalf of the private investor ORTELLO Business Corporation (OBC): http://www.theecologist.org/News/news_analysis/2771261/tanzania_breaks_promise_thousands_of_maasai_evicted_to_make_way_for_lion_hunt.html

11. *Forest Conservation: The Preservation of the Mkomazi Game Reserve, Tanzania*. Daniel Brokington ed. (Bloomington, Indiana: Indiana University Press, 2002).

protection and tracking of gorillas, hence the creation of the Bwindi-Mgahinga National Park. The creation of this park occurred without any consultation or free, prior and informed consent of the Indigenous Peoples upon whose land this park was being built. Without a proper resettlement plan, the Batwa were left vulnerable and at the mercy of faith-based organizations who have taken it upon themselves to house, clothe and feed them as impoverished internally displaced persons. Indigenous pastoralists, such as the Karamojong and Basongora, have in turn been “abandoned” to fend for themselves in the isolated parts of the country, with their rights to development being denied.¹²

Similarly, conflicts in Rwanda and Burundi have focused mainly on the two main ethnic groups in the country—the Hutu and Tutsi—while largely ignoring the fate of the Indigenous Batwa who also bears the brunt of the conflict in this country. However, it must be stated that through negotiation and affirmative action, Burundi had (prior to the recent conflict) succeeded in including a number of Batwa representatives in the Senate. Rwanda later followed suit with the inclusion of some Batwa in their Senate.

The addition of South Sudan to the East African community is too recent for any assessment of the experiences of Indigenous Peoples there to be made. However, the conflicts taking place in Northern Kenya have a similar effect on the Indigenous communities of South Sudan, since the Toposa and Murle are pastoralists whose situation is similar to that of their Turkana and Karamojong neighbors.

Many of the human rights violations and ensuing conflict discussed above often go unreported partly because of the isolated and often inaccessible areas that many Indigenous communities find themselves in within their respective countries. However, these also often go unreported because of the negative attitudes of many reporters and journalists, most of whom are often a product of dominant mainstream society and who look down upon Indigenous Peoples. Still other reporters suffer from a lack of appropriate training in the sensitivity required in the preparation and presentation of equally sensitive issues related to Indigenous communities. Consequently, when Indigenous issues are reported, they are

12. “Research and Information Visit Report to Uganda,” *supra* note 1.

trivialized and sometimes caricatured. For this reason, it is truly critical to train and expose the media—including editors and directors—to the human rights issues specifically affecting Indigenous peoples.¹³

IV. Experiences with litigation in resolving conflict in East Africa

Some Indigenous communities in East Africa have used the courts quite effectively to resolve conflicts and to defend their rights, particularly their rights to their lands and resources. Some litigation has resulted in the achievement of some degrees of success since a number of communities have received compensation and in others cases there have been cessations of hostilities, albeit temporarily. However, success in litigation has demonstrated only a modicum of success, as the situations below indicate.

In Kenya, the Endorois have been celebrated as the first Indigenous community in the region to win a case at the level of the regional court against the government for the denial of their fundamental human rights. That was in 2010, and to date, six years down the line, the implementation of the court decision has remained a problem. The community blames the government for their unwillingness to implement the court decisions and the government blames the community for failure to cooperate.¹⁴

Similarly, following evictions from their lands, the Benet of north-east Uganda took their case to court and won. In the settlement, they were granted restitution rights to their ancestral lands.¹⁵ However, the

13. In 2007, the Arid Lands Institute, in collaboration with Community Research and Development Services (CORDS) and with support from the International Work Group for Indigenous Affairs, conducted sensitization seminars for the media in Tanzania and for Eastern Africa. From the seminar, it became apparent that most of the participants were unaware or had never been exposed to Indigenous Peoples' issues. The reporters talked of challenges they faced convincing their editors to prioritize issues of importance to Indigenous Peoples but which mainstream media often considers insignificant.
14. Personal discussions with Endorois community members and the Attorney General's office at various times in early 2016.
15. "Research and Information Visit Report to Uganda," *supra* note 1: See also Jack Mukaili, "Hadzabe shut out land grabbers with own land title," International Work

implementation of the decision of the court has remained similarly problematic.

The Indigenous Ogiek community in Kenya has also pursued the litigation alternative to resolve their land disputes and seems to be facing similar frustrations.

In Tanzania, a number of Indigenous communities have either won cases or have pending cases in courts over violations of their rights in respect to evictions from village lands that rightly belong to them. Other litigations revolve around invasion of their lands by farmers and politically connected elite in government and in the ruling party. Outright removal and subsequent resettlement of Indigenous territory for large-scale farms, as in the case of the Barbaig of Hanang District, or for hunting concessions, as in the case of the Maasai of Ngorongoro District, have attracted litigation in local courts. Some of these Indigenous communities have exhausted all local legal remedies and are being considered for regional courts. The courts dismissed the Barbaig case because the Barbaig could not prove that they are Tanzanian citizens, despite their communities only being found in Tanzania.¹⁶ Indeed, all communities in Tanzania who identify themselves as Indigenous (with the exception of the hunter/gatherer Akiye) have taken cases to court on account of gross violation of one set of rights or another. They include the Hadzabe, Barbaig, Baraguyu (Parakuyio) and Maasai. Yet, while these cases are in court, the same violations continue unabated and in complete disregard of court procedure. Such impunity is repeated in every place these Indigenous disputes occur, apparently with no legal consequences or repercussions.¹⁷

Similar scenarios are repeated in other countries throughout the region where many Indigenous communities have legitimate claims against their states and are considering following litigation channels locally and regionally as a means to having their rights redressed.

Group for Indigenous Affairs (November 1, 2011), http://www.iwgia.org/news/search-news?news_id=371

16. Tenga, *supra* note 10.

17. Personal communication with the Maasai of Morogoro, Ngorongoro and Kiteto Districts in Tanzania.

It is noted that violations of rights of Indigenous Peoples takes place despite the existence of regional, national and international human rights instruments that are meant to protect against such violations.¹⁸ National constitutions also exist with clear clauses containing protection of human rights of all communities.

For example, in Kenya, a new Constitution was adopted in 2010 that mentions for the first time the rights of minorities and marginalized communities. It also specifically notes that hunter-gatherers should have legally affirmed land rights. Despite this, however, violence is frequently meted out by forest scouts against Indigenous Peoples in protected areas or in conserved forests. At the same time, harassment of people living in areas adjacent to wildlife parks and sanctuaries has similarly continued unabated, perpetuated by Kenya Wildlife Service scouts. This goes to show that effective implementation of the new instrument remains a challenge.

While litigation elsewhere in the region has encouraged Indigenous communities to pursue similar paths, and many of them are rightly doing so, with the poor record in implementation of court decisions, it is now becoming apparent that litigation can be lengthy, expensive, and cumbersome and may not necessarily achieve the desired result. Many cases filed in local courts, instead of being assessed on merit, have been thrown out on technical and petty grounds. This means that alternative possibilities may now need to be explored for the realization of human rights of Indigenous Peoples in the East African region. These include peace building and negotiated settlements.

V. Experiences with peace building and negotiated settlements

While the media rarely covers violations of Indigenous Peoples' rights, the same is also true of dispute settlements. Indigenous Peoples in the region still practice extensive peace building institutions that they employ to settle conflicts among themselves and with neighboring

18. All African countries have national human rights institutions that are expected to provide reports on their human rights situations every two years to the African Commission on Human and Peoples' Rights. There is also the new Partnership for African Development (NEPAD).

communities. Women play pivotal roles in these peace building activities. There is a need to investigate what these peace building methods are, to assess how effective they still are, and to explore possibilities of mainstreaming them for the purpose of utilizing them to resolve some of the intractable conflicts experienced by Indigenous communities.

One important and successful peace building initiative in the region was started by a woman athlete, Tegla Lorupe, from the Pokot community of Kenya, for the purpose of fostering peace and creating harmony among warring pastoralist communities including the Pokot, Turkana, Marakwet and Karamojong. Her initiative has succeeded in creating lasting peace accords between communities and also, most significantly, it has reportedly returned 1,000 children to school who were on the verge of becoming child soldiers.¹⁹

While Indigenous communities in this region have repeatedly demonstrated skill in utilizing their own Indigenous peace building mechanisms to resolve conflicts between and among themselves, it is clear that these skills have not been utilized outside their own communities. Yet most of the recent conflicts experienced by Indigenous communities are with governments and it is not clear whether local solutions can be utilized nationally or regionally. It is imperative, therefore, that the rich peace building institutions of Indigenous Peoples are recorded and mainstreamed for possible use at the national, regional and possibly international levels.

Negotiated settlements with states have also been witnessed in the resolution of some of the conflicts between Indigenous Peoples and states. For example, the government of Tanzania demonstrated a willingness to negotiate in creating an accord to address a cultural heritage site of significance to the Maasai community. It is known as *Endoinyioolmoruak* (the mountain of elders). This is a small mountain located between Mt. Kilimanjaro and Mt. Meru, in the Arusha region of Northern Tanzania. This Indigenous community used this heritage site for the generation of names for retiring successive age sets from one generation to the next over time and, in doing so, reckoning historical

19. See Tegla Lorupe's peace initiative here: <http://office.teglapeacefoundation.org>

events associated with this passage. Following the demarcation of Africa to European powers during the Berlin Treaty in 1884, the site was placed in Tanganyika, present day Tanzania, and it ceased to be easily accessible to the Kenya Maasai. Discussions were initiated on the matter around 2004–2005, but have never been completed because the East African Treaty seems to be silent on such trans-boundary resources of historical significance. Meanwhile, the heritage site is increasingly being encroached upon despite the expressed willingness and ability of the government through the then-Ministry of Education and Culture to protect and preserve it for posterity.

So far, under the auspices of the East African Community, a regional intergovernmental organization in East Africa, there has been a tradition of addressing conflicting between states. Accordingly, discussions took place to establish the Rwanda Tribunal and to organize the Burundi talks, both taking place in Arusha, Tanzania. Perhaps there is a possibility of extending this agreement among countries of the region to also cover internal peace settlements and solutions involving communities that cross borders, as in the case of shared cultural heritage sites of relevance to Indigenous communities found in one country, but also to trans-boundary Indigenous citizens of another country. To do so would be to seriously address cultural rights such as the example mentioned above.

VI. Recommendations to various actors

To states in Africa

1. Observe and implement instruments related to the rights of Indigenous peoples, both regional and international, especially the United Nations Declaration on the Rights of Indigenous Peoples.
2. Disseminate and popularize all declarations and treaties of relevance to the rights of Indigenous Peoples.
3. Implement and apply the law equally for all citizens by addressing impunity.

4. Create public fora to discuss Indigenous rights openly and seek participatory solutions that include Indigenous women in emerging conflict situations affecting them.
5. Identify and mainstream Indigenous conflict resolution methods of Indigenous communities; strengthen negotiating skills of Indigenous communities so that they are enabled to negotiate with their governments.

To regional bodies

6. Promote the work of the African Commission on Human and Peoples' Rights in all countries in the region.

To bilateral agencies and development partners

7. Work with states to promote efforts regarding the promotion and protection of the rights of Indigenous Peoples, and uphold corporate responsibility in the pursuit of business agendas.