

**Convention on the
Rights of the Child
Shadow Report Submission:
Indigenous Children's Rights
Violations in Kenya**

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Submitted by Cultural Survival
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I. Reporting Organization

Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC since 2005. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous Peoples' rights in countries throughout the world and publishes its findings in its magazine, the *Cultural Survival Quarterly*; and on its website: www.cs.org.

II. Issue Summary: Indigenous Child Rights in Kenya

The Constitution of Kenya does not refer to children's rights. However, Kenya has ratified ILO Conventions related to these rights, including the Convention on the Prohibition of Forced Labour and the Convention on the Rights of the Child.¹ Influenced by globalization, climate change, and economic insecurity, some Indigenous people have had to change their traditional lifestyles. In particular, many Indigenous youth are having a hard time preserving their culture and "struggling to strike a balance between modernization and the culture they cherish".² In 2007, Kenya also abstained in voting for the UN Declaration on the Rights of Indigenous Peoples.

Education

The right to education is not included in the Kenyan Constitution, and while the country has guaranteed free and universal education, there is a lack of implementation. Schools and students often lack the resources needed to learn, including books, classrooms, and supplies. Oftentimes, secondary and higher schooling are too expensive for Indigenous people, particularly the costs of supplies. For example, 86% of Samburu families do not have the money to send their children to school or buy the necessary supplies.³ The Kenyan government established a Constituency Bursary Fund to help those who cannot afford school supplies, but there are not sufficient funds to truly make an impact. Even if they are able to attend schooling, a study found that Indigenous Peoples have obstacles, "such as being caned, being abused, instant physical punishment from teachers and prefects".⁴ Classrooms are crowded and there are a lack of available teachers- the average student-to-teacher ratio of Kenya is 47 to 1.⁵ Furthermore, the "lack of appropriate and relevant education for Indigenous children hampers the primary education as well as higher education", particularly for hunter-gatherers and pastoralists. Indigenous students are often told in school that they should give up their language and beliefs and are ostracized for their traditional clothing.⁶ One NGO has tried to address this problem by

¹ International Labour Organization and African Commission on Human and People's Rights. (2009). "Kenya: Constitutional, Legislative, and Administrative Provisions Concerning Indigenous Peoples". pg 54.

² Salau, Daniel and Grace Salau. "Maasai Culture: The changing roles of women and the resilience of young men's efforts to preserve their endangered culture in the midst of change". pg 2-3.

³ Samburu Watch. (2015). "Status of Rights of the Indigenous Child, Samburu Kenya." pg. 3.

⁴ Odongo, Benson and Henry Onderi. (2014). "Understanding the Indigenous Child in a Kenyan Context: Opportunities and Challenges". *British Journal of Arts and Social Sciences*. ISSN: 2046-9578, Vol.18 No.II

⁵ Samburu Watch. (2015). "Status of Rights of the Indigenous Child, Samburu Kenya." pg. 2.

⁶ Samburu Watch. (2015). "Status of Rights of the Indigenous Child, Samburu Kenya." pg 2.

creating a schooling system that incorporates afternoon and evening classes so as to accommodate the students' schedules, but this is far from a comprehensive solution⁷

Child Labor

Child labor has been an issue across Kenya, and because Indigenous people struggle with higher poverty levels, Indigenous children are at disproportionately higher risk for becoming ensnared in child labor. In particular, Indigenous child labor has been linked to such problems as “aggravated land loss, pressures on customary livelihoods, lack of basic services...and poor governance.”⁸ Indigenous children work a range of jobs, from jobs related to tourism to private security to prostitution. Because the children are often not paid for their labor, despite the horrible working conditions, the work does not fall under the definition of child labor in the Children's Act ratified by Kenya. This, along with the lack of officials to monitor the issue, makes it difficult to legally combat the problem of child labor.⁹ Furthermore, Indigenous children often work instead of attending school. One organization, the African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN) is working in Kenya to end the use of child labor. They have several ongoing projects in different regions of Kenya and have focused on improving child labor rescue systems and providing financial support to the families of child workers.¹⁰ Indigenous girls are particularly vulnerable to exploitation.

Female Genital Cutting

Many international organizations have decried the practice of female genital cutting, without truly understanding the cultural significance of the practice, in that it is a rite of passage for Indigenous girls. There have been incidences of kidnapping and child exploitation of Indigenous girls ages 9-18 under the guise of saving these girls, a practice that is terrifying for both the girls and the parents. The girls are forcibly taken and brought to rescue homes. The Indigenous girls are “often later abandoned, neglected, not parented, raped, and have unwanted pregnancies.”¹¹ There are studies that suggest this practice is actually a part of the sex trade and yet this “activism” continues to be funded internationally and locally.¹² Furthermore, to avoid being persecuted by international organizations, many Maasai families are circumcising and marrying off their daughters at very early ages. Therefore, it is recommended that alternative traditions are encouraged to develop from within the communities. One organization, Maasai Education Discovery is working with Maasai communities to come up with possible alternatives to FGM and encouraging young Indigenous girls to speak up if they do not want to go through with the process.¹³

Forced Evictions in Samburu

As it is, Indigenous communities already face higher levels of poverty and threats to their traditional lifestyle. About 90% of the Samburu population, for example, live in poverty. Many are losing their nomadic lifestyle as their lands are being taken to create wildlife reserves or national parks. The group ranches where they are relocated cannot support their livestock and are often further away from water sources. As a result, Indigenous

⁷ International Labour Organization and African Commission on Human and People's Rights. (2009). “Kenya: Constitutional, Legislative, and Administrative Provisions Concerning Indigenous Peoples”. pg 33-34.

⁸ Ibid., pg. 56.

⁹ Ibid., pg. 55.

¹⁰ <http://www.anppcankenya.co.ke/index.php/labour-free>

¹¹ Samburu Watch

¹² Samburu Watch. (2015). “Status of Rights of the Indigenous Child, Samburu Kenya.” pg. 7.

¹³ Cultural Survival. (2004). “FGM: Maasai Women Speak Out”.

children are more affected by malnutrition, disease, water-related deaths and illnesses, and experience higher mortality rates.¹⁴ To make matters worse, many Indigenous people face the threat of forced evictions, which creates even more instability for Indigenous families. Starting in 2009, 12 communities in Samburu East were attacked by police at least three times a week for two years. During that period, “hundreds were beaten, scalped, raped, castrated, and murdered and their homes were bombed and burned.”¹⁵ Since then, they have not been properly compensated and are threatened by poverty and starvation. In 2014, police troops were sent to the Embobut forest to evict thousands of Sengwer and Cherangany people. The report cited parents fleeing with their children and belongings to avoid any violence that may come with the eviction.¹⁶ Unfortunately, these evictions can often lead to the burning of schools, houses, and other buildings, which leads to a loss of belongings and greater instability for Indigenous people and children.

Geothermal Development and Threats to Livelihoods

With support of the World Bank, Kenya has engaged in extensive geothermal extraction on Maasai Indigenous territory in Kenya. The projects that have been implemented have raised major concerns of lack of proper protocols for community involvement, irregular and skewed compensation for communities and forceful evictions of local communities that live within project sites. These issues have been confirmed through an initial investigative report by the World Bank Inspection Panel which visited the general area to validate complaints that were lodged by the Maasai community¹⁷. According to one community leader in Longonot, Kenya:

“This company is in Kenya and dealing with geothermal Development. It has been a threat to our existence. We have experienced evictions, threats, loss of land and other human rights. Now, their activities has turned to destroy our livelihood. This is follows a continuous flow of sludge into a valley which is the only source of water for both human and livestock.”¹⁸

The community has independently tested their water, which they report as having turned into a smelly black sludge, and found that the levels of suspended Biochemical Oxygen Demand (BOD) are above the National Environmental Management (NEMA) standards of 30.0mg/l for effluent discharge to the particular environment. The contaminated water has been associated with the death of several livestock which are the main source of livelihoods for the local Maasai community. As a pastoralist community, Maasai livelihoods are deeply dependent on their livestock. Threats to their livestock present immediate threat to the survival of Maasai Indigenous children and families.

In Narasha, a Maasai child drowned in one of the industrial wastewater disposal ponds that was left unprotected.

The Maasai are requesting that safeguard protocols are observed before any funding of such projects is done. They are equally appealing that authentic participation is undertaken with approaches that will ensure for sustainable livelihoods of the affected people.

¹⁴ Samburu Watch. (2015). “Status of Rights of the Indigenous Child, Samburu Kenya.” pg. 1.

¹⁵ Ibid. pg. 4.

¹⁶ Lang, Chris. (7 January 2014). “Forced eviction by Kenya threatens indigenous communities’ human rights and ancestral forests”. *REDD Monitor*. <http://www.redd-monitor.org/2014/01/07/forced-eviction-by-kenya-threatens-indigenous-communities-human-rights-and-ancestral-forests/>

¹⁷ <http://ewebapps.worldbank.org/apps/ip/PanelCases/97-Kenya%20Investigation%20Plan%20-3%20March%202015.pdf>

¹⁸ Koissaba, Ben.(2015) “Geothermal Extraction Causing Livestock Deaths and is a Real Threat to Human Survival in Kenya,” Cultural Survival

III. CRC Concluding Observations

Forty-fourth session Consideration of Reports submitted by States Parties under Article 44 of the Convention.

“Constitutionally recognize the rights of Indigenous pastoralist and hunter-gatherer and other marginalized communities to their lands and resources, to effective political participation and to cultural identity, and enact specific legislation accordingly;

Consider ratifying the ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries;

Put into place affirmative-action measures and the corresponding resources to ensure free universal primary education and basic health care for children belonging to Indigenous Peoples and minority communities. These measures should include further efforts to establish clinics and mobile schools, and conduct birth-registration campaigns, as well as specific incentives and training for health workers and teachers. Such measures should be developed in consultation with and with the participation of the communities concerned;

Implement culturally appropriate measures to eliminate harmful traditional practices and provide material and psychological support to children who are victims of these practices;

Pay particular attention to the recommendations presented by the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people, based on his mission to Kenya in December 2006 (A/HRC/4/32/Add.3).”

IV. Kenyan Report

Kenya included a section in the state report for Indigenous and pastoralist children. Article 63 of the Kenyan Constitution recognizes ancestral land, and the Kenyan government plans on creating laws on protecting it. Kenya has also created a quota system for Indigenous children in schools.

V. Legal Framework

CRC Articles 17(d), Article 24, Article 29(d), Article 30.

VI. The CRC General Comments

General Comment No. 11 (2009) Indigenous children and their rights under the Convention.

Health

“49. States parties shall ensure that all children enjoy the highest attainable standard of health and have access to health-care service. Indigenous children frequently suffer poorer health than non-Indigenous children due to inter alia inferior or inaccessible health services. The Committee notes with concern, on the basis of its reviews of States parties’ reports, that this applies both to developing and developed countries.

51. States parties should take the necessary steps to ensure ease of access to health-care services for Indigenous children. Health services should to the extent possible be community based and planned and administered in cooperation with the peoples concerned. Special consideration should be given to ensure

that health-care services are culturally sensitive and that information about these is available in Indigenous languages. Particular attention should be given to ensuring access to health care for Indigenous Peoples who reside in rural and remote areas or in areas of armed conflict or who are migrant workers, refugees or displaced. States parties should furthermore pay special attention to the needs of Indigenous children with disabilities and ensure that relevant programmes and policies are culturally sensitive.”

VII. Other UN Body Recommendations

Human Rights Committee

Consideration of reports submitted by States parties under article 40 of the Covenant, Concluding observations adopted by the Human Rights Committee at its 105th session, 9-27 July 2012 :

*“The Committee recommends that, in planning its development and natural resource conservation projects, the State party respect the rights of minority and indigenous groups to their ancestral land and ensure that their traditional livelihood that is inextricably linked to their land is fully respected. In this regard, the State party should ensure that the inventory being undertaken by the Interim Coordinating agency with a view to obtaining a clear assessment of the status and land rights of the Ogiek community be participatory and that decisions be based on free and informed consent by this community”.*¹⁹

Universal Periodic Review

Recommendation during the second cycle:

“101.114. Implement the recommendations and decisions of its own judicial institutions and of the African Commission on Human and Peoples’ Rights, particularly those relating to the rights of Indigenous Peoples (Bolivia);”²⁰

VII. Questions

1. What steps is the Kenyan government taking to address the specific and unique needs of Indigenous children?
2. How is the Kenyan government ensuring that Indigenous children’s rights are protected, respected and fulfilled vis a vis large scale development projects?

IX. Recommendations

Cultural Survival urges the government of Kenya to:

1. Ensure that companies operating in Kenya put in place good environmental practices and management to water and soil contamination, and avert livestock infection.
2. Ensure the Free, Prior, Informed Consent of affected Indigenous people like the Maasai and Samburu before and during any Geothermal or other large scale projects that affect their traditional grazing lands. Ensure all safeguard protocols are observed, including proper water treatment and management with periodic

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<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsju22L%2bcWBEro6zgtOYNishm1ABMVpBXJ0K9E2qAqqYmph7KgbWhKC9Fr4cs3cNVyqMn3gZsOEmgs931T10rS2fdNOd4tHmMQIX0zgcopfUi>

²⁰ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/144/88/PDF/G1014488.pdf?OpenElement>

testing preferably on a bi-annual basis.

3. Ensure the participation of young Indigenous women in any policy or project planning around Female Genital Cutting.

4. Ensure funding is available for Indigenous children to access education.

5. Take steps to eliminate all forms of discrimination against Indigenous children in school settings.

6. Engage with Indigenous community leaders to ensure compensation to families for the forced evictions from their homes.