

MEMORANDUM ON HUMAN RIGHT VIOLATIONS

Submitted to

**THE NATIONAL STEERING COMMITTEE FOR NATIONAL HUMAN POLICY AND
NATIONAL ACTION PLAN (NAP)**

BY

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INTRODUCTION.

The Maasai community believes that they are Maasai before being Kenyans. Therefore, we wish to acknowledge the absence of the late Ntenaai Ole Moyiare (Laikipia), who was killed by white settlers defending his birth rights (Land), Sempeta ole Marima (Kajiado), Saisa Ole Kipury (Nakuru), Kimasisa Ole Kunkuru, (Nakuru) and Samson Ole Sisina (Narok) and all those whose rights were not considered as their lives were taken in various different circumstances.

Secondly the Maasai people of Kajiado, Narok, Samburu, Marsabit, Baringo Trans Mara, Laikipia and Loitokitok Districts commend the Ministry of Justice and Constitutional Affairs for spearheading the process of the development of a Human Rights Policy in Kenya.

We however note with dismay the scant allocation of resources with which to undertake the process; we further note the short notice to collect public input into the process. Without sufficient resources and the short notice, it is evident that the government is really not fully committed to the process.

1. Civil And Political Rights

The right to life is the bedrock and the foundation of all the human rights. Without this, all the other rights cannot take hold. But all the human rights are inalienable, inviolable and inherent to all human beings.

Rights to Life

Insecurity is a violation of that right to life.

- Armed conflict between pastoralists and farmers (e.g. in Transmara District and in Loita in Narok - between the Maasai and the Sonjo people of Tanzania)
- Human-wildlife conflict violates the right to life and endangers livestock which is the livelihood of the pastoralist Maasai.
- Extra-judicial killings by security forces as follows: -
 - Mai Mahiu killings by use of helicopter gunship in 2005.
 - Killing of Ntinai Ole Moiyaire in Laikipia.
- Raiding by the Pokot and Turkana, commonly known as cattle rustling have made the Samburu, Ilchamus of Baringo, the Maasai of Transmara and Laikipia run away from their homes and hence they cannot engage in productive activities. All these incidences took place because of lack of security, despite public resources being at the disposal of the government. It does not portray the government in good light, when Kenyan citizens are mowed down by both security forces as well as marauding armed bandits. To date, no security has been deployed in the troubled areas and the killings are undoubtedly set to continue.
- The British government and its forces in practice and training session Laikipia and Samburu, have taken to raping local Samburu and Maasai women bringing forth mulattoes. This is a violation of the right to life as these women are divorced and ostracized by the community to eke out a living without any starting capital. These women are then forced into prostitution, their lives and that of their children are perilous. These victims can be found in dilapidated homesteads in Archers post. These women go through physical, emotional and psychological trauma through their lives. It is torture and a threat to life for the women and the community at large.

- Insecurity has also led to the displacement of the Maasai people and so are land sales caused by poor land policies by the government. The Maasai are rendered minorities in their own land and since they do not have representation, their rights are violated as they do not have access to resources. A good example is the Jamii Bora project at Isinya in Kajiado District, when a whole community of slum dwellers were to settled to a Maasai community land in Kisaju.
- Another example of political displacement is the take over of Constituency Development Fund in Loitokitok by the non Maasai.
- Influx of non Maasai communities in Maasai pastoralist areas brings about a shift in political leadership to non Maasai. This is evident in Narok south and North, Baringo, Trans Mara, Laikipia and Kajiado constituencies, leadership is lost, and thus right to development will consequently be lost leaving Maasai with increased poverty, lack of good infrastructure, schools and health care institutions. They will also close the right to equitable distribution of national resources e.g. water and other social and development amenities.

Recommendation

- The police should be deployed to all locations to ensure sufficient security to all Kenyans.
- Families bereaved by wildlife, are worth compensation equivalent to kshs 2.5 million.
- A wildlife policy that favours the citizens should be drafted to secure the rights of group ranch owners and all Kenyans who live in the peripheries of national parks.
- The peoples in charge of killing the late Ntenai Ole Moyiare (Laikipia), who was killed by the white settler defending his birth rights (Land), Saisa Ole Kipuruy (Nakuru), Kimasisa Ole Kunkuru, (Nakuru) and Samson Ole Sisina (Narok) and all those whose rights were not considered as their lives were taken in various circumstances must be prosecuted and where necessary compensated.
- Civil political leadership - the minorities and indigenous communities have rights to leadership therefore they must be represented in Parliament to ensure equal distribution of resources. This can only be achievable if the law is put to prevent the immigration into pastoralist land.

2. Economic, Social cultural rights:

Maasai land in Narok, Transmara, Kajiado, Samburu and Baringo has been turned into wildlife conservation areas without equitable return on “investment “. This is violation of economic rights. With loss of political leadership, so will the Maasai also lose economic rights and development? Unfair distribution of resources will result in casting the Maasai to external poverty. A look at teacher training colleges and Kenya Medical Trainings College intake reads like who is who in Kiambu. The Maasai have been displaced. The Maasai, as a minority, will they really still have the right to elect their own? As a minority the Maasai need legal protection as minorities. (By adoption of the UN draft Declaration

on the rights of Indigenous Population, the Government would go a long way to protect the rights of the Maasai). The Maasai like all the other ethnic groups are first Maasai and Kenya citizens next. One can renounce citizenship but not his or her roots. It applies to all other ethnic groups also.

Distribution of National resource has always invariably discriminated the Maasai people. Not only is the infrastructure poor or underdeveloped or dilapidated, but social services and employment opportunities are thinly distributed. Employment for example in the transit facilities is skewed in favour of other communities. The same applies to the civil service and private sectors, All because for education. Education begins at pre primary level where children are taught in Kiswahili for lack of enough Maasai teachers in all pre – schools and Early Childhood Education. This trend continues in lower primary. Yet these Maasai children have not even learnt their mother tongue. This is because poor performance in national examinations. No Tertiary institutions exist in all Maasai speaking districts. The Maasai like other pastoralist cannot effectively compete with mainstream societies. The right to quality education is therefore violated.

The current land tenure system that obtains in Kenya completely disregards cultural mapping. In this, we mean cultural ceremonial sites are purposed to be public land for use in ceremonies. Without leaving such designated ceremonial sites it is Maasai Cultural rights violations. Legal protection should as far as repossession of such areas that were traditionally ceremonial sites such as Rrotian in Narok District, Koitiko in Narok South, Shilishili and Marlal in Kajiado South. This is the only way to stop violation of the cultural rights of the Maasai people.

3. Social Cultural Rights.

Intellectual property rights- Maasai intellectuals Property rights are abused and need to patent Maasai regalia, artefacts, and ornaments is necessary and urgent. Maasai identity is also in need of protection. Kenya can still develop cultural diversity.

Recommendation

Cultural policy needed to protect cultural rights of some communities that their cultural rights are abused

Right to development, employments and infrastructure in general

Private Investors in all Maasailands should give 75% of jobs opportunities to local communities. E.g. Magadi Soda Company , tourist facilities , Kenya Meat Commission , East African Portland Cement , Bamburi cement , Export Processing Zone reaps benefits from investment in the areas.

Rights to education and health

The Indication that the government is contemplating closing all boarding schools is sure strategy to destroy education in all pastoralist areas. Rights to social amenities like schools with adequate qualified teachers , boarding facilities schools, rural electrification , roads infrastructure and regular maintenances , enough health care facilities , mobiles schools, veterinary services during the dry seasons , along with communication network in all Maasai lands.

Magadi Soda Company has lease to 222,788 acres but utilities only 14,013 hectares. Along the railway line from Magadi to Konza the company owns a quarter of a mile on both sides of the line. Rights to their land in the area violated with the little benefits to the local Maasai community.

Nooltresh Water Project from Kilimanjaro passes through Maasai land without off take points to supply human and livestock needs .This violates Maasai rights to clean safe drinking water.

Aboriginal's rights.

Anglo Maasai Treaties or constructive arrangement violated rights to their lands and natural resources. The lands were sequestered to British ex servicemen and mobility. There was no compensation for neither was there restitution after independence. This is violation of Maasai natural resources and grazing areas for their livestock.

Recommendation

The Anglo-maasai treaties and magadi soda company that have led to the lost of land and natural resources such as magadi, violate the social economic rights of pastoralist communities hence they don't benefit from resource within their jurisdiction. The government should also consider the ratifications of international convention that observe the rights of indigenous peoples and minorities i.e. the UN draft declaration on the rights of indigenous peoples and ratify the ILO convention 169(108) on rights of indigenous peoples. In case of impossibilities to return lost land to Maasai then restitution and compensation should be mandatory.

Private companies that are operating with pastoralist areas must create employments opportunities to locals.

Training, health and infrastructures in pastoral areas should also be equipped like other areas in the countries. Pastoralist proposed to be given mobile schools that suit their way of livelihood. All agreement to entered 80% of the community members must be consulted.

The Noolturash should not by any chance benefit peoples from Nairobi before benefiting the Loitokitok residents therefore mechanism of supplying the water to all resident must be put in place.

Environmental rights.

The government's illegal excision and allocation of Mau forest is violation of a clean environment al rights. The Maasai do not seem to benefit from their natural resources in their midst.

Large scale farms in Narok Nkorkorri area air spray their wheat. Wind blows the spray to the local communities polluting grazing lands, water bodies and air that bring about serious respiratory diseases to the adjacent community, thus violating community rights to a clean non polluted environment. Further air pollution at Olkaria and Magadi affects not only the Maasai community around these facilities, but that the poisonous fumes from the new Magadi plan are known to kill the prosopsis plant. Waste disposal from the EPZ and the cement factories i.e. Bamburi cement and East Africa Portland Cement pollutes the physical environment. These factories also draw water from Nooltresh water yet the people and their livestock, from where it is drawn do not benefit.

The dust from the factories has occasioned adjacent Maasai communities with cases of respiratory and skin diseases.Olkaria emits acidic sulphur dioxide to the air causing

respiratory diseases. There is also water spewed from the Olkaria polluting water sources making the unsuitable for human and livestock use.

All Maasai lands have been turned to charcoal producing areas causing excessive deforestation as a result. Mau forest has turned into a national resource for timber through serious deforestation activities. This leads to soil erosion, air pollution and land degradation and eventually desertification.

Gold mines in Lolgorian which comprises use of mercury which is poisonous to extract gold leaves the soil degraded. Irregular land allocation and grabbing in Transmara where influential peoples give out land to non residents and local authority lease land to private companies and members of the society are not benefiting i.e. triangle grabbed by Oloololo game range.

Quarrying and extraction of gypsum in Kajiado district has exposed women and children to prostitution.

Recommendation

The Magadi soda should revisit the NEMA baseline survey to ensure that harmful process that have negative impact on the environment and communities stop rather than only looking consideration of the making profits for the company.

The prosopsis plant in Baringo should be uprooted and in case the NEMA is contemplating on any mechanism to finish the plant therefore they should do the research to see the possibilities of assisting the communities.

Right to equality. Owing to the fact that culture is vital, it's necessary that the dispensable practices that victimise girl child from formal education and women from leadership should be revised to give women freedom for leadership. Lack right of land ownership by women have brought Maasai community to immersive lost of land and property. Female genital mutilation is one of practises that should be done as choice of individual rather than it being mandatory thus it lead to early marriages that is connected to school drop out. Additionally FGM make women vulnerable of diseases that reduce productive and high mortality rate in child under age of five.

Recommendations

For the purposes protecting children from child labour, children tracking and to empower women framework on civic education on some of the international convention need to be put in place to build capacity of women on their rights as way of finishing discrimination against women and children to enjoy their rights to education etc. these instrument need to be domesticated

1. Convention on elimination of discrimination against (CEDAW).¹
2. The Convention on the Rights of the Children.²
3. The Nchoki Ndungu sexual offense act

¹ CEDAW A/48(1993) periodic report recommendation

² report on the African charter on human and peoples' rights

