



## Trouble in paradise – tourism and indigenous land rights: together towards ethical solutions

### Background

National Parks were first created in the 1920s in North America. The development of nature tourism led to South American countries following suit in the 1980s. In East Africa, ecotourism originated as wildlife tourism in the 1970s.<sup>1</sup> One of the underlying principles behind this new form of tourism was to allow for development and support of community, while maintaining wildlife migrations, ecosystems and diversity.

Ecotourism has passed a number of milestones. As a result, there has been a growing sensibility worldwide with regard to animals and the environment, and a trend toward sensitivity towards nature and culture. Tour operators market the ecotourism logo, increasing the awareness of travellers and creating a “do good, feel good, leave no trace” ethos. Organizations such as the International Ecotourism Society (TIES) and other non-governmental organizations (NGOs) have been building agendas and creating awareness, while an increasing number of governments are promoting policies and regulations that will create ratings and standards.<sup>2</sup>

Despite these important contributions, too little attention has been paid to the impact of conservation efforts on local peoples and, in particular, on indigenous peoples whose traditional way of life and mode of production depends on their access to their ancestral lands. Indeed, the majority of indigenous communities who traditionally occupied current ecotourism destinations, such as wildlife or biosphere reserves, have been forcibly evicted from these areas in order to create these spaces. An escalating number of case studies around the world confirms that the majority of these evictions were undertaken without the prior informed consent of indigenous communities, and/or without adequate compensation for their loss.

Many of these displacements appear to be implemented on the premise that wildlife and natural resource conservation is incompatible with human activity. This is despite indigenous peoples’ ancestral role as custodians of the land and despite their traditional knowledge systems that ensure the sustainable use of the resources in question. In the case of semi-nomadic pastoralists, the danger of over-grazing has only become more acute as land tenure systems

(which, since colonialism, fail to recognize their way of life) continue to parcel out large areas to individual and commercial interests. In these instances, particularly where pasture is rare in times of drought, it is important to reconsider the interplay between conservation and the cultural survival of indigenous peoples. A further problem, as highlighted by the NGO Tourism Concern, is the insistence by tour operators that tourists do not want to see cattle or pastoralists such as the Maasai, whose lifestyle has supported the wildlife for all these years, because it spoils the idea of ‘pristine wilderness’.<sup>3</sup>

### Who is affected?

In the 2006 drought that heavily affected Kenya, numerous pastoralist communities such as the Maasai and the Endorois lost, on average, 50 per cent or more of their cattle, despite the availability of fresh water and grazing pastures in their respective ancestral lands of the Mara and the Lake Bogoria Game Reserve in the Rift Valley.

More broadly speaking, well over 50 per cent of indigenous communities in Kenya have experienced some form of land dispossession in the name of ecotourism or other development initiatives (this reaches 60–70 per cent in northern Kenya). Affected communities, to name a few, include the Maasai and the Ogiek in the Southern rangelands; the Endorois, Ilchamus, Pokot, Sabaot, Sengwer and Turkana in the Rift Valley; the Borana, Ghabra, Rendille and Somalis in northern Kenya; and the Orma in the wetlands of the Kenyan coast.

In Tanzania, numerous issues arise out of the evictions targeting the Maasai around Ngorongoro, Monduli, Lake Manyara and Tarangire. The Maasai and other communities such as the Hadzabe (hunter-gatherers) have drawn attention to the exploitation and discrimination they face as a result of the continuing imbalances between human rights, wildlife conservation and the management of natural resources.

Legal cases regarding these same issues are on the rise around the world, in Australia, Botswana, Brazil, Canada, Honduras, New Zealand, Nicaragua, Paraguay, South Africa, to name but a few.<sup>4</sup>

## Trouble in paradise: campaign outline

### Target audience

Minority Rights Group International (MRG) launches this campaign in partnership with the Kenyan-based Centre for Minority Rights Development and the Kenya Pastoralist Week (<http://www.cemiride.info>). The campaign's primary target audience consists of indigenous peoples, ecotourists, as well as tourism industry representatives.

### Campaign goals

- To raise awareness among tourists, ecotourists and the tourism industry of the acute challenges faced by indigenous peoples, despite the numerous merits of ecotourism as it is currently practiced.
- To increase dialogue between indigenous peoples, ecotourists and the tourism industry in order to increase understanding of each others' needs, interests and goals.
- To actively seek the input and recommendations of the aforementioned stakeholders, with a view to finding new ethical solutions.
- To produce a final report (to be launched at the 2008 World Social Forum) that will compile the overarching conclusions drawn from the exchanges, interviews and consultations taking place through 2007. The report's proposed frameworks and recommendations will also draw from lessons learned around the world, as well as best practices that ecotourists and the related ecotourism industry can use to inform new and improved practices.
- Finally, the campaign also seeks to facilitate dialogue between indigenous leaders and local/national authorities in order to discuss international standards on the rights of indigenous peoples, including their right to land, natural resources and participation.

### Campaign scope

The campaign scope is international in focus. Though most of MRG's experience is rooted in Africa, we welcome all interested indigenous communities to share their experiences about ecotourism – including positive ones – and to forward questions, comments and/or recommendations. While this text is only available in English at the moment, correspondence can be sent in English, French, Portuguese, Spanish or Swahili. Tourists, ecotourists and tourism operators from all countries, along with interested local or national authorities, are also most welcome to provide input. In this regard, the campaign will be as international as its participants and contributors allow.

### Campaign tools: website and online forum

MRG's Trouble in Paradise campaign website will serve as one of the focal tools for collecting all information and input through the course of 2007. You can access the site at [http://www.minorityrights.org/Trouble\\_in\\_Paradise](http://www.minorityrights.org/Trouble_in_Paradise). The website maps out the key targets of the campaign and initial recommendations for comment from all stakeholders. It contains relevant international human rights standards and case law, as well as case studies on the subject matter. Throughout the year, visitors are welcome to suggest new content materials or links to [cynthia.morel@mrgmail.org](mailto:cynthia.morel@mrgmail.org). Finally, the website also hosts an online forum where pastoralists, ecotourists, tourism industry representatives, decision-makers and wider civil society alike, are given a space to share ideas, put forward recommendations and raise questions. Contributions to the online forum will also inform the content of final report at the end of the campaign.

### International standards

In order to be human-rights-friendly, as well as friendly to the environment, the tourism industry and local governments must strive to ensure greater respect and implementation of the following rights:

#### Land rights

The problem of displacement faced by indigenous communities has been widely recognized.<sup>5</sup> For example, the Working Group on Indigenous Populations/Communities from the African Commission on Human and Peoples Rights has pointed out that, for pastoralist communities:

*'[...] their customary laws and regulations are not recognized or respected [...] as national legislation in many cases does not provide for collective titling of land. Collective tenure is fundamental to most indigenous pastoralist and hunter-gatherer communities and one of the major requests of indigenous communities is therefore the recognition and protection of collective forms of land tenure.'*<sup>6</sup>

Despite these difficulties, the recognition of indigenous peoples' communal land rights as property rights has become increasingly established under international law. One of the leading cases on this principle is the *Mayagna (Sumo) Awas Tingni v Nicaragua* case,<sup>7</sup> where the Inter-American Court of Human Rights recognized that the Inter-American Convention protected property rights 'in a sense which includes, among others, the rights of members of the indigenous communities within the framework of communal property'.<sup>8</sup> Moreover, the Inter-American Court stated that possession of the land should suffice for indigenous communities lacking real title to obtain official recognition of that property.<sup>9</sup>

## Right to participation and right to development

While interest in the traditions and cultures of indigenous peoples is consistent with the wider ethical framework of ecotourism, the reality is that, under current prevailing models, local peoples are being overwhelmingly marginalized in the process of development. In most cases, communities are afforded only a token role, performing cultural dances at the borders of reserves for contributions that pale in comparison to the fees collected by tour operators. Few structures currently exist to ensure that a set percentage from tourist proceeds goes towards community funds that can enable the community to secure wells, cattle dips, veterinary supplies, medicines, school fees and other necessities for their well-being. Even fewer of the existing best practices ensure the full participation of the community in how these funds should be allocated and spent, or how the reserve should be managed.

The right to participation is implicit in the United Nations (UN) International Covenant on Economic, Social and Cultural Rights, in Articles 8 (on freedom of association) and 15 (on cultural life), and explicit in the UN International Covenant on Civil and Political Rights. Of direct relevance in this case is the manner in which the right to participation is spelt out in the 1986 UN Declaration on the Right to Development, where Article 2(3) notes that the right to development includes 'active, free and meaningful participation in development'. The right to participation is also outlined in the 1993 Vienna Declaration and Programme of Action.

Individuals, groups and communities have a human right to be involved in decision-making, planning and implementation processes affecting their economic, social and cultural rights, and are entitled to information that enables the decision-making process to be meaningful. It follows that states and non-state actors, particularly development agencies, have a duty to enable people affected by a development activity to participate in ways that can transform their social, political and economic conditions.

## Free prior informed consent

International development organizations have begun adopting participation and consultation standards with respect to indigenous peoples. A UN Development Programme policy paper notes that participation is 'essential in securing all other rights in development processes'.<sup>10</sup> The World Bank has recently updated its Operational Policies on Indigenous People, now requiring that all borrowers from the Bank 'engage in a process of free, prior and informed consultation... [that] results in broad Community support' by the indigenous peoples affected.<sup>11</sup>

The International Labour Organization (ILO) delineated consultation standards with respect to indigenous peoples in Convention No. 169. The relevant text of the

Convention (Article 6(2)) states: 'The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures'.

The most developed explanation of what prior informed consent means has been made by the UN Committee on the Elimination of Racial Discrimination (CERD). CERD adopted General Recommendation 23 Concerning Indigenous Peoples, which emphasizes that no decisions directly relating to the rights or interests of indigenous people should be taken without their 'informed consent'. The Committee has reiterated this duty in its Concluding Observations to states parties.

The requirement of prior informed consent has also been delineated in the case law of the Inter-American Commission on Human Rights. In *Mary and Carrie Dann v. USA*, the Commission noted that convening meetings with the community 14 years after title extinguishment proceedings began constituted neither prior nor effective participation.<sup>12</sup> To have a process of consent that is fully informed 'requires at a minimum that all of the members of the Community are fully and accurately informed of the nature and consequences of the process and provided with an effective opportunity to participate individually or as collectives'.<sup>13</sup>

The above standards are obligations conferred upon states under international law. The tourism industry should use these standards as important guidelines in all their dealings with indigenous communities when consulting with them on conservation efforts taking place on their ancestral lands.

## Concluding remarks

As ecotourism grows in popularity, there are a number of challenges that need to be faced. Stakeholders must strive to ensure that global standards are established, monitored and met, to ensure that all those affected by (or involved in) ecotourism may benefit. The standards in question need to be respectful of the rights of indigenous peoples. As traditional custodians of their lands, with intimate knowledge of the eco-systems they long protected, indigenous peoples must be viewed as key contributors to the ecotourism industry. The time has come for all stakeholders to join hands in making the shift towards ethical solutions that can allow for an ecotourism industry that thrives alongside empowered and involved indigenous communities for the benefit of all.

## Notes

- 1 David Western, 'The Responsible Business Opportunity', East Africa International Year of Ecotourism Regional Meeting Information Summary of Proceedings (2002).
- 2 *Ibid.*
- 3 Tourism Concern, *Tourism in focus*, Spring 2006, p. 8.
- 4 Links to these cases are available at [http://www.minorityrights.org/Trouble\\_in\\_Paradise](http://www.minorityrights.org/Trouble_in_Paradise)

# working to secure the rights of minorities and indigenous peoples

minority  
rights  
group  
international

## Recommendations

### Recommendations from the Kenya Pastoralist Week, 2006\*

The Kenya Pastoralist Week (KPW) is a multi-stakeholder advocacy platform for pastoralists and minorities, established in 2003. The KPW meets annually with a view to lobbying and advocating for recognition and participation of pastoralists and minorities in development processes. Of the hundreds of communities having taken part in the KPW, many suffer directly from tensions between ecotourism and their pastoralist way of life.

Since 2003, the KPW has established solidarity linkages with other similar platforms in Ethiopia, Tanzania and Uganda. In November 2006, the KPW developed a preliminary list of issues and recommendations to be considered by the tourism industry, local authorities and other relevant stakeholders. Contributions via the online forum on MRG's website will help develop a perspective on the concerns of other indigenous peoples around the world; a further understanding of what the tourism industry and decision-makers might consider as obstacles or first steps to addressing these concerns; and what ecotourists themselves wish to support.

#### KPW 2006 Recommendations:

1. That the private sector should respect the rights of indigenous communities in the conduct of their business, including within the tourism industry.
2. That governments and the tourism industry recognize the pastoralist way of life as an ancestral mode of

production that must be protected and promoted alongside ecotourism.

3. That spaces be created to afford indigenous peoples the opportunity to actively participate in decision-making processes that target their land and natural resources.
4. That restitution mechanisms be developed to ensure that land and natural resource rights are restored to the communities in instances where they were unfairly acquired or expropriated.
5. That governments provide for policy recognition of communal land tenure and pursue equitable sharing of resources.
6. That deliberate and specific benefit-sharing measures be instituted to ensure that indigenous peoples benefit from resources that accrue from the tourism industry using their ancestral lands.
7. That funds be made available through tourism revenues and government grants to facilitate indigenous peoples' human rights education, solidarity building and advocacy before national and international human rights bodies.
8. That, in instances where litigation is necessary, indigenous peoples can engage in this process free from intimidation and harassment.
9. That governments that have not yet signed and ratified international instruments for the protection of minorities and indigenous peoples do so immediately.

\* See Kenya Pastoralist Week 2006 at <http://www.cemiride.info>

5 Report of the African Commission's Working Group of Experts, Submitted in accordance with the 'Resolution on the Rights of Indigenous Populations/Communities in Africa', Adopted by the African Commission on Human and Peoples Rights at its 28th ordinary session (2005).

6 *Ibid.* p. 21.

7 *The Awas Tingni Case* (2001), para. 140(b) and 151.

8 *Ibid.* at para. 148.

9 *Ibid.* at para. 151.

10 *Integrating Human Rights with Development: A UNDP Policy Document*, United Nations Development Programme (1998), Sec. 2.

11 *Revised Draft Operational Policies on Indigenous Peoples 4.10*, World Bank (2004), para. 1.

12 *Mary and Carrie Dann v USA* (2002), para. 136.

13 *Ibid.* at para. 140.

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**Minority Rights Group International** (MRG) is a non-governmental organization (NGO) working to secure the rights of ethnic, religious and linguistic minorities worldwide, and to promote cooperation and understanding between communities. MRG has consultative status with the United Nations Economic and Social Council (ECOSOC), and observer status with the African Commission on Human and Peoples' Rights. MRG is registered as a charity, no. 282305, and a company limited by guarantee in the UK, no. 1544957. **ISBN 1 904584 58 6** This study is published as a contribution to public understanding. The text does not necessarily represent in every detail the collective view of MRG or its partners. Copies of this study are available online at [www.minorityrights.org](http://www.minorityrights.org). Copies can also be obtained from MRG's London office.

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