INDIGENOUS PEOPLES AND THE RIGHT TO FOOD IN KENYA

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SUMMARY

- The right to food as a concept recognizes the links between food security, culture and resource rights, and as a legal principle, it requires a state to ensure that people are free from hunger.

- As a framework to guide policy, research and advocacy, the right to food is gaining increasing popularity among international organizations that address food security and indigenous rights.

- In recent years, the right to food among Kenya's indigenous peoples has been challenged by climate change and state interventions that have resulted in landloss and resettlement.

- Past policies aimed at pastoral development — such as the Maasai Group Ranches — have failed in light of their lack of economic, social and cultural viability.

THE RIGHT TO FOOD AND INDIGENOUS PEOPLES

The 'right to food' is part of an international movement that approaches food security from a rights-based perspective. The term is often used synonymously with 'food sovereignty,' which stresses the definition of food according to the cultural traditions and livelihoods of individuals (Knuth, 2009). Food sovereignty is particularly concerned with self-sufficiency at both the national and local level, and the importance of resource rights and appropriate trade agreements to achieve this goal (Knuth, 2009). Right to food shares many of the same principles of food sovereignty, except that in the case of the former, rights can be binding in international law.

The right to food as a *human right* is established in several codes of law, the most important of which is the International Covenant on Economic, Social,

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and Cultural Rights (ICESCR). Article 11 of the Covenant urges states to implement provisions to ensure people are free from hunger and provided an adequate standard of living (Article 11.1, ICESCR in Knuth, 2009). The body of experts that supervises states' compliancy is the Committee of Economic, Social, and Cultural Rights (CESCR), which interprets the law as follows: "The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture" (GC No. 12 in Knuth, 2009). The Committee defines the availability of food as referring to "the possibilities for feeding oneself directly from productive land or other natural resources."(GC. No. 12,12 in RAPDA and FIAN, 2010).

The CESCR's interpretation of the right to food is particularly important for indigenous peoples. For many indigenous groups food is a 'total social fact'[1]. This assertion is especially true for indigenous peoples who produce their own food through traditional livelihoods (Ask, 2006). While potentially self-sufficient, these groups often face periods of food insecurity, caused by a lack of rights and conditions of poverty. As the Office of the High Commissioner for Human Rights points out, indigenous peoples "are often marginalized when it comes to projects affecting their lands and have been the victims of forced displacement as a result of ventures such as the exploitation of natural resources" (2011). While making up "five percept of the world's populations," they "comprise about 15 percent of the world's poor" (UNHR, 2011). In light of the connection between poverty and food insecurity, it is not surprising that levels of hunger and malnutrition among indigenous populations are disproportionately higher than among the non-indigenous (Knuth, 2009).

PASTORALISTS IN KENYA AND FOOD SECURITY

Many pastoral groups in Kenya are recognized as indigenous peoples based on the experiences they share with other indigenous peoples across the world – namely, their lack of political representation and secure rights to resources (IWGIA, 2011). They comprise 25 percent of the country's population, numbering over three million people, and are broadly defined as "livestock farmer(s) who derives more than 50 percent of economic

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1   The term 'total social fact' was developed by French sociologists to describe an activity which has implications throughout the religious, political, economic and legal spheres of social life.

activity and subsistence from livestock keeping" (Ask, 2006). Investments in livestock have provided many of these groups with high-protein diets that include a combination of meat, milk and blood, supplemented by grains, traditional herbs and vegetables (Homewood, 2009). These diets have been a source of subsistence guiding people's understandings of health and nutrition, and have acted as a key symbol of identity used to express their competency as livestock herders (Homewood, 2008).

In recent years pastoralists' right to food has been challenged by climate change and state interventions that have resulted in land loss and resettlement. Pastoralists in Kenya predominantly live in the driest areas of the country classified as semi-arid and arid lands (ASALs) (Wabwire, 2011). The ASALs cover 80 percent of the total land area of the country and support roughly 70 percent of the national livestock population (Wabwire, 2011). In recent years, however, the aridity and intemperateness of these areas have intensified, with pastoralists reporting longer droughts and unpredictable rainfall. These two factors are difficult to manage without adequate land to move livestock to new pastures and water resources. Many pastoral groups in Kenya have lost land or have been resettled in towns or marginally productive areas. These trends can be linked to colonial and post-colonial land-tenure reforms, and resettlement programs that promote settled livestock production (Anderson, 1999).

LEARNING FROM PAST FOOD SECURITY POLICIES

Arguably the most significant experiment in Kenya's pastoral development has been the creation of the Maasai Group Ranches (GRs), designed to increase livestock production, enhance rangeland conservation and modernize indigenous institutions. Beginning in the mid-1960s the Group Ranch project encouraged groups of pastoralists to form committees that would jointly manage and own fixed areas of land. Ranches were mainly developed in the administrative districts of Kajiado and Narok where Maasai pastoralists live (Ng'ethe, 2011). Within the demarcated boundaries of the group ranch, pastoralists were encouraged to enforce grazing quotas and develop infrastructure through loans and user fees. These infrastructural developments were typically in the form of boreholes and water points, which aimed to reduce the need to migrate (WRS and Landesa, 2011). Pastoralists were also provided with new breeds of livestock commonly

used in settled ranching, which were less resilient to drought, heat, and periods of rapid weight loss (Homewood, 2008; WRS and Landesa, 2011). Combined, these inputs were intended to intensify and commercialize the livestock sector in the drier areas of the country.

The group ranch project, however, has failed to improve livestock production and land-tenure security. Some group ranches were not located on resource-rich land, while others were not ecologically viable, forcing many pastoralists to move outside their boundaries in search of water and pasture during periods of drought (WRI and Landesa, 2011). The sense of tenure insecurity caused by conflicts over boundaries and economic inequality between users encouraged the subdivision of ranches into individual plots, a process which begun in the mid-1970s and continues today (Ng'ethe, 2011). The privatization of formerly communal land has resulted in land-loss, with large tracts being sold to outsiders, confiscated illegally through political dealings and foreclosed upon to pay for outstanding debts (Galaty, 1994).

The subdivision and loss of land has created serious challenges in achieving food security in Maasai communities. As a report on the right to food in Kenya details, the conversion of customary tenure to individual ownership has "contributed to eroding traditional survival mechanism[s] and the pastoralist way of life" (RAPDA and FIAN, 2010: 23). The lack of available pastures resulting from piece-meal subdivision has contributed to the dissemination and weakening of herds during the dry season, with some families being pushed outside of the livestock sector altogether (RAPDA and FIAN, 2010). In a society where livestock are a main source of food and income, livestock losses cause periods of food insecurity that are rarely addressed with food aid. It is estimated that in Kajiado North only 80,000 of the 500,000 residents in need of food aid are receiving deliveries (Interviewee from World Food Program in RAPDA and FIAN, 2010).

ADDRESSING THE POTENTIAL BENEFITS AND CHALLENGES OF THE RIGHT TO FOOD

While faced with serious challenges, many indigenous groups, such as the Maasai, are politically mobilized through (among other avenues) the indigenous rights movement. This movement is an international initiative that has grown considerably over the past 40 years. It brings together

diverse peoples from around the world who have common experiences of cultural, social, political and economic discrimination as minorities[2] within nation-states (Knuth, 2009). The movement is legally supported through a number of international codes, including the 2007 United Nations Declaration on the Rights of Indigenous Peoples. The right to food provides yet another important legal right for indigenous groups who experience significant challenges in accessing adequate quantities and culturally-defined qualities of food. The right to food could also offer indigenous peoples with an additional legal argument when claiming rights to basic resources, including land (Knuth, 2009).

Ultimately, the effectiveness of right to food is not only predicated on claimants' ability to make demands on the state, but also on the state's compliance with international law. Kenya ratified the ICESCR in 1976, and therefore is bound to implement the right to food stipulations stated therein. The right to food, however, is not absolute. The state is able to restrict the right to food if there are more concurring and competing rights and interests (Knuth, 2009). For example, a state may grant concessions to the extraction of resources on the land of indigenous peoples, effectively disrupting their livelihoods, if 'adequate' social assistance is provided as compensation (Knuth, 2009).

The state's domestication of international law in substantive terms also depends on the adoption of international rights in the constitution. The new constitution in Kenya, signed in August 2010, includes a provision related to the right to food (FAO, 2010). This provision, as the FAO right to food program points out, is a significant step at the national level in regards to addressing food security. The next step ultimately involves the development of legislation, policies and programs to ensure the principles of the right to food are realized at the local level.

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2   Indigenous minorities are often defined by their membership to an 'tribal' or 'ethnic' group.

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