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Simat praises Indigenous presence in new Kenya Constitution

Despite their global renown, the Maasai have seldom been at the table in Kenya when decisions were made that concerned them. But as Kenya moved toward a referendum vote on a long-debated new constitution, it became clear that the final document would recognize Indigenous presence and assert Indigenous rights.

Once the referendum vote was scheduled, Maasai activist Mary Simat embarked on a major initiative to familiarize Maasai villagers with the new constitution. Simat, a member of the First Peoples Worldwide board of directors and executive director of Maasai Women for Education and Economic Development, an FPW grantee, urged the Maasai in remote villages to vote. In a matter of months, many came to understand that they could regain rights and resources on voting day.

“It was very good that we had FPW funds to run up and down to the villages. ... We used some of our Maasai experts to explain what was in the constitution.”



Mary Simat photo by Peter Poole

On August 4, 2010, approximately 60 percent of Kenya’s citizens turned out to vote. Almost 70 percent voted for the new constitution, which provides all Kenyans with a bill of rights, devolves power from a central presidency to local governments, and establishes a process for land reform.

“We are celebrating today,” Simat said, in a typical assessment. “We are very proud ... to be recognized for what we have done.”

After years of debate on the constitution, endemic corruption in high office, and a recurrence of ethnic hostilities in the last national election cycle, Kenyans seem to verge on a collective view of August 4 as both a clean break with the past, and a historic new beginning. “Proud to be Kenyan” was the inspired theme of e-mail threads and other commentary in the days after.

Even so, the Indigenous Peoples of Kenya, the Maasai among them, may have the most to celebrate. Never before have they been so politically visible, as Simat has found. The National Heritage ministry named her one of 12 Maasai Heroes in Narok District, the Maasai region west of Nairobi, the national capital. As such she had an official place in the ratification ceremony for the new constitution, a national occasion in Nairobi Aug. 27. Previously she appeared on national television, alongside leading political figures, a week after the referendum vote. She was there as an Indigenous person to discuss Indigenous-specific provisions of the new constitution – a dramatic departure from the old one, a holdover from the colonial era.

“It is like a dream,” Simat said, “to be seated with high government officials, talking on their level, and on national television.”

The Constitution of Kenya now recognizes the country’s Indigenous groups, acknowledging hunter-gatherer, pastoral, forest-dwelling, and nomadic groups, as well as their traditions, customs, languages and livelihoods. The constitution will provide for nominating Indigenous representatives to seats in the national parliament. It includes them in land reform measures, authorizing land use according to their own customs. It enshrines an Indigenous right to self-determination. Through a national Truth, Justice and Reconciliation Commission, it commits Kenya to the redress of historical injustices. And by entrusting revenues to county government councils, rather than to an all-powerful central presidency, it will channel regular funding to local priorities.

“We will now be in control of the revenues, to use them for our own communities,” Simat said.

For the Maasai, semi-nomadic pastoralists of ancient lineage on lands that are now within the borders of Kenya and Tanzania, new resources are timely. In recent decades climate change, conservation interests, safari hunting, tourism, and the government’s commitment to conventional economic development – often accounting for the natural resources of Indigenous Peoples in strictly economic terms – have all helped to diminish Maasai cultural and economic assets.

The referendum vote provided a path to restore them, and in just the right way for Indigenous Peoples – that is, by breaking with the recent past, while carrying forward a deeper one.

“The Indigenous Peoples of this country, they have recognized our ways and our culture,” Simat said. “The document lets us practice our ways without interference.”

-- *Jerry Reynolds*

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In new Kenya, 'Impossible now to dispossess the Ogiek'

Within Africa and internationally, the date of August 4 continues to grow in stature. That was the day almost 60 percent of Kenya's citizens voted overwhelmingly for a new constitution. It includes a bill of rights, regional parliaments and many reform measures.

In approving it, the people replaced a colonial constitution – a holdover from the colonial era that ended with independence in 1963, but retained a corrupting grip on the country for decades – with a democratic document. The degree of change anticipated in Kenya can be gauged from the Ogiek, Indigenous Peoples of the country's Mau Forests Complex. No government of Kenya has ever recognized the Ogiek as Indigenous to the resource-rich forests, much less spelled out their explicit land title rights. Time after time, they have been evicted from their customary holdings. They always return to the forest, but without their stable stewardship the Mau ecosystem is deteriorating. So is the Ogiek culture that evolved from it.

But that's all over, said Kiplangat Cheruyot of Ogiek Peoples Development Program.

"The constitution recognizes Ogiek very clearly, and it will put to rest this eviction and eviction and eviction. ... It will be impossible now to dispossess the Ogiek."

On a grant from First Peoples Worldwide, Ogiek Peoples Development Program put on civic education sessions for the Ogiek, designed to familiarize them with the new constitution. Their response was favorable from early on, Cheruyot related.

"There are a number of issues that made us to vote for this document. It provides for the marginalized and the minority communities," including the Ogiek. It empowers the already established local county councils, transforming them into "parliaments of the region." The Ogiek will be able to partner with the councils around the Mau Forests Complex, and from there Ogiek individuals can be nominated to the national parliament. For the first time, Cheruyot said, "The Ogiek people ... will be able to sit in the parliament."

Also for the first time, "Our right to property is clear." Ogiek land claims cases dating back to 1997 will be heard by a special commission created by the constitution.

As welcome as the Indigenous recognitions may be, Cheruyot added, the Ogiek give equal weight to the environmental conservation standards of the new constitution. "We believe that is a path for us to live in the forest."

The Mau is East Africa's largest continuous forest, and it has come under threat from newly arrived settlers and their demand for resources; from commercial crop planters; from timber companies; and from powerful politicians who illegally allocated forest lands for decades. In addition, the state still consistently accounts for forest resources in economic terms, depicting timber, hydropower, agriculture and tourism as "underlying

requirements for economic development in accordance with Vision 2030” – the national blueprint for Kenya as a “newly industrialized middle-income nation.”

But under the new constitution, Cheruyot said, “Conservation is the supreme law.”

For all that many constitutions look good on paper but not in practice, Cheruyot expresses every confidence that democracy is at hand in Kenya. Many practical steps must be taken to implement the new constitution, and some of them may emerge from a planned meeting of all Indigenous Peoples in Kenya. But first they will celebrate an achievement decades in the making.

“People are feeling good about the constitution. Now what is remaining is the tactical part ... so that we do not lose the dream that we have been thinking about.”

At the official ratification ceremony in the national capital of Nairobi Aug. 27, Kenyans continued to celebrate their new constitution as a break with the colonial past and a new beginning. Among other international notables, U.S. President Barack Obama hailed the vote as an advance for Kenyan democracy. Obama’s late father was Kenyan; the vote took place on the president’s birthday.

-- *Jerry Reynolds*