

# “We Belong to the Land”

## Samburu People’s Legal Battle to Save Lands in Kenya

In March, during their spring break, University of Wyoming law students Sabrina Sameshima and Matt J. Stannard traveled to Kenya to observe a court hearing involving Samburu people who had been forcibly evicted from their lands. Their group included former Cultural Survival intern Travis LaSalle, now a practicing lawyer, who contributed to Cultural Survival’s investigation of police attacks on Samburu communities during 2009 and 2010. The Samburu are taking on some of Kenya’s most powerful figures and institutions in their fight to be returned to their lands. LaSalle and the Center for International Human Rights Law and Advocacy at the University of Wyoming’s College of Law are offering pro bono legal research support to the Samburu’s legal team, and Cultural Survival is providing financial support through its Samburu Legal Fund.



### Sabrina Sameshima & Matt J. Stannard

The Loikop, or Samburu, of north-central Kenya are used to moving around. They have followed cyclical patterns of movement in consistent geographical areas for as long as they can remember. British colonial records and the Samburu’s own testimony suggest that, since at least the early twentieth century, one Samburu community has lived, and periodically moved around on, a piece of land known to them as Kisargei. Like many places in Kenya, the area is known by other names too: the colonial “Eland Downs” or, in reference to its chief landmark, “Kabarak Farm.” Kisargei is also the tributary of the Ewaso Nyiro river, a vital water source now lost to the community, the result of a campaign to evict the community since 2009—which escalated into violence in 2011.

Unbeknownst to the Samburu, Former Kenyan President Daniel Moi obtained title to a large portion of this area during his presidency. In 2009, Moi sold the land to the African Wildlife Foundation (AWF). AWF maintains that they believed the land was free of human residents and clear of ownership dispute. Upon learning this was not the case, AWF gifted the land to the Kenya Wildlife Service (KWS), a Kenyan governmental entity that manages the country’s national parks. Since 2009, community members have reported violent evictions, the torching of their homes, assaults and theft of cattle by government police, and in November of 2011, the murder of a community elder.

In late November 2011, unidentified assailants shot and killed two Kenyan policemen at their post near Kisargei. The police claimed the Samburu were responsible for the attack; community members denied this pointing out that the attackers’ methods suggested they were al-Shabaab, the Islamist militant organization based in southern

Somalia that has made several incursions into Kenya, attacking police posts. Nevertheless, hundreds of police stormed the Samburu community three days later, allegedly confiscating thousands of cows and goats, and harassing and beating residents. Fifty-six year-old tribal elder Mzee Lelekina was found dead soon afterward, his body riddled with bullet wounds. Samburu and Western observers believe the killing was retaliatory; to date, no legal action has been taken concerning Lelekina's murder.

The hostile actions of the police occurred in violation of a court-issued injunction staying evictions and transfer of land until a court could hear the Samburu's numerous objections to the sale and to the Kenyan government's repressive actions. Violation of the injunction is now one of many arguments the Samburu and international human rights advocates are bringing before the High Court in Nyeri. The current phase of the legal action against Moi, AWE, and KWS concerns adverse possession. Under Kenyan law, if one occupies land openly, peacefully, and continually, for 12 years, one may claim title to the occupied land. The implications of such a ruling on Indigenous land claims in Kenya are significant, and the case has garnered attention in the Kenyan and international press.

The trial also highlights the legal system as a meeting point for Indigenous society and the state. The week we spent in Kenya—including three days of trial in Nyeri—in March of 2012, revealed the frustration, pain, dignity and hope so frequently contained in Indigenous rights actions. The little court room in Nyeri became standing-room-only during the trial, with Samburu community members from Kisargei filling one whole side of the observer section and a considerable

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number of seats on the other. Throughout the proceedings, reporters and other interested observers entered, listened for several minutes or an hour, then left to update others. Observers crowded the doorway in the back of the courtroom. Noise bled in from adjoining court rooms and from the street traffic outside. The serious atmosphere seemed to reflect Kenyan legal workers' commitment to the nation's new independent judiciary. A sign outside the courthouse described the mission of the judiciary: *To provide an independent, accessible, responsive forum for the just resolution of disputes in order to preserve the rule of law and to protect all rights and liberties guaranteed by the constitution of Kenya.*

Between sessions and during breaks, with the help of Jo Woodman from Survival International and translators from the community, we asked several community members about the events of the past two years—particularly the assaults this past November. For the community, November 2011 was traumatic and transformative, a culmination of two years of harassment and threats, and a final act of displacement from access to grazing land, water and common space. Each community member we interviewed recounted these events with consistency and controlled anger.



Nakuro, a wife and mother known for frequently speaking her mind in meetings with the plaintiffs' legal team, recalled being told by a Samburu "community manager" (apparently working for the sellers of the land) that, if they were willing to leave Kisargei, the community could relocate, and that a school, hospital and water supply would be waiting for them. The community initially agreed and, following a request by the "manager," provided 18 names of community members to represent their interests. The

bureaucrat came back again, telling the community that such representation was no longer possible, and that only two community members would be given delegate responsibilities. Sensing that the sellers wanted to silence them, the community members balked at the sudden change and refused to accept a deal for relocation.

"The problems started that day," Nakuro said. Nakuro recalled that soldiers appeared among the dwellings soon after

the community backed away from the deal. The soldiers

informed the community members they were "on the president's land" and had to vacate immediately. The legal action and injunction followed, then the violence began in earnest.

Stone-faced, Nakuro reported the burnings and assaults that followed. In addition to the killing of Mzee Lelekina, two other Samburu elders, Mzee Lekitacharan and Mzee Lenchorido, were

severely beaten and taken into custody without immediate medical treatment.

Asked why the community, or individual members, would not relocate, Nakuro responded to the translator, who reported: "She grew up there. She was married there." "Grew up where?" Jo asked, just to be clear. "Kisargei," the woman unambiguously replied. Nakuro has six children. The youngest is 13 years old, suggesting that Nakauro's own family has occupied the land longer than the requisite 12 years to claim adverse possession. Nakuro reports that other Samburu have been living on the land even longer.

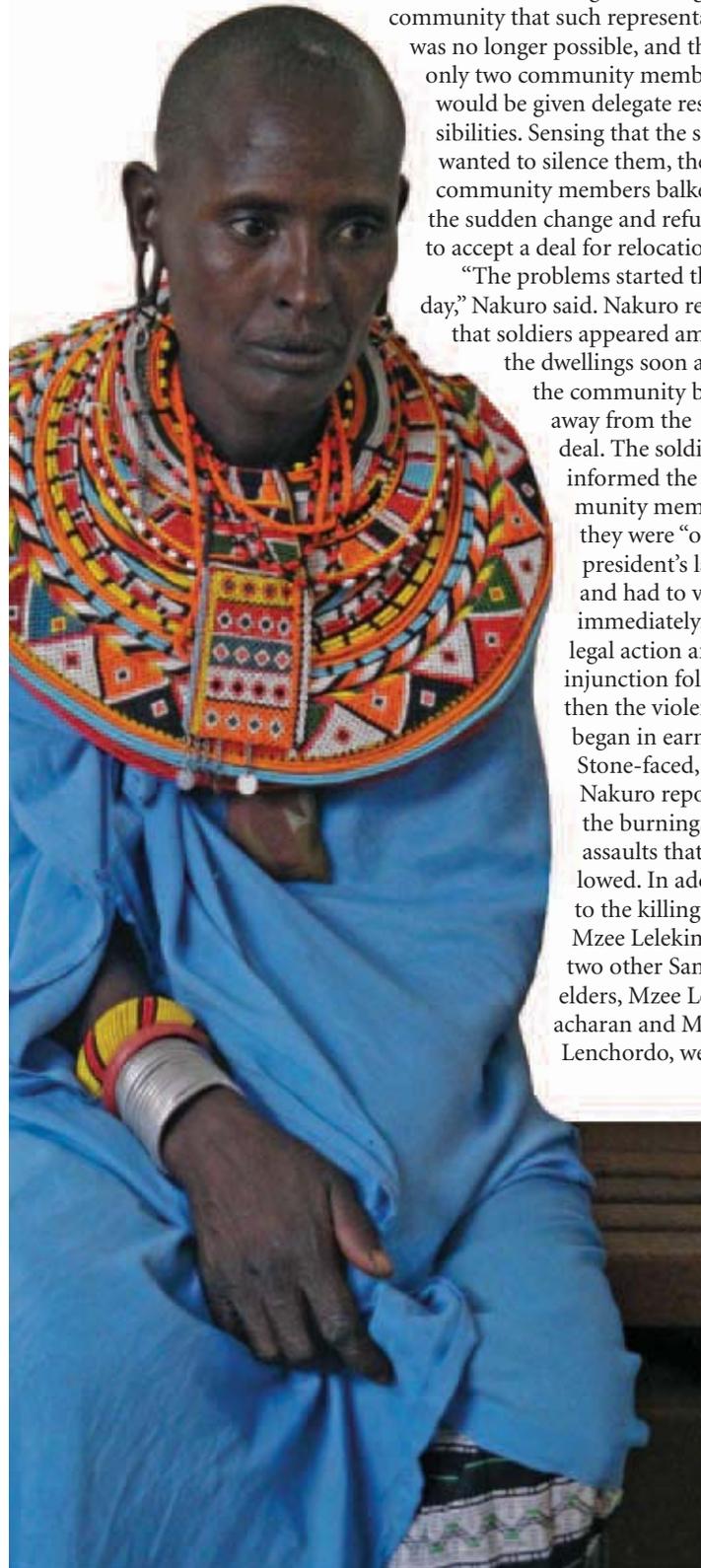
Asked what she would like to say to the defendants, and to the world, Nakuro's gaze grew focused and her words crisp. Of Moi, she asked: "What has he ever done there [on the land]? And me? I have had all my children there." To AWF, she asked: "What is my future? Where should I go? Tell me what to do or where to go next. Where should I go and settle?" Concerning the legal action, her translator said: "She doesn't trust this particular case."

Nakuro's skepticism seemed to be shared by many community members. During the trial in Nyeri, community members quietly filed in and out of the courtroom, sitting stoically throughout the proceedings, most of which were conducted in English, a language few traditional Samburu know. The appearance of three community members as witnesses, and the appointment of a Samburu translator, didn't make the proceedings any more accessible to or inclusive of the members, many of whom are parties in the suit. The translator was ineffective and it was seldom clear whether we were hearing witnesses' actual words or uncertain paraphrasing. Occasional shifts of questions and answers to Swahili, a language known by some but not all Samburu, offered little help. Important administrative and procedural business was still conducted in English, and few of the questions asked of the witnesses offered them genuine opportunities to tell their story.

Other Samburu women we interviewed told similar stories and made similar heartfelt and angry demands on the AWF, KWS, and former President Moi. Esther, a dignified woman a few years older than Nakuro, told us that her children were all born, grown and married on the disputed land. Asked to describe a permanent landmark whose presence is the subject of much argument in the lawsuit, she, like so many others, described the farmhouse and the "shop" that reportedly served as a community gathering place and a clearinghouse for food and supplies. It was a "regular place," where items were periodically stocked and sold. When the police evicted and harassed the Samburu, the shop owners were reportedly also chased away.

Esther's recollection of the November evictions was more explicit than Nakuro's. She recalls a terrifying barrage of helicopters and trucks. "There were so many," she says. People fled their homes, "running away into bushes" to escape police beatings. The conditions since the eviction disturb her as well. The community is scattered, staying wherever they can. "There is no water," she remarked, a lament echoed by several of the scattered community members. To the government of Kenya, Esther asked: "What will happen to me?" And to the AWF she remarked that the land in question "comes from our grand, grand, grandparents. Now I am nothing," she concluded. "I have nowhere to go."

If this Kenyan courthouse is a meeting point for traditional Samburu society and the Kenyan state, the people participating in, and observing the trial are sometimes intersections themselves. Angelina, a 20-year-old Samburu law student, was not born and does not live on Kisargei, but has cousins, aunts and uncles who do. Angelina explained that the Samburu travel with their livestock, but in a consistent fashion modeled after the animals' grazing patterns.





Over time, with all decent land either purchased by private owners or annexed by the government, the Samburu way—cyclical movement with the cattle—may no longer be viable. Precluded from relocating but with nowhere to stay, Samburu culture, “a very rich culture,” she said, modestly, is under attack.

Winning the land claim or other redress won’t solve everything, Angelina said, but it does mean that whatever adaptive measures this community takes, they’ll do so on their own terms. “Having the land is just a basic foundation for them,” she said. But like her traditional relatives, the law student is skeptical of the trial. “I have my doubts.”

Peter Letotin Lemoosa, a lecturer in history and political science at Kenyatta University in Nairobi and a witness for the Samburu plaintiffs, was similarly optimistic about the Samburu being able to develop on their own terms, should they get to keep their land. Even more than Angelina, he inhabits two worlds; Peter’s family is part of a traditional Samburu community, while he extended his reach to the outside world to obtain his Ph.D. Now he inhabits two worlds and is unwilling to give up either. He is concerned that the Samburu who urbanize are often resentful and contemptuous of those who remain as pastoralists. But like Angelina, he is equally concerned that traditional Samburu children and young adults lack access to education. For him, the struggle is simultaneously about tradition and autonomy: understanding one’s history, possessing land as a community, and refusing to give up one culture in order to engage another.

As we write this, the trial goes on, with continuances, more motions, and eventually further testimony. The community members will return to Nyeri when sessions start up again, their presence a reminder that Kenya is many different places and communities, and that law gives an imperfect, awkward accounting of Indigenous struggles for land. Meeting, assisting, and interviewing the Kisargei Samburu was a study of dignity in the face of overwhelming odds and daunting hardship.

— Sabrina Sameshima and Matt J. Stannard are J.D. candidates and interns at the Center for International Human Rights Law and Advocacy, University of Wyoming College of Law.

## Fruitful Partnerships

At First Peoples Worldwide, an Indigenous-led organization based in Fredericksburg, Virginia, we believe that collaboration with other like-minded organizations is an essential part of enhancing our capacity to serve the interests of Indigenous communities. Like Cultural Survival, First Peoples is dedicated to helping Indigenous Peoples all over the world defend their rights, their land and their cultures. We provide small grants to Indigenous communities that are taking steps toward their own development, and Cultural Survival has become an invaluable new asset by bringing new funding opportunities to our attention.

Our collaboration with Cultural Survival began with a joint effort in support of the Samburu community in Kenya. Cultural Survival has been instrumental in providing exposure and advocacy to the Samburu, who have recently been the target of violence by state police in a government campaign to oust them from their cattle grazing territory. Earlier this year, the Samburu were poised to address the government and the media to demand justice for themselves, but needed immediate funding for human rights training and transportation.

Paula Palmer of Cultural Survival’s Global Response program connected the Samburu to First Peoples and provided a letter of endorsement, and we were able to make an emergency grant of \$7,000 to help the Samburu mobilize to continue their fight to protect their lands. We seek to develop partnerships at every level, from local grassroots collaborations to international networking. Our hope is that, through connections like the one between Cultural Survival and First Peoples Worldwide, a powerful and efficient network of Indigenous-centered grassroots organizations can continue to take shape. We are grateful to Cultural Survival for their partnership and support of Indigenous Peoples all over the globe, and we look forward to more collaboration in the future. For more information, please visit our website [www.firstpeoples.org](http://www.firstpeoples.org).

— Neva Adamson, Managing Director,  
First Peoples Worldwide



To learn more about Cultural Survival’s Samburu campaign visit : [goo.gl/UJsfG](http://goo.gl/UJsfG)