

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the rights of indigenous peoples; the Working Group on the use of mercenaries; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: AL Indigenous (2001-8) G/SO 214 (2005-4) G/SO 214 (53-24)
TZA 1/2014

2 April 2014

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights of indigenous peoples; Chair-Rapporteur of the Working Group on the use of mercenaries; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 24/9, 24/13, and 16/23.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the alleged beatings of three Massai pastoralists, **Munjaa son of Musa**, age 24, **Kendo son of Maiwa**, age 46 and **Naboye Ngukwo**, age 27 from Sukenya Village, an area subject to ongoing dispute regarding access to land.

The abovementioned individuals are citizens of Tanzania and residents of Sukenya village, a sub-village of Soitsambu in Loliondo, Northern Tanzania. The area in dispute concerns approximately 12,000 acres of land known as Sukenya Farm which constitutes the ancestral territory of Maasai pastoralists from both Sukenya and Mondorosi villages. The land has been traditionally used by these pastoralists for grazing livestock, accessing important water sources and for moving between villages and sub-villages. It is reported that since 2006, the Maasai have no longer been able to access their traditionally held lands and its resources freely as Sukenya Farm's leasehold was sold by Tanzania Breweries Limited (TBL) to Tanzania Conservation Limited (TCL) for tourism purposes. TCL is owned by a locally incorporated company called Thomson Safaris Company (TSC). Thomson Safaris is a subsidiary of Wineland-Thomson Adventures Inc. based in Boston, United States of America. The title of the land in dispute is currently reported to be in legal proceedings before the High Court.

In the context of the land dispute, it is alleged that in the past years, agents and employees including private security guards of Thomson Safaris have been exerting pressure on Maasai pastoralists to leave the Sukenya Farm area. Allegedly in 2006, employees of Thomson Safari forcibly evicted 200 Maasai families from Sukenya Farm

while also burning 10 Maasai bomas. Upon eviction, the Maasai families relocated to other sectors of the then Soitsambu village, including areas bordering Sukenya Farm. In July 2012, five pastoralists were allegedly beaten, arrested and detained and subsequently charged with trespassing on the disputed land to graze their cattle. The charge was reportedly thrown out by the court on 5 June 2013. Reportedly, the prosecution could not establish a prima facie case concerning ownership and thus the charge of criminal trespass was not upheld. There have since been allegations of subsequent arrests for trespass none of which have reached the courts and Maasai pastoralists being subjected to various acts of intimidation, harassment, extra-judicial arrest and beatings when they have attempted to access Sukenya Farm. It has been reported that no actions have been taken by the authorities to address the complaints relating to these allegations.

According to further information received:

On 13 January 2014, Munjaa son of Musa (Munjaa) and Kendo son of Maiwa (Kendo) were allegedly assaulted by local police and wardens of the Thomson Safaris company. Munjaa was in the vicinity of Sukenya village searching for his cattle which had disappeared when he was approached by several police officers and wardens who allegedly proceeded to beat him. Reportedly, he was not informed of why he was being beaten and he did not resist as he feared for his life. The police and wardens had firearms which they pointed at Munjaa. He was allegedly spat on and threatened with words that led him to believe that he was in great danger and that he was going to be killed. On the same day, Kendo was also taken in by the same police officers and wardens while he was grazing his calves with his two young sons near his home in Sukenya village. The police officers and wardens allegedly arrived in a car and began to beat him with their fists and a metal pipe. He was reportedly slapped hard on the face by a police officer causing him to bleed a lot.

Both Munjaa and Kendo were reported to have been taken in a car to the wardens' camp in Sukenya Farm where they were beaten further. Munjaa was struck with a machete and wounded on his arm and he lost a lot of blood. During the incident he was reportedly pressured to name someone he did not know in relation to a fight with the police. Kendo was further beaten with a metal pipe and kicked by the police officers and wardens who wore heavy boots. His mouth was injured and he bled. Kendo was released seven hours after he was taken and Munjaa two days later on 15 January. Both men reportedly went to seek medical treatment at the Wasso Public Hospital. The hospital doctor treated their injuries but allegedly refused to complete the police form 3 (PF3 forms) which requires giving details of the injuries and their likely causes. It is alleged that the doctor was concerned that he might be called to explain the injuries if the case ever made it to court.

During January 2014, Naboye Ngukwo (Naboye) was also reported to have been approached by Thomson Safaris wardens and local police when he was grazing his cattle in the vicinity of Sukenya Farm. He was allegedly knocked to the ground and beaten with a big stick that he was carrying for grazing. He was reportedly beaten extensively and his hand was badly injured where he had been

hit with a club. Naboye was allegedly told by the police that he would be killed and was afraid for his life. He was subsequently released and went to Wasso Public Hospital for treatment where he discovered through an x-ray that his hand was broken. The hospital doctor allegedly refused to complete the PF3 form giving details of the injuries and likely causes.

In light of the abovementioned information, we wish to refer to the fact that three communications dated 23 March 2009, 23 September 2009 and 8 May 2013 have been sent to your Excellency's Government from the Special Rapporteur on the rights of indigenous peoples concerning similar situations regarding the alleged eviction of Maasai pastoralists in the Kilosa and Ngorongoro Districts and in the Loliondo Game Control Area. Furthermore, on 14 November 2013, the Special Rapporteur on indigenous rights and the Working Group on the use of mercenaries transmitted a communication to your Excellency's Government concerning the alleged forcible eviction and human rights issues affecting indigenous Maasai pastoralists in the area of Sukenya Farm. We regret that to date, there have been no responses from your Excellency's Government to any of the communications mentioned.

Grave concern is expressed at the allegations regarding the abovementioned individuals and the reported acts of intimidation, harassment and beatings inflicted by local police officials and Thomson Safaris' security personnel on Maasai pastoralists in the context of the ongoing dispute over Sukenya Farm.

While we do not wish to prejudge the accuracy of these allegations, we would like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the cases of the persons named above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

In this context, we would like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council Resolution 16/23 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

We would further like to draw your Excellency's Government's attention to paragraph 8 (a) of Resolution 16/23 of the Human Rights Council, which stated that "Intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person, can amount to cruel, inhuman or degrading treatment or to torture.

Furthermore, paragraph 7b of Human Rights Council Resolution 16/23, urges States "(t)o take persistent, determined and effective measures to have all allegations of

torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed; and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture.”

In relation to the allegations of the use of private security personnel to allegedly instigate acts of intimidation, harassment and beatings on the Maasai pastoralists, we wish to refer to paragraph 18 of Human Rights Council resolution 24/13 which requested the Working Group on the use of mercenaries “to continue to monitor mercenaries and mercenary-related activities in all their forms and manifestations, including private military and security companies, in different parts of the world...” In this context, we would like to refer to the Guiding Principles on Business and Human Rights, adopted by the Human Rights Council in 2011, which sets out, inter alia, that States must protect against human rights abuse within their territory and/or jurisdiction by third parties including business enterprises. Furthermore, business enterprises should respect human rights, a responsibility that applies to all enterprises regardless of their size, sector, operational context, ownership and structure. States must also take appropriate steps to ensure through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction, those affected have access to effective remedy.

In light of the concerns raised by the information in this letter as well as in the previous communications to your Government regarding the Maasai people, we request your Government’s response to the allegations transmitted in this letter, and any additional information your Government may deem relevant. In particular, we would like to know further information regarding the following:

1. The measures that have been put in place to provide displaced Maasai pastoralists with adequate compensation including alternative grazing areas and water points necessary for their subsistence.
2. We would appreciate further information on the security personnel used by Thomson Safaris to guard the Sukenya Farm area and whether they are contracted by the company to provide security or are direct employees of Thomson Safaris.
3. We would appreciate information on whether local authorities provided security services to either Tanzania Conservation Limited or Thomson Safaris Limited for a fee in the Sukenya Farm area? If so, please provide details.

4. The measures taken to investigate and address the allegations of ongoing harassment and violence against Maasai pastoralists who attempt to access traditional lands and resources in the Sukenya Farm area.

5. Please provide information on measures taken by the Government or Thomson Safaris representatives to resolve ongoing disputes regarding Sukenya Farm.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

James Anaya
Special Rapporteur on the rights of indigenous peoples

Patricia Arias
Chair-Rapporteur of the Working Group on the use of mercenaries

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading
treatment or punishment