

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the rights of indigenous peoples and the Special Rapporteur on minority issues

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the rights of indigenous peoples and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 43/16, 44/15, 42/20 and 43/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the criminalisation of indigenous Maasai human rights defenders Mr. **Robinson Nalengoyo Ole Torome**, Mr. **Tima Kuronoi**, Mr. **Kingiri Kuronoi**, and Mr. **Oropi Kuronoi**, and the ongoing land dispute between Kedong Ranch Limited, a company domiciled in Kenya, and the indigenous Maasai peoples in Kedong Valley, Kenya. The Maasai also constitute an ethnic and linguistic minority in Kenya.

Mr. Tima Kuronoi, Mr. Kingiri Kuronoi, Mr. Oropi Kuronoi, and Mr. Torome are indigenous human rights defenders, members of the Maasai indigenous community and advocates for the indigenous rights of the Maasai to their ancestral lands in the Kedong Valley, where they have lived for generations. The land in Kedong Valley is essential for the Maasai peoples; as pastoralists, their entire livelihood and culture depend on moving freely within and living off this land, and it holds great cultural and spiritual significance within their community.

Kedong Ranch Ltd. is a private corporation consisting of private ranches and dairy farms. It currently has 23 shareholders, some of whom are family members of the current President of Kenya, Uhuru Kenyatta. Kedong Ranch Ltd has been leasing approximately 75,000 acres of Maasai indigenous land since the 1970's. There has been a longstanding land dispute between the Maasai indigenous peoples and Kedong Ranch Ltd over the validity of this lease.

According to information received:

In July 2019, four individuals claiming to be representatives of the Maasai community made an agreement with Kedong Ranch Ltd. in return for 4,000 acres and 10 million Ksh to the Maasai communities. The wider Maasai community including the four aforementioned human rights defenders, claim that this agreement was illegal and made without their proper free, prior and informed consent (FPIC). On 30 October 2019, a case was filed questioning the validity of the agreement between Kedong Ranch Ltd. and the four alleged representatives of the Maasai community. Maasai indigenous defenders and supporters have demanded that Kedong Ranch Ltd. halt all activities on the land in question pending the decision by the Court of Appeal and the Environment and Land Court, which may result in new legal action and land

ownership.

On 19 October 2019, Mr. Torome and other petitioners filed another case against Kedong Ranch Ltd., the Kenya Railways Corporation, the National Land Commission and the Attorney General of Kenya, on behalf of 4,000 Maasai families (35,000 individuals) living on the Maasai ancestral land. The case calls for recognition of the Maasai peoples' collective land rights and an investigation into the legality of Kedong Ranch Ltd.'s land lease.

On 26 July 2020, Mr. Torome was arrested in Kedong Ranch. He was charged with causing bodily harm and disturbances and released on bail. The human rights defender is currently awaiting trial.

On 21 December 2020, while defending the demarcation of their land that had allegedly been sold without their consent, three members of a Maasai family, Mr. Tima Kuronoi, Mr. Kingiri Kuronoi, and Mr. Oropi Kuronoi were arrested, charged with assault and then released on bail. On 21 January 2021, Mr. Tima Kuronoi, Mr. Kingiri Kuronoi, and Mr. Oropi Kuronoi were arrested after they tried to prevent the employees of Kedong Ranch Ltd. from digging trenches on their land. The three human rights defenders were charged with assault and released on bail later that day. The charges against them still stand.

Without prejudging the accuracy of these allegations, we express serious concern in relation to the ongoing judicial harassment and criminalisation of Mr. Tima Kuronoi, Mr. Kingiri Kuronoi, Mr. Oropi Kuronoi, and Mr. Torome in retaliation for their legitimate human rights work in defending the indigenous ancestral land of their community. It is evident that their ongoing cases are linked to their efforts to stop Kedong Ranch Ltd.'s encroachment on their ancestral land, notably the digging of trenches around it, which according to sources is a colonial practice that is in direct violation of their right to livelihood and culture as indigenous pastoralists and of essential elements of their ethnic identity as a minority. Furthermore, the criminalisation of the four above mentioned human rights defenders exposes an extremely worrying trend in which local police appear to be intervening on behalf of Kedong Ranch Ltd. against the Maasai peoples, resulting in impunity for the perpetrators of harassment, intimidation and physical attack against human rights defenders and local indigenous Maasai peoples.

We express concern over the negative impact the ongoing land conflict on the Maasai indigenous community. Not only does it directly obstruct their freedom of movement and violate their collective land rights, it has also caused the death of a number of the Maasai's livestock and a member of the Maasai community. In September 2020, a 9-year-old Maasai girl died after falling into an 11-foot trench on her way home. The Maasai peoples have been subjected to ongoing harassment, intimidation and threats, including threats of forcible evictions and destruction of their property and homes, because of the land dispute with Kedong Ranch Ltd. We fear that this climate of intimidation and threats against the Maasai communities, and the increased risk of criminalisation will deter them from carrying out their human rights work in defending their ancestral land rights.

We express our deep concern over Kedong Ranch Ltd.'s apparent lack of respect for and disregard of the Maasai peoples' collective right to their ancestral lands and their right to self-determination. As party to an ongoing land dispute that is

pending in the Court of Appeals, we are concerned that Kedong Ranch Ltd. continues to carry out its activities, including the digging of trenches, despite requests from the Maasai peoples to stop all development on the land until a verdict is reached. We are concerned that Kedong Ranch Ltd. violated the Maasai peoples' right to free, prior and informed consent and we fear that the Maasai community are in danger of further dispossession of their ancestral lands, which will have a stark impact on their social, cultural rights as well as the livelihoods of community members.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter, which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please give the factual and legal reasons for the arrest of and charges against human rights defenders Mr. Tima Kuronoi, Mr. Kingiri Kuronoi, Mr. Oropi Kuronoi, and Mr. Robinson Nalengoyo Ole Torome, and an update on the criminal proceedings against them.
3. Please explain the measures that have been put in place to ensure a fair trial on the ongoing land ownership case between the Maasai peoples and Kedong Ranch Ltd. at the High Court and the case at the Court of Appeal questioning the legality of the lease agreement between the four individuals and Kedong Ranch Ltd., and please explain why Kedong Ranch Ltd. has been permitted to continue development and construction while these cases are ongoing.
4. Please provide information on any steps that your Excellency's Government has undertaken, or is considering to take, including policies, legislation and regulations, to fulfill its obligation to protect against human rights abuses by business enterprises within its territories and/or jurisdiction, and to ensure that business enterprises conduct effective human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights throughout their operation, as set forth by the UN Guiding Principles on Business and Human Rights.
5. Please indicate the actions taken, or being planned, by your Government to implement the relevant provisions in the 2019 National Action Plan on Business and Human Rights (NAP) to "develop procedural guidelines for use by businesses, individuals and communities in their negotiations for land access and acquisition," as well as to "enforce all applicable laws as well as respect internationally recognised human rights laws and standards as they relate to land access and acquisition, natural resource management, environment and revenue management".

6. Please provide information regarding measures that your Excellency's Government has taken, in response to the recommendation provided in the Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its visit to Kenya in 2019. In particular, please provide information regarding measures that your Excellency's Government has put in place to protect indigenous peoples in general, and more specifically regarding the recommendations to "enforce the implementation of norms related to consultation and public participation" and to "ensure that all stakeholders, in particular the affected people, are provided with support in land acquisition negotiations, including in terms of access to information and technical assistance".
7. Please provide information of the investigation into the death of the young Maasai girl who died in September 2020 as a result of falling into the trenches dug by Kedong Ranch Ltd.
8. Please provide any information you have on the legality of Kedong Ranch Ltd.'s land lease of the Maasai indigenous ancestral land.
9. Please indicate the measures that have been implemented to prevent further assaults, threats and harassment of the Maasai peoples. If no such steps have been taken, please indicate a manner in which we may be able to engage with your Excellency's Government as to the development and implementation of such concrete steps.
10. Please explain what guarantees have been put in place by your Excellency's government to ensure that all human rights defenders in Kenya, including indigenous human rights defenders, can carry out their peaceful work in a safe and enabling environment. If no measures have been taken, please indicate a means by which we may engage with your Excellency's government on the development of such protection measures.
11. Please provide information on any steps taken by your Excellency's Government to ensure that the affected Maasai indigenous community in your territory and/or jurisdiction have access to effective remedies for business related human rights abuses.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please be informed that a similar letter on the same subject has also been sent to the company Kedong Ranch Ltd.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Dante Pesce
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

José Francisco Cali Tzay
Special Rapporteur on the rights of indigenous peoples

Fernand de Varennes
Special Rapporteur on minority issues

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government the principle and basic right to self-determination, which is guaranteed in the following international treaties: article 1 (1) of Covenant on Economic, Social and Cultural Rights (ICESCR) ratified by Kenya on 1 May 1972 and article 1 (1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Kenya on 1 March 1972. In line with these international covenants, the State shall respect and uphold the right to self-determination, and protect and safeguard the social, cultural and economic development of all peoples.

We draw your attention to the following articles of the ICCPR: article 2 (1), which underlines that each State Party to the covenant shall respect the rights of all individuals in its territory, without distinction of any kind; article 14 (1) which states that all persons are entitled to a fair and public hearing by a competent independent and impartial tribunal established by law; and article 27 which declares that ethnic minorities shall not be denied the right to enjoy their own culture. We would also like to draw your attention to article 17 of the Universal Declaration of Human Rights, which provides that everyone has the right to own property individually and in association with others, and no one should be arbitrarily deprived of their property.

We would also like to refer to the UN Declaration on the Rights of Indigenous Peoples that outlines and defines the individual and collective rights of indigenous peoples, particularly article 25 which states that indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned lands, article 26, which declares that indigenous peoples have the right to the lands and territories which they have traditionally owned, to use and possess these lands as they wish, and that States shall recognise and protect these lands. Furthermore, in article 27, this declaration outlines indigenous peoples' right to redress, either by restitution or by compensation, to traditionally owned lands that have been confiscated or occupied, and that transfer or lease of these lands was freely agreed upon, this compensation shall take the form of lands equal in size and legal status or of monetary compensation to those occupied.

We would also urge your Excellency's government to uphold the right to free, prior, and informed consent (FPIC) of indigenous peoples over their ancestral lands, territories and natural resources. This right to FPIC is enshrined in the UN Declaration on the Rights of Indigenous Peoples and by the African Commission in its Endorois decision. The African Commission has raised concern over the lack of feedback from your Excellency's government on measures taken to implement the Endorois decision, and we would encourage you to apply the above-mentioned human rights of indigenous peoples in the current legal cases regarding the ancestral ownership of Maasai lands. We would also urge you to ensure that the appropriate compensation for the losses suffered by the indigenous Maasai communities because of projects and development implemented on their ancestral lands without their FPIC.

We would also like to draw your attention to the UN Framework and Guiding Principles on Business and Human Rights, a corporate human rights responsibility initiative that provides a global standard for preventing business activity and development negatively impacting human rights. We would urge your Excellency's government to hold private actors whose business activity results in human rights

violations accountable for their actions, in compliance with the UN framework. We would also like to refer to Human Rights Council Resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.

Also, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, which states that everyone has the right to promote and to strive for the protection and realization of human rights and indicates the State's prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms (articles 1 and 2). The Declaration details the State's obligation to ensure that no one is subject to violence, threats, or retaliation as a consequence of carrying out their legitimate work as human rights defenders (article 12).

Lastly, we would like to highlight the UN Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, are relevant to the impact of business activities on human rights. These Guiding Principles are grounded in recognition of:

- a. "States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b. The role of business enterprises as specialized organs or society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- c. The need for rights and obligations to be matched to appropriate and effective remedies when breached."

According to the Guiding Principles, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises.

The obligation to protect, respect, and fulfill human rights, recognized under treaty and customary law entails a duty on the part of the State not only to refrain from violating human rights, but to exercise due diligence to prevent and protect individuals from abuse committed by non-State actors (see for example Human Rights Committee, General Comment no. 31 para. 8).

It is a recognized principle that States must protect against human rights abuse by business enterprises within their territory. As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to "prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication" (Guiding Principle 1). This requires States to "state clearly that all companies domiciled within their territory and/or jurisdiction are expected to respect human rights in all their activities" (Guiding Principle 2). In addition, States should "enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights..." (Guiding Principle 3). The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur.

In particular, Principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. The Commentary to Principle 26 underlines how States, in order to ensure access to remedy, should make sure that the legitimate activities of human rights defenders are not obstructed. Moreover, Principle 26 stipulates that “States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.”

States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.