

**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**

REFERENCE:  
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Mr. Wood,

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.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 56 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to your attention 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

Kedong Ranch Ltd.

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 people 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/or comment(s) you may have on the allegations regarding the ongoing land conflict between Kedong Ranch Ltd. and the indigenous Maasai community.
2. Please provide information as to what human rights due diligence policies and processes have been put in place by Kedong Ranch Ltd. to prevent, mitigate and account for how you address adverse human rights impacts throughout your business operations, in line with the UN Guiding Principles on Business and Human Rights

3. Please provide information about any specific human rights due diligence or impact assessment undertaken taken by your company, concerning the continued development and activity in spite of the fact that the Maasai indigenous community have requested a halt to all development until the land dispute has been settled.
4. Please provide information on the agreement made in July 2019 between four individuals claiming to be representatives of the Maasai community made and Kedong Ranch Ltd. in return for 4,000 acres and 10 million Ksh to the Maasai communities.
5. Please indicate the measures that have been implemented to prevent further assaults, threats and harassment of the Maasai peoples by employees of Kedong Ranch Ltd.
6. Please provide information on whether Kedong Ranch Ltd. has established, or participated in an effective operational-level grievance mechanism to address adverse human rights impacts caused by its operations, in line with the UN Guiding Principles. Please also provide any information as to whether such a mechanism has been used to address any concerns or impacts arising out of the development Kedong Ranch Ltd., as well as information on any outcomes or remedies provided as a result.
7. Please provide information whether your company has provided, or is considering to provide, effective remedy, including adequate compensation, to local communities affected by the development of Kedong Ranch Ltd.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your company 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.

Please be informed that a letter on this subject matter has been also sent to the Government of Kenya with regard to the allegations raised above.

Please accept, Mr. Wood, 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 draw your attention to the United Nations Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, and which 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, all business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others to address adverse human rights impacts with which they are involved. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights.

Principle 13 has identified two main components to the business responsibility to respect human rights, which require that “business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts”.

Principles 17-21 lays down the four-step human rights due diligence process that all business enterprises should take to identify, prevent, mitigate and account for how they address their adverse human rights impacts. Principle 22 further provides that when “business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes”.

We furthermore wish to refer to the Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007. Article 26 asserts the right of indigenous peoples to ‘the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired’ and for legal recognition of those rights ‘with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.’

Article 10 affirms that indigenous peoples ‘shall not be forcibly removed from their lands or territories’ and that “no relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.” Article 11 of the UN Declaration protects indigenous cultural traditions, customs and practices including archaeological and historical sites, and artifacts and asks states to provide effective mechanisms for redress, in conjunction with indigenous peoples. Article 23 affirms the right of indigenous peoples “to determine and develop priorities and strategies for exercising their right to development.”

Article 28(1) states that “indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.” Article 28(2) furthers this by affirming that “unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.”

We would like to bring to your Excellency’s Government’s attention the international standards regarding the protection of the rights of persons belonging to minorities, in particular article 27 of the ICCPR and the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt the measures to that end (article 1) as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination and in full equality before the law (article 4).

In addition, we would like to recall that the UN Declaration on the right to development (A/RES/41/128) defines the right to development as an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development (article 1.1). The Declaration further states that the human person is the central subject of development and should be the active participant and beneficiary of the right to development (article 2.1) and requires that States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights (article 8.2). We are concerned that according to the above information, the Maasai community were not properly consulted with regard to the construction and development of Kedong Ranch Ltd. on their indigenous lands. We refer to the Guidelines and recommendations on the practical implementation of the right to development, which urge states to design and implement development projects after holding meaningful consultations to identify the development priorities of the communities in a project area and benefits-sharing arrangements that would be suitable for those affected (A/HRC/42/38, para 18). The Guidelines also recommend (para 45) that all actors, including institutions, businesses and investors, who produce information about development projects should provide that information transparently. Specifically:

- (a) Information about development projects should be shared with the affected communities as a matter of priority, in the language of those communities and in accessible formats. The information might need to be translated into local and indigenous languages;
- (b) Information should be shared in a format that is accessible to target populations.