

Mandates of the Special Rapporteur on the rights of Indigenous Peoples; the Working Group on Arbitrary Detention; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and the Special Rapporteur on the human rights of internally displaced persons

Ref.: AL TZA 2/2023
(Please use this reference in your reply)

3 November 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights of Indigenous Peoples; Working Group on Arbitrary Detention; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and Special Rapporteur on the human rights of internally displaced persons, pursuant to Human Rights Council resolutions 51/16, 51/8, 52/10 and 50/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **allegations of increasing pressure exerted on the Maasai Peoples to leave their homelands in the Ngorongoro Conservation Area (NCA), of the Ngorongoro District, Arusha region of Tanzania, including the recent arrest and detention of members of the Maasai Indigenous People in Endulen ward, in the NCA.**

The special procedures mandate-holders sent communications in the past raising concerns over the allegations of forced evictions, attacks, intimidation and harassment of Maasai Indigenous Peoples in the country (TZA 3/2021, TZA 2/2019, TZA 1/2016; TZA 1/2015; TZA 1/2014; TZA 3/2013; TZA 2/2013). We regret that the concerns expressed therein have not been addressed or resolved by the Government.

According to the information received:

The Maasai Peoples of Tanzania have been living a semi-nomadic pastoralist lifestyle in harmony with nature and wildlife, moving their cattle throughout their once vast territory as the seasons change. Following the eviction of Maasai Peoples from the Serengeti National Park in 1959, they have been granted permission to live within the NCA, a UNESCO World Heritage Site. In the past decades, Maasai Peoples have experienced renewed pressure over their lands as the Government and private companies seek to obtain the exclusive use of lands in Ngorongoro and Loliondo areas for game reserve, safari and conservation purposes. The forcible displacement of Maasai to shrinking areas within their natural habitat has increased their poverty and vulnerability to diseases and malnutrition.

In April 2021, the NCA authority released a 30-day notice of eviction to 45 peoples and ordered the demolition of about a hundred homes, as well as churches, schools, medical dispensaries, administrative offices within the next 30 days, on the basis they lacked proper permits. Following protests by members of the Maasai Indigenous Peoples, the eviction and demolition were suspended.

In March 2022, the Government issued notices that funds previously allocated for schools in the NCA were now to be redistributed to the Handeni district, where the government of Tanzania is proposing a resettlement for Ngorongoro residents, about 600 kms away in the Tanga region of Tanzania. No permits for renovation or maintenance of buildings providing basic services have been granted in the NCA since 2021 and Indigenous residents have had close to no access to water, endangering their cattle.

In October 2022, Ngorongoro health officials ordered the Endulen ward hospital, predominantly funded by the Catholic church, to significantly reduce their staffing and limit the range of their care and services, in spite of the hospital being the sole provider of these medical services in the area. Other medical facilities are facing risk of closure because of disrepair.

Aside from the gradual elimination of vital education and health services, local district councillors have also denounced in an open letter to the Government dated 22 August 2023, a situation of militarisation of the NCA in recent months exposing local residents to fear and violence.

The Handeni resettlement plan proposed by the Government is reportedly being implemented without adequate consultation with the NCA Indigenous populations, and thus not responding to Maasai basic needs to be able to perpetuate their semi-nomadic lifestyle, and without consultation with concerned local populations in Handeni who are seeing their village being massively developed while current water supplies are already lacking for the current population.

On 31 July 2023, students started a protest to demand that the government grants them the necessary permit to repair a severely damaged primary school, located in Nasipooriong' village, Endulen ward. The school needs repairs without which the building will collapse. The protest was subsequently joined by the wider community, with crowds holding signs and chanting against the Government's plans for relocation away from their homes and lands in the NCA.

Meanwhile, the national media covered stories about Maasai NCA residents calling for the relocation process to be sped up, stories which are reportedly not representative of the opinion of the majority of Maasai residents in the NCA.

On 15 August 2023, journalists from government media arrived at Endulen market and told the gathered crowds to leave the NCA and move to the Handeni resettlement site. The journalists reportedly proclaimed that the Maasai of NCA are a backward, barbaric, poor and uneducated community and that the only way to civilize them was to relocate them outside of the NCA. Maasai community members chased the journalists away. According to the Deputy Commissioner for Conservation in the area, three journalists were reportedly injured by a group of young Maasai people.

On 16 August 2023, security forces including the police and NCA Authority (NCAA) rangers were deployed to Endulen and allegedly arrested over

20 members of the community in the early morning of 17 August. The arrested individuals were reportedly then held in unknown places, without access to their families and lawyers. Reportedly, the Maasai were not arraigned to court and were eventually released on bail after a few days.

On 21 August 2023, the Member of Parliament for Ngorongoro, who had visited Endulen during the protests, was reportedly arrested by the police and NCAA rangers, before being taken to a police station for interrogation about his calls for accountability for the ongoing security operation in Ngorongoro. Allegedly, he was subsequently moved to an unknown location, again without access to his family and lawyer, before being eventually released.

On 10 September 2023, one of Tanzania's key opposition leaders and three other individuals were reportedly briefly detained by the police for holding an unlawful assembly in NCA but were released a few hours later.

While we do not wish to prejudge the accuracy of these allegations, we are deeply concerned by the continuing allegations of harassment affecting the Maasai community in the NCA, including the recent arrest and detention of over 20 members of the Maasai community in Endulen. We are equally concerned at your Excellency's Government plan for resettlement of NCA residents, which does not appear to have involved the meaningful participation of Indigenous Peoples on the one side, and of local residents in Handeni on the other.

We are deeply concerned that the refusal to grant permits for simple maintenance and renovation of buildings providing basic services to the Maasai communities. We have further concerns about the increasing militarisation of the NCA and associated violence and arrests that occurred in recent months, as well as for the unrepresentative media coverage of the human rights situation of Maasai in the NCA. All of this interacts together to favour the economic, social and cultural suffocation of the Maasai Peoples, leaving them no other options but to accept a relocation plan that denies all their rights as Indigenous Peoples, and is likely to lead to them losing their Maasai way of life and identity. This constitutes a failure to uphold the rights of the Maasai to their traditional lands, territories and resources, as well as their rights to health, food, education and water. We regret reports that, after decades of successive forced evictions, attacks on their homes and livestock, and displacements of Tanzania's Maasai Peoples within ever smaller portions of their original lands, the Government of Tanzania seems to now support a solution that would remove the Maasai altogether from their ancestral lands in Northern Tanzania, to make way for commercial and private interests, such as development and tourism.

Finally, we are also concerned at the possible risks of escalation into clashes, both because of the general situation in Ngorongoro, described as a climate of fear and polarized tensions, and possibly in the Handeni district, if water access and a mediation and integration strategy between newcomers and local villagers are not established.

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.

We are issuing this appeal in order to safeguard the rights of the abovementioned individuals from irreparable harm and without prejudicing any eventual legal determination.

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 above-mentioned allegations.
2. Please provide information regarding the measures taken by your Excellency's Government to guarantee the Maasai peoples' right to their ancestral lands, territories and resources within the NCA. Please give details of any strategy your Government may have developed to ensure that Maasai peoples are able to freely perpetuate their traditions of livestock grazing and survive with adequate access to water and sanitation, health, and education services, according to their rights endowed by international law.
3. Please clarify how your Excellency's Government has ensured that the Maasai Peoples are meaningfully consulted on exploring alternatives to resettlement, aiming to avoid displacement for those who wish to remain on their ancestral lands in the NCA, prior to announcing any resettlement plan.
4. Please clarify how your Excellency's Government has obtained the free, prior and informed consent of the Maasai Peoples for the proposed resettlement and whether they have been meaningfully consulted in the elaboration of the resettlement plan, including on the selection of the resettlement site in Handeni district. Please explain whether the Maasai Peoples had an opportunity to participate in the planning and management of the resettlement process and the design of their integration and rehabilitation at the resettlement site.
5. Please explain whether the Maasai who have been resettled in Handeni district are able to enjoy their right to adequate, culturally appropriate housing at the resettlement site, including security of tenure and access to services, materials, facilities and infrastructure; and to continue practicing their traditional livelihoods and culture. Please also explain how the receiving community has been prepared for the resettlement Maasai and how the sharing of limited natural resources has been organized, in order to avoid conflicts and to ensure the continuation of livelihoods, in particular livestock grazing. Please explain how your Excellency's Government has endeavored to ensure that the affected Maasai receive compensation for any property (both personal and real) or livelihood lost as a result of the resettlement.
6. Please provide information on the factual and legal grounds for the arrest and subsequent detention of the abovementioned persons and how these measures are compatible with international human rights law and standards.

7. Please provide the details of any investigation, or judicial or other inquiries, which may have been carried out in relation to the reported enforced disappearances, arrest, and detention of Maasai community members and the Member of Parliament, in order to establish accountability and ensure justice. If no inquiries or investigations have taken place, or if they have been inconclusive, please explain why.

We would appreciate receiving a response within 60 days. Past 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.

Further, we would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the present communication and the regular procedure.

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.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

José Francisco Cali Tzay
Special Rapporteur on the rights of Indigenous Peoples

Matthew Gillett
Vice-Chair on Communications of the Working Group on Arbitrary Detention

Balakrishnan Rajagopal
Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Paula Gaviria
Special Rapporteur on the human rights of internally displaced persons

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government's attention to the applicable international human rights norms and standards, as well as authoritative guidance on their interpretation.

We would also like to refer to the Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007 with a favourable vote by your Excellency's Government. The UN Declaration on the Rights of Indigenous Peoples in its article 1 states that Indigenous Peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law. This includes the rights to physical and mental integrity, liberty and security of person (article 7). It further provides in article 2 that indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular based on their indigenous origin or identity.

We would also like to refer your Excellency's Government to article 3 of the Universal Declaration of Human Rights (UDHR) and article 9 of the International Covenant on Civil and Political Rights (ICCPR), which state that everyone has the right to liberty and security of person. Article 9 of the UDHR and article 9 of the ICCPR further states that no one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. According to Deliberation no. 10 on reparations for arbitrary deprivation of liberty of the Working Group on Arbitrary Detention, all victims of arbitrary deprivation of liberty are entitled to an enforceable right before the competent national authority to prompt and adequate reparations, which should be proportional to the gravity of the violations and the harm suffered. Additionally, as per the jurisprudence of the Working Group on Arbitrary Detention and General comment no. 35, detention of an individual as punishment for the legitimate exercise of rights guaranteed by the Covenant is arbitrary.¹

In this connection, we would like to draw your attention to the fact that UNDRIP recognizes that Indigenous Peoples have the right to own, use, develop and control their lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. States shall give legal recognition and protection to these lands, territories and resources with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned (art. 26).

UNDRIP furthermore affirms in articles 19 and 32 that indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources and that States shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent

¹ See CCPR/C/GC/35.

before the approval of any project, or the adoption and implementation of legislative or administrative measures, affecting their lands or territories and other resources.

Moreover, 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 (art. 10). UNDRIP also sets out 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. 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 (art. 28).

As highlighted recently by the Human Rights Committee, in the case of Indigenous Peoples, the notion of “home” must be understood in the context of the special relationship that they have with their territories and their ways of life, including their subsistence activities such as livestock-raising.²

We wish to draw the attention of your Excellency’s Government to its obligations to ensure the right to adequate housing, which it assumed upon acceding to, for example, the International Covenant on Economic, Social and Cultural (ICESCR) rights on 11 June 1976. The normative content of the right to adequate housing and its minimum elements is outlined by the Committee on Economic, Social and Cultural Rights in its the General comment no. 4. We further wish to refer to the Guiding principles on internal displacement, the Basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18), as well as the Guiding principles on security of tenure for the urban poor (A/HRC/25/54), which together provide further guidance on how to avoid displacement and how to conduct resettlement in a human-rights compliant manner, if it is absolutely necessary in the first place.

We would also like to refer your Excellency’s Government to the 1998 Guiding Principles on Internal Displacement, which are based on international human rights and humanitarian law. Principle 5 states that all authorities shall respect their obligations under international law, including human rights and humanitarian law, to prevent and avoid conditions that might lead to displacement. Principle 6 states that every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence. We would like to particularly draw your attention to principle 9, which highlights that States are under a particular obligation to protect against the displacement of Indigenous Peoples and minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

² CCPR/C/132/D/2552/2015, 2021.