

**Mandates of the Special Rapporteur on the rights of indigenous peoples and the
Chair-Rapporteur of the Working Group on the use of mercenaries.**

REFERENCE: AL Indigenous (2001-8) G/SO 214 (2005-4)
TZA 3/2013

14 November 2013

Excellency,

We have the honour to address you our capacities as Special Rapporteur on the rights of indigenous peoples and Chair-Rapporteur of the Working Group on the use of mercenaries pursuant to Human Rights Council resolutions 24/9 and 24/13.

In this connection, we would like to call the attention of your Excellency's Government to information received concerning the **alleged forcible eviction and other human rights issues affecting indigenous Maasai pastoralists in the area of Sukenya Farm, Arusha Region.**

According to the information received:

Sukenya Farm is a locality encompassing approximately 12,617 acres in the Loliondo Division, Ngorongoro District, in the Arusha Region. The area is situated within the boundaries of the Maasai villages of Sukenya and Mondorosi, which before attaining full village status in July 2012 were both sub-villages of Soitsambu village. As detailed below, the status change of these villages affected their ability to challenge a land transfer in legal proceedings before the High Court of Tanzania.

Reportedly, Sukenya Farm is a large grazing area that constitutes part of the ancestral territories of Maasai pastoralists who are members of the Loita and Laitayok clans from both Sukenya and Mondorosi villages. According to information received, for hundreds of years these Maasai groups have used the wide expanse of this territory to carry out their traditional activities including grazing cattle and accessing important water sources.

In 1984, the Government of Tanzania in conjunction with the Ngorongoro District Council allocated 10,000 acres within the then Soitsambu village to the parastatal company Tanzanian Breweries Limited (TBL) for barley production. Allegedly, numerous Maasai leaders disputed this land transfer by bringing a claim before the Magistrate's Court in Arusha in 1987. The Magistrate's Court found in favor

of TBL despite Maasai assertions that the land allocation occurred without their participation, consultation or consent.

From 1984 until October 2006, TBL reportedly used approximately 700 acres of the concession area to cultivate barley while Maasai pastoralists continued to use the rest of the area to graze and water livestock and construct temporary living shelters, or bomas, during the dry season as they had done in the past. Allegedly, in 2003 the Minister of Lands granted TBL a formal right of occupancy in the form of a 99-year lease agreement. At the same time, the Minister of Lands also allegedly granted TBL an additional 2,617 acres of land traditionally used by the Maasai villages thereby increasing TBL's total land holdings in Sukenya Farm to approximately 12,617 acres.

Subsequently, in 2006, TBL sold its remaining 96-year leasehold to a tourism company known as Tanzania Conservation Limited (TCL). TCL is owned by Thomson Safaris Limited, a company incorporated in Tanzania and a subsidiary of Wineland – Thomson Adventures Inc., based in the United States. After TCL registered its lease interest, its agents and employees including private security guards allegedly began to exert pressure on Maasai pastoralists to leave the Sukenya Farm area. Specifically, it is alleged that in 2006 employees of Thomson Safari forcibly evicted 200 Maasai families from Sukenya Farm while also burning ten Maasai bomas. Upon eviction, the Maasai families relocated to other sectors of the then Soitsambu village, including areas bordering Sukenya Farm.

It is reported that since the 2006 evictions, the private security guards connected to TCL and local police have continually subjected Maasai pastoralists to acts of intimidation, harassment, and beatings when they have attempted to graze their cattle or access water points in the disputed land area. It is also alleged that Maasai pastoralists attempting to access Sukenya Farm are often detained by the company security guards or police and taken to local prisons where they are required to pay a substantial fee in order to be released. Moreover, the ongoing mistreatment of Maasai pastoralists by the private security guards and police has allegedly forced them to seek grazing lands and water sources at significant distances away from their traditional lands in the Sukenya Farm area, which in turn has resulted in increased grazing pressure in other regions.

Similarly, it is reported that in July 2012 trespassing charges were brought against five Maasai pastoralists, including two minors of age, on the basis that the individuals were grazing cattle in Sukenya Farm. According to information received, all these charges were eventually dropped. However, due to the remote location of their villages and the semi-nomadic nature of their traditional lifestyles, Maasai pastoralists from the region of Sukenya Farm often experience significant socioeconomic and geographic barriers to obtaining competent legal representation when faced with criminal charges such as trespassing.

According to information received, several village leaders from the then Soitsambu village visited the Prime Minister of Tanzania in 2008 to express their concerns regarding the treatment of Maasai pastoralists. In response to these

concerns, the Prime Minister reportedly established a Special Committee of Inquiry to investigate allegations related to the sale of Sukenya farm. The Special Committee of Inquiry was reportedly comprised of representatives from several government ministries including the Ministry for Tourism and Natural Resources, Ministry for Land, Housing, and Development, and the Office of the Attorney General among others. However, according to the information, village representatives found the committee composition to be unsatisfactory because it did not include any Maasai representatives from the Ngorongoro District. Further, despite concerns expressed by Soitsambu village representatives on behalf of Maasai pastoralists, the Special Committee of Inquiry allegedly found no irregularities regarding how Thomson Safaris originally obtained Sukenya Farm nor the company's current use of the disputed land.

In February 2010, the Soitsambu Village Council reportedly initiated legal proceedings against Tanzania Breweries Ltd. and Tanzania Conservation Ltd. alleging that the 2003 land transfer occurred without consulting with or gaining consent from the affected Maasai pastoralists. It is reported that on 17 May 2013 these legal proceedings were dismissed by the High Court of Tanzania on the basis that the original complainant, Soitsambu village, no longer existed because in 2012 it had been split into four separate villages, two of which are Mondorosi and Sukenya villages. The High Court sustained that Soitsambu village lacked the necessary legal status to continue with its case. Allegedly, the Court similarly dismissed an application by Mondorosi and Sukenya villages to be joined as plaintiffs in the case.

In addition to pursuing domestic litigation, representatives of the affected Maasai communities have reportedly approached Thomson Safaris in an attempt to peacefully negotiate a resolution to the conflicts related to Sukenya Farm. Allegedly, attorneys acting on behalf of Thomson Safaris have rejected such offers to negotiate. At present, Thomson Safaris employees allegedly continue to guard Sukenya Farm and carry out physical attacks against Maasai pastoralists who attempt to access the area in order to carry out their traditional pastoral activities.

As your Excellency is aware, two separate letters dated 23 March 2009 and 23 September 2009 from the Special Rapporteur on the rights of indigenous peoples drew the attention of your Excellency's Government to similar situations regarding the alleged eviction of Maasai pastoralists in the Kilosa and Ngorongoro Districts. In addition, on 12 April 2010, the Special Rapporteur provided observations and a series of recommendations to your Government regarding applicable international standards for the protection of land and natural resource rights of vulnerable indigenous groups and the need to provide adequate redress and reparations for any restrictions on these rights. More recently, on 8 May 2013, the Special Rapporteur sent a communication to your Government concerning the situation of indigenous Maasai pastoralists in the Loliondo Game Control Area.

These communications have raised concerns regarding the existence of ongoing land conflicts allegedly caused by conservation and tourism development initiatives that

affect the rights of Maasai pastoralists. These land conflicts have allegedly lead to violence against Maasai community members as well as their eviction from their traditional lands. Regrettably, the Special Rapporteur has not received a response from your Excellency's Government to these communications to date.

With regard to the alleged violations committed by private security guards, we would like to refer to paragraph 18 of Human Rights Council resolution 21/8 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..."

While we do not wish to prejudge the accuracy of the above allegations and information related to Sukenya Farm, we would like to refer your Excellency's Government to the relevant provisions of the United Nations Declaration on the Rights of Indigenous Peoples, which was adopted by the United Nations General Assembly on 13 September 2007 with an affirmative vote by Tanzania.

With regards to situations of possible eviction of indigenous peoples, article 10 of the Declaration affirms that "[i]ndigenous peoples shall not be forcibly removed from their lands or territories. 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." Regarding lands and resources, article 26 of the Declaration affirms the right of indigenous peoples to "the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired" and to State recognition and protection of the same. Furthermore, the Declaration provides that indigenous peoples have the right to be consulted "through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources." (art. 32)

We would also like to refer your Government's attention to previous observations by the United Nations Committee on the Elimination of Racial Discrimination. In its 2007 Concluding Observations on Tanzania, the Committee requested your Government to provide information on the situation of land expropriations, forced displacement and resettlement affecting certain ethnic groups. Specifically, the Committee requested the Government to provide information regarding vulnerable nomadic and semi-nomadic ethnic groups, including the Maasai, who allegedly face difficulties "due to their specific way of life and on special measures taken to guarantee the enjoyment of their human rights."¹

Subsequently, within its early warning and urgent action procedure, the Committee on 13 March 2009 sent the Government of Tanzania a letter expressing concern regarding the forced eviction of Maasai pastoralists from Sukenya Farm. The Committee requested the Government to take interim measures in favor of the Maasai of Soitsambu village until their rights were officially determined by the Government or

¹ Concluding Observations of the Committee on the Elimination of Racial Discrimination: Tanzania, CERD/C/TZA/CO/16 (27 March 2007), paras. 14, 16.

through national legal processes. These interim measures included guaranteeing continued access to traditional grazing areas, the suspension of commercial development activities, and the investigation of alleged human rights abuses by police and company security guards against the villagers of Soitsambu.²

In addition, we would like to refer your Government's attention to the recommendations made by the Special Rapporteur on the rights of indigenous peoples to Tanzania in his communication of 12 April 2010 regarding the alleged eviction of Maasai pastoralists in the Kilosa and Ngorongoro Districts. In that communication the Government was recommended to take steps to guarantee and protect the land and natural resource rights of vulnerable indigenous groups including: to cease and desist from further removals of indigenous pastoralist groups from their traditional lands; to establish an effective mechanism to identify and protect indigenous rights to land in accordance with their customary laws and land tenure practices, and in consultation with affected indigenous groups; to establish an adequate mechanism under which affected groups can obtain redress and reparations for any restrictions to their rights lands and resources, including evictions; to carry out independent and impartial investigations into forced removal of indigenous groups; and to provide for active participation of and direct benefits to indigenous pastoralist groups with respect to natural wildlife conservation and other economic development plans.³

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 about:

1. The circumstances surrounding the land acquisition of Sukenya Farm by Tanzanian Breweries Limited in 1984, including information related to the authorization of and justification for the land transfer. In this connection, was any consideration given to the land and natural resource rights that might correspond to the Maasai pastoralists in and around the Sukenya Farm area?
2. The circumstances surrounding the alleged eviction of Maasai pastoralists in 2006 from the Sukenya Farm area. In particular, whether any investigation of this incident has taken place and the results, if any, of that investigation. What measures have been put in place to provide displaced Maasai pastoralists with adequate compensation including alternative grazing areas and water points necessary for their subsistence?
3. Whether Tanzania Conservation Limited or Thomson Safaris Limited engaged private security guards in connection with their operations in the Sukenya Farm area? If so, please provide details.

² Committee on the Elimination of Racial Discrimination, Early Warning and Urgent Action Procedure communication to United Republic of Tanzania (13 March 2009).

³ See, A/HRC/15/37/Add.1, para. 455.

4. 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.
5. The measures taken to investigate and address the allegations of ongoing violence against Maasai pastoralists who attempt to access traditional lands and resources in the Sukenya Farm area?
6. What measures have been taken by Government or Thomson Safaris Limited representatives to resolve ongoing disputes regarding Sukenya farm through negotiations or other conflict resolution processes?
7. The measures taken to implement the interim measures requested by the Committee on the Elimination of Racial Discrimination in 2009 within the framework of its early warning and urgent action procedure with respect to the situation of Sukenya Farm.

We would appreciate a response from your Excellency's Government within 60 days. We undertake to ensure that your Excellency's Government's response will be taken into account in our assessment of this situation and in developing any recommendations that we make for your Excellency's Government's consideration pursuant the terms of our mandates.

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

James Anaya
Special Rapporteur on the rights of indigenous peoples

Anton Katz
Chair-Rapporteur of the Working Group on the use of mercenaries