Mandates of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the rights of indigenous peoples; and the Special Rapporteur on the human rights of internally displaced persons

REFERENCE: AL TZA 2/2019

11 October 2019

Excellency,

We have the honour to address you in our capacities as the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the rights of indigenous peoples; and Special Rapporteur on the human rights of internally displaced persons, pursuant to Human Rights Council resolutions 37/8, 33/9, 33/12 and 41/15.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding the continuing harassment of Maasai indigenous peoples in the Loliondo area in Ngorongoro District, including destruction of homes, confiscation of livestock and intimidation of Maasai villagers in relation to the activities of two tourism-based companies, Tanzania Conservation Limited (TCL) and Ortello Business Corporation (OBC).

We wish to recall previous allegations of attacks, forced eviction, arrest, harassment and intimidation (TZA 1/2016; TZA 1/2015; TZA 1/2014; TZA 3/2013; TZA 2/2013) in the context of the use of Maasai traditional lands for tourism, to which we regret we have not received responses from the Government. Besides the Special Procedures, the Committee on the Elimination of Racial Discrimination raised concerns regarding the alleged activities of luxury game-hunting companies in an early warning procedure communication in 2016 (CERD/90th/EWUAP/GH/MJA/KS) and also wrote letters in 2009, 2011 and 2013 expressing concern regarding the expropriation of Maasai communities from their ancestral lands in Sukenya farm.

According to the information received:

The Maasai are indigenous peoples of the East African Great Rift Valley and have led a semi-nomadic pastoralist lifestyle for centuries moving their cattle throughout the area as the seasons change. They hold a close relationship with their environment, including wildlife and grasslands. Since 1959, when Maasai peoples were first relocated from Serengeti to Loliondo and Ngorongoro areas, conservation projects and foreign investment have led to the forced displacement of Maasai to shrinking areas within their natural habitat, increasing their vulnerability to diseases and malnutrition. Tanzania Conservation Limited (TCL), a company owned by Boston-based Thomson Safaris bought a 96-year lease in 2006 for an area previously bought by the Tanzanian Breweries Ltd without the consent from members of the Maasai community and left abandoned. Since 2006, TCL has been attempting to restrict access to their purchased land for Maasai peoples seeking to graze their cattle and to grow plants for their cattle's survival. Ortello Business Corporation (OBC), a luxury game-hunting company based in the United Arab Emirates, was granted a hunting license in 1992 allowing the UAE royal family to organize private hunting trips. The company has reportedly denied Maasai peoples access to lands and water for their cattle, and have relied on Tanzanian armed forces and police to forcibly evict Maasai communities, including by burning their traditional settlements built from thorn and bush (*boma*) and displacing their livestock.

In 2009, the Wildlife Conservation Act officially prohibited crop cultivation in game reserves, wetland reserves or game controlled areas and imposed strict fines and possible jail time for grazing livestock in game controlled areas. However, thousands of wild animals have allegedly continued to be hunted and killed in game reserves and game controlled areas.

The restrictions on access to their lands and traditional livelihoods, including subsistence farming and grazing, have resulted in the Maasai being denied the right to food and water. The levels of nutrition intake in the villages have reportedly deteriorated. Those villagers who have goats, mix their milk with the porridge, but others have only water to add. Some other villagers do not even have the capacity to mill the maize. Independent studies carried out in health centers have confirmed that the high-levels of malnutrition have caused the preventable deaths of Maasai children due to starvation.

In 2013, several Maasai village councils in Loliondo in Ngorongoro District filed a lawsuit in the High Court of Tanzania in order to claim land rights against TCL. In 2015, the Court ruled against the Maasai.

In July and August 2016, dozens of Maasai community members were arrested, allegedly due to their opposition to the Government's intention to demarcate their traditional lands in favour of TCL and Ortello Business Corporation (OBC) (TZA 1/2016)

In August 2017, Tanzanian security forces, national park rangers and OBC agents proceeded to evict several Maasai communities in Loliondo, which allegedly led to the displacement of some 20,000 persons, the burning and demolition of their settlements and food and the loss of livestock. The operation was reportedly tainted by abusive use of force, illegal arrests and intimidation. The displacement of communities seemed to be linked to the intention of private company OBC to remove human presence from parts of the game-controlled area of Loliondo for tourism purpose.

In this context, four Maasai villages around Loliondo in Ngorongoro District brought a complaint against the United Republic of Tanzania at the East African Court of Justice (EACJ) in September 2017. A year later, on 25 September 2018, the Court issued an interim order against the government to "stop the forcible eviction of Maasai residents from the 1,500 sq km of land in the Wildlife Conservation Area bordering Serengeti National Park; to stop the destruction of their homesteads or the confiscation of their livestock on that land, and against the Tanzanian office of the Inspector General of Police to stop the harassment or intimidation of [Maasai villagers]" until the case has been determined in full. The Court took the view that in the short term the Government's argument that the evictions were in service of the protection of the local ecosystem "pales in the face of the social disruption and human suffering that would inevitably flow from the continued eviction of the Maasai villagers".

In spite of the Court interim order, Maasai peoples have continued to be the subject of harassment since September 2018. Sources have reported spikes of arrests, forced evictions and arson around the four complainant villages in Loliondo in November and December 2018, in violation of the interim Court order. Maasai peoples reportedly continue to live in a climate of fear, in which Tanzanian security forces and park rangers harass, intimidate, threaten, slander and arrest those who seek to share information with the East African Court and those who speak out, including on social media. A new military camp set up in Lopolun in March 2018, has disproportionately increased the presence of security forces in the area.

The November and December 2018 attacks coincided with the OBC preparing their camp for the visit of high profile guests, and were allegedly also a form of reprisal against Maasai villagers for having sued the Government. Tensions are high as local communities accuse soldiers and park rangers of maliciously displacing Maasai cattle from Loliondo into the Serengeti National Park, subsequently claiming to have found cattle there and imposing fines on Maasai herders. Maasai communities in Loliondo believe both soldiers and park rangers work in complicity to deprive the Maasai of their traditional lands.

In spite of the termination in November 2017 of OBC's hunting concession and the Natural Resources Minister calling for investigations into the dealings of OBC, the company reportedly continued to operate in the Loliondo area and to restrict access and use of the lands by the Maasai communities. On 13 February 2019, the Director of the OBC was arrested for employing foreigners without permits, he was later released on bail. The same Director was subsequently arrested again on 4 March 2019 by the Prevention and Combatting Corruption Bureau and charged with ten counts of economic crimes. The activities of the company have slowed down as a result, but concerns have been expressed that the OBC activities may continue when the media attention has reduced. Tanzania Conservation Limited (TCL) has reportedly also colluded with local police officers to harass, arrest and intimidate Maasai peoples accused of trespass on their ancestral lands.

In August 2019, the Government published a Multiple Land Use Model for the Ngorongoro Conservation Area, which reportedly may further reduce the land accessible to the Maasai for their traditional livelihoods and settlements.

While we do not wish to prejudge the accuracy of these allegations, we are deeply concerned about the allegations of violence, forced evictions and harassments affecting Maasai communities as a result of the continued operation of Tanzania Conservation Limited and Ortello Business Corporation. We are equally concerned over allegations of the failure to protect the rights of the Maasai to their traditional lands, territories and resources, as well as their rights to health, food and water, among other human rights.

We are concerned that decades of successive forced evictions and displacements, the shrinking of Maasai peoples' vital space, and the lack of protection against commercial and private interests on their remaining land has had a highly detrimental impact on the preservation of Maasai pastoralist culture and is now threatening the very existence of this people struggling with diseases, malnutrition and the preventable deaths of children, as a result of lack of access to grasslands and water points, and the prohibition to resort to subsistence agriculture.

We are also worried over the escalation and polarization of the conflict between private actors and Government, and local communities. This has led to a climate of distrust and fear between the Government and the communities and may foster a cycle of violence.

We wish to refer to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007 with the affirmative vote of Tanzania. Article 26 of the Declaration states that indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, and that 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.

The Declaration furthermore sets out that States shall provide effective mechanisms for prevention of, and redress for any action which has the aim or effect of dispossessing indigenous peoples of their lands, territories or resources (Article 8) and that indigenous 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 (Article 10). In addition, Article 28 of the Declaration 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

We would also like to refer to the UN Guiding Principles on Business and Human Rights, which provide that States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights. States should take preventative and remedial measures, including policies, legislation, regulations and adjudication to protect the individuals in their territories from human rights abuses by third parties, including business enterprises.

We would also like to refer to the UN Basic Principles and Guidelines for Development Based Evictions and Displacement, which provide, that forced evictions constitute gross violations of a range of internationally recognised human rights. They can be carried out only in exceptional circumstances, and all vulnerable persons and affected groups must be protected, irrespective of whether they hold title to home and property under domestic law. In order to secure effective legal protection against the practice of forced evictions for all persons under their jurisdiction, States should take immediate measures aimed at conferring legal security of tenure upon those persons, households and communities currently lacking such protection, including all those who do not have formal titles to home and land.

Finally, we would also like to refer to the Guiding Principles on Internal Displacement, which stress that States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

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, provide further information on any steps undertaken by your Government to investigate the alleged attacks on Maasai settlements, which took place in November and December 2018 after the East African Court of Justice interim order, and any steps taken to prevent the intimidations and arbitrary arrests of Maasai villagers and punish the perpetrators.

- 3. Please, provide information on the steps taken by your Government to implement the Eastern African Court of Justice interim order of 25 September 2018, which restrains the Government or any person acting on its behalf from evicting the Maasai residents from the 1,500 sq km of land in the Wildlife Conservation Area bordering Serengeti National Park; destroying their homesteads or confiscating their livestock on that land as well as restraining the office of the Inspector General of Police from harassing or intimidating the Maasai.
- 4. Please, provide information on the current status of Government-ordered investigations into the dealings of OBC and actions taken in the result of such investigation, if any.
- 5. Please, provide information on the measures undertaken to protect the Maasai from human rights abuses and attacks by non-state actors, particularly TLC and OBC, as part of Tanzania's State responsibility to protect its population from human rights violations by third parties, including business enterprises.
- 6. Please, provide information on the measures undertaken, legislative or otherwise, to protect the Maasai from forced evictions, and to ensure that any decision affecting their homes and lands is taken with their free, prior and informed consent, and that any resettlement or relocation agreement includes just and fair compensation.
- 6. Please provide information on whether your Government is working together with the Maasai peoples in order to restore trust between parties and design a land management plan with the active participation of the Maasai to ensure conservation and tourism activities are performed in harmony with the rights of the Maasai.
- 7. Please provide information about the measures taken by your Government to prevent and reduce the mortality rate of Maasai children due to malnutrition and starvation and the measures taken to ensure that Maasai peoples have adequate access to exercise their rights to food and to health.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. 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.

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. If we do so, 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.

David R. Boyd

Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Dainius Puras

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Victoria Lucia Tauli-Corpuz Special Rapporteur on the rights of indigenous peoples

Cecilia Jimenez-Damary 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 like to draw your Excellency's attention to the following principles: Article 6(1) of the International Convention on Civil and Political Rights (ICCPR), to which Tanzania acceded on 11 June 1976, provides that every individual has the right to life and that no person shall be arbitrarily deprived of his or her life. In General Comment No. 31, the Committee has observed that there is a positive obligation on States Parties to ensure protection of Covenant rights of individuals against violations by its own security forces. Permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice could give rise to a breach of the Covenant (CCPR/C/21/Rev.1/Add.13).

We also refer to articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) acceded by Tanzania on 11 June 1976 which protect the rights to food and to health, respectively. The Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment No. 14, states that the right to health is inclusive and extends not only to timely and appropriate health care but also to the underlying determinants of health, such as, inter alia, access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, and healthy occupational and environmental conditions (para. 11). ICESCR Article 12.2 (a) particularly provides for States to adopt measures for the reduction of infant mortality and for the healthy development of the child. The right of the child to health is also protected by article 24 of the Convention of the Rights of the Child (CRC) ratified by Tanzania on 10 June 1991. CRC article 24.2 particularly provides for States to take appropriate measures to diminish infant and child mortality; ensure medical assistance and health care to all children and combat disease and malnutrition, including through the provision of adequate nutritious foods and clean drinking-water.

While the realization of the right to health is progressive, States have the core obligation to ensure at the very least, the minimum essential levels of the right to health. These include ensuring access to the minimum essential food which is nutritionally adequate and safe and to ensure freedom from hunger to everyone (para. 43). Moreover, violations of the right to health follow States' failure to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to health by third parties, including omissions or failure to regulate the activities of individuals, groups or corporations so as to prevent them from violating the right to health of others (para. 51). In this connection, the CESCR highlights the particular situation of indigenous peoples and indicates that development-related activities that lead to their displacement against their will from their traditional territories and environment, denying them their

sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health (para. 27).

We would also like to draw your Excellency's attention to article 11(1) of the ICESCR on the right to housing. In its General Comment No. 4, the CESCR affirmed that the right to housing includes legal protection against forced evictions, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection. It also declared that forced evictions are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances.

Also in relation to article 11(1) of the ICESCR, the Committee stated on its General Comment No. 7 that indigenous peoples suffer disproportionately from the practice of forced eviction. Therefore, States parties must ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards, by private persons or bodies. States parties must also see to it that all the individuals concerned have a right to adequate compensation for any affected property.

On her latest report to the United Nations General Assembly (A/74/183), 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, called Member States to declare a moratorium on forced evictions affecting indigenous peoples, until national legislation governing eviction and resettlement has been adopted that is fully compliant with international human rights standards and that allows for recourse before independent judicial institutions. The Special Rapporteur also stated that, prior to carrying out any evictions, States must ensure that all feasible alternatives are explored in consultation with the indigenous communities affected. Indigenous peoples must not be rendered homeless as a result of evictions, nor should they be made vulnerable to the violation of other human rights. Where the affected communities are unable to provide for themselves, States should take all appropriate measures, to the maximum of its available resources, to ensure access to adequate alternative housing, resettlement or access to productive land, as appropriate. States should also monitor and prevent forced evictions carried out by private persons or other third parties.

We furthermore wish to refer to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007 with the affirmative vote of Tanzania, which elaborates upon existing binding rights in the specific cultural, historical, social and economic circumstances of indigenous peoples. These fundamental human rights include equality and non-discrimination, life and personal integrity, culture, health and property, all of which are recognized in the principal human rights treaties ratified by Tanzania and mentioned above. In particular, we would like to recall article 7 of the UNDRIP which provides that indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person. With respect to their rights to property in the form of land and natural resource rights, Article 26 states for 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. 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.'

Furthermore, the UNDRIP provides for the rights of indigenous peoples to redress for actions that have affected the use and enjoyment of their traditional lands and resources. In that regard, Article 28 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.'

We would also like to refer your Excellency's Government to the 1998 Guiding Principles on Internal Displacement, which establishes 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 of persons. We moreover stress that according to the Guiding Principles, every human being shall have the right to be protected against being arbitrarily displaced from his or her home including due to gross human rights violations, discrimination and fear of persecution (Principle 6). This therefore strongly relates to the allegations above that persons have been forced to flee due to human rights violations or fear of violations and discriminations. 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.

It is necessary that those persons internally displaced are assisted and supported by the government until such time that they achieve durable solutions. Guiding Principle 28 establishes that "[c]ompetent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of 9 the country. Such authorities shall endeavor to facilitate the reintegration of returned or resettled internally displaced persons." Where return to places of origin is deemed unsafe, alternative solutions must be found in consultations with affected communities and until such time that safe and dignified return is possible. Moreover, Guiding Principle 29 states that "[c]ompetent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation". Furthermore, Principle 8 of the Pinheiro Principles explicitly calls on states to alleviate the situation of displaced persons living in inadequate housing. In regard to the requirement to ensure durable solutions for IDPs, we furthermore recall the provisions of the IASC Framework on Durable Solutions for Internally Displaced Persons.

Finally, we would also like to recall that the Government of Tanzania signed the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) on 8 December 2010, but has not ratified it yet. We would like to exhort the Government to expeditiously proceed to the ratification of the Kampala Convention.

The full texts of the human rights instruments and standards recalled above are available on <u>www.ohchr.org</u> or can be provided upon request.