



To:

Mr. Francisco Cali Tzay, United Nations Special Rapporteur on the rights of indigenous peoples

Ms. Mary Lawlor, United Nations Special Rapporteur on the situation of human rights defenders

Board

9 March 2021

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Chris Grove
Executive Director

Dear Mr. Cali Tzay and Ms. Lawlor,

Greetings from ESCR-Net - International Network for Economic, Social and Cultural Rights, consisting of over 280 organizations and advocates across 75 countries, devoted to achieving economic, social, cultural and environmental justice through human rights.

We are writing to share updates relating to our previous communication on 9 July 2020, related to the ongoing criminalization of indigenous land rights defenders in the context of a land conflict in Kedong Valley, Kenya.¹ In the previous letter, we expressed concern related to the criminalization of indigenous Maasai human rights defender, Nalengoyo Ole Torome, who was arrested on 26 June 2020, in Kedong Ranch, Kenya, but later released on bail. The criminalization of Mr. Torome is intimately linked to the indigenous Maasai communities' longstanding struggle to safeguard their ancestral lands in the face of activities of the Kedong Ranch Ltd. corporation.

Since our last communication, another indigenous human rights defender from the community is facing criminal charges. On 12 October 2020, Raphael Kerenke was arrested and charged with attempted assault. According to a member of the Maasai community² living within Kedong Ranch, Mr. Kerenke was allegedly beaten and then arrested while he was alone with the police. He was reportedly requesting police assistance to stop representatives of the Kedong Ranch Ltd. digging trenches, which

¹ ESCR-Net (2020) Kenya: Stop the judicial harassment of land rights defenders. At: <https://www.escr-net.org/news/2020/kenya-stop-judicial-harassment-land-rights-defenders>

² ESCR-Net are aware of the identity of this person and can connect the UN Special Rapporteurs with witnesses as needed and if it is helpful.

obstruct the free movement of the indigenous Maasai on Kedong Ranch. Mr. Kerenke was released on bail on 13 October 2020.

The two men are indigenous human rights defenders advocating for the indigenous rights of the Maasai to their ancestral lands in the Kedong Valley. Both Mr. Torome and Mr. Kerenke are facing criminal charges of causing bodily harm and disturbances, and attempted assault, respectively. The criminalization of these indigenous human rights defenders appears to be clear attempts to discourage their legitimate human rights work to protect the collective rights of their communities.

Likewise, according to credible sources, the Maasai communities' ongoing struggle to safeguard their land rights has resulted in continuous harassment of the indigenous Maasai communities at the hands of Kedong Ranch Ltd. and state actors. According to ESCR-Net member, Narasha Community Development Group, the community has faced continued attempts of forcible evictions and destruction of community property and homes. On 3 November 2020, police forces allegedly attacked the church on Kedong Ranch during a community meeting. Later that day, police forces returned to destroy the latrines by the church.³ These actions appear to be intended to intimidate the community and provoke its leaders to act and risk further criminalization.

Kedong Ranch Ltd. has effectively restricted the movement of the Maasai indigenous communities by erecting fences in certain areas as well as digging trenches on the land. The Maasai are traditionally pastoralists and move their herds of cows and sheep for grazing. The fencing and trenches dug by the Kedong Ranch Ltd. are shutting off free movement for the community and inhibit community members from engaging in their traditional lifestyle.

In September 2020, a 9-year-old girl from the community, Jackline Nasinkoi Muntolol, fell into one of the trenches dug by Kedong Ranch Ltd. A trench wall collapsed on her and she tragically died before members of the community were able to dig her free. This caused an outcry in the community and members of the community staged a protest, blocking the road along Suswa, Narok County.⁴

It is worth noting that these acts of harassment and criminalization of the indigenous Maasai communities are taking place in the context of a decades long dispute between the communities and the Kedong Ranch Ltd corporation regarding the ownership of the land. The parties have been embroiled in legal cases for several years, with the Maasai communities in Kedong Ranch claiming ancestral occupation on the 76,000 acres of land, which are currently being leased by Kedong Ranch Ltd. An initial court ruling in January of 2015⁵ sided with Kedong Ranch Ltd. but is still awaiting a

³ Ivan Okuda (February 2021) Paying the Price: A Study on Criminalization of Land and Environmental Rights Defenders in East Africa, Rights and Resource Initiative. p. 27. At: <http://www.indiaenvironmentportal.org.in/files/file/PayingthePrice.pdf>

⁴ Kiplangat Kirui (30 September 2020): Girl dies in trench, residents block road in protest. The Star. At: <https://www.the-star.co.ke/counties/rift-valley/2020-09-30-girl-dies-in-trench-residents-block-road-in-protest/>

⁵ Nakuru High Court, Civil Suit Number 21 of 2015

hearing before the Court of Appeal court.⁶ Narasha Community Development Group, together with the Maasai peoples, have been demanding Kedong Ranch Ltd. to stop any activities in the area until pending and new legal actions over land ownership at the Court of Appeal and the Environment and Land Court are resolved.⁷

While the majority of the Maasai community has remained united in insisting on their ancestral land rights, four individuals claiming to represent the Maasai community made an agreement with Kedong Ranch in July 2019, without the consent of the wider Maasai community.⁸ Two of the individuals are members of the Kitset Sossion Maasai community and the other two are not local community members. The agreement granted some 4,000 acres and 10 million Ksh to the Maasai communities.⁹ The wider Maasai community in Kedong Ranch does not recognize and is legally challenging the agreement, which they claim was made without their free, prior and informed consent (FPIC).¹⁰ The communities insist that the 4000 acres are insufficient to sustain their traditional pastoral lifestyle.¹¹

Furthermore, the agreement has led to deep divisions and has been a source of increased conflict amongst groups in the Maasai communities. On 21 December 2020, this allegedly led to a confrontation as a Maasai family resisted the demarcation of part of their land which had allegedly been sold to Maasai living outside the territory occupied by Kedong Ranch without their consent. The group that had arrived to demarcate the land, allegedly attacked the family and in the process one of the attackers was hurt when members of the family defended themselves. This led to the subsequent arrest of and assault charges against three members of the family, Tima Kuronoi, Kinkirri Kuronoi and Orobi Kapulenke. The three members of the family have since been released on bail but are still facing criminal charges. To our knowledge, no members of the group that came to demarcate the land have faced any charges.

Recent events of criminalization and harassment of the Maasai community point to a concerning pattern of local police seemingly intervening on behalf of Kedong Ranch Ltd. and its allies against the Maasai communities. In addition to arrests and destruction of latrines, the police have provided protection to Kedong Ranch Ltd employees erecting fences and digging ditches on Maasai land.

⁶ Court of Appeal at Nairobi, Civil Appeal No. 226 of 2015

⁷ Kiplangat Kirui (September 2020): Girl dies in trench, residents block road in protest. The Star. At: <https://www.the-star.co.ke/counties/rift-valley/2020-09-30-girl-dies-in-trench-residents-block-road-in-protest/>

⁸ Marindany (Kenya) (February 2020): Kedong Maasai to block BBI weekend meeting in Narok. The Star. At: <https://www.pressreader.com/kenya/the-star-kenya/20200220/282252372548638>

⁹ KBC Channel 1 (2019): Over 2, 500 families in the contested Kedong Ranch to get 4000 acres of 75-thousand acre piece <https://www.youtube.com/watch?v=nNUbrIokAIo>

¹⁰ Environment and Land Court at Nairobi, ELC petition No. 21 of 2019

¹¹ Kiplangat Kirui (2020): Maasai community rejects Kedong land offer. The Star. At: <https://www.the-star.co.ke/counties/rift-valley/2020-02-16-maasai-community-rejects-kedong-land-offer/> (This article lists the shareholders of Kedong Ranch)

The Maasai have suffered massive land dispossession dating back to colonial times and the practice has continued under post-independence governments.¹² The ongoing land ownership case against the Kedong Ranch involves a total population of more than 30,000 individuals at the risk of being further dispossessed from their lands. The Maasai ancestral land has been concessioned to various projects, including a dry port and several geothermal plants, Akiira 1 and Olkaria VI and V. These have been effected without meaningful consultation or consent of the Maasai communities and in violation of their right to free, prior and informed consent (FPIC). These projects have already caused serious human rights and environmental violations, resulting in the withdrawal of funding by the European Investment Bank in late 2019.¹³

The Maasai have lived on the land that is today known as Kedong Ranch for generations and have strong spiritual and cultural ties to their ancestral home. Kedong Valley is home to several important cultural and spiritual sites for the Maasai. Thus, in addition to violating their right to free, prior and informed consent and having a severe impact on the rights to livelihood and a dignified life, the potential loss of their ancestral land will also impact the cultural rights of the Maasai.

In light of the gravity of the situation, we respectfully ask you to call on the Government of Kenya urgently to take all necessary steps to:

1. Undertake prompt, effective, independent and impartial investigations into the circumstances leading to the charges against Mr Nalengoyo Ole Torome and Mr Raphael Kerenke, including investigation into any undue corporate influence which has led to the criminalization of their lawful activities to defend and promote human rights.
2. End criminalization and harassment of all human rights defenders in Kenya and guarantee an enabling environment where human rights defenders can work free from attacks with the protections found in the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.
3. Undertake a prompt, effective, independent and impartial investigation into the circumstances leading to the death of Jackline Nasinkoi Muntolol and give her family the justice they deserve.

¹² Ben Ole Koissaba (2016) 'Elusive Justice: The Maasai Contestation of Land Appropriation in Kenya: A Historical and Contemporary Perspective'

(https://www.researchgate.net/publication/303484500_Elusive_Justice_The_Maasai_Contestation_of_Land_Appropriation_in_Kenya_A_Historical_and_Contemporary_Perspective)

¹³ International Accountability Project (2018) 'Akiira 1 geothermal power plant project. Community-led research and outreach report' (<https://accountabilityproject.org/wp-content/uploads/2019/10/Akiira-1-Geothermal-Power-Plant-Project-Community-Led-Research-and-Outreach-Report.pdf>)

International Work Group for Indigenous Affairs (2019) 'The impact of renewable energy projects on indigenous communities in Kenya' (<https://www.iwgia.org/en/kenya/3534-impact-of-renewable-energy-projects-on-indigenous-communities-in-kenya.html>)

4. Ensure a fair trial for Tima Kuronoi, Kinkirri Kuronoi and Orobi Kapulenke and ensure safeguards against forced evictions.
5. Uphold the rights to self-determination recognized in the international human rights covenants and free, prior and informed consent (FPIC) of indigenous peoples over their ancestral lands, territories, and natural resources as recognized in the UN Declaration on the Rights of Indigenous Peoples and by the African Commission in its Endorois decision, and effectively apply international human rights law in the ongoing legal cases related to the traditional ownership of Maasai lands, as well as ensuring adequate reparations for material and immaterial losses suffered by the indigenous Maasai communities caused by projects implemented on their lands without their FPIC and as a result of colonial and post-colonial dispossession.
6. Take all possible steps to limit corporate capture of the State and the undue corporate influence over the police, other government institutions and public processes, including via effective legislative, policy and judicial enforcement mechanisms which enable the state to safeguard the human rights of its population, regardless of any business interests at stake.
7. Protect against human rights violations by private actors, including by adopting effective measures to ensure compliance with the United Nations Guiding Principles on Business and Human Rights. This includes regularizing corporate activity via domestic legislation that can ensure corporate accountability and supporting multilateral processes, such as the UN Intergovernmental Working Group process in Geneva to develop a legally binding instrument to regulate corporate activity internationally.

Cordially,

A handwritten signature in black ink, appearing to read 'C. Grove', with a long horizontal stroke extending to the right.

Chris Grove

Executive Director