

Mandates of 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; the Special Rapporteur in the field of cultural rights; 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 to food; the Special Rapporteur on the rights of indigenous peoples; the Special Rapporteur on the human rights of internally displaced persons; the Special Rapporteur on extreme poverty and human rights and the Special Rapporteur on the human rights to safe drinking water and sanitation

Ref.: AL TZA 3/2021
(Please use this reference in your reply)

9 February 2022

Excellency,

We have the honour to address you in our capacities as 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; Special Rapporteur in the field of cultural rights; 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 to food; Special Rapporteur on the rights of indigenous peoples; Special Rapporteur on the human rights of internally displaced persons; Special Rapporteur on extreme poverty and human rights and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 43/14, 46/9, 46/7, 32/8, 42/20, 41/15, 44/13 and 42/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **plans for resettlement, forced evictions, home demolitions and additional restrictions which by 2027 are due to affect some 82,000 people, the vast majority being indigenous Maasai pastoralists whose traditional lands lie in the Ngorongoro Conservation Area. Such plans have allegedly not been consulted with the Maasai peoples in order to obtain their free, prior and informed consent. If pursued these plans could jeopardize their physical and cultural survival in the name of "nature conservation", ignoring the close relationship that the Maasai have traditionally had with their lands, territories, and resources and their stewardship role in protecting biodiversity. The plans also fail to address the root causes of the current threats to the healthy environment of these territories, notably touristic activity.**

The special procedures mandate-holders have 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 2/2019, TZA 1/2016; TZA 1/2015; TZA 1/2014; TZA 3/2013; TZA 2/2013). We regret that, with the exception of TZA 1/2015, the Government of Tanzania has not yet responded to these letters and to the concerns expressed therein.

According to the information received:

Background

The Ngorongoro Conservation Area (NCA) is an area of 8,100 km² [810,000 ha], bordering the Serengeti National Park, in Northern Tanzania

and is home to indigenous Maasai pastoralists. The Maasai make up over 95% of the NCA's population, the rest being a small number of Datoga pastoralists and Hadzabe hunter-gatherers near Lake Eyasi as well as a small number of NCA employees and those employed in the tourism industry.

According to reports, when the proposal for the creation of the NCA was put forward in the 1950s, the Maasai were assured that they could continue inhabiting the NCA and were promised the development of better water resources as well as participation in the governance of the conservation area, among others, in exchange for leaving completely the region - Moru area that is now part of the Serengeti National Park.

Over the years, the Maasai have been largely excluded from management positions in the Ngorongoro Conservation Area Authority (NCAA) and have been subjected to a series of subsequent evictions. These evictions have involved the burning of their *bomas* (a compound comprising the huts that house the Maasai and providing an enclosure for their cattle), the destruction of their livelihoods, food and water sources, the seizure of cattle and the forced displacement of tens of thousands from their lands, in the name of "preserving the ecosystems for tourism".

In 2010, the NCA was added to the UNESCO World Heritage Site List for its cultural values, after having already been listed in 1979 for its natural characteristics. Reportedly, for both designations, the indigenous communities in the NCA were not consulted and the decision resulted in a number of livelihood restrictions, including restrictions on crop cultivation and livestock raising.

In the recognition of the Outstanding Universal Value¹ of the Ngorongoro Conservation Area and its inscription on the World Heritage List², it is stated that the primary management objectives are to a) conserve the natural resources of the property, b) protect the interests of the Maasai pastoralists, and c) promote tourism. "The management system and the Management Plan [of the NCA] need to be widened to encompass an integrated cultural and natural approach, bringing together ecosystem needs with cultural objectives in order to achieve a sustainable approach to conserving the Outstanding Universal Value of the property, including the management of grasslands and the archaeological resource, and to promote environmental and cultural awareness." The administration of the NCA should importantly have "the capacity and specialist skills to ensure the effectiveness of its multiple-use regime, including knowledge of management of pastoral use in partnership with the Maasai community and other relevant stakeholders." The active participation of resident communities in decision-making processes is considered by the World Heritage Committee as "essential, including the development of benefit-sharing mechanisms to encourage a sense of ownership of, and responsibility for, the conservation and sustainable use of the property's natural and cultural resources." These principles were reiterated in the World Heritage Committee's Decisions about the site, in which it

¹ Available at <https://whc.unesco.org/en/list/39/>

² See also the *Operational Guidelines for the implementation of the World Heritage Convention*, <https://whc.unesco.org/en/guidelines/>, for further information about the participation of local and concerned persons and communities in World Heritage resources.

requested that the State Party: engages “local communities and other stakeholders in exploring alternative livelihood solutions to its current voluntary resettlement scheme consistent with the policies of the Convention and relevant international norms”³; and “ensures the General Management Plan (GMP) for the property is finalized in consultation with, and with the free prior and informed consent as appropriate of local stakeholders and rights holders [...], consistent with international norms and the policies of the Convention”⁴.

The Multiple Land Use Model review exercise, the resettlement plan and the threat to the Maasai’s survival

In 2019, the UNESCO World Heritage Centre (WHC), the International Union for the Conservation of Nature (IUCN), and the International Council on Monuments and Sites (ICOMOS), in their capacity as official advisory bodies of the World Heritage Committee under the World Heritage Convention, visited the NCA and issued a joint mission report. In the report, they indicated that stringent measures were needed to control population growth in the NCA and its impact on the area. They requested the Government of Tanzania to complete a “multiple land-use model” (MLUM) review exercise and to share its results with the World Heritage Centre and its Advisory Bodies.

Following the recommendations included in the joint mission report, the Government developed a new MLUM and a related resettlement plan which would expand the size of the NCA from 8,100 km² to 12,083 km² by including areas from Loliondo Game Controlled Area (GCA) - already contested in the East African Court of Justice, and Lake Natron GCA. The new plan for the NCA envisages the division of the NCA into four management zones, namely a conservation core zone, a conservation sub-zone, a transition zone, and a settlement and development zone. According to reports, the proposed plan would restrict human settlement and development to an area equalling approximately 18 percent of the total area of the thus expanded NCA. The use of the core conservation area would be restricted to research and tourism development. Likewise, the conservation sub-zone will be mainly dedicated to research and tourism, while all settlement, grazing or cultivation activities will be prohibited. In the transition zone settlements and crop production are similarly prohibited, but seasonal grazing for livestock would be allowed. Allegedly, the new plan from the NCA would relegate the Maasai to areas without adequate water sources. Moreover, due to the planned expansion, the land available to the Maasai for pastoralism, settlements and farming will be further reduced, with devastating effects on their food security.

In order to implement the new NCA model, the Government developed the mentioned Resettlement Plan which sets out to relocate about 82,000 people by 2027. The Government considers that 40 percent of those living within the NCA are “immigrants,” defined as “families, which were not present and those which were not resettled in NCA from Moru area in Serengeti National Park when the Conservation Area was established in 1959 and their

³ Decision 43 COM 7B.39, 2019, para. 9

⁴ Decision 44 COM 7B.171, 2021, paras. 9 and 10

descendants”. According to the plan, 40,000 “immigrants” would be identified and moved back to their “place of origin” by the end of 2021. Reportedly, the full resettlement plan has not yet been made public and indigenous peoples have expressed their concern that, given the absence of documentation among pastoralist communities, it would be difficult for many people to prove their descent from the original inhabitants of the NCA – or the adjacent Moru area, with the risk that they will be forcibly relocated. The plan also envisages that 40,000 “destitute and very poor pastoralists” will be “interested to resettle out of NCA voluntarily to specified areas.”

According to the information received, the Tanzania National Commission for UNESCO advocated for the removal of all people from the NCA while keeping their traditional settlements (bomas) intact for tourism. Reportedly, the MLUM and the resettlement plan ignore the close relationship that the Maasai have had with the environment of their territories, which has historically played a key role in the conservation and sustainable use of the area, and ignores their pleas to address tourism. Allegedly, the new plan for the NCA was drafted by a group of persons that did not include any NCA resident and does not adequately incorporate their concerns nor their recommendations. When four community members were eventually involved in the process, most of the document had already been prepared and the members were reportedly side-lined from the very beginning of their involvement.

Reportedly, the Maasai have formulated a number of recommendations to improve the MLUM, including, among others: i) permission to build decent permanent houses according to a building code that should be developed; ii) recognition of land ownership with title deeds; iii) permission to grow crops to ensure food security; iv) provision for more social services such as water, health facilities, schools and electricity; v) allocation of more land for grazing; and vi) involvement in all issues affecting their livelihoods.

According to the information received, the argument used to justify the MLUM and the resettlement plan, that is to say the impact of the growing population on the area, is unfounded and ignores the symbiotic relationship that the Maasai have developed over centuries with their territories. Their traditional knowledge has been recognized as having allowed biodiversity and a large mammal population to thrive.⁵ It is reported that the NCA hosts the highest density of mammalian predators in Africa including the lion population and endangered wildlife species such as the black rhino, wild dog, cheetah, and elephant. Nevertheless, according to reports, the approach followed by the Government as well as by the organizations which took part in the 2019 joint mission is to antagonize nature conservation and indigenous peoples’ livelihoods, ignoring the root causes of the risks faced by the NCA, notably tourism.

According to the information received, for example, the restrictions imposed by the Government on the Maasai’s activities in the NCA (such as the periodic burning of grasses) have led to an increase in invasive alien and

⁵ See, for example, Melubo, K. "Why are wildlife on the Maasai doorsteps? Insights from the Maasai of Tanzania." *AlterNative: An International Journal of Indigenous Peoples* 16, no. 3 (2020): 180-192. <https://journals.sagepub.com/doi/pdf/10.1177/1177180120947823>

pioneer weed species, with adverse effects on the plant diversity and the survival of herds and wild animals. As poverty and food insecurity have increased among the residents, the traditional rules governing the access to and use of land and resources that have ensured the sustainable management of the territories for generations have started to be ignored in favour of decisions prioritizing short-term gains. While the resettlement plan places a particular focus on “poor” pastoralists with a view to envisaging their relocation outside the NCA, it fails to take into account that their poverty is the result of the restrictions imposed on their livelihoods and the loss of their traditional lands, which has in turn negative effects on the environment in the NCA. Reportedly, many NCA residents will be left with little choice but to “volunteer” to be relocated given the current and planned restrictions on their livelihoods in the NCA.

On the other hand, although the 2019 joint mission report noted that the growing number of tourists and vehicles entering the NCA pose a threat to the area's healthy environment, the MLUM and resettlement plan do not provide for restrictions on tourism. In addition, according to reports, while lodges and commercial facilities for tourism are allowed, the Government restricts the ability of residents to build their traditional housing or make improvements to their current housing.

Current situation

On 16 April 2021, the Ngorongoro Conservation Area Authority (NCAA) issued eviction notices to 45 people and ordered more than 100 buildings to be destroyed on the ground that they lacked proper permits. The buildings included homes, public schools, religious centers, medical dispensaries and administrative offices. Reportedly, such buildings are not all built by community's members at their own initiative; the Government itself owns the public schools, dispensaries and police stations that have been listed for demolition. The occupants and owners of the buildings were given 30 days to comply with the orders. The NCAA also identified more than 150 ‘immigrants’⁶ within the NCA with a view to their future removal.

On 19 April 2021, representatives of NCA residents issued a statement asking the Government to halt the evictions and demolitions planned; investigate the human rights violations suffered by the Maasai; and create an independent and participatory commission to address the challenges of the NCA, among other requests.

On 20 April 2021, the NCAA suspended the relocation and demolition orders until further notice. Reportedly, the threat of relocation looms over the concerned communities, threatening the survival of the Maasai pastoralists who have stewarded the land and environment for generations and now risk losing access to them.

On 17 October 2021, the President of Tanzania delivered a public speech in which she indicated that people must be relocated from the NCA, which followed previous speeches with a similar message, such as a public speech

⁶ Defined as “families, which were not present and those which were not resettled in NCA from Moru area in Serengeti National Park when the Conservation Area was established in 1959 and their descendants.”

delivered on 5 April 2021, shortly after her inauguration.

Following increasing protests from the Maasai communities, the Government has reportedly promised to launch a “participatory” approach to future land use decisions. Nevertheless, according to reports, requests to create an independent and inclusive process to review future land use plans in the NCA and to establish a judicial commission to investigate the human rights violations perpetrated against the Maasai has thus far been ignored.

Reportedly, the Ngorongoro Conservation Area Authority has submitted a budget request to begin the implementation of a relocation plan for over 80,000 residents starting by the end of February 2022.

According to information received, on 3 February, police in collaboration with NCAA wardens have arrested six journalists within Ngorongoro Conservation Area, who went to cover a meeting in Nainokanoka Ward organised by the community resident of the area.

Without prejudging the accuracy of the information received, we wish to express our serious concern about plans for resettlement, forced evictions, home demolitions and additional restrictions to the livelihood of the residents of the Ngorongoro Conservation Area (NCA), which are expected to displace thousands of indigenous Maasai pastoralists from their traditional lands. We are also concerned that these plans have been developed without consulting the affected indigenous peoples, in violation of international human rights standards, including those related to the right to an adequate standard of living, including adequate food, housing, safe water and sanitation, and the right to take part in the definition, elaboration and implementation of policies and decisions that have an impact on the exercise of one’s cultural rights.

We are deeply alarmed at the fact that, although the NCA is home to the indigenous Maasai and their active participation in all decision-making processes concerning the site is requested by the World Heritage Committee, they have reportedly not been involved in the elaboration of strategies for the sustainable management of the area including at the conservation level. We are also concerned that their free, prior and informed consent was not sought in connection with the plans mentioned above, which may have devastating consequences for their survival. While noting that your Excellency’s Government has reportedly launched a participatory approach to future decision-making on land use, we remain concerned about the failure to respect and protect the Maasai’s rights to their traditional lands, territories and resources, to adequate housing, to access safe water for consumption and food production, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic, cultural and spiritual activities. We are concerned that the alienation, dispossession and displacement of the Maasai from their lands severs their spiritual and physical connection to their environment and to what they consider to be “home”. The situation leads to a complex condition of homelessness accompanied by social and mental despair and the restriction in fulfilling the rights to safe water and food security. Our preoccupations extend to the lack of recognition of the Maasai’s contributions to conservation and restoration of biodiversity on the territory, having substantial positive impacts on the right to a clean, healthy and sustainable environment. We also regret that your Excellency’s Government fails to consider an

approach to conservation that includes indigenous conservation skills and knowledge and to work collaboratively with indigenous peoples who have lived and protected the area for generations.

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 above-mentioned allegations.
2. Please provide information on the measures taken or envisaged by the Government to collaboratively work with the Maasai with a view to conserving the ecosystems within their traditional lands as well as indigenous livelihoods, skills and knowledge of conservation, which are all recognized as important features of natural and cultural World Heritage listing. Please indicate if, and to which extent, their involvement in conservation management and tourism activities in the NCA has been considered and undertaken, and how they share in the benefits of these developments.
3. Please provide information about how the MLUM balances the adverse impacts of tourism activities on the livelihoods of the traditional residents in the NCA. Please explain all types of impact assessment that have been conducted prior to the development and implementation of the MLUM, including any assessment of potential impacts on environmental degradation and on human rights, including access to food and housing, access to social services (accessibility and affordability of essential health care, education, energy, safe water and sanitation services for all for example), about the results of these assessments and how they have been integrated into the MLUM.
4. Please also provide details regarding the extent to which information about the proposed MLUM was provided to potentially affected indigenous communities, the opportunities provided for public participation in decision-making about it, and ways in which public feedback was reflected in decision-making.
5. Please provide information on the measures taken to confer legal security of tenure in the NCA, including information on the measures taken to demarcate and allocate collective land rights to the Maasai, in consultation with them and in accordance with their customs, traditions, land tenure systems and evolving needs.
6. Please, provide information on the measures undertaken, legislative or otherwise, to protect the Maasai from forced evictions and arbitrary displacement, taking into consideration the fact that many persons and

families may lack official documentation about the duration of their presence on the territory, and to ensure that any decision affecting their homes and lands, territories and resources is taken with their free, prior and informed consent and after agreement on just and fair compensation and, where possible, with the option of return.

7. Please provide information on the actions taken by the Government to ensure that in the case of forced eviction, the relocation guarantees safe and secure (in particular for women and girls) access to water, sanitation, food, and other livelihoods, and that the means for food production, water management and sanitation are culturally appropriate and respectful of Maasai cosmovision. In this regard, please also provide information on how evicted communities will be guaranteed access to their sacred places within the NCA.
8. Please indicate the steps taken or envisaged by the Government in response to the recommendations formulated by the NCA residents, including those related to the establishment of an independent and inclusive process to review land use plans in the NCA and the creation of a judicial commission to investigate the human rights violations perpetrated thus far.
9. Please clarify the legal basis for the demolition orders issued on 16 April 2021.
10. Please indicate what measures have been taken to ensure that persons who have lost their land, housing, possessions or livelihoods, or who have been displaced or have suffered any other economic or cultural impacts as a result of the implementation of the NCA, have access to effective remedy and reparation.
11. Please indicate what measures have been taken to ensure a rights based approach to conservation restoration and sustainable biodiversity in the Ngorongoro Conservation Area. Please provide further information on any measures planned or taken by the Government to preserve and recognize the active role of the Maasai in this context.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website after 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 be informed that letters on the same matter have also been sent to UNESCO World Heritage Committee, the International Union for the Conservation of Nature and the International Council on Monuments and Sites.

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

Balakrishnan Rajagopal
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David R. Boyd
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José Francisco Cali Tzay
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Cecilia Jimenez-Damary
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Olivier De Schutter
Special Rapporteur on extreme poverty and human rights

Pedro Arrojo-Agudo
Special Rapporteur on the human rights to safe drinking water and sanitation

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 the attention of your Excellency's Government to its obligations under article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Tanzania in 1976, which recognizes the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and stipulates that States shall take appropriate steps to ensure the realization of this right. This article must be read in conjunction with Article 2.2 of the Covenant, which provides for the exercise of any right under the Covenant without discrimination of any kind. We also would like to draw the attention of your Excellency's Government to its obligations under articles 6 and 17 of the International Covenant on Civil and Political Rights (ICCPR), ratified in 1976, on the rights to life and to non-interference with privacy, family, home or correspondence.

In its General Comment No. 4 on the right to adequate housing, the Committee on Economic, Social and Cultural Rights has clarified that the right to housing should not be interpreted in a narrow or restrictive sense, such as merely having a roof over one's head; rather, it should be seen as the right to live somewhere in security, peace and dignity. It includes, among others, the availability of services, materials, facilities and infrastructure essential for health, security, comfort and nutrition, including sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services. It has also clarified that characteristics of housing adequacy include also security of tenure, affordability, habitability, accessibility, location and cultural adequacy. Housing is not adequate if it does not respect and take into account the expression of cultural identity. The Committee has indicated that States must allocate sufficient resources to the realization of the right to adequate housing and prioritize the needs of disadvantaged and marginalized individuals or groups.

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.⁷ As indicated by the previous UN Special Rapporteur on the right to adequate housing, Ms Leilani Farha, "the alienation and dispossession of indigenous peoples from their lands severs their spiritual and physical connection to the world and to their understanding of home, contributing to a complex condition of homelessness".⁸ In this regard, we wish to recall that the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the UN General Assembly in 2007, has recognized that Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard (art. 25).

⁷ CCPR/C/132/D/2552/2015, 2021.

⁸ A/74/183, para. 2

We wish to recall that, as clarified by the Committee on Economic, Social and Cultural Rights, in its General Comment No. 7, forced evictions are a gross violation of the right to adequate housing and may also result in violations of other human rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions. We wish to underscore that, notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons. We furthermore wish to recall the United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement (A/HRC/4/18, Annex 1) which specify that evictions can only take place in 'exceptional circumstances'; that they must be authorized by law, and ensure full and fair compensation and rehabilitation. The Guidelines indicates that 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; and should take specific preventive measures to avoid and/or eliminate underlying causes of forced evictions.

We would like to draw the attention of your Excellency's Government to Article 25 of the Universal Declaration of Human Rights recognizes the right of everyone "to a standard of living adequate for the health and well-being of himself and of his family, including food." Article 11 (1) of ICESCR further recognizes "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions."

ICESCR requires States to "take appropriate steps to ensure the realization of the right to food" (article 11(1)). According to general Comment 12, the obligations to respect existing access to adequate food requires State parties to refrain from taking any pressures that result in preventing such access. The obligation to protect requires measures by the state to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to fulfil (facilitate) means the state must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including their access to land in order to ensure their food security. (para. 15.) Whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly.

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

Article 32 of UNDRIP also underlines that States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact. 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).

In addition, we wish to recall that, as recognized in UNDRIP, indigenous peoples have the right to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities. In this connection, we would also like to draw your Excellency Government's attention to its obligation under the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111), ratified by Tanzania in 2002, to ensure equality of opportunity and treatment in employment and occupation without discrimination. Promoting and ensuring access to material goods and services required to carry out an occupation, such as access to land and resources, should be part of the objectives of a national policy on equality under article 2 of the Convention.⁹

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.

Principle 7 outlines the standards and modalities that must be observed when displacement is being undertaken, which apply whether or not displacement is permissible. Principle (1) sets out that, prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that feasible

⁹ ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR), 2012 General Survey on the fundamental conventions, para. 756.

alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects. Principle 7(2) refers to the provision of proper accommodation to the displaced persons and satisfactory conditions of safety, nutrition, health, hygiene, and the non-separation of family members. Principle 7(3) states that, if displacement occurs in situations other than during the emergency stages of armed conflict and disasters, the following guarantees shall be complied with: (a) a specific decision shall be taken by a State authority empowered by law to order such measures; (b) adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation; (c) the free and informed consent of those to be displaced shall be sought; (d) the authorities concerned shall endeavor to involve those affected, particularly women, in the planning and management of their relocation; (e) law enforcement measures, where required, shall be carried out by competent legal authorities; and (f) the right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected. Authorities also have the obligation to protect internally displaced persons, including their protection from human rights violations (Principles 10 to 23), to provide humanitarian assistance during their displacement (Principles 24 to 30), and to support durable solutions to their displacement (Principles 28 to 30).

We would like to remind your Excellency's Government of its primary duty and responsibility to support durable solutions for internally displaced persons, i.e. their safe, voluntary and dignified return to their places or origin, their resettlement elsewhere in the country or their local integration, including assistance to recover their property and possessions which they left behind (Principles 28-30). Where recovery of such property is not possible, internally displaced persons should receive appropriate compensation or another form of just reparation (Principle 29(2)). Principle 28 provides that special effort should be made to ensure the full participation of internally displaced persons in the planning and management of their return, resettlement and reintegration. In regard to the requirement to ensure durable solutions for internally displaced persons, we furthermore recall the provisions of the IASC Framework on Durable Solutions for Internally Displaced Persons.

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.

Furthermore, we would like to recall that the UN Human Rights Council, in recognizing the right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights, has affirmed that "States have the obligation to respect, protect and promote human rights, including in all actions undertaken to address environmental challenges, and to take measures to protect the rights of all".¹⁰ In this regard, we would like to recall that article 29 of UNDRIP recognizes that indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination. We wish to emphasize that States have acknowledged that respect for indigenous knowledge,

¹⁰ Res. 48/13, 2021

cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment.¹¹

We also wish to refer your Excellency's Government to its obligations under the Convention on Biological Diversity, ratified by Tanzania in 1996, which stipulates that States shall "respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices".¹²

We also wish to recall that the Conference of the Parties to the Convention on Biological Diversity adopted a decision already in 2014, which highlighted the requirement that protected areas and management regimes must be consensual and participatory if indigenous peoples' rights are to be respected.¹³

We wish to refer your Excellency's Government to the report of the UN Special Rapporteur on the rights of indigenous peoples on conservation measures and their impact on indigenous peoples' rights and the guidance provided therein (A/71/229). As indicated in the report, there is increasing recognition that the ancestral lands of indigenous peoples contain the most intact ecosystems and provide the most effective and sustainable form of conservation. Studies have demonstrated that the territories of indigenous peoples who have been given land rights have been significantly better conserved than the adjacent land.¹⁴

We would like to highlight that on 8 October 2021, the Human Rights Council adopted resolution 48/13, recognizing the right to a clean, healthy and sustainable environment. Furthermore, the Framework Principles on Human Rights and the Environment, presented to the Human Rights Council in March 2018 (A/HRC/37/59) set out basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment. As underscored by the Special Rapporteur on human rights in the environment in a policy brief entitled "Human rights-based approaches to conserving biodiversity: equitable, effective and imperative", there is a need to step aside from "fortress conservation" and preconize a human rights based conservationist approach. In this brief, the Special Rapporteur also highlights that "(r)especting and protecting human rights, especially the rights of Indigenous Peoples and other rural rights holders, is an obligation under international law and an effective, equitable and cost-efficient conservation strategy that should be applied to all efforts to safeguard nature".¹⁵

In this regard, we also wish to recall the report of the UN Special Rapporteur on Human Rights and the Environment on "A healthy biosphere and the right to a healthy environment" (A/75/161) in which the Rapporteur indicated that "indigenous peoples and local communities and peasants can make enormous contributions to the conservation, protection, restoration and sustainable use of ecosystems and

¹¹ UNDRIP, preamble.

¹² CBD, art. 8 (j)

¹³ UNEP/CBD/COP/DEC/XII/12

¹⁴ A/71/229, para. 15.

Special Rapporteur on human rights and the environment, Policy Brief No. 1 : Human rights-based approaches to conserving biodiversity: equitable, effective and imperative, August 2021 available at: <https://www.ohchr.org/Documents/Issues/Environment/SREnvironment/policy-briefing-1.pdf>

biodiversity, when empowered to do so, through recognition of their rights. Thanks to their traditional knowledge, customary legal systems and cultures, they have proved effective at conserving nature.”¹⁶ In the report, the Special Rapporteur has recommended that States, *inter alia*:

- (a) Prioritize the legal recognition of the title, tenure and rights of indigenous peoples, Afrodescendants, peasants and local communities, empowering those who depend directly on nature for their livelihoods to engage in long-term, sustainable agricultural, harvesting and conservation practices based on traditional knowledge, customary laws and stewardship responsibilities;
- (b) Ensure access to land, water, wildlife, plants, medicines and sacred sites, subject to conservation measures established through inclusive consultation processes and where required, the free, prior and informed consent of indigenous peoples;
- (c) Provide swift, fair and effective redress for past violations of the rights of indigenous peoples and local communities, such as displacement and relocation, related to the creation of parks and protected areas, through mechanisms ranging from reconciliation processes to compensation;
- (d) Place indigenous peoples and local communities at the forefront of efforts to identify, designate and manage new areas important for cultural and biological diversity, including indigenous protected and conserved areas, indigenous and community conserved areas, sacred sites and other effective area-based conservation measures;
- (e) Engage indigenous peoples and local communities to manage or co-manage conserved and protected areas within their territories, including adequate legal, financial and other resources;
- (f) Redirect financial flows for conservation to indigenous peoples and local communities involved in protecting and sustainably using biodiversity.

We also wish to draw your Excellency’s Government attention to its obligations under article 27 of the International Covenant on Civil and Political Rights, and article 15 of the International Covenant on Economic, Social and Cultural Rights, concerning the right of everyone to take part in cultural life. As clarified by UN Committee on Economic, Social and Cultural Rights in its General Comment no. 21, States should adopt appropriate measures or programmes to support minorities or other groups in their efforts to preserve their culture (para. 52.f), and should obtain their free and informed prior consent when the preservation of their cultural resources are at risk (para. 55). In the case of indigenous peoples, cultural life has a strong communal dimension which is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. The Committee has emphasized that “indigenous peoples’ cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and,

¹⁶ A/75/161, para. 57

ultimately, their cultural identity”. Likewise, the UN Human Rights Committee, in its General Comment no. 23, has explained that traditional activities must be protected as manifestation of culture.

The Special Rapporteur in the field of cultural rights recalled that the right to access and enjoy cultural heritage also includes “contributing to the identification, interpretation and development of cultural heritage, as well as to the design and implementation of preservation/safeguard policies and programmes”. She stressed the duty of States not to destroy, damage or alter cultural heritage, at least not without the free, prior and informed consent of concerned populations, as well as their duty “to take measures to preserve/ safeguard cultural heritage from destruction or damage by third parties” (A/HRC/17/38, paras. 78 and 80 a) and b)), and recommended that States recognize and value the diversity of cultural heritages present in their territories and under their jurisdiction. In the context of touristic activities, the Special Rapporteur recalled the importance for Governments to support cultural heritage as a living practice, to ensure that the people whose cultural heritage is used to promote tourism are empowered to manage such activities to their best advantage and that they have a significant share in the benefits generated by the tourism industry (A/HRC/28/57/Add.1, para. 100 and 113).

In addition, the Guiding Principles on Extreme Poverty and Human Rights, adopted by the Human Rights Council in September 2012 through its resolution 21/11, recognizes indigenous peoples as one of groups particularly vulnerable to poverty and highlights the importance of their rights to take part in cultural life and to enjoy the benefits of scientific progress and its applications. It calls on States to “[e]nsure that cultural heritage policies and programmes, including those designed to promote tourism, are not implemented at the expense or to the detriment of communities living in poverty, including through the active participation of the relevant communities and individuals” (paragraph 90, (c)).

In this regard, we also recall that the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, ratified by Tanzania, recognizes the importance of the knowledge systems of indigenous peoples, and their positive contribution to sustainable development, as well as the need for their adequate protection and promotion. We furthermore refer to the UNESCO Convention on the Safeguarding of the Intangible Cultural Heritage, ratified by Tanzania, which similarly recognizes that indigenous communities, groups and, in some cases, individuals, play an important role in the production, safeguarding, maintenance and re-creation of the intangible cultural heritage, thus helping to enrich cultural diversity and human creativity.

Finally, with regard to the alleged arbitrary arrest of six journalists within Ngorongoro Conservation Area, we wish to recall Article 19 of the ICCPR, which guarantees the right to freedom of opinion and expression, which includes the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”. Under Article 19 (3) of the ICCPR, any restriction on the right to freedom of expression must be: (i) provided by law; (ii) serve a legitimate purpose; and (iii) be necessary and proportional to meet the ends it seeks to serve. In this context, we would like to underscore that the deprivation of liberty as punishment for the legitimate exercise of the rights to freedom of opinion and expression and freedom of assembly and association is arbitrary. Article 19 of the ICCPR protects,

inter alia, political discourse, commentary on one's own and on public affairs, discussion on human rights, journalism, among others (Human Rights Committee, General Comment no. 34, para. 11). As expressed in its General Comment no.34, the Committee stated that "A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights" (para. 13). The interference in the freedom of the press is therefore a particularly serious restriction of the rights under Article 19. As further expressed by the Committee, "the penalization of a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression, id para. 42. Furthermore, and as generally held, attacks against individuals for the exercise of their right to freedom of expression is incompatible with the Covenant, see CCPR/C/GC/34 para 23. Any such attacks should be subject to independent and impartial investigations, id. In its resolution 45/18, the Human Rights Council recognised the importance of investigative journalism and the ability of the media to investigate and publish the results of their investigations, "without fear of reprisals, plays an important role in societies, including in contributing to holding public institutions and officials accountable or detecting cases of corruption, and revealing human rights abuses by business enterprises."