

SHADOW REPORT

SHADOW REPORT CONCERNING THE SITUATION OF ECONOMIC SOCIAL AND
CULTURAL RIGHTS OF INDIGENOUS PASTORALISTS AND HUNTER GATHERERS
OF THE UNITED REPUBLIC OF TANZANIA:

REFERENCE: Combined initial, second and third periodic reports of the United Republic of Tanzania submitted to the International Covenant on Economic, Social and Cultural rights (UN doc E/C.12/TZA/1-3, 28 March 2011) at the occasion of The 48th Session of the Committee on Economic Social and Cultural Rights.

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Executive Summary

Indigenous pastoralist and hunter/gatherer communities constitute the most vulnerable segments of the Tanzanian society. Their economies and traditional ways of life rely heavily on cattle herding, as well as hunting and gathering. Climate change and its impacts have increased their vulnerability to an even greater extent.

At the same time these communities have been subjected to forceful evictions from their ancestral lands to give room to other land uses, which are considered by the government to be more economically viable. These land uses include large scale crop cultivation, creation of Wildlife Protected Areas such as Game Reserves and expansion of National Parks, mining, construction of military barracks and a wide range of other Foreign Direct Investments (FDIs) such as sports hunting and luxury photographic tented tourism.

At present, Game Controlled Areas¹ in Tanzania form part of many indigenous pastoralists' Villages² meaning they are found within legally existing villages. The initial establishment of the said Game Controlled Areas within indigenous pastoralists' villages did not prevent the indigenous pastoralist from accessing their natural resources and continuing their traditional pastoral livelihoods.³

However, in an extra ordinary turn of events, the new Wildlife Conservation Act of 2009 provides that "Any person shall not, save with the written permission of the Director [of wildlife] previously sought and obtained, graze any livestock in any Game Controlled Area." This law poses a very big threat to the continued existence of pastoralism as a livelihood system contrary to article 1.2 of the International Covenant on Economic, Social and Cultural Rights.

Likewise, there is no comprehensive and enforceable legislation regulating compensation when indigenous peoples' land is taken as per the provisions of article 11 and 1.2 of the Covenant on Economic Social and Cultural Rights.⁴ Consequently forceful evictions of indigenous peoples

¹ A Game Controlled Area (GCA) is a wildlife Protected Area in which licensed hunting is permitted as opposed to a National Park where only non consumptive use of wildlife such as tourism is permitted. The predecessor to the current law (the Wildlife Conservation Act of 2009) permitted human habitation in Game Controlled Areas. However, the current law criminalizes the same without taking into account the fact that many of such Areas are pastoralists' ancestral lands.

² A village is an administrative unit established under section 22 of the Local Governments (District Authorities) Act No. 7 of 1982. In practice, there must be 250 or more households for an area with well defined boundaries to qualify for registration as a village.

³ Section 7(2) (a)-(b) of the Wildlife Conservation Act Of 1974 (Repealed) provided that people whose places of ordinary residence were within the Game Reserves as well as those who were born in the Game Reserves were exempted from the general requirements for permits to live or graze in a Game Reserve.

⁴ The Land Act no 5 of 1999 provides for prompt, fair and adequate compensation but in practice pastoralists have never been compensated.

from their ancestral land continue unabated; it is now the norm rather than the exception. Their Free, Prior and Informed Consent is not sought. A prominent case is the 2009 eviction in Loliondo, Ngorongoro District in Northern Tanzania that resulted in the burning of more than 200 residential houses belonging to indigenous pastoralists. During the eviction the villagers lost their properties including cows and goats, and witnessed their clothes, money and utensils taken by the fire.⁵ No compensation has been offered by the government to the victims who now live under abject poverty.

Moreover, Tanzania fails to fulfill its obligation to ensure that indigenous peoples are able to feed themselves especially in the Ngorongoro Conservation Area (NCAA) where subsistence farming has been outlawed hence reducing indigenous peoples into dependants of food aid contrary to article 11 of the International Covenant on Economic Social and Cultural Rights (ICESCR).

The state Party deliberately fails to protect sacred sites of indigenous pastoralists and hunter gatherers from alienation. A towering example in this regard is “*endoinyo-oormorwak*”, a sacred hill where the Maasai pastoralists used to go for traditional prayers and for conducting a wide range of other sacred ceremonies. This place has been confiscated for the purposes of building the National Police College contrary to article 15 of the International Covenant on Economic Social and Cultural Rights (ICESCR).

Preface

This supplemental/shadow report has been prepared by the Coalition of Indigenous Pastoralist and Hunter Gatherer Organizations in order to avail the Committee on Economic, Social and Cultural Rights (CESCR) with information relating to the situation of Indigenous Peoples in Tanzania in relation to the enjoyment of Economic, Social and Cultural Rights (ESCR). The

⁵ FEMACT's Loliondo Fact Finding Report of August 2009 available online through search machines. Also see: Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, [Ref: A/HRC/15/37/Add.1, 14/9/2010], paragraph 445, page 181. Note: *FEMACT* is the human rights coalition of NGOs which advocates for gender and other human rights. It is comprised of more than 50 members.

supplemental report also aims at commenting on the Tanzania's combined initial, second and third consolidated periodic report to the committee.

Generally, Tanzania's consolidated report to the Committee does not take into account the vulnerability and the economic, social and cultural rights of indigenous peoples comprising of pastoralists and hunter gatherers. There are no disaggregated data in the report for indigenous peoples relating to their situation of poverty (para. 16), and they are not mentioned under groups who are particularly vulnerable to poverty and discrimination (para. 34). This supplemental report therefore, focuses specifically on the situation of indigenous peoples, in order to provide the Committee with important information that has been omitted in the Tanzanian consolidated report.

Other international human rights bodies have previously recommended to the government of Tanzania to recognize indigenous peoples in Tanzania and to take steps to guarantee their rights in accordance with international law. Most recently the Universal Periodic Review (UPR) made a number of recommendations relating to indigenous peoples.⁶

Likewise in 2009 the Human Rights Committee in its concluding observations relating to the review of Tanzania under the International Covenant on Civil and Political Rights (CCPR) stated that: *"The Committee recalls its General Comment No 23 (1994) on the rights of minorities and is concerned that the State party does not recognize the existence of indigenous peoples and*

⁶ Draft Report of the Working Group on the Universal Periodic Review. The United Republic of Tanzania. Human Rights Council. Working Group on the Universal Periodic Review. Twelfth session. Geneva 3-14 October 2011. A/HRC/WG.6/12/L.2. The main recommendations relating to indigenous peoples are:

86.45. Hold responsible alleged perpetrators of forced evictions and pollution of drinking water in the area around big mines

86.46. Align policies to ensure access to land and water for pastoralists with the African Union Framework on Pastoralism and to conclude regional agreements to facilitate cross-border pastoralism.

86.48 Recognize the notion of indigenous peoples with a view to effectively protecting their rights.

86.49. Adopt measures to protect and preserve the cultural heritage and traditional way of life of indigenous peoples and undertake effective consultations with indigenous peoples based on free, prior and informed consent.

86.50. Launch a credible investigation of forced evictions and land conflicts and use the results of this investigation to help draft new legislation, which fully takes the rights of indigenous peoples into account.

86.51. Promote a legal framework giving legal certitude in terms of property, in particular with regard to land ownership and protection against forced evictions and recognition of the rights of indigenous people, pastoralists, hunters and gathering peoples.

86.52. Set up an effective statutory consultation mechanism with organizations working on the rights of indigenous peoples to help avoid further conflicts.

minorities in its territory and regrets the lack of information about certain vulnerable ethnic groups. It also notes with concern reports that the traditional way of life of indigenous communities has been negatively affected by the establishment of game reserves and other projects” (para. 26).⁷ The Human Rights Committee recommended that: “The State party should, as a matter of urgency, carry out a study regarding minorities and indigenous communities in the State party, and adopt specific legislation and special measures to protect, preserve and promote their cultural heritage and traditional way of life. The State party should also consult indigenous communities before establishing game reserves, granting licenses for hunting, or other projects on ancestral and disputed lands” (para 26).⁸

Similarly the African Commission on Human and Peoples’ Rights (ACHPR) reviewed in May 2008 Tanzania’s second to tenth Periodic Report. In its Concluding Observations the ACHPR writes that: *“The ACHPR is also concerned that the government of Tanzania seems to be unaware of the Report on Indigenous Populations/Communities in Africa adopted by the ACHPR in 2003, and as a result fails to take effective measures to promote and protect the rights of indigenous populations/communities guaranteed under the African Charter” (para 37).⁹ The ACHPR in its Concluding Observations: “Encourages the government of Tanzania to adopt the definition or characterization of indigenous populations/communities adopted by the African Commission in 2003 and to adopt effective measures to promote and protect their rights guaranteed under the African Charter” (recommendation no. 10).¹⁰*

1.1 Background: The Indigenous Peoples of Tanzania

In conformity with the criteria set out by the African Commission on Human and Peoples’ Rights as well as the United Nations, the indigenous peoples of the United Republic of Tanzania include the Maasai, the Barbaig, Akie, Taturu and Hadzabe. The former two groups are predominantly pastoralists whereas the latter comprise of forest-dwelling hunter-gatherers. The groups mentioned above collectively practice pastoralism and hunting-gathering.

⁷ International Covenant on Civil and Political Rights. Concluding observations of the Human Rights Committee, Tanzania. 29 July 2009. CCPR/C/TZA/CO/4.

⁸ Op.cit.

⁹ Concluding Observations of the African Commission on Human and Peoples’ Rights on the Second-Tenth Periodic Report of the United Republic of Tanzania. 43rd Ordinary Session, Enzulwini, Kingdom of Swaziland. 7-22 May 2008.

¹⁰ Op.cit.

Pastoralism is a livelihood practice involving indigenous livestock grazing by making use of sparsely distributed resources such as pastures, salt licks and water sources.¹¹ To this end, it requires mobility or unrestricted movement of livestock from a point of resource scarcity to the point of resource abundance. On the same footing hunting and gathering just like pastoralism is another livelihood system whereby those practicing it depend traditional hunting and gathering wild fruits, honey, and roots in the forests.

Pastoralism is commonly practiced in arid and semi-arid environments where resources (water and pasture) are variable in time and space. Local knowledge of rainfall patterns, pasture quality and availability, and pasture management are based on mobility, long-term social networks, and flexible management regimes. Mobility is central to this system to both access resources across variable environments, and also allow for different pastures to rest at different times of the year.¹²

Indigenous peoples in Tanzania are subjected to violations, abuses and denials of human rights including systematic land alienation, evictions, intimidations, and marginalization from social services as well as lack of legal recognition. This is despite of the fact that the United Republic of Tanzania has enacted several laws and policies to address land rights and other rights. The misguided investment policies and abuse (legislative and administrative) of power are some of the main causes of the mistreatment of indigenous peoples in Tanzania.

The two modes of production, namely pastoralism and hunter-gathering are not recognized by the government and the dominant society as being economically viable livelihood options.¹³ The

¹¹ In Tanzania, the livestock sub-sector which is highly characterized by indigenous livestock breeds or pastoralism. This livelihood system contributes about 30% of the entire gross value output of agriculture.

¹² For a comprehensive analysis of pastoralism and land use, see Oba, G., & Kaitira, L. M. (2006). Herder knowledge of landscape assessments in arid rangelands in northern Tanzania. *Journal of Arid Environments*, 66(1), 168; Scoones, I. (Ed.). (1995). *Living with Uncertainty*. London: Intermediate Technology Publications; Niamir, M. (1990). *Herders' decision-making in natural resources management in arid and semi-arid Africa* (No. 4). Rome: FAO.

¹³ See the Village Land Act no. 5, 1999. Although this law has a provision that indicates recognition of common property ownership for pastoralists such that land sharing arrangements are possible, R.W. Tenga et al opine that 'official practice does not appear to recognize a customary pastoral title to land, it only recognizes a usufruct- a mere license to use someone else's property.. See A Study on Options for Pastoralists to secure their Livelihoods in

lack of recognition of and support to pastoralist and hunter/gather forms of production is also reflected in the government's CDESCR report. Thus, nowhere does pastoralism appear in the economic statistics mentioned in the report.

Likewise, in the section relating to Article 11, pastoralists and hunter/gatherers and their traditional production systems and needs are totally invisible, while all emphasis is placed on assistance to farmers and modernization of agriculture. This is despite the fact that a growing body of scientific research has proven that nomadic pastoralism is the most effective and economically viable way of utilizing natural resources in arid and semi-arid lands in Africa, and that traditional pastoralism contributes significantly to local and national economies¹⁴. This blatant lack of official recognition of and support to pastoralist and hunter/gather livelihoods and forms of production makes indigenous peoples very vulnerable to dispossession of their lands and to violations of a wide range of other Economic, Social and Cultural Rights as will be exemplified below.

2. Cases of Violation of the Convention on Economic, Social and Cultural Rights (ICESCR)

2.1 The Right not to be deprived of the means of subsistence (Article 1.2 of CDESCR)

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its means of subsistence. (Emphasis added).

Currently, owing to lack of Constitutional protection of land rights, the United Republic of Tanzania does not have a land rights regime which meets its obligation under article 1.2 of the convention quoted above. This means that laws of Tanzania do not adequately recognize and protect indigenous pastoralists' and hunter gatherers' ancestral lands which constitute not only

Tanzania: Current policy, Legal and Economic Issues.

¹⁴ See for instance: Helen de Jode (ed): *Modern and mobile. The future of livestock production in Africa's drylands*. IIED and SOS Sahel, 2010. See also the website of CELEP: <http://www.celep.info/>

their means of subsistence but also the basis for their collective survival and development leading to the deprivation of their means of subsistence.

The main laws governing land tenure and ownership in Tanzania are the Land Act No. 4 and the Village Land Act no. 5 respectively. The Interpretation section of the Village Land Act stipulates that a village land means the land declared to be Village land in accordance with Section 7 of the Village Land Act. The main threat posed by this law to indigenous pastoralists and hunter gatherers relates to the definition of General land as provided for in the Land Act. This law defines General land to mean “all public land which is not reserved land or village land *and includes unoccupied or unused village land.*” Emphasis added.

This provision runs contrary to land use patterns by pastoralists and hunter gatherers. Pastoralism for example, requires movement from a point of resource abundance to the point of resource scarcity. In the course of these movements, pastoral ancestral land is regarded as unused and hence susceptible to grabbing for other land uses.

Another towering example which has the potential to occasion deprivation of the means of subsistence to indigenous pastoralists is embodied in the provisions of the Wildlife Conservation Act 2009. This law provides under section 21(1) that “*Any person shall not, save with the written permission of the Director [of Wildlife] previously sought and obtained, graze any livestock in any game controlled area.*” It is not clear how this law can be implemented in practical terms on the ground, without depriving indigenous pastoralists of their rights to subsistence in contravention of Article 1 (2) of the Covenant. This particularly relates to Longido District and Ngorongoro District (Loliondo Division) in northern Tanzania where more than half of the land falls within the so called “Game Controlled Areas” and is currently occupied by indigenous cattle herders as their ancestral lands.

Recommendations

1. The Proposed new Constitution should provide provisions for the protection of land rights, including the collective land rights of pastoralists and hunter/gatherers.
2. All Game Controlled Areas falling within indigenous pastoralists lands should be de-gazetted to avoid insecurity of land tenure among indigenous pastoralists..

3. The Land Act number 5 of 1999 should be amended to provide for security of land tenure to indigenous pastoralists and hunter gatherers in line with their traditional ways of life and their livelihoods.
4. The new constitution should have a provision which talks about pastoralism and hunting and gathering as legitimate livelihood systems.

2.2 The Right to Adequate Housing (Article 11 (1) of CESCR): Forced Evictions.

The State Parties to this Covenant recognize 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. The state Parties will take appropriate steps to ensure the realization of this right, recognizing to this the essential importance of the international cooperation based on free consent.

Forced eviction is *prima facie* incompatible with the requirement of the Covenant on Economic Social and Cultural Rights (ESCR).¹⁵ In particular, forced eviction violates the obligation of the state party contained in the Covenant for providing and protecting shelter and for ensuring that people are not deprived of their means for subsistence. This assertion is contained in the General Recommendation No. 4 (1991)¹⁶, issued by the Committee on Economic Social and Cultural Rights (CESCR). The Committee made it clear that the degree of security of tenure that guarantees legal protection against forced eviction¹⁷, harassment, and other threats is necessary for all persons to possess.¹⁸

Apart from manifestly violating state obligations under the Covenant, forced evictions frequently cause violations of a myriad of other human rights. This is due to the inter relationship and interdependency which exists among all human rights. Other rights that can be trampled underfoot when forced eviction is practiced include Civil and Political Rights (CPR) such as the

¹⁵ Para 18

¹⁶ Report of the Committee On Economic Social and Cultural Rights on the Work of its Sixth Session-E/1992/23

¹⁷ Forced Eviction is defined as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.” Ibid, Para 3

¹⁸ Para 8(a)

right to life, the right to security of persons, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions.¹⁹

In view of the above, the Human Rights Committee, while considering the 4th Periodic Report of Tanzania (CCPR/C/TZA/4) expressed its concern on reports that the traditional way of life of indigenous communities has been negatively affected by the establishment of game reserves and other projects.²⁰ In this context, the human rights committee was undoubtedly referring to forceful eviction which has been the single most cause of impoverishment and disruption of traditional ways of life of indigenous communities in Tanzania.

Although Tanzania is a party to the Covenant on Economic, Social and Cultural Rights, instances of forced evictions are widespread in Tanzania, disproportionately targeting and negatively affecting indigenous pastoralists and hunter gatherers. Since forceful evictions are carried out in the name of development and environmental conservation, lands belonging to indigenous pastoralists and hunter gatherers have been taken without their Free, Prior and Informed Consent and very often without any prior consultation in relation to the planned activities hence intensifying conflicts and exacerbating poverty. In addition, adequate compensation is in practice never provided. Thus the reality on the ground stands in sharp contrast to the wording of the Initial, second and third periodic report of the United Republic of Tanzania.²¹

Guidelines for State reporting adopted by the Committee on Economic, Social and Cultural Rights require State parties to provide various types of information pertaining directly to the practice of forced eviction. Relevant information includes the “number of persons evicted within the last five years and the number of persons currently lacking legal protection against arbitrary eviction or other kind of eviction.”²²

¹⁹ Para 4

²⁰ The Committee provided further that “The State party should, as a matter of urgency, carry out a study regarding minorities and indigenous communities in the state party, and adopt specific legislation and special measures to protect, preserve, and promote their cultural heritage and traditional way of life. The state party should also consult indigenous communities before establishing game reserves, granting licenses for hunting, or other projects on “ancestral” or disputed lands.”

²¹ See Paragraph 28 to 31.

²² E/C.12/1990/23, ANNEX III, paras. 6 and 8(d)

This information is not contained in the Initial, second and third periodic report of the United Republic of Tanzania, especially as it relates to indigenous pastoralists and hunter gatherers. There are numerous examples of forceful evictions of indigenous communities in Tanzania, and the evictions continue despite the many concerns voiced by the international community. The following 3 cases are illustrative of the actual situations facing the said indigenous communities in Tanzania.

2.2.1 The Loliondo Forced Evictions

In 1992, the Government of Tanzania granted a commercial hunting licence on a land belonging to eight registered villages in Loliondo Division, Ngorongoro District in northern Tanzania. The licence was granted to Ottelo Bussiness Cooperation (OBC) - a United Arabs Emirates company owned by Brigadier Mohamed Abdulrahim Al-Ali, a member of the Royal Family of the United Arab Emirates. The eight villages, which are predominantly inhabited by Maasai pastoralists include Soitsambu, Oloipiri, Ololosokwan, Loosoito/Maaloni, Oloerien Magaiduru, Piyaya, Arash and Malambo.²³

These villages are located within the boundaries of the Loliondo Game Controlled Area where human settlements is permitted. As a result of the hunting licence, the Maasai pastoralists lost control over important parts of their village lands which are fundamental for their livelihoods. These areas contain key natural resources such as salt lick and water and they provide refuge in times of acute drought.²⁴

In addition to the fact that Maasai pastoralists have been living in the area for over a hundred years, the said villages and village lands are legally recognized under the laws of Tanzania, in particular, the Land Act, Cap. 113, the Village Land Act, Cap. 114 and the Local Government (District Authorities) Act, Cap. 287. These land laws state that the rights of villagers over village lands is non-derogable by any law or authority and that whenever there is a conflict between the Land Act and any other law, the provisions of the Land Act will prevail. Furthermore, at the time

²³ FEMACT's Loliondo Fact Finding Report of August 2009 available online through search machines. Also see: Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, [Ref: A/HRC/15/37/Add.1, 14/9/2010], paragraph 445, page 181. Note: *FEMACT* is the human rights coalition of NGOs which advocates for gender and other human rights. It is comprised of more than 50 members.

²⁴ Ibid

of the evictions the Wildlife Conservation Act, Cap. 283 allowed coexistence of wildlife and human beings in Game Controlled Areas.²⁵

In total disregard of the rule of law, the government leadership of the Ngorongoro District, in collaboration with the OBC security guards, forcefully evicted Maasai pastoralists in July 2009 by burning more than 200 residential houses.²⁶ During the eviction the villagers lost their properties including cows and goats, and witnessed their clothes, money and utensils taken by the fire. The government has commissioned investigations of the evictions, but the reports from investigation missions have never been made public and no measures have been taken to compensate the victims and remedy the situation. On the contrary, the pastoralists continue to live under abject poverty.²⁷

2.2.2 The Mbarali Forced Eviction

In the period from May 2006 to May 2007 large numbers of Sukuma agro-pastoralists and IIParakuiyo, Taturu and Barabaig pastoralists and their livestock were evicted from the Usangu Plains in Mbarali district, Mbeya region. It is estimated that more than 400 families and 300.000 livestock were moved, and that a high number of livestock died or was lost in the process²⁸.

The arguments given for the evictions were that the pastoralists should allegedly be responsible for environmental degradation in the Ihefu and Usangu Basin and the drying up of the Great Ruaha River (which is in turn linked to the power cuts that have plagued Tanzania for years). However, those accusations disregard scientific studies concluding that the drying up of the Great Ruaha River is not caused by the activities of pastoralists but rather by the expansion of irrigated cultivation, in particular the extension of rice and other crop growing into the dry season.

²⁵ This is the law that was in force at the time when the eviction was carried out. It has however been repealed and replaced with the Wildlife Conservation Act of 2009 which came into force in 2010.

²⁶ FEMACT's Loliondo Fact Finding Report of August 2009 available online through search machines. Also see: Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, [Ref: A/HRC/15/37/Add.1, 14/9/2010], paragraph 445, page 181. Note: *FEMACT* is the human rights coalition of NGOs which advocates for gender and other human rights. It is comprised of more than 50 members.

²⁷ Ibid.

²⁸ PINGOs Forum, *Sectarianism Against Pastoralism; Causes Consequences and possible solution*, 2009

The evictions were discussed by the Committee of Ministers on the 24th January 2007 after which the Minister of Livestock issued an official statement on the eviction process, admitting that there had been shortcomings. On the 20th April 2007 the then Prime Minister, Hon. Edward Lowassa announced to Parliament that the government was forming a special commission to investigate the eviction process and make recommendations. The Commission of Enquiry, which was led by Justice Othman Chande (the current Chief Justice of Tanzania), visited Mbarali in early May 2007, and the Commission presented its report to the President on the 6th June 2007. However, the report has not been made public up until now and no actions have been taken to address the human rights violations committed during the evictions process. The evicted pastoralists continue to suffer and there is urgent need for appropriate measures to be taken. The affected families have neither been compensated for being evicted nor provided with essential needs in the new areas where they were moved to in the Lindi and Coast regions in Southern Tanzania. The evicted pastoralists and agro pastoralists are now completely destitute and they have not received any assistance, not even as being refugees.

2.2.3 The Kilosa Forced Evictions

On the 19th of November 2008, the District Executive Director of Kilosa District, Morogoro Region, Tanzania issued a letter addressing all Ward, Village and Division Executive officers informing them that he did not recognize the Ngaiti sub village and that its inhabitants should therefore vacate immediately to give way for large scale commercial wheat cultivation.²⁹ The village, which has around 20,000 inhabitants, has been occupied by indigenous Maasai pastoralists since 1951.³⁰

The problem started when the District authority earmarked Ngaiti village as a suitable land for wheat cultivation. Instead of soliciting approval of the said large scale cultivation from the Maasai through their Free, Prior and Informed Consent, the District authority opted to derecognize the village and order the pastoralists to vacate with immediate effect.³¹ As with the other cases of forced evictions the government has commissioned investigation missions, but the

²⁹ Brief Report on the Eviction of Pastoralists from Kilosa District, Feb 2009, by PINGOs Forum

³⁰ The Maasai had customary right to land.

³¹ This was a violation of Laws of Tanzania including the Land Acquisition Act of 1967.

report and findings has never been published, and the victims of the forced evictions have not been compensated.³²

There are many other examples of forced evictions of indigenous communities in Tanzania with a view to use indigenous peoples' lands for large scale farming, conservation areas, tourism and commercial game hunting etc. The widespread granting of leaseholds by the government of Tanzania to private investors is increasingly leading to land dispossession of indigenous communities and to land related conflicts. Such conflicts often become violent and there are several examples of people who have been killed or mutilated by police, game wardens etc.

Recommendations

1. The Government of Tanzania should make public the reports of the various committees that have investigated violations of human rights of indigenous peoples in relation with the forced evictions and bring the perpetrators of such violations to justice.
2. The Government of Tanzania should ensure that indigenous pastoralists who have been impoverished by forced evictions are adequately and promptly compensated, relocated and where possible restituted to their original lands
3. The Government of Tanzania should use the proposed new constitutional dispensation to make security of land tenure – including on a collective basis - a constitutional category in the country in order to protect ancestral land rights of indigenous nomadic pastoralists, hunter gatherers and other small scale producers. Lack of such constitutional safeguards currently permits the enactment of laws that undermine both individual as well as collective land rights for Tanzanians.
4. In addition to the Constitutional Provisions, the Government of Tanzania should enact a comprehensive legislation against forced evictions applicable to all agents acting under the authority of the government or who are accountable to it. This is an essential basis upon which to build a system of effective protection. Such legislation should provide the greatest possible security of tenure to indigenous pastoralists and hunter gatherers; conform to the Covenant and international human rights law in general; and control

³² These peoples now live under abject poverty.

strictly the circumstances under which evictions may be carried out. Such legislation is currently lacking in Tanzania.

2.3 The Right to adequate food. (Article 11(1) of CESCR).

“The State Parties to the present Covenant recognize 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. The State Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.”

Security of land and natural resource tenure for indigenous pastoralists and hunter gatherers is cardinal for their enjoyment and full realization of the right to adequate food and decent living conditions as enshrined under articles 11 and 1.2 of the Covenant respectively, as well as the full enjoyment of other rights guaranteed by the covenant and other international human rights instruments. This is because the two groups constitute small scale, land and natural resource-based dependent producers.

The international obligation quoted above enjoins the United Republic of Tanzania to respect, to protect and to fulfill the right to adequate food and freedom from hunger for all the people of Tanzania, including the indigenous populations whose cultures and way of life differ from the mainstream population. This cannot be achieved in practical terms unless issues pertaining to tenure security of land and natural resources are addressed and resolved.

Access and rights to land and natural resources for the indigenous pastoralists and hunter gatherers has, however, been eroded by land alienations that date back to the colonial period, and that have deepened and widened over time. This includes loss of land to game reserves, wildlife sanctuaries, conservations areas, commercial hunting enterprises, large-scale plantations, peasant farmers under resettlement schemes and urban centers.

This excessive loss of land has resulted in a critical shrinkage of the resource base that is seriously threatening pastoral livelihoods generally and the right to food in particular. In addition, the power to control most part of pastoral ancestral land has been vested in wildlife conservation authorities who have introduced harsh management rules that undermine

pastoralism hence threatening the right to food for the pastoralist population. The below example from the Ngorongoro Conservations Area illustrates this situation.

2.3.1 Ngorongoro Conservation Area (NCA)

The Ngorongoro Conservation Area (NCA) in northern Tanzania, home to more than 70,000 Maasai pastoralists, has the highest level of malnutrition and the smallest livestock holdings per household compared to other pastoral areas in Tanzania.³³ The NCA is a Multiple Land Use Area in which indigenous pastoralists co-exist with wildlife unlike a National Park where human habitation is not permissible.

The law establishing the NCA, namely the Ngorongoro Conservation Act of 1959, vests control of the land to an institution called the Ngorongoro Conservation Area Authority (NCAA). This law also prohibits cultivation within the NCA on the ground that pastoralism is compatible with wildlife conservation while crop cultivation is not.

However, in 1992 the government lifted the ban on cultivation to rescue pastoralists from starvation. This was based on recognition that due to drought many cattle died and that the pastoralists could therefore not survive entirely on the remaining herds of livestock. To this end, small scale subsistence cultivation has henceforth been practiced in small farms of maximum one (1) acre without causing problems to the rich biodiversity.

However, in an extra ordinary turn of events, the government in 2009 again banned cultivation. This came at a time when prolonged drought caused the death of many more livestock and made the community even poorer and more food insecure than during the early 1990s when the ban was lifted.

The fundamental idea of the concept of the right to adequate food is that groups should not become dependent on food aid, but should remain or become self sufficient to feed themselves and that access to food should occur in a dignified and sustainable manner. However, the contemporary situation of indigenous pastoralists in the NCA attests to the opposite. By now, indigenous pastoralists in the NCA have been prevented from sustainably feeding themselves and have become food aid dependent. Since food aid is not reliable, many of them are forced to

³³ See Susan Charnley, 'From Nature Tourism to Ecotourism? The Case of the Ngorongoro Conservation Area, Tanzania.'

sell the few remaining livestock to purchase food, and this leads to impoverishment and loss of their culture and identity. Since the NCAA controls the land, the pastoralists cannot lease it out or enter into joint ventures with investors. There are numerous investors in the villages within the NCA but they pay the money directly to the NCAA preventing the pastoralists from developing livelihood diversification opportunities.

Recommendations

1. The government of Tanzania should lift the ban on cultivation in the Ngorongoro Conservation Area.
2. The Government of Tanzania should, in cooperation with other state parties to the Covenant, restock livestock herders (as it does in the case of farmers where the government subsidizes fertilizers and issues loans).
3. Constructive dialogue should be ensured between the pastoralists of the NCA and the authorities responsible for the NCA. Effective mechanisms for such dialogue and for the effective participation of the pastoralists in decisions that affect them must be put in place.
4. Pastoralists living in the NCA must receive a fair share of the revenues generated by the NCA.

2.4 The Right to education (Article 13) of CDESCR

“The State Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.”

In addition to the international obligations above quoted, the Constitution of the United Republic of Tanzania provides under Article 11(3) that the government shall endeavor to ensure that there are equal and adequate opportunities to all persons to enable them acquire education and

vocational training at all levels of schools and other institutions of learning. Moreover, under the current secondary education development programme (SEDP), the government aims at ensuring that there is at least one secondary school in every ward. A ward is an administrative unit in the country's governance structure comprising of three to four villages.

However, the situation is different for indigenous pastoralists and hunter gathers, and many indigenous children do not go to school. In the Ngorongoro Conservation Area (NCA) for example there are currently only two secondary schools to cater for seven wards. Efforts to build secondary schools in the area are frustrated by cumbersome procedures relating to Environmental Impact Assessment (E.I.A) on the pretext that many sites are ecologically sensitive. Ironically, however, five star hotels and resorts are increasingly built on the said ecologically sensitive sites where schools are prohibited.³⁴

In general, there is widespread lack of information³⁵ and appreciation on the part of the Tanzanian government of the special plight and needs of the indigenous peoples and this affects their right to education. This lack of appreciation is for instance reflected in the March 2008 monthly presidential address to the nation where the president attributes mobility among pastoralists as having the potential of causing failure to achieve the Millennium Development Goals as far as primary school enrolment is concerned.

Recommendations:

1. The government should ameliorate the conditions of indigenous pastoralists instead of blaming them for preventing the government to achieve its international obligations. For example the government should provide educational facilities such as boarding schools for children from nomadic and semi nomadic communities. Boarding schools are compatible with the demands of pastoralism since when parents move with cattle, children can proceed with education.

³⁴ See Majira news papers dated 12th, April 2008, supra

³⁵ After considering the 8th to 16th Periodic Report of the United Republic of Tanzania submitted at its 1713th and 1714th meetings, the Committee on Elimination of Racial Discrimination noted with concern lack of information on certain vulnerable groups, notably nomadic and semi nomadic populations, inter alia the Barbaig, Maasai and Hadzabe on the difficulty they allegedly face due to their specific way of life and on measures taken to guarantee the enjoyment of their rights.

2. The Government should also initiate the establishment of mobile schools, which are compatible with nomadic livelihoods and which have been tried out successfully in other parts of the world.

2.5 The Right to Culture (Article 15 (1) of CDESCR

“The State Parties to the present Covenant recognize the right of everyone to take part in cultural life”

Culture encapsulates the distinctive set of ideas, social behavior, ways of life and patterns of communication of a particular society or people. The collective right to preserve and develop their cultures on their own terms is fundamental for indigenous peoples since it has to do with their very survival as distinct peoples. The lack of recognition and appreciation of indigenous peoples by the government and dominant society, the land and natural resource dispossession, the increasing impoverishment and the lack of voice in decisions making processes all pose a serious threat to the cultures of indigenous peoples in Tanzania.

In addition, the state Party deliberately fails to protect sacred sites of indigenous pastoralists and hunter gatherers from alienation. A towering example in this regard is “*endoinyo-oormorwak*”, a sacred hill where the Maasai pastoralists used to go for traditional prayers and for conducting a wide range of other sacred ceremonies. This place has been confiscated for the purposes of building the National Police College contrary to article 15 of the International Covenant on Economic Social and Cultural Rights (ICESCR).

Recommendations:

1. The government of Tanzania should be reminded that as per their obligations under the CDESCR they must take effective measures to recognize, support and protect the cultures of all ethnic groups in Tanzania, including the cultures that differ considerably from the dominant mainstream society such as pastoralists and hunter/gatherers.