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<p style="text-align: center;"><i>31 Bight Avenue, Lajant, Kunta North District, Western Region, P. O. Box 673, Banjul, The Gambia</i> Tel: (220) 4410505 / 4410506; Fax: (220) 4410504 E-mail: achpr@achpr.org; Web www.achpr.org</p>		

REF: ACHPR/Appeal/SM/WGIP/01/700.09

Date: 6 August 2009

His Excellency Jakaya M. Kikwete
The President of the United Republic of Tanzania
Dar es Salam
Tanzania

Your Excellency,

Subject: Appeal by the Chairperson of the African Commission's Working Group on Indigenous Populations/Communities in Africa in respect to the alleged evictions and destruction of property belonging to the Maasai Community in Loliondo, Northern Tanzania

I have the honour to address Your Excellency, in my capacity as the Chairperson of the Working Group on Indigenous Populations/Communities in Africa (WGIP), a special mechanism established within the auspices of the African Commission on Human and Peoples' Rights (the African Commission) with responsibility to advise the African Commission on matters relating to the rights of indigenous populations/communities on the continent.

The Working Group is to this end mandated to undertake visits, studies, researches and other activities to States Parties to the African Charter on Human and Peoples' Rights, to gather information on the rights of indigenous peoples in Africa, with a view to sharing best practices and advising States on measures to put in place to ensure better protection of the rights of indigenous peoples on the continent. The Group is also mandated to bring to the attention of the African Commission issues that may threaten or hinder the effective enjoyment of the rights of indigenous peoples.

Your Excellency, as Chairperson of the Working Group, I would like to bring to your kind attention, reports that I have received recently alleging that eight villages in Loliondo, in Northern Tanzania, have been burnt and the property of

the inhabitants destroyed in an operation meant to evict them from their homes and grazing land.

According to the reports, the operation took place on 4 July 2009, and during the exercise more than two hundred Maasai *bomas* (homesteads of extended families) were totally burnt, one woman was allegedly raped by 8 policemen, and some pregnant women who were chased from their homes reported having miscarriages. It is estimated that up to 3,000 people have been made homeless and are presently without food and blankets, and several maize farms, which were ready for harvest, were set ablaze. The reports also indicate that more than 50,000 cattle were left with no grass and water due to the eviction, and some cattle were lost due to the stampede, while a few were burned to death by fire. It is also alleged that several families were separated, with some children missing as a result of the chaos and panic. According to the reports, the eviction was conducted by the Tanzania Police (field force unit) with assistance of private guards from the Otterllo Business Cooperation (OBC).

Your Excellency, I understand from one of the reports that on 15 July 2009, the Minister of Natural Resource and Tourism made a visit to Loliondo to see the situation and during the visit she was able to meet with a few local leaders in the district. During the meeting she condemned the operation and said it should be stopped immediately. It is alleged that the Minister, however, refused to meet the villagers, victims of the eviction and destruction, saying she did not have time, and no action was taken against those who were involved in the evictions and destruction. It is alleged further that a day after the Minister's visit more *bomas* were burnt and people were beaten and harassed, that the harassments continue to date, and cattle are now dying as they are still denied access to water and grazing land. It is alleged further that, local NGOs trying to assist the affected communities are facing harassment from the local authorities for allegedly inciting the public to resist OBC's domination and Government use of force.

Your Excellency, without in any way reaching conclusions on the reports I have received, as Chairperson of the Working Group, I am seriously concerned about these reports, and if indeed these reports are correct, the Government of the United Republic of Tanzania would be failing in its obligations to respect and protect human rights, and in particular, uphold the right to property guaranteed under Article 14 of the African Charter. I would therefore be very grateful if the Government could kindly provide clarification on these reports, and in particular indicate what measures it has put in place or is likely to put in place to deal with the situation, if the reports are correct.

I also wish to bring to Your Excellency's kind attention that on 11 August 2005, the United Nations Sub-Commission on the Promotion and Protection of Human Rights endorsed a set of guidelines, known as the Pinhero Principles, and recommended them to UN agencies, the international community, including States and civil society organisations, as a guide to address the legal and

technical issues concerning housing, evictions and property restitution when the rights thereof are violated. Principle 5 thereof addresses the right to protection from displacement/evictions. Paragraphs 5.3 and 5.4 of the Principles state that *"States shall prohibit forced eviction, demolition of houses and destruction of agricultural areas and the arbitrary confiscation or expropriation of lands ..."*. *"States shall take steps to ensure that no one is subjected to displacement [evictions] by either State or non State actors. States shall also ensure that individuals, corporations, and other entities within their legal jurisdiction or effective control refrain from carrying out or otherwise participating in displacement"*.

The African Commission is aware that the Pinhero Principles are part of soft law and do not have any force of law. They however reflect the emerging principles in international human rights jurisprudence. When these principles are read together with decisions of the African Commission and the provisions of the African Charter, the African Commission finds great persuasive value in them, albeit as a guide to interpret the Charter, and in particular, the right to property under Article 14 of the African Charter.

I sincerely hope that Your Excellency will ensure that these allegations are investigated and that my appeal will receive Your Excellency's favourable attention and prompt response.

Let me also inform Your Excellency that in line with my mandate to report to each Ordinary Session of the African Commission on the situation of indigenous populations on the continent, the content of this Appeal Letter as well as that of any response received from Your Excellency's Government will be included in my Report to be submitted to the 46th Ordinary Session of the African Commission, which is scheduled to take place in November 2009.

Please accept, Your Excellency, the assurances of my highest consideration.


Commissioner Musa Nagary Bitaye
Chairperson of the African Commission's
Working Group on Indigenous Populations/Communities in Africa

cc:

Commissioner Bahame Tom Nyanduga
Acting Chairperson, ACHPR