

## Recommendations for the Universal Periodic Review of the United Republic Tanzania, 25<sup>th</sup> Session, May 2016

### KEY ISSUES:

The rights of minorities and indigenous peoples in Tanzania are continuously undermined as a result of both weak domestic legislation and/or the failure of domestic legal mechanisms to protect such rights.

Firstly, **indigenous communities have had their livelihoods threatened as a result of Government and/or private companies acquiring possession of their land.** Often, such companies offer luxury safaris to tourists, for lucrative commercial rewards, whilst the communities themselves receive no compensation and efforts to seek restorative justice are futile. MRG is particularly concerned about a major land dispute between the Maasai of Sukenya Farm, Loliondo, and foreign investors Tanzania Conservation Ltd/Thomson Safaris<sup>1</sup> (TCL/TS). Sukenya Farm is an area of over 12,600 acres of open grazing land owned on an ancestral basis by local Maasai. It is currently leased, with the approval of the Government, to TCL/TS and there have been concerning reports of violence, harassment and arbitrary detention by security guards and the police towards the pastoralists. Today, the pastoralists continue to be denied access to the land for grazing, farming and drinking water for their livestock. MRG asserts violations of the Maasai's rights to property; adequate housing, and development; whilst the associated violence threatens their rights to life and their right to freedom from arbitrary arrest.

Secondly, the Constitution of the United Republic of Tanzania (the Constitution) only provides a **limited protection for the equal rights of women.** Some of these constitutional rights can be found under: Article 9(g), which refers to equal opportunities; and Articles 66(1)(b), 66(1)(e) and 78(1), which refers to women's political rights. The Constitution also refers to all peoples as equal throughout. There are, however, inconsistencies. Although Part III of the Constitution expressly states the right of equality between all people, the wording is not gender neutral – it is written in the third person, which frequently refers to 'his' right. Furthermore, Article 29(3) and (4), as well as being phrased entirely differently to other parts of the Article's subsections, make no reference to gender equality. In March 2016, the CEDAW reiterated its concern that "the constitutional definition of discrimination is still not in line with articles 1 and 2 of the Convention, which prohibits direct and indirect discrimination in the public and private spheres"<sup>2</sup>. Masaai and other indigenous women are disproportionately affected by this legislation as a result of their membership of an indigenous group and their status as women in a patriarchal society.

As a result, Masaai women face double discrimination in a number of areas. For example, the restricted access to Sukenya Farm has blocked the Masaai's access to vital water sources, which they and their live stock need to survive. The next nearest source is some 10-15km away, which has resulted in a specific impact on Masaai women because it is their role, within this indigenous tribe, to collect the water. Their workload has therefore increased significantly, as has their physical suffering. In addition, the restricted access to Sukenya Farm has also reduced the income of Masaai families, who are, as a result, no longer able to afford school fees.

<sup>1</sup> TCL, a Tanzanian incorporated company, shares the same co-directors as Thomson Safaris Ltd, also a Tanzanian incorporated company, and is similarly under the same ownership as Wineland-Thomson Adventures Inc, a U.S.-based tourism company. These affiliated companies mainly use the land for luxury tourist accommodation and other safari related holiday activities for their clients.

<sup>2</sup> Committee on the Elimination of Discrimination against Women, *Concluding Observations on the combined seventh and eighth periodic reports of the United Republic of Tanzania*, CEDAW/C/TZA/CO/7-8 (7 March 2016)

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Thirdly, **education is not considered a basic right under Part III of the Constitution**; rather, it is considered a fundamental objective of State policy under Part II Article 11. Following its March 2015 review of Tanzania, the Committee on the Rights of the Child expressed concern at the “rates of absenteeism and dropout, often due to the education provided not being adapted to the livelihoods of children and families involved in activities such as pastoralism, fishing, mining and farming”<sup>3</sup>.

Traditional attitudes create additional obstacles for girls in education because parents prefer to send boys to school, since it is the girls who leave the family to build their own. The limited access to education that Masaai girls face, perpetuates the inequality between Masaai men and women, and hampers the deconstruction of ‘patriarchal household structures.’<sup>4</sup> The Constitution, domestic legislation and legal mechanisms are not in line with international legal standards, including: Article 13 ICESCR; Article 28 CRC; as well as Articles 10(a), 14(2)(d) and 14(2)(h) CEDAW.

### **The Government of Tanzania should take urgent steps to:**

- Ensure that indigenous rights over their ancestrally owned land rights are enforced in accordance with Article 8(2)(b) of the UN Declaration on the Rights of Indigenous Peoples and the ruling by the African Commission on Human and People’s Rights in the case of the Endorois people<sup>5</sup>;
- Restore Maasai land rights in Loliondo so that they are able to graze and access water for their livestock, and appropriate compensation awarded to those who have suffered as a result of the evictions;
- Give the affected Maasai the opportunity to participate fully and equally in Government meetings and decisions concerning local land;
- Undertake to ensure the physical security of the affected Maasai and investigate thoroughly all allegations of brutality and criminality by the police and local security guards;
- Ensure that the new Constitution is written in a gender neutral tone, promotes equality between men and women in line with international standards and has a specific focus on the protection of indigenous women’s rights;
- Ensure that the Government of Tanzania provides equal access to education for all indigenous communities, with a particular focus on ensuring that girls are not disproportionately disadvantaged.

<sup>3</sup> Committee on the Rights of the Child, *Concluding Observations on the combined third to fifth periodic reports of the United Republic of Tanzania*, CRC/C/TZA/CO/3-5 (3 March 2015)

<sup>4</sup> IIED, *The Pastoral Women’s Council, Empowerment for Tanzania’s Maasai*, 137e Gate keeper, ‘The role of local organisations in sustainable development’, August 2008, p. 6.

<sup>5</sup> 276/03 Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya ACmHPR 25 November 2009.