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Mandate of the Special Rapporteur on the rights of indigenous peoples.

REFERENCE: AL Indigenous (2001-8)
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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the rights of indigenous peoples pursuant to Human Rights Council Resolution 24/9.

In this connection, I would like to bring to the attention of your Excellency's Government the **allegations concerning the burning of Maasai houses and property in the community of Narasha and the alleged failure of the Government to provide compensation that was promised to the victims.**

According to the information received:

On 26 July 2013, a convoy of vehicles carrying some 200 individuals arrived in the community of Narasha, Naivsha, in the Great Rift Valley, which is located within the traditional lands of the Maasai people. Throughout that entire day, the group burned numerous Maasai homes—according to community estimates 247 homes—destroying the household items, children's schoolbooks and thousands of Kenyan shillings within the houses. Additionally, some two hundred heads of cattle and six cars were destroyed by the fires. In what was described as a chaotic situation generated by the incident, school children ran from school to hide outside the village and it took several days to locate all of them. It is alleged that the perpetrators were accompanied by State security officers, who guarded the group while they burned the houses.

That same day, a Member of Parliament from the county of Kijiado arrived at the village and subsequently reported the incident to the Government. Other State officials, including President Kenyatta and representatives of the Ministry of Energy and the Ministry of Internal Security, have also reportedly visited the community and met with community leaders. According to the information, State authorities have promised Narasha community members that they will be compensated for their loss, and have expressed their desire to find a solution to the situation. It is alleged that nevertheless, over two months since the incident no compensation has been provided to the victims. In the meantime, numerous

Maasai families have had to endure bouts of rain without any adequate shelter following the destruction of their houses, and they have also had few means to rebuild their homes.

According to the information, the Maasai people have for generations lived in the Great Rift Valley area, where the community of Narasha is located, carrying out their traditional pastoralist activities, although they lack official titles to those traditional lands. However, they are reportedly involved in legal proceedings secure their rights over their traditional lands in the area. Since the 1980s, the Olkaria geothermal plant run by the company KenGen with funding from the World Bank, has reportedly been operating throughout the area surrounding the Narasha community. It is alleged that the plant has been operating in its phases I-III and there are currently plans to expand the geothermal plant into phases IV and V. Concerns are expressed that the burning of Maasai houses in July 2013 was carried out in order to make way for the expansion of the project. According to the allegations, the Maasai people living in the area of the Narasha community have not received any form of benefits derived from geothermal project activities since it began its operations.

In a subsequent press release by the World Bank issued in September 2013, the Bank asserted that the July 2013 evictions were not connected to its Kenya Electricity Expansion Project (KEEP) which supports the Kenyan power utility company Ken Gen. The Bank stated that among the people evicted were a small number of Maasai families that were scheduled for an agreed future relocation as part of the KEEP project because those families lived too close to the project and could be affected by noise and other pollution. It added that it was discussing with the Kenyan Government the measures it was taking to address the situation and ensure that the Bank's social safeguard policies would be followed with regards to other families that would be resettled under the KEEP project.

Excellency, while I do not wish to prejudge the accuracy of the above allegations, I would like to refer your Excellency's Government to relevant provisions of the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on 13 September 2007. While I am aware that Kenya abstained from voting on the United Nations Declaration on the rights of indigenous peoples, I would like to emphasize that this instrument provides an authoritative statement of international human rights standards related to indigenous peoples.

As I have previously stated, the "Declaration does not affirm or create special rights separate from the fundamental human rights that are deemed of universal application, but rather elaborates upon these fundamental rights in the specific cultural, historical, social and economic circumstances of indigenous peoples."¹ These fundamental human rights include equality and non-discrimination, life and personal integrity, culture, health and property, all of which are recognized in the principal human rights treaties ratified by Kenya. Those treaties include the International Covenant on

¹ A/HRC/9/9, para. 40.

Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination.

Consistent with those norms of universal application, the Declaration on the rights of indigenous peoples contains important provisions concerning the rights of indigenous peoples to life, security and physical integrity. Article 7 provides that “[i]ndigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.” With respect to their rights to property in the form of land and natural resource rights, article 26 states for the rights of indigenous peoples to “the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired” and for legal recognition of those rights “with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.” Article 10 provides that indigenous peoples “shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned.”

Furthermore, the Declaration provides for the rights of indigenous peoples to redress for actions that have affected the use and enjoyment of their traditional lands and resources. In that regard, article 28 states that “[i]ndigenous 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.”

In light of the information and allegations contained in this communication, I would be interested in knowing your Excellency’s Government’s views on the accuracy of the information contained in this letter, and I would be grateful to receive any additional information your Government may deem relevant. In particular, I would like to know further information about:

- 1) Whether any investigation has been undertaken regarding the events of 26 July 2013 in the Narasha community, and the measures that have been or will be taken to sanction those found to be responsible for the destruction of homes and other property of community members;
- 2) The measures taken to provide compensation, as allegedly promised by the Government, to the members of the Narasha community for the losses and damages they sustained during the events of 26 July 2013;
- 3) Any measures taken to address the land tenure situation of the community of Narasha, including through legal recognition of their traditional land and natural resource rights;

4) Whether in the approval, implementation and reported expansion of the geothermal project near the Narasha community, any consideration was given to the land and natural resource rights that the community may have in the project area?

5) Whether any direct benefit-sharing agreements have been established with members of the Narasha community with regards to the operation of the geothermal plant by the KenGen company.

I would appreciate a response from your Excellency's Government within 60 days. I undertake to ensure that your Excellency's Government's response will be taken into account in my assessment of this situation and in developing any recommendations that I make for your Excellency's Government's consideration pursuant to the terms of my mandate.

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

James Anaya
Special Rapporteur on the rights of indigenous peoples