

**SUBMISSION BY PASTORALISTS AND HUNTER-GATHERERS ORGANIZATIONS IN
TANZANIA**

SUBMISSION TO THE HUMAN RIGHTS COUNCIL

UNIVERSAL PERIODIC REVIEW MECHANISM

[UPR 25TH SESSION, 2016]

REVIEW OF THE UNITED REPUBLIC OF TANZANIA 2012-2015

**SUBMITTED BY THE FOLLOWING PASTORALISTS AND HUNTER-GATHERERS
ORGANIZATIONS**

Pastoralist Indigenous Non-Governmental Organisations' Forum (PINGOs Forum)

International Working Group on Indigenous Affairs (IWGIA)

Tanzania Center for Reserch and Information for Pastoralism (TCRIP)

Community Research and Development Services (CORDS)

Ujamaa Community Resource Team (Ujamaa CRT)

Association for Law and Advocacy for Pastoralists (ALAPA)

Tanzania Pastoralists Hunter-gatherers Organisation (TAPHGO)

Tanzania Natural Resources Forum (TNRF)

Longido Community Development Organisation (LCDO)

Pastoralists Livelihood Support and Empowermnt Progrmme (PALISEP)

Parakuyo Indigenous Community Development Organisation (PAICODEO)

Hadzabe Survival Council of Tanzania (HSCT)

Ngorongoro NGOs Network (NGONET)

Laramatak Development Organization (LADO)

Maasai Women Development Organization (MWEDO)

Huduma ya Injili na Maendeleo ya Wafugaji (HIMWA)

Monduli Pastoralists Development Organization (MPDO)

Tanzania Pastoralists Community Forum (TPCF)

Umoja wa Wafugaji Mpanda

Community Economic Development and Social Transformation (CEDESOTA)

KINNAPA Development Programme (KINNAPA)

Sunya Ward Education And Training (SWEAT)

Pastoral Women Council (PWC)

Longido Community Development Organization (LCDO)

I. EXECUTIVE SUMMARY

1. In conformity with the criteria set out by the African Commission on Human and Peoples Rights' (ACHPR) as well as international human rights law and UN reports, Indigenous peoples in Tanzania are pastoralists and hunter-gatherers from the Maasai, the Barbaig, the Akie, and the Hadza communities. The former two groups are predominantly pastoralists who practice pastoralism whereas the latter comprise of forest-dwelling hunter-gatherers. There are other pastoralists in Tanzania such as Sukuma, Nyaturu, Taturu, Gogo and others who belong to tribal groups, recognized also under international human rights law. The groups mentioned above collectively practice pastoralism and hunting gathering.
2. The situation on the ground in Tanzania shows that pastoralists and hunter-gatherers 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 (URT) has enacted several laws and policies to regulate land rights and other human rights. The unfavorable investment policies and abuse of administrative powers are some of the main causes of the mistreatment of these marginalized communities in Tanzania. This reality has prompted civil society organizations working with pastoralists and hunter-gatherers¹ to urge, the Government of the URT to adopt, *inter alia*, legislative measures to address the specific rights of these groups in the country.

II. METHODOLOGY

3. This is a stakeholder submission prepared by a coalition of 24 pastoralists and hunter-gatherers' Civil Society Organizations (CSOs), forums, networks and groups. The stakeholders submission is a compilation of primary and secondary sources of information, evidence and facts collected through consultative meetings and interviews with civil society organizations, public officials and community members, experts on pastoralism as well as members of the academia. More information was obtained from different credible sources including; the United Nations treaty bodies, United Nations special procedures, African Commission of Human and Peoples' Rights (ACHPR), Government reports, media as well as reports of fact-finding missions conducted by CSOs working in the pastoralists and hunter-gatherers areas affected in Tanzania and series of meetings of pastoralists and hunter-gatherers CSOs and National CSOs. These engagements were followed by a validation meeting attended by CSOs, forums, networks and groups to validate this UPR submission on September 11, 2015 in Arusha.

III. HUMAN RIGHTS ISSUES, CHALLENGES AND RECOMMENDATIONS

Status of accepted Recommendations during the previous UPR 2011:

4. The Government of URT was reviewed during the first cycle Universal Periodic Review (UPR) in October 2011. The Government accepted 96 recommendations, rejected 4, and deferred 53 for further consideration. Based on follow up on the status of the accepted recommendations

¹ See the cover page for the list of these CSOs.

and those that the state party agreed to take into consideration and provide responses to; we indigenous pastoralists and hunter-gatherers CSOs, forums, networks and groups hereby summarize the status of implementation of these recommendations as follows:

5. That recommendations made under paragraph 85.38 on protection and promotion of the rights of marginalized and vulnerable populations as made by Nepal, have not been implemented save for the insertion of article 56 in the current proposed constitution.
6. That recommendations on paragraph 85.43 on ensuring that police officers who committed acts of torture and ill-treatment be prosecuted and punished appropriately made by Belgium and paragraphs 85.44, 85.45, 85.67 related to taking adequate measures to protect its population from violence committed by the security forces and establish an independent mechanism for the investigation of complaints regarding abuses carried out by law enforcement officials given by Denmark, the United Kingdom and United States respectively, have not been implemented. In contrast, the perpetrators of different operations that have violated the rights of pastoralists and hunter-gatherers have not been taken to court. Although various probe committees such as the Presidential Quasi-Judicial Commission on Operation Tokomeza Ujangili² and Parliamentary Select Committee of Inquiry on the Land Conflict between Farmers, Pastoralists, Investors and Other Land Users³ and the Standing Committee on Land, Natural Resources and Environment⁴ were formed to follow up on issues of violations of pastoralists' rights, either the reports of these probe bodies have not been made public resulting in non-prosecution of perpetrators of the violations has been prosecuted.
7. That paragraph 85.66 on improving the efficiency of the justice system by streamlining and simplifying judicial procedures including introducing a case management system that tracks individual cases from filing to disposition and limits the amount of time each case can be held at each stage as given by Canada has been only partially implemented. Although there is an increase of the number of judges in both the High Court and the Court of Appeal, there is no speed tracking system of long pending cases in courts has been put in place.

We, indigenous pastoralists and hunter-gatherer CSOs, made a follow up on recommendations that the government has accepted to take into consideration and provide responses to. Based on the follow up, we can conclude that no progress have been made in the implementation of the following:

8. Recommendations on paragraphs 86.16, 86.18, 86.19 and 86.20 on issuing a standing invitation to the Special Procedures of the United Nations Human Rights Council given by Romania, Brazil, Spain and Uruguay have not been implemented by the state party and no consultation was made by the State on such recommendations.

² Tume ya Uchunguzi wa Malalamiko yaliyotokona na Utekelezaji wa Operesheni Tokomeza Ujangili (Tume ya Jaji Msumi).

³ Kamati Teule ya Bunge Iliyoundwa Kuchungza Sababu za Migogoro Baina ya Wakulima, Wafugaji, Wawekezaji na Watumiaji Wengine wa Ardhi Nchini.

⁴ Kamati ya Kudumu ya Ardhi, Maliasili na Mazingira.

9. That recommendation on paragraph 86.45 to hold responsible alleged perpetrators of forced evictions and pollution of drinking water in the areas around the big mines given by Norway has been implemented only partially. The Government has stopped responsible investors who have been spilling toxic materials in River Tighite in Bunda and Lake Bassotu in Hanang. However, perpetrators have not been taken to court.
10. That the recommendation in paragraph 86.46 to align policies to ensure access to land and water for pastoralists in line with the African Union Framework on Pastoralism and to conclude regional agreements to facilitate cross-border pastoralism given by Netherlands has not been implemented. No review has been made of the Livestock policy of 2006 in line with the African Union Framework on Pastoralism. There is neither cross border agreement nor the dialogue established and carried to allow pastoralists to graze across borders. There have been serious human rights violations of pastoralists' rights in border areas between Tanzania, Kenya, Rwanda, Uganda, and Burundi.
11. That recommendations in paragraphs 86.48, 86.49 and 86.52 on recognition of the notion of indigenous peoples, adoption of 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 and setting up an effective statutory consultation mechanism with organizations working on the rights of indigenous peoples to help avoid further conflicts given by Denmark and Finland have been implemented only partially by the Commission for Human Rights and Good Governance of Tanzania. However, the Government is still not supportive on acceptance and recognition of indigenous peoples.
12. That the recommendation in paragraph 86.51 on promotion of 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 peoples, pastoralists and hunters-gathering given by Mexico has not been implemented. In contrast there have been several evictions in different parts of the country since 2012. There is no new legislation formulated to prohibit forceful eviction.

General Conclusion and Recommendations on Implementation Status

13. Most of the recommendations touching on the rights of indigenous peoples, pastoralists and hunter-gatherers have not been implemented; this leads to a conclusion that the Government of Tanzanian has not taken the recommendations seriously. Further, Tanzania has to show political will to understand and appreciate the concept of indigenous people with a view to accepting existence of indigenous peoples within its borders. We recommend that the government revisits all recommendations touching on the rights of indigenous peoples and implement them.

IV. CURRENT HUMAN RIGHTS VIOLATIONS AND RECOMMENDATIONS

Marginalization and Discrimination of pastoralists and hunter-gatherers

14. Budgetary allocation for the Ministry of Livestock and Fisheries Development (MoLFD) remain among the smallest budget with more than 65% of the total budget in the year 2014/15 and 2015/16 devoted to recurrent expenditure and less than 35% is for development of the sector. The budget does not match the contribution that pastoralists make to the national economy.
15. Both pastoralists and hunter-gatherers have continued to be marginalized and discriminated against in Tanzania by existing policies, laws and government officials. Though tolerated; hunter-gatherers livelihood that is dependent on hunting wild animal is discriminated against in Tanzania. The Wildlife Act No.5 of 2009 that considers hunter-gatherers to be poachers who must be dealt with is towering evidence. Further, some government officials perceive pastoralists to be uncivilized citizens.
16. Violence and killings targeting pastoralists continued to occur in 2013 with little protection from the government. For example, on November 6, some peasants in Kambala Village, Mvomero District, killed two members of the Maasai Pastoralists namely Pianga Oleku and Lekoonyi Lekata. On January 25, 2013 farmers attacked Maasai pastoralists in Dumila, Kilosa District, burning eight houses and other properties. This conflict spread to Morogoro town resulting in mobs attacks targeting innocent Maasai just because they are Maasai.⁵
17. **RECOMMENDATIONS:** The Government should put in place appropriate constitutional and legislative mechanisms to protect pastoralists and hunter-gatherers against discrimination of all forms including discrimination of their dignity, livelihoods and protection of their land.

Unlawful Arrests, Torture and Prosecution of Pastoralists and Hunter-Gatherers

18. Pastoralists and hunter-gatherers have been subjected to arbitrary decisions and actions of law enforcement agencies in many districts like Kilosa, Mvomero, Ulanga, Kilombero, Meatu, Kiteto, Ngorongoro, Siha and others.
19. On March 30, 2012 Masunga Luchemba was arrested and charged with murder of a game scout killed by mob justice at Iramba Ndogo Village. Mr Luchemba was an activist who have been following the eviction of pastoralists and hunter-gatherers who were evicted by Mwiba Safari; a tourists company that is managing Makao Wildlife Management Area. In different incidents Mr Luchemba prior to his arrest, was threatened by game scouts of Mwiba Safari that he will be arrested and prosecuted if he continue following up the issues of evictions of the pastoralists in Makao Wildlife area

⁵ These attacks take place amidst the security warnings given by the victim community.

20. On May 5, 2015 the police arrested, tortured and put in custody 24 Maasai pastoralists for four days for allegations of either being Kenya immigrants or facilitating Kenyan to graze livestock illegally in Tanzania without taking them to court. The government also alleged that they were responsible for a violent episode that resulted in the injury of a policeman that occurred in Soitsambu Village. This is a continuation of the harassment of pastoralists in Loliondo where intimidation continue to be inflicted to pastoralists with an intention of making them give up and leave their land to an investor conducting hunting activities in Loliondo Game Control Area. Among the community leaders arrested and detained included a councilor for Ololosokwan Ward and village chairmen of Ololosokwan, Soit-sambu, Mondoro's, and Sukenya villages, Ngorongoro District. They were brought to Wasso which is the headquarter of Ngorongoro District Council and forced to march bare-footed with their hands up for nine kilometers to Loliondo Police Station. In total violation of criminal justice, they were denied bail without legal justification and ultimately released without being taken to court. Up to now there are no formal charges against them and no judicial proceeding were taken. Again, on 10th May 2015 the police from the Field Force Unit (FFU) went at Kirtalo village in Soitsambu ward with a number of tear gas and bullets and invaded a village meeting and arrested village leaders, the councilor and herders were severely beaten and harassed without being taken to the court of law.
21. On May 15, 2015 a minor, Saitabau Naing'isa, aged 8 years of Irkitalo Village, in Loliondo with other 4 Maasai adults, was illegally locked up at a police cell for a night in the same cell with adults and sustained minor injuries from police harassments. He was never taken to court and official allegations against him were never made known.
22. On November 16, 2014 in West Kilimanjaro 16 Maasai pastoralists were arrested and cases fabricated against them just because of resisting occupation of their ancestral land by a tour company called Tanganyika Film and Safaris Outfitters Limited.
23. In Emborley e Murtangos, Kiteto District, between August and November 2014, 13 Maasai pastoralists were arbitrarily arrested and remanded for three months.
24. **RECOMMENDATIONS:** The Government should set up an independent commission of inquiry involving pastoralists and hunter-gatherers to investigate unlawful arrests, prosecution and other human rights violations towards pastoralists and hunter-gatherers.
25. The Government should prosecute perpetrators involved in the arbitrary arrests, mistreatments, and imprisonments of innocent pastoralists and hunter-gatherers.
26. The Government should stop intimidating its pastoralists and hunter-gatherers and human rights defenders through state machinery.

Misuse of State Machinery and Use of Excessive Power

27. There are many other cases of the Government misusing its armed forces against pastoralists and hunter-gatherers. On November 10, 2012 in Chita Village Kilombero District the police shot dead Dasu Lutaligula while evicting pastoralists from Kilombero Ramsar Site. Luhende Lutaligula and Daase Lutaligula were seriously wounded in the same attack.⁶ While implementing the same eviction, on January 26, 2013 the police shot and killed Baya Katambi of Ipera Asilia Village in Ulanga District.
28. On July 9, 2014 a policeman, who is guarding at the tour company Thomson Safaris based in Boston USA shot Olunjai Timan in Mondorosi Village. Sukenya; the area that Thomson Safari is occupying is the subject of a long standing conflict between the pastoralists and the company where the claim of the pastoralists is that their land was illegally grabbed by Thomson Safari with support of the government. In West Kilimanjaro, on November 14, 2014 police working for Tanganyika Film and Outfitters Safari Limited owned by a Briton shot and badly injured one Supuk Naisyosyol. In all these incidences the culprits were left with impunity. The area in question is an ancestral land of the Maasai which is claimed to have been dubiously taken from them by Tanganyika Film and Outfitters Safari Limited
29. **RECOMMENDATIONS:** The Government should establish an independent commission to investigate the killings, the injury, and evictions of pastoralists and hunter-gatherers. The report should be made public and the culprits be prosecuted.

Land Grabs and Unlawful Evictions

30. During the period under review Tanzania witnessed escalating cases of land grabs and unlawful evictions of pastoralists and hunter-gatherers from their ancestral land. Some of the land grabs and unlawful evictions were carried out by different land users like wildlife protected area authorities, farmers and investors supported by the Government. The following are districts in which pastoralists and hunter-gatherers suffered different degrees of evictions from their lands (with the years in brackets). These evictions were documented in Ulanga (October, 2012), Kilombero (November 2012), Morogoro Vijijini (November, 2012), Mpanda (2013), Kambala (2013), Pangani (2013), Korogwe (2013), Handeni (2014), Kilindi (2014), Bagamoyo (2013), Babati (2013), Simanjiro (2012), Rufiji (2012), Kisarawe (2013), Ngorongoro (2013), Kilosa (2014), Meatu (2014), Siha (2014), Hai (2014), Mpanda (2012), Mvomero (2014), Kiteto (2014), Arumeru (2015), Monduli (2012), Hanang (2013), Same (2013), Mkuranga (2014), Mbarali (2014), Igunga (2014), Kishapu (2014), Bariadi (2014), Bunda (2014), Serengeti (2014) and Tarime (2014).

⁶ *Mwananchi* [Dar es Salaam] (November 12, 2012).

31. **RECOMMENDATIONS:** The Government should ensure security of land tenure and communal ownership of land for pastoralists and hunter-gatherers through constitutional and legislative safeguards.
32. The Government should ensure that all land that has been taken unlawfully is restored to the pastoralists and hunter-gatherers and that no further land grabs and unlawful evictions will take place in Tanzania.

Intimidation of Human Rights defenders, Journalists and Civil Society

33. Human rights defenders have been intimidated, unlawfully arrested and maliciously prosecuted.⁷ The Government has also been suppressing efforts by civil society, journalists, traditional leaders and villagers to investigate and protect the rights of the pastoralists and hunter-gatherers. Blogger Susanna Nordlund is a case in point. Nordlund, a Swedish National, was arrested on June 23, 2015 because she was doing a blog that described human rights issues of concern to pastoralists in Tanzania. She was remanded for two days in Loliondo and then Arusha for one night. While in custody she was not allowed to communicate with anyone including her family members. She was not taken to court rather on June 26, 2015 she was declared a prohibited immigrant and escorted by immigration official to Kenya through Namanga. Similarly, the government enacted a new Cyber Crime Act of 2015, which seriously hinder freedom of speech and intimidate human rights activists and CSOs on advocating for human rights. Section 4, 5 na 45 (4) particularly curtails the freedom of receiving and providing information contrary to article 18 of the Constitution of the United Republic of Tanzania.
34. **RECOMMENDATIONS:** The Government should immediately stop the intimidation, threats and malicious prosecution of human rights defenders, and should refrain from declaring human rights activists illegal immigrants. It should stop attacking journalists and human rights activists.
35. We further recommend that the government should immediately review the Cyber Crime Act of 2015 to ensure that it guarantee the freedom of speech as provided in the constitution of the URT

Interference with Judicial Decisions by the Executive and Failure to Implement Court Orders

36. On March 15, 2013 the Court of Appeal in *Civil Appeal No.77 of 2012* ruled in favour of the Barabaig pastoralists of Vilimavitatu Village declaring that a Wildlife Management Area had been established without the free, prior and informed consent of the pastoralists in the village and that the land should be returned back to the community. On September 4, 2013 the Government evicted the Barabaig pastoralists of the village, burning down 44 of their houses and ordering them to leave the area immediately. Reportedly the Babati District Council and

⁷ Some activists like Samuel Nang'iria received threatening SMSs.

Vilima vitatu Village Chairman authorised the evictions, which were carried out by police and private security guards.

37. Pastoralists of Mabwegere Village, Kilosa District, filed case No. 53 of 2010 at the Court of Appeal of Tanzania against farmers who invaded their land. On January 30 2012 the Court of Appeal ruled in favour of the pastoralists of Mabwegere Village. In 2014 the Kilosa District Council refused to implement the court of appeal judgment, and the Attorney General advised the Prime Minister that the judgment is not implementable
38. In Kiteto District in an area known as Emborley e Murtangus belonging to 7 pastoralists villages which jointly allocated part of their village land for grazing and environment protection, there was an invasion by farmers resulting in a Court of Appeal decision in favour of the pastoralists. The government does not respect this decision. The Government through the Prime Minister ordered subdivision of the land contrary to the decision of the Court of Appeal in Appeal case No.58 of 2010. Further, different government officials including the Regional Commissioner for Manyara and the Member of Parliament for Kongwa, have been inciting farmers to stay put in the land of pastoralists contrary to the judgment of the Court of Appeal. It was clearly stated by the court that “*All farmers be removed out of...Emborley e Murtangos*”.
39. **RECOMMENDATIONS:** The Government of Tanzania should respect and implement without further delay the court decisions on Mabwegere, Vilima vitatu, Emborley e Murtangos and all other pastoralists lands.
40. The Government should take actions against public servants who interfere with judicial decisions and refrain from interfering with court decisions.

Delay of Justice on constitutional and public interest litigation

41. Court cases involving pastoralists and hunter-gatherers’ have been subjected to unreasonable delays. The Loliondo Constitutional case is a case in point having been pending in the High Court of Tanzania Arusha Registry since December 2010⁸. This is despite the suit being filed under a certificate of urgency with the aim of speeding up legal proceeding considering the continuing violation of human rights in Loliondo by the Government. As a follow up, applicants⁹ sought advise of the court by a letter dated August 23, 2011. To date, the case is still pending while the violence continues.
42. **RECOMMENDATIONS:** The Government should improve the efficiency of the justice system to ensure that that constitutional litigations as well as other public interest are conducted expediently to avoid miscarriage of justices

⁸ MISC.CIVIL CAUSE No.15 of 2010

⁹ PINGO’s Forum, LHRC, NGONET and Ujamaa CRT.

Lack of Representation of Indigenous Peoples in Decision Making Organs

43. In some geographic areas in Tanzania pastoralists and hunter-gatherers are numerical minorities. At lower organs of decision-making bodies like Mbulu District Council for example the Hadza hunter-gatherers only have one councilor. In all district councils of Morogoro Region pastoralists have no representatives and it is in these regions that the pastoralists suffer the worst cases of attacks. In all other places where pastoralists and hunter-gatherers are minorities in Tanzania, the story is much the same.
44. **RECOMMENDATIONS:** Since pastoralists and hunter-gatherers are minorities in some areas the Government should take affirmative actions to ensure that wherever pastoralists and hunter-gatherers are they should be represented in decisions that affect their livelihoods especially in local government bodies.

Collective Punishment of Pastoralists and Hunter-Gatherers

45. While presenting a report of the Presidential Quasi-Judicial Commission on Operation Tokomeza Ujangili¹⁰ to the president on 10th April 2015¹¹, the Retired Judge Hamis Amir Msumi confirmed *nine* deaths resulting from torture during the operation. It also upheld that in 22 districts the military breached the laws and regulations during the operation and that it tortured, illegally arrested and humiliated the victims; many of them indigenous peoples.¹²
46. **RECOMMENDATIONS:** The Government should take to task all those involved in the violation of human rights during Operation Tokomeza Ujangili and ensure that it refrain from misusing the military in local level operations involving civilians.
47. The Government should make a fair and adequate compensation to the victims of all operations that have taken place without further delay.
48. The Government should make public the full report of the Quasi-Judicial Commission of Inquiry on the Effects of Operation Tokomeza Ujangili

¹⁰ Operation Tokomeza Ujangili (Operation Destroy Poaching), which was meant to arrest the then escalating poaching in the country started on October 4, 2013 for several weeks in a row. Unfortunately the operation resulted in gross violation of human rights as provided by the parliamentary committee report that showed that pastoralists were targeted rather than poachers

¹¹ The full report was not made public but the press release is available on www.blog.ikulu.go.tz/?p=5510

¹² *Mwananchi* [Dar es Salaam] (May 9, 2015).