



Due Diligence Report

Concerning the Report *Stealth Game* Published by the Oakland Institute

Dr. Kanyinke Sena, PhD

This Due Diligence Report was prepared pursuant to financial support and Terms of Reference issued by the Joint Supporters identified herein.

The contents and views herein are the sole responsibility of Dr. Kanyinke Sena and do not necessarily reflect the views of the Joint Supporters.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
BACKGROUND OF THIS REPORT	3
SCOPE OF THIS REPORT	4
INDEPENDENCE AND IMPARTIALITY	6
SUMMARY OF RESEARCH PROCESS.....	7
TABLE OF ALLEGATIONS AND FINDINGS.....	11
OBJECTIVE 1: ALLEGED KILLINGS AND ‘FUELING CONFLICT’	13
I. Terms of Reference.....	13
II. Key Background Issues	14
A. <i>Intra-community violence in Isiolo.....</i>	<i>14</i>
B. <i>NRT’s interlinkage with inter-community conflict</i>	<i>22</i>
III. Specific Factual Findings	35
A. <i>Kula Mawe.....</i>	<i>35</i>
B. <i>Biliqo Bulesa</i>	<i>45</i>
C. <i>Photo captions.....</i>	<i>51</i>
Concluding Observations on Objective 1	53
OBJECTIVE 2: ALLEGED CORRUPTION OR IMPROPER INFLUENCE.....	54
I. Terms of Reference.....	54
II. Key Background Issues	57
A. <i>Livestock markets and NRT Trading</i>	<i>57</i>
B. <i>FPIC</i>	<i>59</i>
III. Specific Factual Findings	61
A. <i>Corruption allegations against Hon. Ali Dima, MCA Chari Ward</i>	<i>61</i>
B. <i>Allegation that NRT has built four airstrips without the Isiolo County Government’s permission.....</i>	<i>64</i>
C. <i>Issues around purchase of livestock and bursaries.....</i>	<i>68</i>
D. <i>‘Green-grabbing’ of Indigenous Land</i>	<i>69</i>
E. <i>Alleged lack of FPIC, especially in the formation of the Biliqo Bulesa Conservancy</i>	<i>71</i>
F. <i>Alleged failure of NRT to deliver promised benefits in Biliqo Bulesa</i>	<i>77</i>
IV. Concluding Observations on Objective 2	80

OBJECTIVE 3: ALLEGED COMMUNITY LOSS OF LAND RIGHTS	80
I. Terms of Reference.....	80
II. Key Background Issues	81
A. <i>Deep fears of land loss driven by competing narratives</i>	<i>81</i>
B. <i>The nature of NRT’s ‘influence,’ ‘ownership,’ and ‘control’</i>	<i>83</i>
C. <i>Grazing-related controversies.....</i>	<i>85</i>
III. Specific Factual Findings	87
A. <i>Alleged taking of community lands.....</i>	<i>87</i>
B. <i>Alleged Restriction on Access and Monitoring of Potential Hotel/Camp Sites</i>	<i>89</i>
C. <i>Alleged undermining the Dheda Grazing Management System.....</i>	<i>92</i>
IV. Concluding Observations on Objective 3	93
OBJECTIVE 4: OAKLAND’S METHODOLOGY AND SOURCING.....	93
I. Terms of Reference.....	93
CONCLUDING OBSERVATIONS TO THE FACTUAL OBJECTIVES	93
OBJECTIVE 5: RECOMMENDATIONS ON FURTHER STEPS NEEDED TO FULLY UNDERSTAND THE CONTEXT OF THE ALLEGATIONS.....	97
I. Terms of Reference.....	97
II. Key Background Issues	99
A. <i>NRT’s practice of Human Rights Due Diligence and response to criticism</i>	<i>99</i>
III. Recommendations for Potential HRDD ‘Next Steps’	101
A. <i>Baseline Recommendation: Human Rights and Security Impact Assessment and/or Conflict Sensitivity Analysis.....</i>	<i>102</i>
B. <i>Menu of Potential HRDD Responses and Mechanisms</i>	<i>104</i>
OBJECTIVE 6: RECOMMENDATIONS ON SPECIFIC ACTIONS AND MEASURES	107
I. Terms of Reference.....	107
II. Recommendations on Specific Actions and Measures	107
A. <i>Government of Kenya</i>	<i>107</i>
B. <i>Isiolo County Government.....</i>	<i>109</i>
C. <i>NRT and Member Conservancies.....</i>	<i>110</i>
D. <i>Final Recommendation to Donors.....</i>	<i>111</i>

ABBREVIATIONS

AGM	Annual General Meeting
BCE	Borana Council of Elders
CBO	Community Based Organisation
DDA	Due Diligence Advisor
DDR	Due Diligence Review
FPIC	Free, Prior, and Informed Consent
HRDD	Human Rights Due Diligence
IHRD	Isiolo Human Rights Defenders
IMPACT	Indigenous Movement for Peace Advancement & Conflict Transformation
JOCC	Joint Operations Command Centre
KMC	Kenya Meat Commission
KPS	Kenya Police Service
KWCA	Kenya Wildlife Conservancies Association
KWS	Kenya Wildlife Service
LAPSSET	Lamu Port-South Sudan-Ethiopia Transport corridor
LTM	Livestock-to-Markets
MCA	Member of County Assembly
MID-P	Merti Integrated Development Programme
NGO	Non-Government Organisation
NPR	National Police Reserves or National Police Reservist
NRT	Northern Rangelands Trust
NRTT	NRT Trading
OB	Occurrence Book
TNC	The Nature Conservancy
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNGPs	UN Guiding Principles on Business & Human Rights
USAID	United States Agency for International Development

EXECUTIVE SUMMARY

This Due Diligence Report (DDR) provides the results of a detailed research, investigation, and assessment process that follows up on specific allegations made in ‘Stealth Game: ‘Community’ Conservancies Devastate Land and Lives in Northern Kenya,’ published by the Oakland Institute in November 2021 (the ‘Oakland Report’).

The Oakland Report amplifies human rights concerns prevalent in the relevant areas of Isiolo, Samburu, Marsabit, and Laikipia counties in northern Kenya—issues such as community participation levels in community-based wildlife conservancies, livestock grazing rights, evolving land tenure arrangements, and intractable security risks in a region openly plagued with criminal violence and ethnic tensions. These concerns are important—and familiar.

The report also, however, makes specific allegations linking the Northern Rangelands Trust (NRT) and its member conservancies to specific instances of grave human rights abuses, including killings, corruption, and intentional ‘fueling’ of ethnic conflict. This DDR was commissioned by certain financial supporters of NRT to obtain a detailed, independent, on-the-ground assessment of these allegations so that those supporters can consider whether they have an obligation to take further steps to fulfil their independent responsibility to respect human rights.

The DDR has found strikingly little evidence to corroborate the allegations against NRT in the Oakland Report. Indeed, the allegations appear to have emerged from a minimal investigative process and are deeply implicated in a complex political environment where attacks on NRT are widely understood as an electoral tactic and as a means to draw attention. The Oakland Report authors openly acknowledge that they stumbled upon the issue of opposition to NRT in 2019. Unfortunately, it appears that they never subsequently validated the initial testimonies they collected at that time—or even returned to the region at all. The result is that they and their work were effectively manipulated by a small group of politicians and community leaders, at least with respect to the specific allegations of grave abuses directly linked to NRT.

The DDR also finds, however, that the unsupported and often demonstrably false allegations emerge from a critical context which demands attention in numerous ways. Severe human rights impacts *are* prevalent in the region, in particular in the form of loss of life and property associated with cattle rustling and ethnic conflict, and impacts related to the lack of basic government services. NRT did not cause these impacts. But as the number of conservancies in the region grow, NRT’s involvement in sensitive security, governance, and rights issues grows with it, and the implication of NRT in underlying controversies and debates becomes inevitable.

While the DDR was not tasked with a systematic survey of these underlying issues, our researchers did encounter frustrations and occasional hostile attitudes toward NRT in the community. There was confusion as to what NRT is and unfamiliarity with how it makes decisions. The extent of NRT’s power and influence is taken as a fact of life (including when it is exaggerated), undermining some people’s confidence that they can truly make their own decisions. And NRT has exacerbated this dynamic at times by adopting a contentious approach to communications and community relations—including, in one instance, a threat of litigation against community

members. This approach only feeds perceptions by some in the communities that NRT is intolerant and focused on its own agenda.

There is no doubt that NRT and community conservancy activities and benefits are widely valued. These activities can be credited not just with reductions in poaching and habitat degradation, but also significant revenue generation for communities through tourism, fair market trading, and more recently, carbon. The NRT-backed peace programme and its livestock recovery programme are widely appreciated for reducing inter-community conflict despite an increase in conflict drivers, including the rise of criminal cattle rustling networks. NRT and community conservancies should continue their important work and continue to receive robust national and international support. But they can also respond more adeptly to community concerns, misunderstandings, and grievances.

The Terms of Reference of this DDR request recommendations on ‘human rights due diligence’ (HRDD) next steps and other measures and actions that might be taken to more fully understand the context of the allegations and fulfil the various parties’ ongoing responsibilities to respect human rights. While a full assessment of NRT’s HRDD practices is beyond the scope, this DDR finds that NRT has dedicated an admirable amount of attention to human rights issues, as reflected in the numerous strategy and policy documents it shares on its website, but also that NRT’s overall approach to HRDD is unstructured and potentially inadequate in some respects. Because a full assessment was beyond the scope, this DDR fulfils the request for recommendations by providing a ‘menu’ of potential HRDD ‘next steps’ that NRT and the supporters who commissioned this DDR might wish to consider in the future to better understand actual and potential impacts linked, even indirectly, to NRT’s activities and role in the region.

The DDR also recommends the completion of a human rights and security or conflict sensitivity analysis focused on NRT’s activities in Isiolo County. Even though NRT has extensively studied the security situation, it needs to be exceptionally careful moving forward to avoid seeing its activities drawn into controversy and manipulated by conflict participants. The recommended analysis can help NRT develop clear strategies, guidelines, and accountability mechanisms to ensure it steers clear of such results.

Finally, with due recognition for the limited factual scope of this report, the DDR offers a list of recommended action steps based on the experiences and impressions generated in the course of the research and investigation, that may be considered by a range of actors and include national and county government to better protect human rights and inter-community relations in the area.

BACKGROUND OF THIS REPORT

In November 2021, the California-based think tank Oakland Institute published ‘Stealth Game: ‘Community’ Conservancies Devastate Land & Lives in Northern Kenya’ (hereinafter ‘Oakland Report’). The Oakland Report contains a range of allegations about the Northern Rangelands Trust (NRT), a Kenyan not-for-profit organisation founded in 2004 to promote the establishment of community-led conservation initiatives, or ‘community conservancies.’ The use of community conservancies as a community land management model has expanded rapidly over the last 30 years. Today, there are hundreds of community conservancies across Kenya, and formal regulations were provided in the Wildlife Conservation and Management Act of 2013.

The Oakland Report offers a highly critical perspective on ‘the evolution of Kenya’s land and wildlife conservation laws; the history, the structure, and the functioning of NRT; land issues surrounding the privatized model of conservation in Kenya, and the impact of this model on local communities in terms of livelihoods and human rights violations, including the death toll on local communities.’¹ The Report contributes to a passionate and ongoing debate about the fairness, effectiveness, and suitability of the community conservancy land use model in Kenya’s many diverse social and ecological contexts.²

Critically, however, the Oakland Report supports its arguments and its focus on NRT with several serious allegations of killings, corruption, and other grave human rights abuses allegedly linked to NRT operations. In exchanges with the Report’s authors in Aug-Sept. 2021, NRT firmly denied the allegations.

NRT receives funding and support from a range of sources, including numerous international foundations, organisations, and development agencies. A group of supporters including the US Agency for International Development (USAID), the European Union (EU), the Danish International Development Agency (Danida), Agence Française de Développement (AFD), and the Fonds Français pour l’Environnement Mondial (FFEM), led by The Nature Conservancy (TNC), (hereinafter ‘Joint Supporters’), recognized that the allegations triggered an obligation to conduct due diligence sufficient to determine whether their support for NRT was causing, contributing, or directly linked to grave human rights abuses. Specifically, supporters needed information that was (a) independent of NRT; (b) more detailed; and (c) attuned to the broader social/political context.

TNC, on behalf of the Joint Supporters, issued Terms of Reference in December 2021 for an independent Due Diligence Review (DDR) of the allegations. Our Due Diligence Advisory (DDA) team was assembled and retained in February 2022. Situational analysis and investigative field work was conducted from March to May 2022. The scope and extent of the field work is indicated in the Research Process section below and throughout. The independence of the DDA and this DDR is addressed below.

¹ Oakland Report at 12.

² See Ian Scoones, [Contested conservancies: livestock, wildlife and people in Laikipia, Kenya](#), PASTRES, 6 May 2022, and Tom Lalampaa, [How conservancies have opened up the rangelands](#), 25 May 2021.

SCOPE OF THIS REPORT

In its conclusions, the Oakland Report calls for ‘an independent investigation into land related grievances around all of NRT’s community conservancies, allegations of inter-ethnic conflict fueled by NRT’s rapid response units, abuses and extrajudicial killings by the 9-1 and 9-2 units.’³ This DDR both is and is not that proposed investigation.

This DDR *focuses narrowly on the specific factual allegations in the Oakland Report*. The reasoning is that if the specific allegations in the Oakland Report are untrue, misleading, or materially incomplete, the scope of any ensuing call for action should be considered accordingly. Initial concern about the truth and completeness of the allegations was based not only on NRT’s firm denials but on a preliminary analysis of the Oakland Report’s methodology and sources, which suggested that a small number of individuals served as sources for almost all the allegations and that several of these individuals were local politicians rather than directly impacted victims.

Nonetheless, the DDA has undertaken this assignment with impartiality and good faith, giving the benefit of the doubt to victims and applying the *pro homine* principle to fully prioritize the protection of human rights as much as possible.

Additionally, while this DDR does find a pronounced lack of support for the Oakland allegations, this should *not* be read to suggest that issues raised by the growth of community conservancies need not be considered or addressed, including impacts to ethnic conflicts, land rights, livelihoods, gender dynamics, and political participation. The DDA notes that prior to the release of the Oakland Report, TNC had already commissioned a human rights risk analysis related to community conservancies that is national in scope and relies on social science methodologies such as semi-random selection of participants and consistent interview structures. This report (which the DDA has not reviewed) will provide a better platform for generating discussion on experiences with conservancies because it emerges from an independent and more inclusive framing of the issues rather than in response to a single set of highly questionable allegations.⁴

The following six objectives were used to establish the scope of this review in the original Terms of Reference:

- 1) Review: ‘Any allegations of extrajudicial killings, physical abuse, harassment, or exacerbation of ethnic conflicts by individuals associated with NRT.’
- 2) Review: ‘Any allegations of corruption, coercion, or improper or unfair use of political, social, or personal pressure to influence decision-making regarding the establishment or operation of NRT conservancies.’
- 3) Review: Any allegations ‘Any gain or loss of rights to land or access to land associated with NRT or its conservancies.’

³ Oakland Report at 43.

⁴ The DDA has not reviewed or relied on this report but is encouraged by the ongoing attention to these important issues.

- 4) Review: ‘The methodology and sourcing used by the Oakland Report and the extent of specific factual corroboration provided by sources relied on by the Oakland Report.’
- 5) Provide: ‘Recommendations as to any further steps that may be needed for Joint Supporters to fully understand the context of the allegations and make determinations of appropriate action.’
- 6) Optionally provide: ‘Recommendations as to appropriate actions or measures to promote inclusivity in conservation in Northern Kenya, and suggestions of other further steps needed by the Joint Supporters or others to fulfil their human rights due diligence obligations under the circumstances.’

The ‘factual’ objectives 1-4 are addressed in order. Each acknowledges the **terms of reference**, provides information on **key background issues** needed to understand the DDA’s conclusions concerning the facts, and then addresses **each specific allegation** in the Oakland Report with specificity. Objective 4 is deemed to have been accomplished as part of Objectives 1-3.

Concluding Observations to the Factual Objectives are provided immediately following these sections, at page 93.

Objective 5 is taken as an occasion to consider the broader context of the allegations and relevant issues from a **human rights due diligence (HRDD)** lens.⁵ This section addresses NRT’s existing record on HRDD and offers a ‘menu of options’ on future HRDD steps that NRT and the Joint Supporters might consider in moving to better understand the complex environment in which NRT operates and build ongoing human rights protections strategies in cooperation with communities. This section also concretely recommends the completion of a human rights and security or conflict sensitivity analysis focused on NRT’s activities.

Objective 6 concludes by offering a list of recommended action steps that could be taken by government and private actors based on the experiences and impressions generated in the course of the research and investigation of this DDR.

⁵ According to the UN Guiding Principles on Business and Human Rights, which broadly defines the responsibilities of non-government actors to respect human rights, the HRDD process includes “**assessing** actual and potential human rights impacts, **integrating and acting** upon the findings, **tracking** responses, and **communicating** how impacts are addressed.” UNGP, Principle 19.

INDEPENDENCE AND IMPARTIALITY

The DDA team was led by Dr. Kanyinke Sena, an Indigenous Kenyan with Maasai and Ogiek ancestry who has extensive contacts in the relevant areas of Isiolo, Laikipia, and Samburu counties, and has worked in the field of Indigenous rights and development inside and outside of Kenya for decades.⁶ Dr. Sena is a former chairperson of the UN Permanent Forum on Indigenous Issues and currently the Director of the Indigenous Peoples of Africa Co-ordinating Committee (IPACC). He has never worked for TNC, the main financial sponsor of this DDR, or any of the other Joint Supporters. He has not worked in government or electoral politics.

Although Dr. Sena personally conducted the vast majority of the field work, he relied occasionally on select individuals for services related to security, research, and other support. No members of the DDA team had any prior or ongoing contacts with TNC or any Joint Supporters.

The DDA team necessarily engaged with and received advocacy from NRT, the Oakland Institute, and other impacted parties as part of the research process. However, the team maintained control over the extent and nature of all contacts and relationships. The team provided periodic updates to TNC and the Joint Supporters on progress towards contract deadlines primarily through an independent human rights consulting firm, Forum Nobis PLLC, serving as a liaison.

The DDA contract required a focus specifically on the allegations in the Oakland Report, for the reasons noted above. However, the team independently decided the scope of investigation needed to address those allegations and the methodology of the investigation. The analysis, findings, conclusions, and other substance of this DDR reflect the independent views and determinations of Dr. Sena and the DDA team.

To ensure fairness, completeness, and compliance with the terms of the underlying contract, a draft of this DDR was circulated to the Joint Supporters and NRT shortly prior to publication. The DDA team received comments on the draft but maintained complete control concerning any and all proposed changes and additions. Final technical assistance on the draft was provided by Forum Nobis at the direction of Dr. Sena.

Dr. Sena has been paid a flat fee for his considerable investment of time and professional expertise in conducting the field work and preparing this DDR. The fee is consistent with customary rates for professional work of this nature in Kenya and Dr. Sena's typical professional rate.

⁶ Dr. Sena's experience is such that he was contacted by the Oakland Report's authors in July 2021 to inform him of the potential evictions of Maasai in Tanzania and welcomed any suggestions he may have for pushing IUCN to take action that ensures the recommendations of Indigenous residents are implemented regarding the management of the Ngorongoro conservation area. The contact consisted of a two email exchanges only that did not result in any engagement between Dr. Sena and the Oakland Institute.

SUMMARY OF RESEARCH PROCESS

The methodology employed for this HRDD process was simple—but arduous.

Substantial desk research was conducted primarily by Dr. Sena into the history of community conservancies, NRT, ethnic conflict in the relevant regions, and applicable legal, social, political, and human rights issues. Dr. Sena was also able to rely on his many years of experience working directly with communities, activists, and organisations on these issues, and his on-the-ground experience working in the relevant counties.

The desk research was followed by an extensive process of direct investigation and interviews with all parties who were willing to engage. The villages visited included Kapenguria in West Pokot, Marigat, Loruk and Tangelbei in Baringo County; Marallal, Wamba, Sero Oipi and Archers Post in Samburu County; Nanyuki and Dol Dol in Laikipia County; and Isiolo, Kipsing, Kula Mawe, Gotu, Dhima Ado, Biliqo, Bulesa, Merti and Kinna in Isiolo County.

As discussed below, the Oakland Report relies primarily on testimonies allegedly provided at two sets of community meetings: one dated 5-6 June 2019, in Kula Mawe, and a second dated 18-19 June 2019, in Biliqo. The DDA team visited the site of the Kula Mawe meeting on March 11, 2022. As described below, we were able to talk to the person who hosted Ms. Anuradha Mittal, founder and executive director of the Oakland Institute, and several other people who attended the meeting, as well as the chief of Kula Mawe, the head of police, and approximately 10 community members. The team visited Biliqo and Bulesa on 2-5 May 2022, and was able to interview the head of police, the current chairman and manager of the conservancy, the NRT Peace Ambassador, a former chairwoman of the conservancy, Biliqo hospital staff, local business people, senior chiefs, religious leaders, and approximately 20 community leaders and members. Some of these individuals were sources of the Oakland Report.

The team made extensive efforts to engage with and learn from Oakland itself. The engagement was initially positive, but soon broke down, as follows.

- Initial contact with Ms. Mittal was made on 15 March 2022 through an introductory email sent by Mr. Mali Ole Kaunga, the director of IMPACT, an NGO based in Nanyuki and mentioned in the Oakland Report. The DDA team was clear that our intent was an independent review that would include direct outreach to all communities, activists, conservancies, NRT, and government actors.
- Ms. Mittal responded indicating her support for such a broad process. She informed us of claims that past investigations into NRT have been heavily criticized for only consulting a select group of individuals. She hoped that all voices will be heard this time with us leading the effort. Ms. Mittal represented that she would ***‘provide contact information for community-based groups and community members who have long awaited an opportunity to share their experiences with NRT.’*** She also indicated that she would be available to speak with us about our findings and the research.
- On 18 March 2022, we responded that Ms. Mittal that Abdinoor Dima Jillo (‘Major Jillo’) had been identified as an important individual to talk with as soon as possible. We informed her that we had tried repeatedly but unsuccessfully to reach

Major Jillo. We requested her assistance. We also asked her for the contact details, including the villages where they could find information about the alleged victims of extrajudicial killings including Enow Aloo Matmolu, Ali Noor Ali, Son of Guyo Dokata/son of Godana Badasa/Kulat Gashe, Adam Issack, Eanow Alio, Ahmed Abdi Rahman, Ibrahim (a youth representative in Kula Mawe) and Simon Looru. We shared that the DDA team had visited Kula Mawe and had not been able to find or verify the identity of any of these individuals.

- On 20 March 2022, Ms. Mittal responded without sharing any contact information. Rather, she began to raise concerns about ‘the history of harassment and intimidation faced by the communities on the ground,’ stating that because ‘their petitions [have been] ignored by [international] donors for years, as you can imagine, there is very little trust. Instead, there is a lot of fear.’ She asserted that ‘It will be important to provide a letter to the communities, introducing the team and an overview of the investigation—including the objectives, timeline, and the names of the contracting donors. In the absence of this, it might be difficult to obtain interviews and to ask for evidence from individuals and community-based groups. If the team could provide such a letter, Oakland can share it with their contacts and request their assistance.’
- The DDA team promptly provided Ms. Mittal with the requested letter of introduction on 22 March 2022. We also requested contact information for a specific list of individuals sourced in the Oakland Report. Ms. Mittal responded on 29 March 2022, stating that ‘regarding your request for contact information for individuals who are mentioned in our report, as I said in a previous email, it is imperative that you reach out to the respective Council of Elders in the areas these individuals live. . . . I recommend that you send a letter detailing the background of the investigators, the supporting donors, and an overview of the investigation to the Council of Elders, so they can assist you in your visit and meetings with the community members. . . . I suggest this also because of the intimidation and harassment that has previously been unleashed on individuals sharing their lived experiences with NRT.’ See Annex 1.

Lacking cooperation from Oakland, the DDA team continued try to locate and talk to identified sources in the Oakland Report, relying on local information from community visits and from community and government leaders, including the chiefs of Kula Mawe and Bulesa, the MCA for Chari Ward, the Governor of Isiolo, and NRT. Among other key efforts:

- We sent letters of introduction to Major Jillo (after seeking to make contact via SMS and WhatsApp on 12-13 March 2022). When these communications were ignored, we tried the tactic described at paragraph 76 and were able to get Major Jillo on the phone briefly. After promising to cooperate and send us further information, he terminated the call and we have not heard from him since. The letter that the DDA sent to Major Jillo was shared on Facebook by a Ms. Violet Matiru, who is known for strongly-worded attacks on NRT on social media.
- We contacted the Borana Council of Elders (BCE) by letter dated 31 March 2022. See Annex 2. On 20 April 2022, the BCE contacted us through a Mr. Halkano Abdullahi, acknowledging the 31 March letter and indicating that they would assist

with contact details after the end of Ramadhan (2 May 2022). On 4 May 2022, we followed up with the BCE chairperson with a phone call. He did not agree to provide information and instead indicated that the BCE would eventually contact us with a meeting date. We have never received any follow-up contact. At the end of our process, NRT provided us with an undated letter from the BCE, on BCE letterhead. The letter is signed but the name is not legible, and NRT officials were not able to tell us the name of the signatory. The letter acknowledges BCE objections in the past but states that the BCE has more recently ‘reached a level of understanding and clarity on the truth about the community conservancies and fact about NRT model of community development initiatives’ and commits to ‘continue with this engagement with the objective of resolving issues including allegations against NRT on insecurity matters and community land claims.’ See Annex 3.

- On 6 April 2022, we had a phone conversation with Mr. Adan Hussein Chulu, who is identified on page 35 of the Oakland Report as the ‘Secretary General’ of the Isiolo Human Rights Defenders (IHRD), appears to be the author of text on page 11 that is placed above the image of a document that does not contain the text, and who signed (on behalf of IHRD) a letter to NRT supporter Danida, reprinted on page 42. Mr. Chulu also refused to talk or share any contact information for victims or their families. Like Ms. Mittal, he requested a formal letter of introduction. We immediately sent such a letter the same day, 6 April 2022. Mr. Chulu thereafter stopped taking our calls and we were unable to speak to him again. At the end of our process, we were provided with a letter on IHRD letterhead, signed by Ibrahim Wako as ‘Coordinator’ of the IHRD, which states that ‘at no time [has] IHRD engaged, partnered, or worked with Oakland Institute on any activity or project’ and ‘we are not part of the Oakland Institute report.’⁷ See Annex 4.

Throughout the research process, the DDA regularly sought relevant documentation from official records and other sources. This include searching for any police records in Isiolo, Kula Mawe, Archers Post, Biliqo, and Merti. The team also sought records from Kenya Wildlife Service (KWS) in Isiolo and Meru and also from the County Government of Isiolo through the Deputy Governor. The team also spoke to other organisations that included the Ministry of Lands officials at the county level, KWS, Merti Integrated Development Programme, IMPACT, OPDP, Drylands Learning and Capacity-building Initiative (DLCI), and NRT member conservancies.

Finally, the DDA engaged extensively with NRT, pursuant to a deliberate strategy. As discussed below in Objective 5, NRT has a vigorous communications team with very strong opinions on every issue. The DDA chose to avoid any contact with this team until the very end of the process. In order to gather facts, the DDA did extensively engage with NRT personnel with on-site visits to NRT headquarters on 14 March and 11 April, as well as telephone interviews. We spoke extensively with Tom Lalampaa (CEO); Ian Craig, founder and NRT board member; Samuel Lemaroro, head of security; Batian Craig (owner of contracted security firm 51 Degrees); Osman Hussein, Director of Operations; Beatrice Lempair, Director of BeadWORKS; Shem Juma,

⁷ The Oakland Report published text from two letters signed and/or authored by Mr. Chulu. Even though the Oakland Report often accompanies the text of quoted letters with an image of the document itself, it does not do this for these particular letters, so it has not been determined if Mr. Chulu’s letters were on IHRD letterhead.

Director of Grants; Burton Lenanyokie, Director of the NRT Centre; Mohamed Shibia, Director of NRT East; Josephine Ekiru, Peace Coordinator; and eight rangers manning the Joint Operations Communications Centre (JOCC) at the time of the DDA's visit.

After a near-final draft of the DDR had been prepared, we met with NRT personnel including communications on 30 May. At that time, we also received and reviewed an 'Internal Response' prepared by the communications team that reflected investigation into specific allegations as well as statements of NRT's views and positions. The response is confidential and the DDA respects NRT's right to keep it confidential until its investigation and consideration is complete. This DDR does not quote or rely on the substance of the Internal Response except where noted specifically. In some areas, the Internal Response conveys factual information that is consistent with the DDR findings but has not been independently verified. This information is not included here but may be added to the public record by NRT itself in due course.

Note on impact of Oakland's non-cooperation

The Oakland Institute's effective refusal to cooperate with a due diligence inquiry by a well-qualified, non-partisan expert into claims that it published and has aggressively promoted is concerning. These concerns are compounded by the fact that the non-cooperation emerged mid-stream, after the DDA indicated that it was having trouble finding support for the allegations. If Oakland's sources turned out to be unreliable, Oakland itself should have the highest interest in finding this out and setting the record straight.

Nonetheless the DDA has worked to ensure that Oakland's non-cooperation was not the end of the inquiry. While this DDR has found little to no factual substance for the allegations, we recognize that the allegations nonetheless reflect the advocacy of a small number of vocal critics and emerge from the difficult environment in northern Kenya, where governance and human rights issues are undeniable. Even if only some of the Oakland allegations were true, or partially true, those particular victims and impacts deserve to be sorted out from the rest and attended to.

In some areas, however, review was simply not possible without Oakland's cooperation. Although we find the refusal by Oakland and other key sources to explain and defend its claims problematic, we choose to leave the evidence itself as neither substantiated nor disproven but note where it is uncorroborated ('no support') and/or called into question by other evidence.

TABLE OF ALLEGATIONS AND FINDINGS

The report that follows is highly detailed and prefaced by consideration of numerous complex background issues. This material is necessary to fully understand the substantive basis for each conclusion and finding in this DDR. For ease of reference, however, the following table is provided indicating each allegation from the Oakland Report that was investigated and the basic finding as to each. The table references specific language used in this DDR to distinguish between the following categories of findings based on the available facts:

- A conclusion of **‘no evidence’** means no evidence other than an *unsourced* Oakland allegation or an Oakland allegation specifically found to be unlikely or not credible. This reflects a determination by the DDA that the evidence provided in the Oakland Report is not reliable.
- A conclusion of **‘no support’** means no evidence other than a *sourced* Oakland allegation, where there is no evidence contrary to what is stated in the Oakland Report other than a sometimes conspicuous lack of corroboration or support. In some cases this conclusion results from the fact that some areas were unsafe to travel to for investigation during the research period and/or where the fact that Oakland did not make more details about its claims available, leaving the DDA in the position of proving a negative.
- A conclusion of **‘allegation disproven’** or **‘alleged NRT/conservancy link disproven’** means a finding of no evidence or no support combined with other compelling evidence that leads the DDA to affirmatively conclude that the allegation is not true.
- A conclusion of **‘some evidence consistent with the allegation’** reflects that while the DDA found problems with the allegation as stated in the Oakland Report, the team also found some evidence in support of the allegation or consistent with the allegation.
- A reference to **‘no claimed link to NRT’** means that the DDA has largely refrained from investigating the substance of the incident or complaint because the Oakland Report itself does not claim a link to NRT or its member conservancies, putting it outside the scope of this DDR. Note that for this part of the review, ‘NRT’ is understood to include all NRT member conservancies and their employees, as involvement by any of them would be a ‘link’ of some extent to NRT.

Allegation	Finding of this Review*
Death of Gumato Hassan and her daughter (Oakland p. 35)	No evidence of incident or NRT link (§ 90)
Death of Adam Issack (Oakland p. 35)	No alleged link to NRT (§ 96)
Death of Eanow Alio (Oakland p. 35)	No alleged link to NRT (§ 101)
Death of Ahmed Abdi Rahman (Oakland p. 36)	Alleged NRT link disproven (§ 109)
Disappearance of two youth (Oakland p. 35)	No evidence of allegation (§ 115)

Death of Simon Looru (Oakland p. 35)	Alleged NRT link disproven (¶ 120)
Death of Enow Aloo Matmolu (Oakland p. 35)	No support for either incident or alleged NRT link (¶ 135)
Sons of Guyo Dokata and Godana Badasa (Oakland p. 35)	No evidence of NRT link; incident different than reported (¶ 141)
Assault of Jumale Galgalo Wario (Oakland p. 29)	No alleged link to NRT (¶ 156)
Use of vehicles in 2017 (Oakland p. 35)	No evidence of NRT link (¶ 150)
Corruption allegations against Ali Dima (Oakland p. 30)	Allegation disproven (¶ 206)
Construction/authorization of ‘illegal’ airstrips (Oakland p. 39-40)	No support for allegation (¶ 216)
NRT buys livestock at exploitative prices (Oakland p. 31)	No support for allegation (¶ 225)
‘Green-grabbing’ (Oakland p. 28)	No evidence of allegation (¶ 235)
Conservancy agreements with NRT are kept secret from the community (Oakland p. 30)	Allegation disproven (¶ 244)
Failure to obtain and sustain FPIC for the Biliqo Bulesa Conservancy (Oakland p. 29-31)	Some evidence consistent with the allegation (¶ 259)
Failure to deliver promised benefits	No support for allegation, some aspects of allegation disproven (¶ 270)
Taking of community lands	No support for allegation (¶ 305)
Restricted access and monitoring of potential hotel/camp sites (Oakland p. 31, 36)	No evidence of allegation (¶ 318)
Undermining the Dheda grazing management system (Oakland p. 34)	Evidence of impact but no support for allegation of ‘undermining’ (¶ 324)

OBJECTIVE 1: ALLEGED KILLINGS AND ‘FUELING CONFLICT’

I. Terms of Reference

1. For this objective, the DDA has been asked to address allegations concerning the following: *‘Any allegations of extrajudicial killings, physical abuse, harassment, or exacerbation of ethnic conflicts by individuals associated with NRT.’*
2. We begin specifying the allegations and analyzing certain key terms of reference. We then proceed to offer a summary of key background issues that, in our view, serve as key drivers of the allegations and are necessary to a full understanding of the specific factual findings. We then set forth our factual findings on the specific allegations contained in the Oakland Report.
3. The allegations pertinent to this objective are largely contained at pages 29-35 of the Oakland Report. These are addressed in turn in the sections below, with reference to the allegedly killed or targeted individual. The Oakland Report also resurfaces allegations from the 2019 Borana Council of Elders Report, discussed in Section II.B.ii to this Objective.
4. ‘Extrajudicial killings,’ or extrajudicial executions, are defined as the deliberate killing of an individual (s) by a state agent (s), *or with their consent*, without a previous judgment affording all judicial guarantees, such as a fair and unbiased procedure.⁸ It happens when someone in an official position deliberately kills a person without any legal process. Such arbitrary deprivations of life can be carried out not only by state agents but also by militias, death squads or other non-state actors. Extrajudicial killings often target political opponents, activists, or marginalized groups.⁹
5. NRT direct employees includes its staff and seven mobile scout teams, known as the ‘9’ teams, who operate on a regional level under co-supervision with the Kenya Police Service (KPS) and Kenya Wildlife Service (KWS). See below, Section II.B.v. Further, each member conservancy has a staff and employs a team of uniformed scouts (currently 870 across the 43 NRT-member conservancies) with similar supervision. All armed scouts and team leaders operate as National Police Reservists (NPRs) after having undergone academy training.¹⁰ They are obligated to report to KPS and KWS deployments.¹¹ Any killings that will therefore be associated with the NRT ‘9’ teams and/or the 870 conservancy rangers will fit within the definition of extrajudicial killings.

8 See, e.g., <https://trialinternational.org/topics-post/extrajudicial-executions/>

9 See, e.g., <https://www.omct.org/en/what-we-do/extrajudicial-killings>

10 See, e.g., NRT, A Partnership for Peace & Security: Kenya Police College Offer Ranger Training to NRT at <https://www.nrt-kenya.org/news-2/2018/9/3/kenya-police-college-training>

11 NRT, Security: Rapid Response, <https://www.nrt-kenya.org/peace-and-security>. This information in the paragraph was investigated and corroborated in interviews with Mr. Tom Lalampaa, NRT’s CEO, and Mr. Batian Craig, Lewa Conservancy, 14 March 2022.

6. Physical abuse is any intentional act causing injury or trauma to another person by way of bodily contact. In the context of the above allegations, physical abuse can be in varied forms ,including forbidding use of water points, damaging property, injuring livestock, use of weapons to hurt or threaten to hurt, preventing individuals or communities from calling the police or seeking medical attention, and driving recklessly or dangerously among others.
7. Ethnic conflicts are conflicts between two or more communities which may or may not be violent. They may be political, social, economic, or religious but most importantly in the context of northern Kenya, cultural. Violent ethnic conflicts are motivated by ethnic hatred and are predominantly based on social and political inequality or ignited by political leaderships. Non-violent conflicts may be based also on political or business rivalry among others. Exacerbating ethnic conflicts therefore involves making such violent or non-violent conflicts more bitter, severe, or intense.
8. The team further takes the term ‘individuals associated with NRT’ to mean any natural person who is, or who was at any time pertinent to any activities of NRT and include NRT Board members, Council of Elders, Office bearers, ‘9’ teams rangers, employees, and NRT member conservancies, including their rangers and any other persons who at the time of the allegations were acting directly under the command and control of NRT.

II. Key Background Issues

A. *Intra-community violence in Isiolo*

9. The allegations of killings and conflict in the Oakland Report are all said to have occurred in Isiolo County and reflect conflicts between the Samburu and the Borana communities. With the exception of the allegations examined in Section III below, the allegations are sourced to a 2019 report by the Borana Council of Elders and the Waaso Professionals Forum, discussed in Section II.C below. As will become evident, the broader dynamic of ethnic tensions and violence between the Samburu and Borana emerges as a key driver of the allegations as well as the undeniable human rights concerns in the region. An examination of the broader context of the conflicts in Isiolo County is appropriate.



An NRT Peace Committee meeting. 14.3.2022 at NRT Headquarters

10. In *The Politics of Pastoral Violence: A Case Study of Isiolo County, Northern Kenya*, Roba Sharamo describes a wide range of conflicts and violence affecting the region, including cattle rustling, ethnic violence, displacements and occasional massacres, all embedded in inter-communal and clan relations among the various pastoralist communities of northern Kenya and the greater Horn of Africa region.¹² In addition, stress factors such as climate change, environmental degradation, drought, famine, water scarcity, and other natural catastrophes are worsening the conflicts.¹³ Other factors contributing to conflicts include changing land tenure regimes, for example, the beginnings of a shift to community land-holding under Kenya's Community Land Act,¹⁴ and administrative land use and electoral boundary changes that open lands for commercial ranching as well as wildlife conservation. Recurrent violent conflicts are further aggravated by the proliferation of small arms and light weapons, and instability in neighbouring Somalia, Ethiopia, and South Sudan. Conflicts are further compounded by the historical marginalization of northern Kenya from the colonial period to the last decade.¹⁵
11. These new issues are exacerbating local tensions.¹⁶ Terrorism, resource extraction, and devolution are also intensifying existing local conflicts and raising new challenges.¹⁷ Devolution has resulted in the entrenchment of 'winner-takes-all' ethnic politics at the county level.¹⁸ Control of large budgets and political posts by local elites in the newly created county governments is fueling clan tensions. These localized conflicts lead to the emergence of local militias, which opens opportunities for recruitment and infiltration by Al-Shabaab, and triggers harsh counter-terrorism responses from Kenyan security forces.¹⁹ Oil concessions and major development projects such as the Lamu Port-South Sudan-Ethiopia Transport corridor (LAPPSET) have generated speculative land grabbing, newly contested communal and political borders, disputes over allocation of oil revenues, and potential increases in migration.²⁰



Protests by Somalis in Isiolo after eight were killed by Samburu. 13th April 2022

¹² Roba Sharamo, [The Politics of Pastoral Violence: A Case Study of Isiolo County, Northern Kenya](#) (June 2014).

¹³ Ibid.

¹⁴ Community Land Act, No. 27 of 2016. For a helpful summary, see Lorna Mainnah, [A brief overview of the Community Land Act](#). The author also thanks Elija Lempaira, Programme Manager Community Land Protection, IMPACT, for additional information provided during the research process.

¹⁵ Ibid.

¹⁶ Conciliation Resources, [Tackling the changing face of conflict in northern Kenya](#) (April 2017).

¹⁷ Coalition Resources, [Kenya: Conflict in Focus](#).

¹⁸ KD4, [Conflict Analysis of Northern Kenya](#) (July 2020).

¹⁹ Ibid.

²⁰ Ibid.

12. At the time of this study, there were ongoing violent conflicts in Elgeyo Marakwet,²¹ Baringo,²² Laikipia,²³ and Isiolo. Cattle rustling has become a major cause of the conflicts in all the relevant counties. Historically, cattle rustling has been a problematic cultural practice but has now been transformed into a form of organised crime with postulated support from international criminal networks.²⁴ Reasons attributed to increased cattle rustling include an increasing demand for beef in urban centres and competition for political power and resources: political barons use organised attacks to drive out their political rivals and extend their business interests.²⁵
13. Isiolo county occupies 25,336 sq km. It has a population of 268,000 persons. It has two constituencies (north and south), three sub-counties, and 10 wards. In addition to Borana and Samburu, Isiolo is home to Gabra, Sakuye, Turkana, Meru, and Somali. The Borana are the most dominant, followed by the Somali and Meru, then Samburu.²⁶ Violence is evident not just between the Borana and Samburu but also in the Meru,²⁷ Turkana,²⁸ and even Somali.²⁹
14. Like other counties in northern Kenya, Isiolo has history of annual ethnic violence. The team note a few examples. In 2021-2022 alone, six people were killed in attacks between the Borana and Degodia over a border row and pasture in January 2021 in Hurura village in the Isiolo-Wajir border.³⁰ It is estimated that over 50 lives had been lost in the same area in the previous two years.³¹ In June 2021, 18 lives were lost in inter-clan fighting

²¹ KTN News, *Tension high in Elgeyo Marakwet as bandits kill two people in the troubled North*, 20 Mar. 2022 at <https://www.youtube.com/watch?v=e0eZruz7eig>

²² Fredrick Ooko, *What will it take to stop the killings in Baringo?*, The Standard, 13 Mar. 2022 at <https://www.standardmedia.co.ke/opinion/article/2001440195/what-will-it-take-to-stop-the-killings-in-baringo>

²³ *Gov't Promises To Restore Peace In Troubled Laikipia*, 22 Mar. 2022 at <https://www.kenyanews.go.ke/govt-vows-to-restore-normalcy-in-troubled-laikipia/>

²⁴ Institute for Security Studies, *East African governments must protect their pastoralists by ratifying the protocol on cattle raiding*, 20 Feb. 2020 at <https://issafrica.org/iss-today/cattle-rustling-from-cultural-practice-to-deadly-organised-crime>

²⁵ ReliefWeb, *Kenya: Cattle-rustling and the politics of business in Kenya*, 27 Mar. 2014 at <https://reliefweb.int/report/kenya/cattle-rustling-and-politics-business-kenya>

²⁶ Dennis Dibondo, *Meru community in Isiolo dismisses census report*, The Star, 13 Nov. 2019 at <https://www.the-star.co.ke/counties/eastern/2019-11-13-meru-community-in-isiolo-dismisses-census-report/>

²⁷ NTV Kenya, *Five people killed as Meru-Isiolo border clashes re-ignite*, 8 Mar. 2019 at <https://www.youtube.com/watch?v=cEFTeCsGSnQ>

²⁸ Cultural Survival, *Kenya: Violence breaks out between Borana and Turkana tribes*, at <https://www.culturalsurvival.org/news/kenya-violence-breaks-out-between-borana-and-turkana-tribes>; KTN News, *8 people killed in Isiolo following conflict between the Samburu and the Turkana communities*, 12 Nov. 2014 at <https://www.youtube.com/watch?v=6J11jWSGBUg>.

²⁹ The Nation, *Borana and Somali herders in Isiolo told to end conflict*, 29 June 2020 at <https://nation.africa/kenya/counties/isiolo/borana-and-somali-herders-in-isiolo-told-to-end-conflict-372388>

³⁰ KTN News, *6 people have been killed in renewed clashes pitting 2 communities in Isiolo county*, 10 Jan. 2021 at <https://www.standardmedia.co.ke/ktnnews/checkpoint/video/2000203091/6-people-have-been-killed-in-renewed-clashes-pitting-2-communities-in-isiolo-county>

³¹ Ibid.

within the Borana community around Chinchoftu, Bassa in Merti subcounty in Isiolo.³² In the same month, a further six people were killed and several others injured after over 100 bandits suspected to be herders from Samburu attacked Turkana herders near Buffalo Springs National Reserve in Attan, Ngaremara.³³ On 4th March 2022, five people were killed in Degochicha area in fighting between the Borana and the Degodia.³⁴ In the Kom area, Samburu morans allegedly killed one Borana and injured two on 10th March. Samburu Morans allegedly shot and killed an NRT driver on 6th March 2022, along the Merti road.³⁵ Frequent firing on motor vehicles by bandits along the Merti road are also common.³⁶ Indeed, a Toyota Land Cruiser that *the DDA team itself* had made plans to hire for travel to Biliqo Bulesa was riddled with gunfire as it was on its way to meet the DDA team in March 2022.³⁷ One person died and several were injured. This was the second time in March that the vehicle had been shot at on that road. On 9th April 2022, nine people were killed by bandits around the LMD area near Isiolo town.³⁸ Between April 20-25, five people were killed in separate incidents: three men on a motorcycle along Merti-Kom road and two men on a motorcycle along Isiolo-Muriri road in Tigania West. In Burat, two men who were on a motorcycle were shot and injured in another ambush.³⁹

15. Accordingly, as this DDR considers allegations of violence and impact on conflict, additional underlying and intersecting drivers of conflict must be kept in mind, including:

- i. *Competition for water and pasture*

16. A major driver of conflicts in Isiolo. Isiolo County is classified as arid or semi-arid with an annual rainfall of approximately 150-250 mm.⁴⁰ Neighbouring counties including Laikipia North, Samburu, and Marsabit are dry and hot areas. When drought strikes, herders from within and outside Isiolo County travel for many kilometers with livestock and build temporal structures near grazing fields, displacing families from their lands.

³² The Star, *Interclan fighting rages in Isiolo, Marsabit 18 die in month*, 19 July 2021 at <https://www.the-star.co.ke/counties/eastern/2021-07-19-interclan-fighting-rages-in-isiolo-marsabit-18-die-in-month/>

³³ All Africa, *Kenya: Six Killed in Gun Fight After Bandits Attack Herders in Isiolo*, 13 June 2021 at <https://allafrica.com/stories/202106140064.html>

³⁴ Capital News, *5 killed in conflicts over pasture and water in Wajir-Isiolo Border*, 4 Mar. 2022 at <https://www.capitalfm.co.ke/news/2022/03/5-killed-in-deadly-clashes-over-pasture-water-along-wajir-isiolo-border/>

³⁵ Interviews with conservancy and NRT leadership, March 2022.

³⁶ Interviews and supporting documentation from community members.

³⁷ First-hand account from DDA team.

³⁸ Citizen TV, *Nine killed, four others injured by bandits in Isiolo Count*, 10 Apr. 2022 at <https://www.youtube.com/watch?v=xbMKyIf1pBs>

³⁹ Cyrus Ombati, *Five killed, two injured in separate Isiolo attacks*, 25 Apr. 2022 at <https://www.the-star.co.ke/counties/north-eastern/2022-04-25-five-killed-two-injured-in-separate-isiolo-attacks/>

⁴⁰ Bancy M. Mati, John M. Muchiri, Kennedy Njenga, Frits Penning de Vries and Douglas J. Merrey, *Assessing Water Availability under Pastoral Livestock Systems in Drought-prone Isiolo District, Kenya*, 2005 at https://www.researchgate.net/publication/42765507_Assessing_Water_Availability_under_Pastoral_Livestock_Systems_in_Drought-prone_Isiolo_District_Kenya#fullTextFileContent

Loss of animals due to diseases and drought gives communities justification to raid their neighbours' territories to restock their herds and cushion themselves against the losses.

ii. *Cattle rustling*

17. As noted, this was once a problematic but undeniable and complex cultural practice among communities in northern Kenya. Cattle raids were an important strategy for wealth accumulation that also served multiple purposes in ethnic neighbour relations. At times, it was redistributive, transferring animals across social boundaries in situations of need, such as during drought or when young men sought animals to pay out as bride price. There was loss of life, but on a much smaller scale than now.⁴¹ The problem of cattle rustling today has transformed and ballooned out of control. ***Almost every conflict reported in Isiolo in 2022 involved cattle rustling.*** Guns have been used by all communities during the raids or counter raids. There are also claims that politicians and wealthy entrepreneurs, whose intention is to procure cattle in vast quantities either to feed warring armies or to sell to abattoirs in Nairobi for profit, organise and equip the large gangs of young men who do the raiding. The use of firearms has made cattle rustling far deadlier; a regular occurrence with extreme negative consequences on pastoralists' economies in Isiolo and the neighbourhood.⁴²



Community livestock grazing in Lewa Conservancy

iii. *Deep animosity*

18. Animosity is the result of years of fighting and historical land claims. If a child from either of the communities grows up knowing that his or her father or siblings was killed by members of a particular community, they may hate that community throughout their life.⁴³ In Samburu or Borana, WhatsApp groups gleefully share photos of corpses of killed enemies.⁴⁴

iv. *Competing land claims*

19. Impacts from changing land law have also been noted as a major cause of conflicts in Isiolo.⁴⁵ The Laikipiak and Dorobo communities claim what is now Isiolo County as their ancestral land. The Samburu have occupied north of Ewaso Ngiro River, but often cross

⁴¹ Abbink, J., *Change in Southern Ethiopia: Developments from within Suri Society*. Disaster and Development in the Horn of Africa (2016) at 151-153.

⁴² Menkhaus, K., *Conflict Assessment: Northern Kenya and Somaliland* (2015).

⁴³ Interview with Deputy Governor Isiolo, March 2022. Interview with Mr. Hassan Shano, former MCA, March 2022. Interview with Mr. Robert Lemer keto, April 2022.

⁴⁴ First-hand account from DDA team.

⁴⁵ Safo Roba Boye and Randi Kaarhus, [*Competing Claims and Contested Boundaries: Legitimizing Land Rights in Isiolo District, Northern Kenya*](#), Africa Spectrum (2011: 99-124).

the river to graze south of the river—thus the names Isiolo, Ngare Ndare Oldonyiro, and even the name of the river itself, Waso. Historically, Isiolo district was established by the British in 1929 as a ‘Borana district to prevent further expansion by Somali groups coming from the northeast.’⁴⁶ A formal Somali–Boran dividing line was established and this division now marks the eastern boundary between Isiolo and the districts of Wajir and Garissa, mostly inhabited by Somali. However, Somalis still claim parts of Isiolo as their own. Further lines were created by the colonial governments to prevent Borana expansion westwards into Samburu territory and southwards to their customary use of grazing and water in Meru District. The colonial government also settled some 3,000 Somali (Herti and Isaak clans) in and around Isiolo Town. They were mainly settled in a ‘Class C leasehold area of over 1,000 square miles.’⁴⁷ This was the rangelands area that had earlier been used by both the Laikipiak Masaai and the Samburu. The Meru community has claimed most parts of Isiolo, including Isiolo town.⁴⁸ The Kenya Defense Forces have also been allocated large tracks of land around Isiolo and Archers Post.⁴⁹

20. The end result is that the Boranas feel pressure from every side. Outsiders ‘want the Borana to only claim the road as their land.’⁵⁰
21. Looking ahead, registration of land in Isiolo under the Community Land Act will be complex. In Isiolo County, land is held in trust on behalf of the community under the Trust Lands Act Cap 288 (now obsolete).⁵¹ Due to the competing land claims and the diverse ethnic makeup of the county, the community land registration process will face challenges including difficulties in designating specific areas for specific communities.⁵² The failure of the Ministry of Lands to appoint a Community Land Registrar is another problem.⁵³ There are also tensions over inclusion of minority communities like the Izaq & Harti Somali clans.⁵⁴ Un-registered lands make it easier for communities to easily invade and encroach as the boundaries are ill-defined and in many cases overlap. Encroachment is driven powerfully by a desire to control resources.⁵⁵ Land ownership

⁴⁶ Ibid.

⁴⁷ Report by the Northern Frontier District Commission, 1962, p. 6, NA – CO 896/1.

⁴⁸ Peoples Daily, *Stop claiming our electoral boundaries, Isiolo MPs tell Meru Governor*, 15 Nov. 2019 at <https://www.pd.co.ke/inside-politics/stop-claiming-our-electoral-boundaries-isiolo-mps-tell-meru-governor-13199/>

⁴⁹ Waweru Wairimu, *Kenya: Meru, Isiolo Residents Seek Court's Help Over Land Taken By KDF*, 17 May 2021 at <https://allafrica.com/stories/202105170965.html>

⁵⁰ Interview with Mrs. Hadija Pereira. May 2022.

⁵¹ Saferworld, *Isiolo County conflict analysis*, at <https://www.files.ethz.ch/isn/191933/isiolo-conflict-analysis.pdf>

⁵² KBC Channel, *Isiolo elders oppose proposal to register community land using names of certain tribes*, 14 July 2021 at https://www.youtube.com/watch?v=c5AAr0EC_Cc

⁵³ KTN news, *Pastoralists communities in Isiolo push to register community land*, 13 Oct. 2021 at <https://www.youtube.com/watch?v=FDjVJPu3BRs>

⁵⁴ Nation, *Izaq & Harti clan in Isiolo demand inclusion in ongoing community land registration*, 27 Feb. 2021 at <https://www.youtube.com/watch?v=xT82kyM9ne8>

⁵⁵ Ibid.

rights are also complicated and undermined by political interests.⁵⁶ Politicians in Isiolo have been accused of using land ownership as a political tool, making promises about ensuring ownership of contested parcels of land to get support from people from their own ethnic communities.⁵⁷ This has exacerbated the conflict across the county.⁵⁸

v. *Political intrigues*

22. Political leadership is closely linked to resource allocation. Consequently, every community strategizes to secure political leadership, sometimes ‘by any means necessary.’ The dominant clans in communities employ different strategies to continue the dominance, and the smaller communities form alliances for political purposes. Politicians sometimes instigate tensions for strategies of self-interest and to safeguard their electoral base. Politicians will often defend their people even when they unleash terror on their neighbours and will arm community members with the rationale that they need to ‘secure themselves.’⁵⁹

vi. *Large-scale infrastructure projects*

23. Previously a marginalized area, Isiolo County is now experiencing tremendous large-scale infrastructural projects. Large infrastructure projects promise benefits to the county but raise multiple issues relating to land ownership and property rights; displacement and restriction of pastoral mobility; and other socioeconomic and environmental impacts, such as pollution, urbanization, and modernization. Information and consultations are lacking, and there has been political interference.⁶⁰ Through the Lamu Port South Sudan Ethiopia Transport (LAPSSET) Corridor, an international airport has been completed in Isiolo, a 504 km Isiolo-Moyale highway is now completed,⁶¹ and a resort city and hydroelectric dam are in process. These infrastructure projects are fueling conflicts as people jostle for land around them.⁶²

vii. *Weak policing*

- a. Isiolo authorities lack the manpower, resources, and capacity to police the county’s vast arid areas. Consequently, they have resorted to *arming civilians*, deputizing

⁵⁶ Waweru Wairimu, *Leaders differ over Isiolo community land registration as meeting aborts*, 12 May 2021 at <https://nation.africa/kenya/counties/isiolo/leaders-differ-over-isiolo-community-land-meeting-3398250>

⁵⁷ Safer World, *Isiolo County conflict analysis*, op cit.

⁵⁸ Ibid.

⁵⁹ Waweru Wairimu, *Kenya: The Killing Fields of Isiolo - How Politics, Police Laxity Are Fuelling Insecurity*, 23 June 2021 at <https://allafrica.com/stories/202106230642.html>

⁶⁰ Kennedy Mkutu Agade and Abdullahi Boru Halakhe, *Rapid Assessment of the Institutional Architecture for Conflict Mitigation* (March 2019).

⁶¹ Standard News, *The road that made us Kenyans*, 30 July 2020 at <https://www.standardmedia.co.ke/business/real-estate/article/2001380553/the-road-that-made-us-kenyans>

⁶² Standard News, *Lapsset fuelling border wars in Meru and Isiolo, say MPs*, 31 Oct. 2015 at <https://nation.africa/kenya/news/lapsset-fuelling-border-wars-in-meru-and-isiolo-say-mps-1141262?view=htmlamp>

community members to serve as National Police Reservists (NPRs) with minimal training or oversight. Civilian NPRs play a key role in the analysis below. The lack of resources also leads officials to embrace security support from non-state actors like NRT. As described below, NRT's '9 Teams' and rangers from other community conservancies are also deputized as NPRs and have assumed important security roles in the region. Because these are non-government actors without underlying foundations of state authority, aggrieved communities quickly arrive at a perception that the actors illegitimately support some communities over others. While the DDA team could not obtain reliable documentation on the distribution of civilian NPRs among the various communities—this itself being a troubling fact—it seems clear that the Samburu have far more civilian NPRs (as well as conservancy-linked NPRs) than the Borana or Turkana. In the absence of adequate state security, communities throughout Isiolo feel entirely justified in arming themselves and taking whatever actions they feel necessary to secure themselves, leading to increased inter-communal violence.

viii. Conservation-driven conflicts

24. Finally, the rapid increase in conservation efforts, including community-based efforts like community conservancies, undeniably impacts security dynamics and community perceptions across Isiolo. Isiolo County is rich in flora and fauna. With this richness comes a vulnerability to poaching. With poaching has come tremendous international donor attention to wildlife conservation, strongly supported by national and county governments.
25. Over time, conservation efforts have evolved, with a current focus on community conservancies under Kenya's Wildlife Conservation and Management Act, which to great degree merely ratifies forms and practices that emerged organically in years prior to ratification of the Act. NRT illustrates a model of aggregating community-based efforts to achieve an Integrated Landscape Management approach,⁶³ which has been widely looked to for its potential to 'break down sectoral barriers, capitalize on synergies in land uses and human development, and strengthen coordination and participation of a wide range of stakeholders.'⁶⁴ In addition to the direct conservation, economic benefit, and community organisation impacts, community conservancies can provide a platform and incentive for peacebuilding. They do, however, introduce new authority structures that can compete or be perceived as competing with traditional authorities rooted in nationally-appointed chiefs and local and county government.⁶⁵
26. As Kennedy Mkutu has found, lines between defense and aggression can become blurred for conservancy rangers when their communities are party to conflict in community conservancy areas.⁶⁶ Dramatic increases in the presence of conservancy security can affect power balances and trigger arms races between historical rivals on conservancy

⁶³ See FAO, *Integrated Landscape Management*, <https://www.fao.org/land-water/overview/integrated-landscape-management/>

⁶⁴ See UNEP, *Integrated Landscape Management and the SDGs*, <https://www.unep.org/fr/node/1088>

⁶⁵ Kennedy Mkutu, *Security dynamics in conservancies in Kenya: The case of Isiolo County* (March 2020).

⁶⁶ Ibid.

borders. Most broadly, the existence of a non-governmental authority structures receiving high levels of outside donor funding directed in part at funding security forces plainly has implications on lines community perception, legitimacy, sovereignty, and sustainability. This question with respect to NRT is considered more closely below.

27. It must be noted that the growth of conservation efforts (including community-based models) has had a profound effect on powerful organised poaching interests. At the peak of poaching from 2007-2014, high prices could be obtained for elephant tusks (USD 1,000-2,000/kg) and rhino horns (USD 40,000-70,000/kg). Through aggressive antipoaching activities led by KWS, the police, NRT, and its conservancies, not a single rhino was killed in 2020.⁶⁷ Poaching activities have been linked to influential government officials including current and former employees of KWS.⁶⁸ The anti-poaching activities by NRT and its conservancies may therefore attract considerable resistance from these powerful interests that can be filtered through community expression in various ways.

B. NRT's interlinkage with inter-community conflict

i. NRT's relationship to Borana and Samburu

28. The allegations in the Oakland Report emerge exclusively from members of the Borana community claiming bad acts by NRT and Samburu, including an interrelationship between the latter. NRT has member conservancies in both Borana and Samburu territories, but far more of the latter than the former. The overall relationship between the two communities and NRT must be considered not just in terms of number of conservancies, but related impacts on resources, including revenues from tourism, carbon markets, other NRT-linked businesses, and the use of conservancy security as a means of access to legal firearms. It is also important to understand how NRT may impact land issues and politics in Isiolo.
29. The narrative prevalent in Borana communities is that since the establishment of conservancies in the area, there has been an escalation in cattle rustling and deadly attacks against the Borana, leading to 'countless' killings and looting of livestock. The narrative continues that this has been inspired, instigated, and facilitated by NRT, which is biased toward the Samburu as evidenced by the greater number of Samburu conservancies and Samburu executives and employees at NRT.⁶⁹
30. In framing the accusations against NRT, an anti-colonial approach is used by Borana and non-Borana activists such as seen in Oakland Report. The claim is that NRT is a personal creation of a wealthy landowner from a colonial family, Mr. Ian Craig, and has the purpose of dispossessing communities of their land through conservation and

⁶⁷ Sustainability Times, [*Kenya reaping benefits from its aggressive anti-poaching drive, bolstered by Ellipse Projects radios and CyberTracker app*](#), 17 Mar. 2021.

⁶⁸ See for example, Poaching Facts, Military & corrupt officials, at <https://www.poachingfacts.com/faces-of-the-poachers/military-corrupt-officials/>

⁶⁹ DDA impressions taken from entire research process.

the deployment of armed security units responsible for serious human rights abuses.⁷⁰ NRT firmly asserts that it is ‘owned and led by the 43 community conservancies it serves.’⁷¹ NRT and its supporters have at times emphasized that it was ‘formed by [Ian Craig’s] Lewa Conservancy and USAID’ and similar aspects to the origin and evolution of the NRT model.⁷²

31. NRT is presently ‘housed’ by the Lewa Wildlife Conservancy as part of a 40-year contract that will run to 2044.⁷³ Though Lewa and NRT may be legally independent, the DDA team observed that Ian Craig is a constant presence at NRT operational facilities located at Lewa. As the Oakland Report emphasizes, security for both NRT and Lewa is provided in significant part by a private company, 51 Degrees, which is operated by Mr. Craig’s son Batian.⁷⁴ When asked about these arrangements, NRT leadership candidly acknowledged implications on the perception that NRT remains dominated by the Craig family. Leadership maintained that their options have been limited by contractual obligations and further noted that moving NRT ‘out’ of Lewa to either of Samburu or Isiolo counties could aggravate tribal conflicts. Despite this, NRT is apparently considering options for relocation, especially to Meru County is a safe option. NRT reports that 10 acres have been purchased as a preliminary step in this effort, which would be directly aimed at bolstering recognition of NRT’s independence from Lewa.⁷⁵
32. Though NRT and Lewa have a close working relationship, with Lewa playing a key role in providing logistical and technical support to NRT,⁷⁶ NRT is now one of the 11 regional groupings under the Kenya Wildlife Conservancies Associations (KWCA).⁷⁷ Each of the regional groups has member conservancies and each runs programmes similar to NRT, though with a degree of difference depending on the region’s priorities. Each is also housed within a conservancy within the member conservancies. For example, Southern Rangelands Association of Land Owners’ (SORALO) offices are located in Shompole Conservancy. The regional bodies are registered either as land

⁷⁰ Oakland Report at 5.

⁷¹ See <https://www.nrt-kenya.org/> and <https://www.nrt-kenya.org/the-story-of-nrt>

⁷² See USAID Kenya, [Northern Rangelands Trust Support](#). Lewa Conservancy does not presently claim a direct role in NRT except to acknowledge that its conservation efforts “result[ed] in the launch of [NRT]” and that Lewa and NRT “benefit from a close working relationship, with Lewa playing a key role in providing logistical and technical support to NRT.” See <https://www.lewa.org/about/conservancy-faq/>. Lewa was previously owned by the Craig family but has since been transferred into trust. Interview with Ian Craig, March 2022.

⁷³ Interview with Mr. Tom Lalampaa, NRT CEO, Various dates March – April 2022.

⁷⁴ Interviews with Ian Craig, Tom Lalampaa, and other, Mar-Apr. 2022.

⁷⁵ Interview with Tom Lalampaa, Mar. 2022.

⁷⁶ Lewa. Frequently asked questions at <https://www.lewa.org/about/conservancy-faq/>

⁷⁷ KWCA, Regions at <https://kwcakenya.com/regional-associations/>

- trusts (Southern Rangelands Association of Land Owners⁷⁸), associations (for example, Rift Lakes Conservancies Association⁷⁹), or trust (for example Amboseli Ecosystem Trust⁸⁰).
33. Lewa Conservancy itself has also transitioned from exclusive ownership by the Craig family and is now run by a board of directors.⁸¹
 34. Samburu leadership in NRT also contributes to Borana attitudes toward NRT.⁸² NRT's CEO and head of peace and security are both Samburu. The majority of staff within NRT security teams are also Samburu or Maa speakers. The reality of society in this region is that these individuals are, or will be perceived as, relatives, friends, and allies of other Samburu, including individuals in county government and Samburu conservancy leadership. Cultural norms reinforce expectations that Samburus will assist their kin when under attack, or even participate in attacks in support of their community.
 35. These expectations and social understanding are a key driver to widespread, indeed universal perception in Borana communities that NRT security teams respond faster in conflicts where Samburu are involved as opposed to when other communities are fighting.⁸³ The DDA observed an NRT peace and security meeting and witnessed balanced reporting from the peace coordinators in the respective regions/conservancies, although the impact of the DDA's presence is acknowledged. NRT's CEO acknowledged speedier responses by NRT in Samburu conservancies as a potential fact, but attributed it to better communication systems, including telephone communications and road networks, within the Samburu communities/conservancies.⁸⁴
 36. A key fact is that the Samburu embraced the community conservancy model—and NRT—as much as 20 years ahead of the Borana. Consequently, Samburu community conservancies both in Samburu and Isiolo counties have been receiving tourism revenue and other NRT investments, including vehicles, and gaining resources and corresponding influence and power relative to Borana communities that only moved to form conservancies much later.⁸⁵ In 2019, the Samburu County Government became

⁷⁸ See Southern Rangelands Association of Land Owners at <https://kwakenya.com/regional-associations/southern-rangelands-association-of-land-owners/>

⁷⁹ See Rift Lakes Conservancies Association at <https://kwakenya.com/regional-associations/rift-lakes-conservancies-association/>

⁸⁰ See Amboseli Ecosystem Trust at <https://kwakenya.com/regional-associations/amboseli-ecosystem-trust/>

⁸¹ Lewa, Lewa Wildlife Conservancy Board of Directors at <https://www.lewa.org/wp-content/uploads/2018/09/2013-Lewa-Annual-Report.pdf>

⁸² Mkutu, Mar. 2020, op. cit.

⁸³ Interview with numerous community members and rangers, Mar-Apr. 2022.

⁸⁴ Lalampaa, op. cit.

⁸⁵ Interview with Isiolo Deputy Governor.

the first county in Kenya to approve direct funding for community conservancies. Presently it allocates KES 119 million annually and participates in lobbying for additional funds from international donors.⁸⁶ The Biliqo Bulesa Conservancy was established in 2007—the first community conservancy in Isiolo—but the wider Borana community has yet to fully embrace the model as a path forward. More Borana conservancies have been established in the last five years, indicating an evolution in attitude.⁸⁷ Nonetheless, the differential in conservancy investment, revenue, and related resources between Samburu and Isiolo counties and Samburu and Borana communities remains huge.⁸⁸

ii. The 2019 Borana Council of Elders report

37. In April 2019, a report was issued under the name of the Borana Council of Elders and Waaso Professional Forum titled ‘Fact Finding Report on the Northern Rangelands Trust’s Operations in Community Conservancies in Isiolo County’ (‘BCE Report’).⁸⁹ The BCE Report illustrates and, in many ways, epitomizes the narrative just described. It is also a key source for the Oakland Report: other than the specific incidents examined in Section III below, *all* the generalized allegations of killings and conflict in the Oakland Report are sourced to the BCE Report.
38. As will be discussed below, the BCE Report contains minimal sourcing on its face. The report’s ‘marquee’ claim that as many as 70 Borana have been killed by Samburu attacks aided by NRT contains no supporting data, much less any specific indication as to how NRT aid was provided except in terms of sweeping generalizations.
39. Shortly after release of the BCE Report, a **task force** was assembled by the Isiolo County government to look into the allegations and related. Although the task force’s schedule was significantly frustrated by the emergence of the COVID-19 pandemic, it was able to hold a number of community forums, including in the key source area of the BCE Report, Biliqo Bulesa. Despite having prepared and submitted its report to the government of Isiolo County, the Borana Council of Elders and the ‘Waaso

⁸⁶ County Government of Samburu, MoU with Community Conservancies, at <https://www.samburu.go.ke/2020/08/13/mou-with-conservancies/>

⁸⁷ Interview with Dr. Abdi Issa, Deputy Governor Isiolo. Interview on various dates in Isiolo in March and April 2022.

⁸⁸ Note that even though Isiolo has more conservancies (12) than Samburu County (9), 6 out of the 12 conservancies in Isiolo are owned Samburu communities. Isiolo conservancies include Garbatula, Sericha, Kina, Cherab, Biliqo Bulesa, Nakuprat-Gotu, Nasuulu, Leparua, Nanapa, Nanapicho, Naapu, and Narupa (Oldonyiro). Samburu county conservancies include Sera, Westgate, Kalama, Nkoteiya, Meibae, Ltungai and Ngilai, Nalowuon and Kalepo (Namunyak).

⁸⁹ Boran Coucil of Elders and Waaso Professional Forum, Fact Finding Report on the Northern Rangelands Trust’s Operations in Community Conservancies in Isiolo County, April 2019 at https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/pdfpreview/boran_council_of_elders_wasso_professional_forum_fact_finding_report_2019.pdf

Professional Forum’ refused to meet with the task force or otherwise further explain, much less substantiate, the allegations.

40. A detailed draft report was prepared including findings on the claims in the BCE Report, but somewhere near the end of the process the task force’s work was suspended for unknown reasons. A copy of the draft report was provided to the DDA by an anonymous source. While the task force was unable to investigate any specific claims due to the lack of cooperation, the draft report notes results from its outreach in Biliqo Bulesa in stark contrast to the claims made on behalf of that community by the BCE Report. For example, with respect to the BCE Report claim that ‘the NRT community conservancy model aids in livestock theft and perpetuates ethnic conflict,’ the task force found:

The community from Biliqo Bulesa unanimously agreed that the reason why livestock is stolen is not because of the conservancies model but rather due to fighting over pasture and water inadequacy in the region. . . . On whether the model perpetuates ethnic clashes the response was NO in all the forums.⁹⁰

The draft report conveys that the community audiences at its forums in Biliqo Bulesa ‘recommended that the county government of Isiolo should enact legislation to support community conservancies.’⁹¹

41. NRT also responded to the BCE Report. Shortly after the report’s release, NRT issued a strongly-worded public rebuttal.⁹² The rebuttal is considered in more detail at Section II.A to Objective 5, below. In interviews, NRT leadership acknowledged that the response was assembled on what the DDA finds to be an ‘ad hoc’ basis, with various team members collecting information from various field and other sources and relying on facts simply ‘known’ to NRT employees. No sincere effort was made to obtain a meaningful, non-combative dialogue with the authors of the report. And no record of investigation or the process of assembling the response remains.
42. As described in Objective 5, the DDA finds that this response was inadequate from a human rights due diligence (HRDD) perspective. The DDA also observes that the response has an aggressive and offended tone. In its conclusion, NRT threatens litigation against the Council of Elders. As described in Objective 5, this approach reflects a communications strategy that is not only ill-advised but concretely counter-productive, in that it reinforces community perceptions that NRT is intolerant, high-handed, and aggressive. These perceptions then come to drive further breakdowns in

⁹⁰ Report of the Taskforce on Northern Rangelands Trust (NRT) in Isiolo County, draft dated Sept 2020, at 17. We urge the government of Isiolo County to finalize the report or publicly release the draft.

⁹¹ Ibid., 18.

⁹² See <https://www.nrt-kenya.org/news-2/2019/5/3/response-to-the-fact-finding-report-on-the-northern-rangelands-trusts-operations-in-community-conservancies-in-isiolo-county-published-by-the-borana-council-of-elders-and-the-waso-professional-forum>

communications and cooperation and lead to greater adverse impacts linked to NRT's role—not to mention the generation of questionable and false allegations against NRT such as those seen in the Oakland Report.

iii. *Narrative competition*

43. In completing this assignment, the DDA reached certain impressions concerning the competition of narratives in the public discourse on the value of community conservancies, NRT, and conservation generally. While these impressions were not the focus of targeted research, they are offered here for usefulness.
44. There is no doubt that conservation of nature is essential. The *State of Knowledge Report* published jointly by the Convention on Biological Diversity and the World Health Organization concludes that healthy communities, both urban and rural, rely on well-functioning ecosystems. Biodiversity, the variety of life on Earth, plays a specific role in the existence and long-term maintenance of ecosystem functions.⁹³ Biodiversity loss can have profound impacts on functioning of natural and managed ecosystems and the ability of ecosystems to deliver ecological services to human societies.⁹⁴ Humans and cultural diversity are an important part of biodiversity.⁹⁵ However, WWF's 2020 Living Planet Report notes that the world has seen an average 68% drop in mammal, bird, fish, reptile, and amphibian populations since 1970. Much of the loss is caused by human activities that include habitat loss (clearing for various reasons), overexploitation (extreme hunting and fishing pressure), pollution and climate change associated with global warming.⁹⁶ Biodiversity loss presents an existential threat to human life.⁹⁷
45. Conservation strategies, however, can compete with many other powerful and pressing land use demands,⁹⁸ for example increasing human population, livelihoods, commercial development, infrastructure development, and security among others. This competition can trigger political contests that involve conservation advocates and opponents, both basing their arguments on support for Indigenous rights and development.⁹⁹ Our research in northern Kenya indicates that some of these opponents are brothers and sisters or spouses.

⁹³ AlpES Learning Tool, <http://www.alpeselearning.eu/a-1-ecosystem-services-and-their-connection-with-biodiversity-and-human-activity/>.

⁹⁴ Thébault, E., Loreau, M. [The relationship between biodiversity and ecosystem functioning in food webs](#). *Ecol Res* 21, 17–25 (2006).

⁹⁵ American Museum of Natural History, [What Is Biodiversity?](#)

⁹⁶ Olivia Lai, [What are the Biggest Causes of Biodiversity Loss?](#), 23 Dec. 2021.

⁹⁷ ECO-business, [Roundtable: How will the world stem global biodiversity loss?](#), 13 May 2019.

⁹⁸ Ralf C. Buckley, [Grand challenges in conservation research](#), *Front. Ecol. Evol.*, 05 Nov. 2015.

⁹⁹ Ibid.

46. Conservancies in Kenya protect land, create sanctuaries for wildlife, and can bring benefits in the form of direct payments¹⁰⁰ and jobs to the people who share the land with wildlife.¹⁰¹ Not everyone sees it this way, however. In their 2016 book, *The Big Conservation Lie*, Mordecai Ogada and John Mbaria argue that the wildlife conservation narrative in Kenya, as well as much of Africa, is thoroughly intertwined with colonialism, racism, exclusion of Indigenous and natives, veiled bribery, deceit, cult-like conservation thinking, and effective exploitation of the very wilderness that conservationists claim they are out to preserve.
47. Today international donor funding in the conservation space simultaneously supports these two highly contradictory narratives. Both groups seek to put Indigenous communities at the centre of their activities, or at least their public narratives and funding strategies.
48. The DDA fully embraces the legitimacy of all contributions to the public discourse on these questions. The DDA simply notes that the often incendiary dialogue increasingly generated by these competing narratives has become, in itself, a relevant driver of community perceptions and related impacts, including conflict.
49. The DDA further notes that the narrative competition is affected by the vast funding differential between the two sets of actors. NRT, backed by long-time donors of conservation efforts in Kenya,¹⁰² has an annual budget of over KES 2 billion.¹⁰³ This gives it significant influence in northern Kenya and impacts on its relationships with the communities, county governments, and other NGOs/CBOs operating in the conservation space. To use casual language, NRT is a ‘juicy target’ for a wide range of groups without access to the same level of funding.
50. The research process for this DDR involved exposure to direct and indirect testimonies from former staff of NRT and its member constituencies who left under various circumstances and who now participate in publicly challenging NRT. It was not within the scope of this DDR to fully investigate these situations apart from occasionally noting the impact of circumstances on the credibility of certain evidence. The DDA makes the observation here because motivations of former staff undeniably play a role in the narrative competition described in this section.

¹⁰⁰ The DDA’s prior experience with and observations of community conservancies suggests that direct payments play an important role in stimulating participation by community members and securing the endorsement of the community conservancy approach by community members who may choose not to participate deeply but also do not want to be “left out.”

¹⁰¹ Game Watchers Safaris, The Conservancy Concept, <https://www.porini.com/blog/the-conservancy-concept/>

¹⁰² This fact is stated without judgment concerning NRT’s community-based model of conservation, which has evolved over time and does not on its face align with the “fortress conservation” approaches targeted by critics. See the notation concerning Integrated Landscape Management approaches, above.

¹⁰³ NRT Finance, [2020 full year report and 5-year budget forecast](#).

51. As just one example, the DDA made substantial efforts to obtain the perspective of Mr. Titus Letaapo, a former NRT executive described as the former ‘right hand’ to NRT CEO Tom Lalampaa. After leaving NRT, Mr. Letaapo now serves as CEO of GEO Indigenous Alliance and a Managing Director with Sarara Foundation. Mr. Letaapo agreed to an interview and the DDA team travelled all the way to Wamba for the interview. When the team arrived, Mr. Letaapo informed us by telephone conversation that he had reconsidered his decision to talk specifically because there was nothing positive he could tell us about NRT. He would not be assured that the DDA was not seeking only positive information. Most strikingly, in the course of the conversation, which was not conducted under any arrangement of confidentiality, Mr. Letaapo outright stated that his present ‘mission’ was ‘to destroy NRT.’¹⁰⁴

iv. Firearms and NPRs

52. There are many actual and potential impacts related to this differential. Of key relevance to the analysis here is the impact on access to ‘legal’ firearms.
53. A preliminary observation is that legal firearms are just one piece of the overall context of small arms and light weapons. In most of northern Kenya, a firearm is just a phone call away¹⁰⁵ and as low as KES 30,000 (US \$ 300) for an AK 47 rifle.¹⁰⁶ A 2017 small arms survey estimated 740,000 illegal firearms in Kenya, most of them in northern Kenya. As already noted, firearms both escalate and change the character of longstanding conflict areas such as cattle rustling.¹⁰⁷ The DDA notes with concern that local ‘arms races’ are likely to worsen as Kenya’s 2022 general election approaches.¹⁰⁸
54. Rangers are equipped with firearms only after being enrolled as NPRs authorized by the Kenya Police Service (KPS). They remain at all times obligated to come to the assistance of KPS upon request as needed for the general maintenance of law and order, protection of life and property, prevention and detection of crime, and apprehension of offenders. Based on a range of interviews with officials and community members, as well as other sources, the DDA found that conservancy NPRs, due to their proximity, tend to be called first if a security incident occurs. KWS and

There are two groups of NRP:

1. Those that are employed as scouts in the conservancies.
2. Other community members that the government gives firearms to as NPR.

¹⁰⁴ Telephone conversation with Titus Letaapo, 2 Apr. 2022.

¹⁰⁵ Interview with Mr. Yusuf Pererira, businessman, Merti.

¹⁰⁶ Interview with Deputy Governor, Isiolo

¹⁰⁷ See Section II.A.ii.

¹⁰⁸ Institute of Security Studies, *Cross-border arms trafficking inflames northern Kenya’s conflict*, 18 Nov. 2019 at <https://issafrica.org/iss-today/cross-border-arms-trafficking-inflames-northern-kenyas-conflict>

- KPS service are resorted to if conservancy security—especially NRT security—is unavailable.¹⁰⁹
55. Under the law, conservancy NPRs are to be trained and supervised by KPS.¹¹⁰ Training is conducted by KWS. NRT, through the security company 51 Degrees, also provides training. Many sources have found that one of the greatest challenges for communities is the lack of proper management of NPRs generally. ***The problem is much greater concerning civilian NPRs***, for whom almost no training or supervision programmes have been implemented.¹¹¹ Civilian NPRs rarely receive ancillary equipment—even uniforms; they report back to police stations irregularly and generally do not hand in their weapons for the police to store safely.¹¹² The nomadic nature of the pastoralist communities makes monitoring of these NPRs extremely difficult. The resulting patterns of firearms misuse and diversion of government-owned firearms and ammunition to the service of private interests is only to be expected.¹¹³
 56. These problems affect conservancy NPRs and NRT operations to an extent. Although significantly higher levels of training, resources, and supervision are provided, NRT and its conservancies must operate in coordination with KPS and the civilian NPR network. NRT funds and equips two Joint Operations Command Centres (JOCCs), one located at Lewa and another at the Isiolo County police headquarters. Both have advanced technology available to monitor deployments and operations. See Section II.C, below. The DDA was unable to reach the senior KPS officer associated with these joint operations to seek his views on the nature and status of these efforts.
 57. Firearms in conservation are obviously necessary to address cattle raids and poachers. But that fact alone does not address much less resolve the question of adverse impact. The reality is that communities are able to put weapons in community members' hands by forming conservancies and funding conservancy rangers. This scope of this impact must, however, be considered in the context of the massive presence of illegal firearms and the widespread issuance of firearms to largely unsupervised civilian NPRs.

v. *NRT's '9' teams*

58. NRT employs seven mobile scout teams, known as the '9' teams, who operate on a regional level under the leadership of the Kenya Police Service and KWS, focusing

¹⁰⁹ Multiple interviews, Mar-Apr. 2022. See also Sara Van De Hoeven, *Guns and Conservation: Protecting Wildlife and Ensuring "Peace and Security" in Northern Kenya*, 4 Feb 2021, at https://mambo.hypotheses.org/3043#_ftn9

¹¹⁰ Section 110 (2), (4).

¹¹¹ Esther Njuguna, James Ndung'u and Kyalo Musoi, [*Matching needs with resources: National Police Reserve and community security in Kenya's frontiers*](#).

¹¹² Ibid.

¹¹³ Ibid.

primarily on anti-poaching and mitigating livestock theft, when called upon by the Government.¹¹⁴

59. The ‘9’ teams are distributed for specific purposes in specific locations/areas as indicated in the following table.

Team	Purpose/Issue	Area of Operation
9-0	Rhino	Sera Conservancy
9-1	Rhino	Sera Conservancy
9-2		
9-3	Anti-poaching, mitigating livestock theft	Waso Belt along Isiolo, Samburu Laikipia boundaries
9-4		
9-5		
9-6	Wildlife movement across Kenya/Uganda border	West Pokot
9-7	Bushmeat trade	Coast

60. Tribal distribution of the ‘9’ teams is as follows:

Team	Samburu	Borana	Rendille	Gabra	Maasai	Turkana	Pokot	Marakwet
9-0	4	3	3	2				
9-1	6	2	3	2				
9-2	3	3	5	3	2			
9-3	5	2	2	3		2		
9-4	0	3	7	2				
9-5	4				2	2	3	
9-6						5	6	2

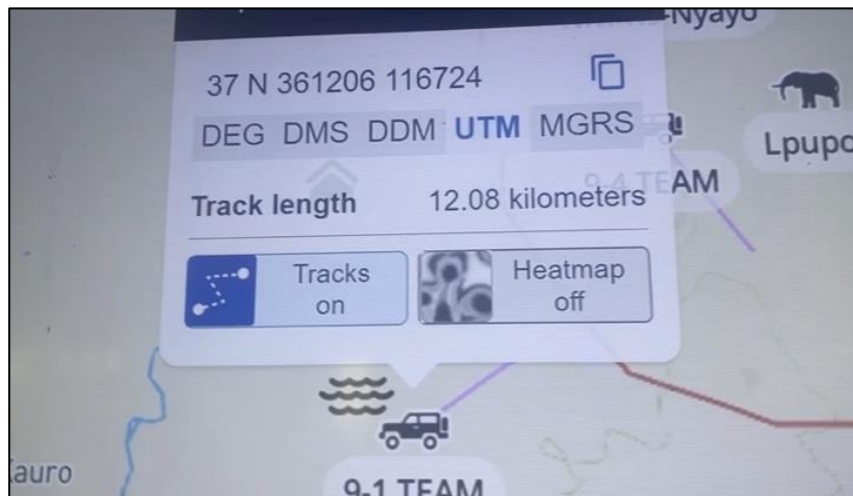
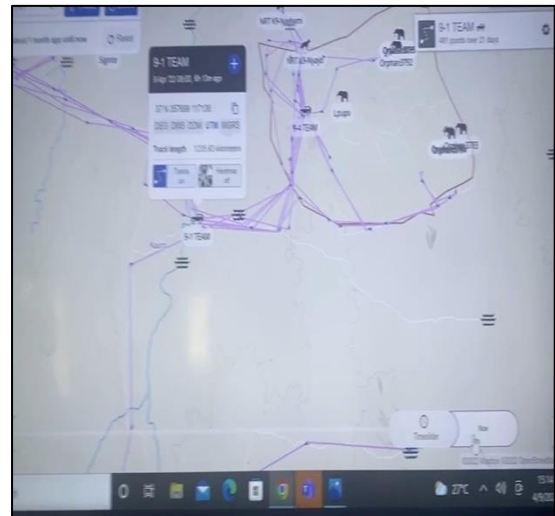
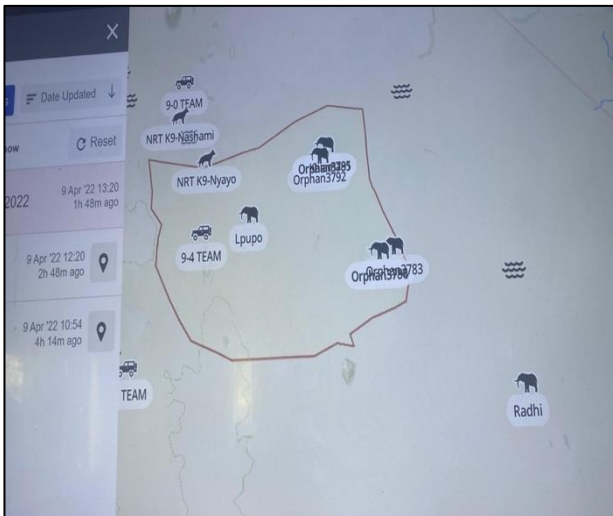
Team	Somali	Pokomo	Bajun	Orma	Mbooni	Turkana
9-7	3	3	2	1	1	1

Team	Samburu	Meru	Maasai
K9 Unite Team (Sera)	2	1	2

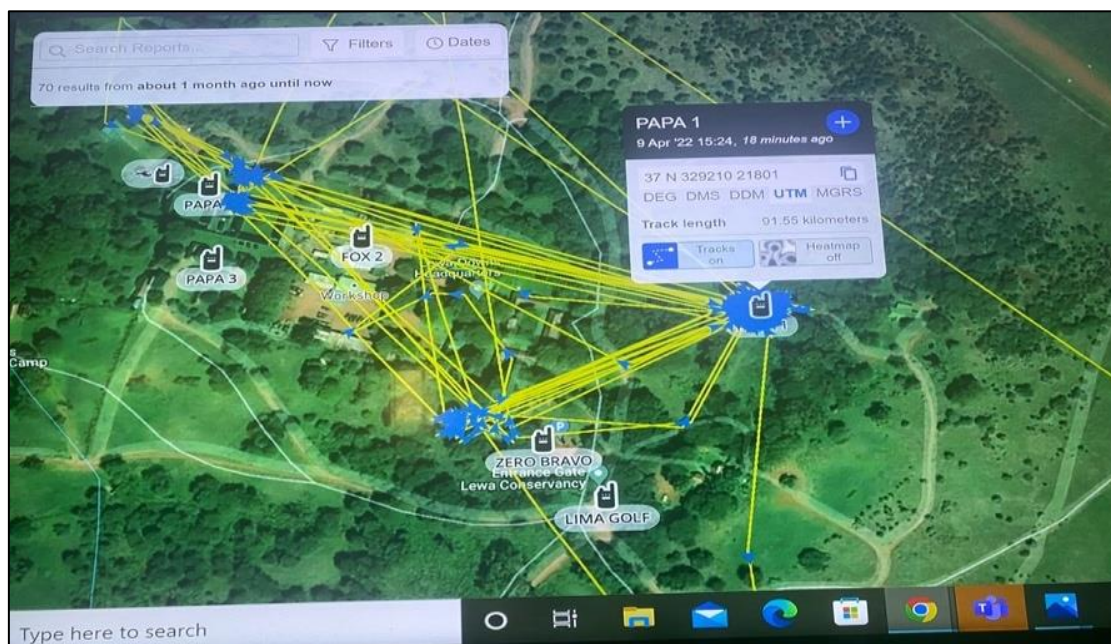
¹¹⁴ NRT, Security at <https://www.nrt-kenya.org/peace-and-security>

Oakland report and any other that can be made available for further investigations can therefore be easily identified if they are legal weapons held by NRT or associated conservancies.

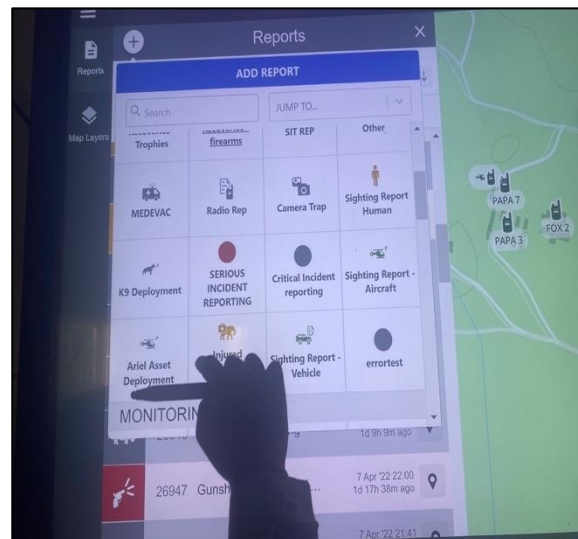
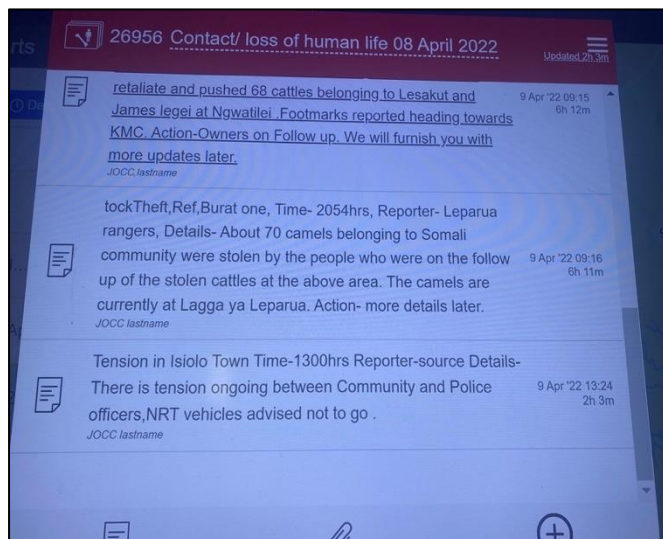
64. Any allegation involving a '9' team can also be verified in other ways besides the record of the locations as shown above. Vehicle tracking systems installed in each of the '9' teams vehicles show the location of each team on the ground and the route it has used, including the distance covered. This are monitored at the NRT JOCCs as illustrated in the photos below.



65. Further, the locations of the NRT teams and their security details can also be verified through movement of their radio handsets as shown in the photo below.



66. Further, all incidences can be traced at the JOC and at the County Police headquarters as exemplified in the images below. The technology on display at the JOCs was undeniably impressive.



67. This observation does not, however, fully address the question of how the technology is used in reality. The limitations of an inquiry such as this DDR to answer this question are evident. The DDA relates, however, that when the DDA visited the JOCC at the Isiolo County police headquarters, the staff were watching a football match. They did not even notice our arrival. We came in, watched part of the match, and took photos of the relevant equipment without comment from the officers.

III. Specific Factual Findings

A. *Kula Mawe*

68. Approximately half of the allegations of killings in the Oakland Report emanate from one set of meetings on 5-6 June 2019 that Oakland researchers apparently witnessed. Before addressing the allegations that are sourced to this meeting, we will provide a narrative description of our experiences of investigation in Kula Mawe. Additionally, the DDA came to learn that the 5-6 June meeting was organised by Major Jillo. Some basic facts about Major Jillo and the DDA's efforts to contact him are also described at the outset.
69. As noted in the Research Process Summary, our investigation in this area included a direct visit to Kula Mawe, as well as interviews with village chiefs; county government officials in Isiolo and Samburu; police in Isiolo, Kula Mawe, Kina and Archers Post; KWS management in Isiolo; and senior NRT officials and staff. The team also randomly interviewed members of both Samburu and Borana communities across Isiolo County as well as members of Pokot community around Ruko conservancy. As described below, the DDA reached out to Oakland/Ms. Mittal, to Major Jillo, to the Borana Council of Elders (through Major Jillo and others), to Mr. Hassan Shano (former MCA and CEO of Waaso Trust), and other identified key figures. We also interviewed Mr. Abdi, who claimed he was from the Isiolo Human Rights Defenders and who reached out directly to us claiming that he was the real source of the information in the Oakland Report.
70. In March 2022, the team traveled to Kula Mawe in order to visit victims' families, witness grave sites, examine any available records, interview the broader community, and generally get a clearer picture of the circumstances. Cognizant of the fact that prior announcement of the purpose of the visit can scare away people or result in pre-arranged responses, the team sought contacts from contacts in Isiolo, of people they could talk to about water and livestock issues in Kula Mawe. The team's contact in Isiolo referred us to a Ms. Amina Diba, a relative in Kula Mawe. In Kula Mawe, our first stop was the administration police station to report our presence and the nature of research visit and seek directions to Ms. Amina Diba. The head of the station knew Amina. After general discussions about water and livestock issues in Kula Mawe, we asked about the role of the conservancy and NRT in water, livestock, and conflict issues in Kula Mawe and whether there were any police reports regarding conservancy and

NRT rangers. We also asked whether they could direct us to the families we were interested in. No one at the station had heard of any of the alleged victims. On police reports, they explained that it would be difficult to get any police report because the people rarely report their issues at the station as they prefer sorting their issues through traditional mechanisms. However, they brought to our attention an accident about a year ago where a vehicle had knocked and killed a motorbike rider in Kula Mawe, in response to which residents had demonstrated. However, they were not aware of any issues around conservancies in the area. They referred us to the area chief, but he was out in the rangelands grazing his livestock. We made contact with the chief by phone and he referred us to assistant chief Roba for any help we would need.

71. The team then proceeded to Ms. Amina's house. She has lived in Kula Mawe for about 65 years. She teaches at the local primary school and runs a CBO called Kayoka Self-Help Group. She describes herself as a pastoralist activist and has traveled internationally. After about an hour of talk about water and livestock in Kula Mawe, we brought in the issues raised in the Oakland Report. She exclaimed that she had met with Ms. Mittal and Major Jillo in June 2019—in fact she had travelled in the same vehicle from Isiolo to Kula Mawe with them. She had hosted Ms. Mittal and the June 2019 meeting, and described the meeting as having been organised by Major Jillo, who had mobilized the appearance of various people from various places. Humorously, she informed Dr. Sena that he was sitting in the very same seat that Ms. Mittal sat in during the main June 2019 meeting. When asked about the families referenced in the Oakland Report, however, Ms. Amina did not recognize *any of the names*. She shared the contact information she had for Major Jillo.

72. For purposes of comparison, Ms. Amina corroborated in detail the police description of the incident of the motorbiker knocked by a speeding vehicle and the resulting community demonstrations. She also described an earlier event where the Borana and Meru were fighting over pasture and water in Kula Mawe. The police tried to intervene but were overpowered. As they were escaping, they shot indiscriminately. One bullet hit her house. The Oakland report



Ms. Amina Diba showing the spot where a stray police bullet hit her house window.

mentions this event on page 29 as ‘on January 7, 2019 combined security forces fired live rounds of ammunition in the densely populated Kula Mawe Trading Centre. The

- security forces proceeded to the water point, indiscriminately beating everyone. Jumale Galgalo Wario was assaulted by a uniformed security officer.’ Ms. Amina attributes the indiscriminate shooting to fighters, not police, and did not recognize any beatings by police.
73. At that time, the assistant village chief joined us at Ms. Amina’s house. He had also attended the Oakland Kula Mawe meeting and met Ms. Mittal. He knows Major Jillo well. But he was also not familiar with the any of the names listed as victims of extrajudicial killings or their families. He suggested that some of the participants in the Kula Mawe meeting may have been mobilized from Barambate or Gotu by Major Jillo. He cautioned that allegations of extrajudicial killings may be exaggerated and politically motivated. He conveyed that ***Major Jillo was a candidate in the upcoming MCA election*** and seemed to have organised his campaign around his resistance to NRT, which is generally supported by the present MCA. He further conveyed that Major Jillo had repeatedly but unsuccessfully run for political office over the last 20 years. Ms. Amina confirmed all these details.
 74. The assistant chief corroborated the details of the motorbike accident and the details of the January 2019 shooting as recounted by Ms. Amina.
 75. The team interviewed several residents in Kula Mawe village, including at the watering point. None could identify the names of the alleged victims or their families. Some also suggested that participants at the June 2019 meeting had been mobilized by Major Jillo from other parts of Isiolo.
 76. Recognizing the importance of Major Jillo to the investigation, the DDA subsequently engaged in the efforts to contact him as described in the Summary of the Research Process, above. Specifically, the DDA made phone calls and sent WhatsApp and SMS on Saturday and Sunday, 12-13 March 2022. The WhatsApp texts showed blue checkmarks indicating the messages had been read. The DDA made numerous follow-up calls. When there was still no response, the DDA sought assistance from a contact, Mr. Hassan Shano, a former nominated MCA, who knows Major Jillo well. A phone call was placed from Mr. Hassan Shano’s phone on 30 March 2022. This time, Major Jillo answered the phone. When he learned that the DDA was on the line, he did not immediately hang up, but quickly answered a few questions and promised to be in contact later. In fact, the HRDD team did not hear from Major Jillo until 30 April when he wrote a WhatsApp message asking us to respond to a letter from the Borana Council of Elders.
 77. The DDA took the fact that neither Ms. Amina nor the assistant village chief recognized any names of victims to be highly significant. Ms. Amina has lived in the community for 65 years. She is very active in the community, which is very small. Everyone knows each other. Village chiefs and assistant chiefs also tend to know everyone—this is their job—and they are the first people to be informed and consulted when incidents occur.

78. The DDA did investigate official records, including an examination of police records as far as Archers Post and Isiolo town. While nothing was found, it is acknowledged that all the alleged victims are Borana, who practice Islam and bury their dead the same day, within the vicinity of the death. They rarely report incidents including deaths and very rarely obtain burial permits.
79. It must be noted that while no documentary evidence could be found for the killing referenced in the Oakland Report, killings from ongoing inter-communal conflicts are a tragic fact of life in the region. As described above, they are driven by cattle raids both for cultural and business reasons, water and pasture access, and revenge missions. Over a hundred lives have been lost in Isiolo county because of inter-communal violence over the last few months. There have been casualties from Borana, Turkana, Somali, Samburu, Degodia, and NRT staff.
80. The DDA team experienced this reality on two occasions during the research period. On 13 March 2022, we agreed with Mr. Pereira, a businessman who runs a transport



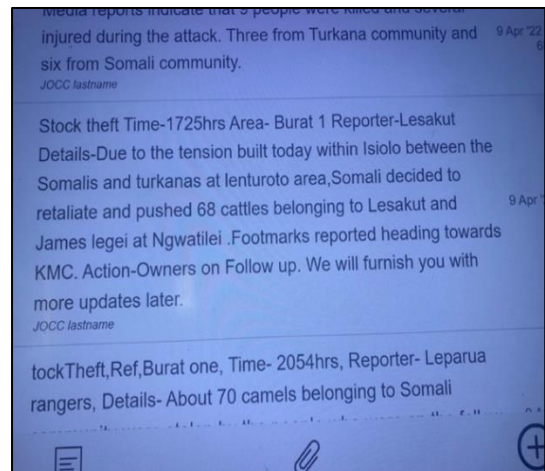
service between Isiolo and Merti and runs a hotel in Merti, to hire his car for three days to take us to Biliqo Bulesa and Merti, in the first week of April. When we visited him on 3 April 2022, the team found the car bullet ridden. He informed us that the car had been shot at by ‘Samburu bandits, but an NRT vehicle transporting Samburu warriors was in the vicinity.’ To verify this allegation, the team visited the driver of the vehicle in hospital and also spoke to his sister who went by ambulance to rescue her brother. Both confirmed that a green conservancy land cruiser arrived at some

point but much after the shooting had taken place. We then promptly went to the JOCC at NRT to verify the position of their ‘9’ teams at the time of the incident. Though NRT had the report of the incident on their systems, the team couldn’t see any of their vehicles in the vicinity through their vehicle tracking system, thus corroborating the testimony of the driver and his sister.

81. Further, on 9 April, fighting broke out between the Somalis and Turkana within the KMC area near Isiolo town. The team rushed unannounced to NRT's JOCC to verify the position of '9' teams. When we arrived, NRT had already recalled all '9' teams to camp around Isiolo. However, they were following the incident and constantly updating their reports.



Some of the 9 Teams vehicles parked at NRT Camp at Lewa on 9th April 2022



82. We now provide findings on the specific allegations associated with the meeting in Kula Mawe.

i. Gumato Hassan and Daughter

83. Allegation: ‘I was at my boma with my daughter Gumato Hassan and her child. In the evening, NRT rangers came to the boma and asked for a goat. We gave the goat to them. The following morning four rangers returned in full combat uniform and started firing. My daughter asked why use firearms on us when we gave you the goat. I ran away. When I returned, my daughter and her child [were] dead.’¹¹⁵
84. The source is stated in footnote 251: ‘Testimony of community member [Kumpa Halkano], June 6, 2019’. This is the meeting discussed above, organised by Major Jillo.
85. The community member is a lady mentioned as ‘Kumpa Halkano’ whose picture has been provided in the Oakland Report. The background in the picture seems to be the same hall that the HRDD team visited in Kula Mawe.
86. From the wordings of the allegations, the exact location of the homestead (boma) where the alleged killings took place has not been provided. Kumpa Halkano seems to be certain that the rangers who came to the boma in the evening to ask for a goat were NRT rangers. She does not provide the number of the alleged NRT rangers who came to take the goat. However, she mentions that *four rangers in full combat uniform* (she does not say NRT rangers or the same rangers that came the previous evening whom she could logically recognize from the previous evening).
87. Steps taken to investigate the allegation include attempting to find more information about Kumpa Halkano and other relatives of Gumato and information on her in the investigation in Kula Mawe described above. As noted above, neither the assistant village chief nor the long-time resident Ms. Amina had heard of these individuals. Nor had three other community members interviewed. We also discussed the allegation with the head of Administration Police and investigated records at the Kula Mawe and Archers Post police station. No there was no evidence whatsoever of Kumpa Halkano, Gumato Hassan, or the incident.
88. In the very brief conversation, the DDA managed to have with Major Jillo, described above, the DDA asked about this incident. Mr. Jillo stated that these individuals are pastoralists, and they are out grazing in the rangelands.
89. Our attempts to contact Oakland and Ms. Mittal to learn more about Kumpa Halkano are detailed above.

¹¹⁵ Oakland Report at 35.

90. The DDA finds **no evidence** for the allegation of NRT or conservancy involvement in this alleged incident.

ii. Adam Issack

91. Allegation: ‘Maulid Issack, testified to the Oakland Institute research team that his 25-year old brother, Adam Issack, was accosted by eight men and shot at Gotu Water Point on February 20, 2018.’¹¹⁶
92. The source is stated in footnote 249: ‘Direct communication from Maulid Issak. Kula Mawe, June 6, 2019.’ This is the meeting discussed above, organised by Major Jillo.
93. The allegation contains no reference to NRT or conservancy rangers. Or even the police. ‘Eight men’ can be Samburu, Turkana, Rendile, Somali, or even Borana.
94. The DDA team visited Gotu, spoke to the Gotu police, and examined Ewaso Nyiro River passes about 150 meters from the town. The police acknowledged there had been shootings over the years but had no records concerning Adam Issack and had never heard of Adam Issack or Maulid Issack.
95. There are no records of the incident in Gotu police camp.
96. Because this allegation makes **no alleged link** to NRT or conservancies, the DDA determined this reported incident to be outside of the scope and did not investigate further.



Gotu and Gotu Spring protection

iii. Eanow Alio

97. Allegation: ‘Another community member informed the research team that Eanow Alio and a person named Adwas were killed on May 5, 2019. Eanow’s mother claimed that she had reported the death to the police, but was not given a report.’¹¹⁷

¹¹⁶ Oakland Report at 35.

¹¹⁷ Oakland Report at 35.

98. The source is stated in footnote 252: ‘Testimony of Eanow Alio and Adwaso. Kula Mawe, June 6, 2019.’ This is the meeting discussed above, organised by Major Jillo.
99. Attribution to Eanow Alio himself makes no sense given that the allegation is that he was killed. However, it appears that the specific source is Eanow’s mother. On page 34 of the Oakland Report, a picture of a lady has been included with the caption ‘*Mother of Eanow Alio from Biliqo, allegedly killed in conflict over land.*’
100. The allegation contains no reference to NRT or conservancy rangers. Nor does the allegation indicate the location of the alleged two deaths. It is also not indicated in which police station the matter was reported to.
101. Because this allegation makes **no alleged link** to NRT or conservancies, the DDA determined this reported incident to be outside of the scope and did not investigate further.
- iv. *Ahmed Abdi Rahman*
102. Allegation: ‘[It was] alleged that NRT killed one man while he was taking water from the spring, in the presence of his two sons.’¹¹⁸
103. Allegation: ‘On April 13, 2019, I was with my brother, Ahmed Abdi Rahman, and a friend, at a water point in Kuro Bisan Owo in Biliqo. Six NRT employees in uniform arrived and started shooting. They killed my brother and then left in a vehicle. The team ran away and returned later to collect Ahmed’s body.’¹¹⁹
104. The source is stated in footnotes 257: ‘Direct communication with Ali Abdi Rahman. Kula Mawe, June 5, 2019.’
105. NRT has responded to this allegation as follows:



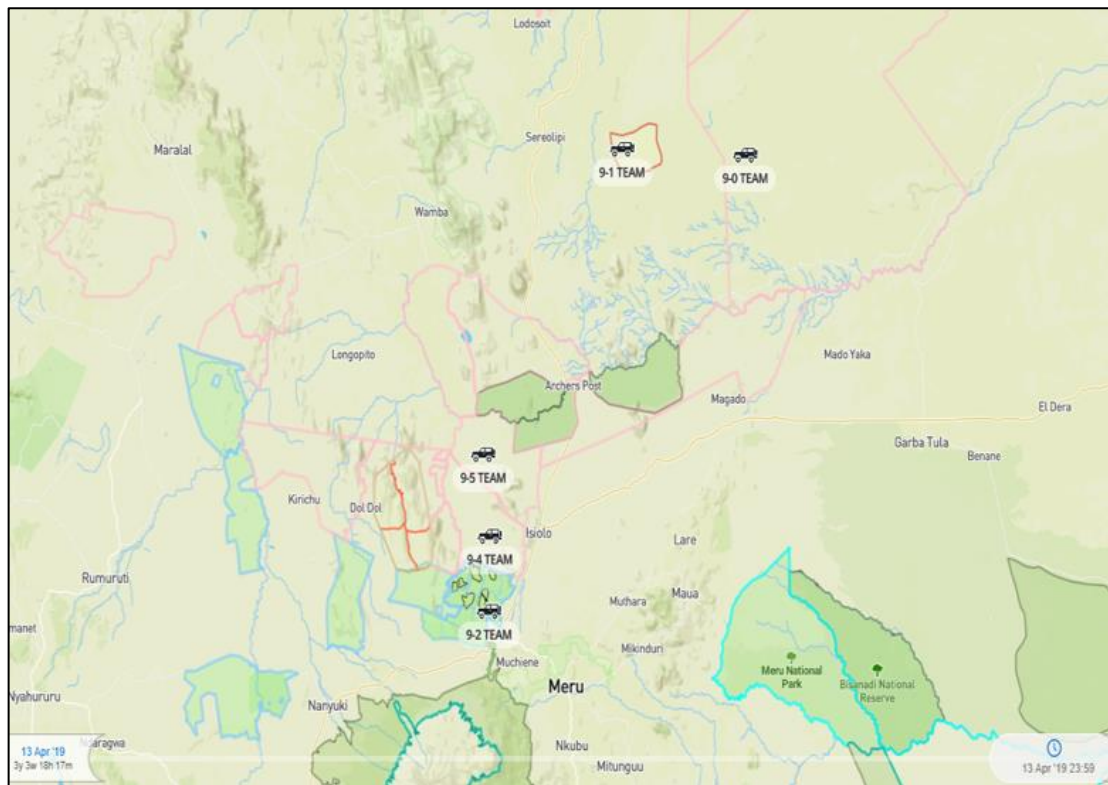
The tragic death of Mr. Rahman was an ethnic killing of a member of the Borana community by Samburu Moran at the Kauro Hot Spring. There was no involvement by NRT rangers in the incident at all, let alone a shooting involving six NRT employees in uniform. The police from Marti are the relevant investigative authority. No NRT ranger was implicated in or

¹¹⁸ Oakland Report at 36.

¹¹⁹ Ibid.

charged in relation to this matter. GPS coordinates of our ranger teams confirm there were no units anywhere in the area around that time.

106. In Kula Mawe, neither the assistant chief, Ms. Amina, nor other residents had heard of Ahmed or Ali Abdi Rahman. However, Kula Mawe is about 150 km from the Kuro Bisan Owo spring. And the DDA team had heard that Major Jillo had mobilized people from different villages to attend the meeting.
107. Due to security reasons, the DDA was unable to visit Kuro Bisan Owo. As Major Jillo has not provided the relevant contact details, we are unable to establish the identity of Ali Abdi Rahman or investigate further.
108. The DDA did, of course, follow up on NRT's claim regarding GPS coordinates. The DDA confirmed the activity of the tracking system generally and was provided with the map below of the location of the '9' teams on the date of the incident. It does confirm that none were near Kuro Bissan Owo.



109. In light of the evidence provided by NRT and not responded to in any way, the DDA finds the allegation of any NRT or conservancy involvement in this incident is **disproven**.

v. *Two youth disappearances per report from 'Ibrahim'*

110. Allegation: 'A youth representative of the community, Ibrahim, reported that NRT has arrested and tortured people, and that 'two youth have disappeared.'¹²⁰
111. The source is stated in footnote 250: 'Direct communication from Ibrahim. Kula Mawe, June 5, 2019.' This is the meeting discussed above, organised by Major Jillo.
112. The allegation contains reference to NRT. The full name of the source is not provided. Ibrahim is a common Muslim name. Identifying Ibrahim without his family name might be difficult even in a small village like Kula Mawe. Also, the names of the persons alleged to have been arrested, tortured, and disappeared have not been provided, despite all the efforts to contact Major Jillo.
113. The assistant chief of Kula Mawe with not familiar with any young person named Ibrahim, especially who would be characterized as a representative of the community. No one in Kula Mawe was familiar with any youth disappearances or allegations of torture linked to NRT.
114. The DDA is aware that disappearance of youth is a severe issue in Isiolo County, especially linked to recruitment into extremist organisations. It was reported that in 2016, 27 youths were reported to have disappeared from schools in the County.¹²¹
115. In light of the utter lack of specificity to the allegation and the inability to confirm the identity of Ibrahim, the DDA finds that there is **no evidence** of any NRT link to this alleged conduct and/or incident.

vi. *Simon Looru*

116. Allegation: 'In September 2019, two conservancy rangers, Ekisin Lotaro and Tachiri Lonakutok, of Nasuulu Community Conservancy in Isiolo county, were detained after being accused of killing Simon Looru at Loruko village in Burat Ward on September 4, 2019. According to NRT, the two rangers were later cleared of any wrongdoing by the Office of the Director of Public Prosecutions.'¹²²
117. The source is stated in footnote 253 is a media report by journalist Waweru Wairimu.

¹²⁰ Oakland Report at 35.

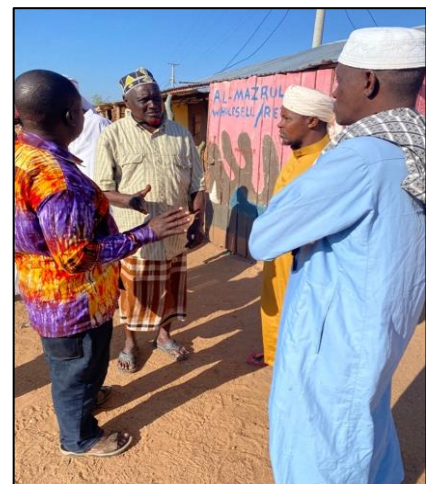
¹²¹ NTV News, *27 youth have disappeared from schools in Isiolo County*, 22 June 2016 at <https://www.youtube.com/watch?v=kpgGwX-3cbo>

¹²² Oakland Report at 35.

118. Somewhat unusually, the Oakland Report expressly acknowledges NRT's response. It does not appear to challenge NRT's investigation and conclusions regarding this matter, namely that the conservancy rangers were cleared of wrongdoing.
119. The DDA obtained the relevant order. It is dated 17 Sept. 2019 from the Office of the Director of Public Prosecutions. It orders the release of the identified rangers. Additionally it states: 'Of note however is that both [witnesses to the crime] agree that the attackers must have been Somali because of their mode of dressing.' See Annex 5.
120. In light of Oakland's acknowledgment, it appears there is no sustained allegation of NRT or other conservancy involvement in this incident. The DDA finds that the allegation of any NRT or conservancy involvement in this incident is **disproven**. Indeed, it is unclear why Oakland included this incident in its report despite the lack of any sustained allegation involving NRT or conservancy personnel.

B. Biliqo Bulesa

121. Roughly the second half of allegations of killings in the Oakland Report emanate from meetings held 18-19 June in the village of Biliqo, in the Biliqo Bulesa Conservancy. As noted in the Research Process Summary, investigation included a direct visit to Biliqo and Bulesa seeking contact with families and direct examination of the locations of the alleged incidences. Because this visit was initially complicated by security issues, the DDA began with telephonic conversations with contacts in the area to discuss the allegations. One useful contact was Dr. Jarso Mokku, the Executive Director of the Drylands Learning and Capacity Building Initiative, who is from Bulesa and assisted with identifying families of the alleged victims and potential witnesses to the alleged incidences. Ultimately the DDA obtained phone numbers of 17 individuals and spoke to 14 of them. Some were individuals mentioned in the Oakland Report.



Dr. Sena meeting with community members in Bulesa

122. Subsequently the DDA team accomplished visits to Dhima Ado, Biliqo, Bulesa, and Merti, where the DDA team spoke with the police, the senior chiefs, the village sheikh, conservancy officials, and over a dozen community members. The team also randomly interviewed Samburu in Archers Post, Sero Olinpi and others that the DDA team encountered along the River Ewaso Ngiro in Biliqo Bulesa Conservancy.
123. There is no question that residents in the area of the Biliqo Bulesa Conservancy have suffered greatly in terms of lives and property lost from attacks, including by Samburu

morans. The roots of this violence is complex. The Biliqo Bulesa Conservancy borders the Ewaso Nyiro River to the south and Sera Conservancy in Samburu County to the west. It also borders Melako Conservancy in Marsabit County to the north. The Kom Springs, located in the conservancy is considered a common grazing area and water point for Borana and Samburu pastoralists as well as other pastoralists from Marsabit County to the north. With a population of about 10,000 people in a vast area of 377,300 hectares, the conservancy is a large grazing area for pastoralists in the neighbourhood. Further, Samburu have made claims of the area based on ancestral occupation. Coupled with the fact that Samburus have more firearms and vehicles, Borana suffer a lot of casualties and livestock losses. They are therefore very bitter against the Samburu or any person/organisation associated with the Samburu.

124. Biliqo Bulesa technically has three ranger camps—Kom, Babala, and Kismidir. However, due to persistent attacks, the conservancy has closed all three posts.¹²³

125. Allegations of conservancy rangers involved in violence in the Kom area have circulated for a while. In a paper dated March 2020, Kennedy Mkutu describes:

There are a variety of views on the involvement of rangers in the events in Kom. One member of a community-based organisation said that ‘9’ teams had been involved in killings while another said that there was no evidence of this. County ward administrators were also confused as to the identity of people carrying sophisticated arms who were guarding the cattle in Kom. They thought perhaps they were either NPRs or government soldiers. The case of Kom is complex and deserves more attention.¹²⁴

126. On 2 May 2022, Kom sublocation was declared a disturbed area by the Government. Reasons included not just general violence, but concerns about organised crime and terror activities. It was declared a security area with heavy security presence, restricted movements, and a dusk-to-dawn curfew.¹²⁵

127. We now provide findings on the specific allegations associated with the meeting in Biliqo.

i. Enow Aloo Matmolu

128. **Allegation:** “According to his brother, Alio Matmolu, Enow Aloo met his death ‘in the hands of Samburu bandits who were directed and facilitated by the 9-1 militia.’” Alio Matmolu alleged that the 9-1 unit of NRT facilitated the movement of Samburu bandits

¹²³ Interview with Conservancy manager, 3 May 2022.

¹²⁴ Mkutu, Mar. 2020, op cit.

¹²⁵ NTV, *Insecurity: CS Matiang’i announces 30-day curfew in Marsabit County*, 2 May 2022 at https://www.youtube.com/watch?v=bbVF_M2FHus.

‘using vehicles with NRT labels.’ ‘He said that others, including Mzee Kotola was also attacked by Samburu....’ Location of alleged incident is an area called Tum.¹²⁶

129. The source is stated at footnote 243: Alio Motmolu, brother of the diseased.
130. From our analysis, it is not clear if Alio Matmolu is claiming to have witnessed the incidences or just reporting what he may have heard. However, the death of Enow occurred clearly in the hands of Samburu bandits. Similarly, Mzee Kotola was also attacked by Samburu bandits.
131. As already detailed, the DDA team spoke extensively with community and conservancy leadership in the area (Biliqo Bulesa). No one had heard of the Enow Aloo or Alio Matamol. Additionally, as part of the community land registration process, conservancy management has developed a list of conservancy members and area residents. The name of Alio Matmolu is not on the list.
132. The DDA team was not able to visit Tum because of security reasons. However, phone calls to numerous contacts in Biliqo also did not yield the identity of Alio Matmolu.
133. NRT’s Internal Response, which the DDA reviewed near the end of the process (see Summary of Research Process, above) asserts familiarity with the identities of Enow Aloo and Alio Matmolu and the circumstances of Enow Aloo’s death. The response does not provide documentation or explain its research process. The DDA expects that NRT will make the facts known to it part of the public record in due course.
134. The DDA team found no other evidence to support the allegations, much less that any violent actions were ‘directed and facilitated by the 9-1 militia’ or that “the 9-1 unit of NRT facilitated the movement of Samburu bandits ‘using vehicles with NRT labels.’” (See also below, Use of Vehicles in 2017.)
135. The DDA finds that there is **no support** for this allegation in the Oakland Report.

ii. Sons of Guyo Dokata and Godana Badasa / Kulat Gashe

136. **Allegation:** ‘/Guyo Dokata's son and Godana Badasa's son were killed in a planned conflict with the 9-1 presence and support openly seen. The 9-1 rogues used their vehicles with NRT labels to transport the Samburu bandits who were armed to teeth and monitored the unfolding from a safe distance. In this particular case, over 100 cattle

¹²⁶ Oakland Report at 33 (called ‘Tum Tum’ in the Oakland Report).

were driven away. Around the same time a mother and a herder, Kulat Gashe (from Bulesa) were killed in a fierce fight with Samburu attackers.¹²⁷

137. The source is stated at footnote 251: Mzee Wario Wako, Elder in Biliqo-Bulesa. 19 June 2019. Related text on page 33 suggests that Wario Wako claims to be an eye-witness to at least two of these killings.
138. To investigate this allegation, the DDA spoke to multiple residents of Bulesa including the senior chief, the sheikh, elders in Biliqo, and the conservancy management. NO one was familiar with the name Guyo Dokata, but *all* people interviewed were very familiar with the death of Godana Badasa himself (not his son). Godana Badasa was an uncle to a former Biliqo conservancy manager, Mr. Mohammed Golombo Dokota.
139. The testimonies taken are consistent that on the day of the incident that resulted in the death of Godana Badasa, Samburu morans had raided a homestead near Nyachis area near Kom and stole about 100 goats. Borana pursued the morans and recovered the goats. As they were escaping, they met Godana Badasa, Fugicha Doke, and another person. The escaping Samburu morans shot at them. Fugicha Doke and the other person were much younger and therefore escaped into a lager. Godana Badasa was elderly and the morans were able to kill him. The team couldn't find Fugicha Doke when the DDA visited Bulesa. Again, this story was corroborated in detail by the chiefs, the sheikh of Bulesa, the Conservancy manager (Mohammad Wako), the Conservancy chairperson (Halkano Golo), and other elders in Bulesa, including Mr. Diba Kiyana Golicha.
140. None of the individuals who independently relayed this story made any mention of a link to NRT. They understood this to be the product of all-too-familiar violence inflicted by Samburu morans. When expressly asked why NRT might have been linked to this killing in a story told to Oakland researchers, Mr. Golicha provided an exceptionally candid answer:

You must understand that cattle raids are constant between the Samburu and Borana. Even two days ago (2 May 2022), Samburu stole 100 of my goats not far from Bulesa. ***Our problem is the Samburu and we tend to politicize the conflict so that we can get additional resources.*** What we need is more guns for our conservancy rangers so that they can protect us against the Samburu.

141. Given the consistency of the multiple interview responses on this topic in Bulesa and the larger context, the DDA finds that there is **no evidence** to support the claim that NRT was part of the alleged incident.

¹²⁷ Oakland Report at 34. These alleged killings appear to be the ones referenced in the previous sentence on page 33: "Another community member, Mzee Wario, a herder, reported that he knew of four people killed, two of whom he witnessed personally."

iii. *Use of Vehicles in 2017*

142. Allegation:

According to local sources, NRT in some instances supported the Samburu ethnic group against the Borana. Halkano Otuna Godana, former NRT ranger who worked in Biliqo, Chari Ward, testified that he was required to report any information to the NRT about pending attacks by the Borana against the Samburu community. He alleges that despite informing Golicha Jarso, Peace Ambassador on the NRT Board of Trustees about such attacks, information about pending attacks of Samburu against the Borana was not forthcoming, which led to biases that ‘made Boranas suffer at the hands of NRT.’ Godana, who also worked at Ntorobo Camp and Lewa Conservancy, noted that the NRT rapid response 9-1 teams had become involved in conflicts between the Samburu and Borana communities in February 2017, a time of drought and scarcity in northern Kenya. When armed members of the Samburu community moved onto grazing lands in the Ntorobo Camp, he reported ‘9-1 officers in charge used vehicles fueled by NRT to be used by the armed Samburu morans’ and that in the evening the ‘vehicle goes back to pick the bandits from those areas.’ This routine continued, he alleged, until March 19, 2017, when ‘war between Boranas and Samburus broke out.’ Being ‘from a community in conflict with the Samburu,’ the officer attempted to withdraw his colleagues from the area, but was instructed by NRT to go back. He resisted as the insecurity was dangerous for him and clashes between the two communities had already claimed 17 lives. Eventually, he was dismissed from his post, and allegedly not paid his salary by NRT.¹²⁸

143. The source is stated in the text and footnote 240 as Halkano Otuna Godana. The allegation is that the event took place in Feb 2017 at Ntorobo Camp in Biliqo Bulesa Conservancy.

144. Because of insecurity and subsequent declaration of Kom sublocation as a security area, the team were not able to visit Ntorobo camp. The DDA was unable to make contact with Mr. Otuna Godana.

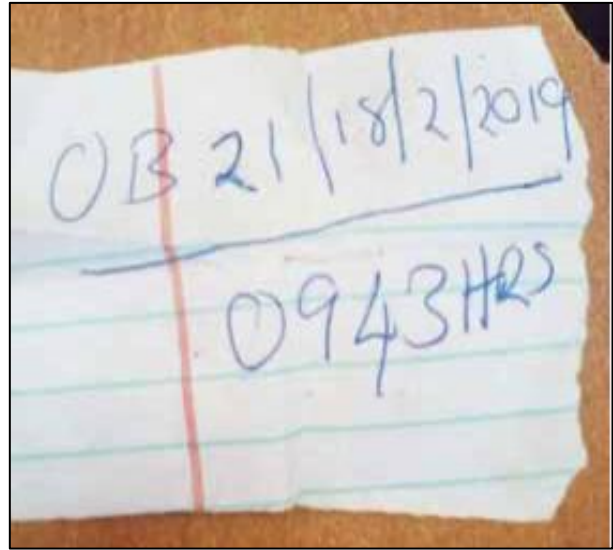
145. NRT confirmed that Mr. Halkano Otuna was employed as ranger by Biliqo Bulesa Conservancy, but denied that he was ever an employee of Lewa or NRT. From its own records, NRT provided minutes of a Biliqo Bulesa Conservancy Board meeting held on 28 October 2017 and a dismissal letter to Halkano dated 30 October 2017. See Annex 6. The basis for the unanimous board’s action is described in detail: Mr. Halkano

¹²⁸ Oakland Report at 33.

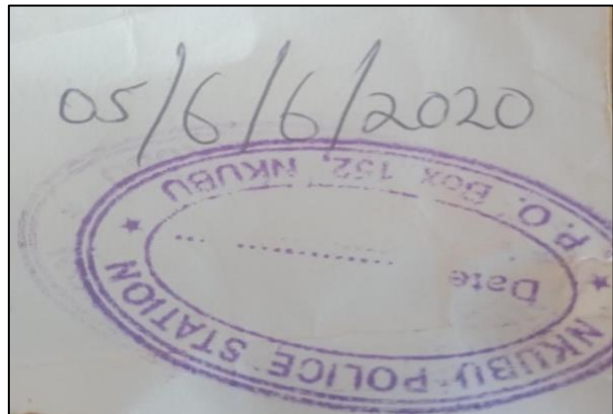
- Otuna is alleged to have encouraged fellow rangers not to heed to a call by conservancy management (not NRT) and for subsequently aggressively confronting and attempting to beat a board member. The board directed that he be paid his salary for the three months he was on suspension and for the month of October, upon handing over conservancy property and depositing his firearm at the Merti Police Station.
146. We spoke with Mr. Golicha Jarso, referenced in the allegation. As he explained his job as a Peace Ambassador under an NRT-sponsored peace programme, it was his job, whenever he heard of a potential attack by his community against the Samburu or by the Samburu against his community, to coordinate with peace ambassadors in other conservancies and NRT generally to try to stop the conflict. The most serious problems emerged during periods of intense drought (such as being experienced at the time of the research) when large numbers of Samburu, Rendile, and Somali migrate to the area around Biliqo. They tend to ignore grazing systems in place, both from conservancy committees and the Deedha system; they just come in large numbers, with firearms, and overpower any conservancy rangers. Golicha Jarso noted that at the time of research, the Biliqo Bulesa Conservancy has closed down all its ranger camps because of the heavy Samburu presence in the area.
 147. Mr. Golicha Jarso did not recall receiving any notice or complaint from Halkano Otuna Godana, as referenced in the Oakland allegation. However, we note that Golicha Jarso and in fact all Biliqo Bulesa Conservancy management are Borana. The allegation seems to state that Golicha Jarso, despite being informed, did not convey information about imminent Samburu attacks on the Borana. This makes no sense.
 148. With respect to the allegation of NRT vehicles ferrying Samburu moran, Mr. Golicha Jarso, a Borana with direct operational ties to NRT, had never heard of this and did not believe it. It must be noted that Halkano Otuna Godana, as a ranger, would not have any special access to information concerning the ‘9’ teams, as all communication between conservancies and NRT goes through conservancy management. At no point does an individual ranger communicate directly with NRT. As such, Mr. Halkano Otuna Godana is not a former employee providing information concerning information he would have had access to as an employee.
 149. And of course, his testimony must be received in light of his frustration at having been dismissed from his position.
 150. In light of all the facts, the DDA does not credit Mr. Halkano’s claims and finds **no evidence** that NRT vehicles were used in attacks against the Borana in February and March 2017.

C. Photo captions

151. The Oakland Report includes the adjacent O.B. numbers with the caption ‘given to family members by the police after reporting violent incidents resulting in injuries, deaths and disappearances.’ There appears to be no further information provided on what these alleged injuries, deaths, and disappearances are. The photo appears to have been provided merely for purposes of illustration or dramatization.



152. The Occurrence Book (OB) is the nerve centre of the operations at every police station. It's the almost complete record of reports of incidents, crimes, complaints, and a sort of inventory of all the suspects and the accusations against them.¹²⁹ Every police station issues a similar OB number as the one listed in the Oakland Report. They indicate the record number, date, and time of the reporting of the incident. However, the issuing policer officer tends to stamp them with the police station rubber stamp for ease of authentication. In the above case, the rubber stamp of the issuing police station is not included. Neither does that Oakland Report indicate the name of the police station where the incident was reported as shown in the picture at right. Further from late 2019, a majority of police stations have started issuing digitized OB numbers.¹³⁰



153. The DDA finds there is no need for further investigation of this issue.

154. On page 29, Oakland Institute presents a photo of a medical examination report of one Mr. Jumale Galgalo Wario, 20 years, issued by Garbatula police, and below it includes the words ‘on January 7, 2019 combined security forces fired live rounds of

¹²⁹ Nation, Digital OB to ease policing, 5th August 2020 at <https://nation.africa/kenya/blogs-opinion/editorials/digital-ob-to-ease-policing-1912960>

¹³⁰ See for example, Boniface Mwangi, at <https://twitter.com/bonifacemwangi/status/1045717563949412352/photo/1>

ammunition in the densely populated Kula Mawe Trading Centre. The security forces proceeded to the water point, indiscriminately beating everyone. Jumale Galgalo Wario was assaulted by a uniformed security officer.'

155. It is not clear why this allegation is raised in the caption to a photo rather than the text of the Report.
156. However, the references to 'security forces' and 'uniformed security officer,' combined with the absence of any specific reference to NRT, suggests that this allegation concerns government security forces and is accordingly outside the scope of the DDR.

Concluding Observations on Objective 1

157. This DDR has not found evidence to support any of the alleged killings or ‘fueling conflict’ allegations in the Oakland Report.
158. However, NRT’s strong performance record on facilitating the establishment community conservancies in northern Kenya must be seen against the backdrop of a potent mix of security threats and other issues that generate human rights impacts for communities in northern Kenya, including inter-ethnic conflict, the cattle rustling problem, the influx of illegal firearms, threats from terrorism, historical marginalization, and historical land claims. It is unrealistic to think that NRT could pursue its ambitious environmental and social programmes without becoming interlinked with impacts related to these issues. It should be expected, however, that NRT would have a clear set of due diligence strategies, operational guidelines, and accountability mechanisms designed to continuously monitor and mitigate the impacts of its activities in this difficult landscape.
159. It is widely understood that pursuing human rights and development objectives in a high-conflict and/or armed conflict environment presents extraordinary difficulties and human rights risk. All issues and efforts tend to become framed and driven by the conflict. The context examined here is a perfect example. Politicians and community leaders from across northern Kenya approach NRT and its activities from the perspective of consolidating political support and generating resources to address urgent security threats. As these efforts variously succeed and fail, it comes to seem like NRT itself is driving conflict in the region.
160. When NRT started, it worked primarily with the Maasai and Samburu communities. It is started engaging the Borana and other communities when the Samburu and the Maasai had made significant gains in terms of weaponry, vehicles, and finances. This gave them tremendous advantage over the Borana, their historical enemies. Faced with this situation, Borana politicians and community leaders are trying to use the issue of Samburu advantage within NRT as separate issue to mitigate the threat and mobilize their own support in Isiolo.
161. The result is a politics of victimhood and allegations, including the grave allegations of killing examined in this section. In Kula Mawe, a politician who has been trying to get elected since 2002 arranged an advocacy meeting to drive regional, national, and international attention. Testimonies were provided, but by persons from other parts of Isiolo, with whom locals are unfamiliar. The investigation team has not been able to get the contacts of the alleged victims’ families or corroborate any part of the allegations themselves. In Bulesa, a community leader candidly admits: ‘Our problem is the Samburu and we tend to politicize the conflict so that we can get additional resources.’

162. One can respond to these findings with outrage and umbrage, as NRT tends to do. See Section II.B.ii. But this is not productive and requires turning a blind eye to the many serious human rights impacts that not only surround NRT's programmes and activities but are, inevitably, deeply interlinked with them. The better response is to acknowledge the interlinkage and diligently explore and pursue mitigation options.
163. In many ways, NRT and the impacted communities themselves are doing this. As noted repeatedly, a full review of all related efforts is beyond the scope of this DDR. But in its most recent strategic plan, NRT indicates that it has several monitoring systems in place, and that it recognizes a need to 'better integrate peace and security, with a more comprehensive approach to stabilisation, including identifying, preventing, resolving and transforming conflict.'¹³¹ At the most basic level, NRT and Borana are working to build Borana engagement with conservancies and their benefits. NRT must ensure it has clear procedures and strategies that will make it continuously cognizant of community dynamics resulting from its long-term engagement with the Samburu and Borana. As provided in the Recommendations, NRT may consider arranging for a detailed conflict sensitivity analysis or impact assessment on human rights and security to help guide its next steps in light of all these complicated issues.
164. See also Concluding Observations on the Factual Objectives, below.

OBJECTIVE 2: ALLEGED CORRUPTION OR IMPROPER INFLUENCE

I. Terms of Reference

165. For this objective, the DDA has been asked to address the following: '*Any allegations of corruption, coercion, or improper or unfair use of political, social, or personal pressure to influence decision-making regarding the establishment or operation of NRT conservancies.*'
166. We begin by specifying the allegations and analyzing certain key terms of reference. We then proceed to offer a summary of key background issues, namely the technical details of the livestock trade and of the concept of Free, Prior, and Informed Consent (FPIC) that frame the relevant allegations and are necessary to a full understanding of the specific factual findings. We then set forth our factual findings on the specific allegations contained in the Oakland Report.
167. The Oakland Report alleges Mr. Ali Dima, a local politician, was bribed when he purchased two vehicles from NRT. The source provided is Mr. Dima's own comments at a public hearing.¹³²

¹³¹ NRT [Strategic Plan 2018-2022](#), at 11.

¹³² Oakland Report at 30.

168. The Oakland Report alleges that NRT operates illegal airstrips operating in Isiolo whose ‘intentions are questionable’ and that the NRT ‘acts as a smoke screen to safeguard interests of stakeholders who determine the course of the organisation behind the scenes,’ quoting a letter from Rehema Jaldesa, a local politician.¹³³
169. The Oakland Report alleges that NRT is involved in the livestock trade in a way that ‘competes with the community’ in the Chari rangelands and that NRT has been ‘purchasing cattle at exploitative prices’ and later ‘selling the cattle at huge profits.’¹³⁴
170. Oakland claims that the presence of representatives from the Kenya Forest Service or Kenya Wildlife Service on the NRT Board suggests a process of ‘green-grabbing.’¹³⁵
171. The Oakland Report claims that NRT established the Biliqo Bulesa Conservancy without community support or authorization—essentially without the communities’ Free, Prior, and Informed Consent (FPIC). The Oakland Report supports this claim with the following factual assertions and sources:
 - a. A claim by Major Jillo, discussed above, as its source to allege that agreements signed by NRT and individuals on behalf of the community has ‘remained secret’ during the entire 13 years that the conservancy has been operational.¹³⁶
 - b. A quote taken from a news article attributed to Mr. Najar Nyakio Munyinyi, identified as ‘a consultant on Indigenous land rights,’ alleging that NRT ‘contacts and sweet-talks influential personalities’ in the community whom they ‘later deploy to convince fellow community members of the benefits they [stand] to gain from the conservancy.’¹³⁷
 - c. A claim that the first board of the Biliqo Bulesa Conservancy was ‘sacked’ after they ‘asked what happened to the promises made by NRT.’¹³⁸ No source is provided but it appears this claim is attributed to the news article just mentioned, by John Mbaria.
 - d. A quote attributed to Mr. Diba Kiyana Golicha, allegedly taken at the June 2019 Biliqo meeting discussed above, in which Mr. Golicha states that Biliqo Bulesa

¹³³ Oakland Report at 39-40.

¹³⁴ Oakland Report at 30.

¹³⁵ Oakland Report at 28

¹³⁶ Oakland Report at 30.

¹³⁷ Oakland Report at 30.

¹³⁸ Oakland Report at 30.

Conservancy board consists of “leaders [who] have been at the forefront of ‘selling out land to the white man.’”¹³⁹

172. Finally, the Oakland Report alleges that NRT has failed to deliver on promised benefits, especially to communities in the Biliqo Bulesa Conservancy area.¹⁴⁰
173. With respect to the terms in the objective, we note that there is significant overlap and subtle questions of degree. The easiest reference to define is ‘corruption,’ which is the unauthorized use of official power to obtain undue private interest, such as compensation, benefits, or personal influence. It includes bribery, extortion, cronyism, nepotism, parochialism, patronage, graft, and embezzlement.
174. ‘Coercion,’ in the context of the objective, means the exercise of power to obtain a result by means that are inherently unlawful, such as threats of reprisal or other intimidating behavior that puts a person in immediate fear of unlawful or unjust consequences in order to compel that person to act against his or her will.
175. ‘Improper or unfair’ use of ‘pressure’ and ‘influence’ are harder to clearly define and sometimes harder to identify. As noted below, parties to any political or social process will seek to use what influence they have to pursue their objectives, and they may do so, even vigorously, without breaking the law. Even lobbying, while often regulated, is not outright illegal. From a human rights perspective, ‘improper or unfair’ use of pressure or influence turns on its impact on the human rights of other persons. Influence may be improper from a human rights perspective even where it is not in violation of national law. Notably, human rights is significantly concerned with questions of relative power, resources, and ‘equality of arms.’ What is proper or fair for one actor to engage in may be improper or unfair for another. Due to the uncertainty here, this DDR will not attempt to make conclusive determinations of what is and is not improper or unfair when a close question is presented, but will instead lay out the relevant facts and considerations for readers to make their own assessment.

¹³⁹ Oakland Report at 30.

¹⁴⁰ Oakland Report at 31. The Oakland Report also highlights a handful of legal petitions, letters to county authorities, and other actions taken by individuals objecting to the establishment of a conservancy in their area. See Oakland Report at 9 (discussing injunction issued in John Ngimor & 554 others vs. NRT & 3 others); at 11 (concerning a demonstration in Gafarsa); *see also* <https://www.oaklandinstitute.org/community-petitions-kinna-ward> (objections by some residents in Kinna Ward); <https://www.oaklandinstitute.org/community-petitions-merti-cherab> (letters and responses to complaint by Abdirahman Osman). With respect to ongoing legal proceedings, the DDA determined that it would not be appropriate to investigate or present findings at this point, so as to not interfere with the legal process. With respect to the other petitions, the DDA reiterates our respect for all contributions to the public discourse on the issue of community conservancies. Disagreement by some individuals on the value and appropriateness of community conservancies in different contexts is hardly unexpected. While some of the petitions use heated language and make broad allegations of NRT wrongdoing, especially those petitions associated with familiar players from the findings in Objective 1, they do not appear to set forth any specific allegations as to fall, even derivatively, within the scope of this DDR.

176. ‘Green grabbing’ is defined as the appropriation of land and resources for environmental ends.¹⁴¹

II. Key Background Issues

A. Livestock markets and NRT Trading

177. Several allegations relevant to this objective concern the involvement of NRT in livestock trade through its company NRT Trading company (NRTT).
178. NRT Trading (NRTT) runs a Livestock-to-Markets (LTM) business that aims to improve the income that pastoralists and their conservancies receive from sale of their cattle.¹⁴² LTM buys cattle directly from conservancies, using a transparent weight-based pricing system, paying pastoralists directly. Pastoralists ask the conservancy leadership for a ‘market day’ and the conservancy leadership consults with NRTT. Two weeks prior to the market day, NRTT and the conservancy officials publicize the market to the conservancy membership. Alternatively, pastoralists can sell at any of the local markets that occur on a weekly basis in numerous towns in the area.
179. During a NRTT market day, every interested seller brings their livestock to the market. Those which weigh above 250 kg are weighed and paid for by NRT per kilo. Payments are done in cash with few resorting to either MPESA or bank transfers.
180. The weight-based pricing system is of critical importance to pastoralists. The alternative method is to negotiate a price based on estimation or ‘post-sale’ weighing. Livestock farmers believe that post-sale weighing acted in the favour of processors, particularly in large sales where weighing may not occur until hours after the sale, by which time cattle have significantly hollowed out and lost weight, raising animal welfare concerns and reducing the kilograms for which producers get paid.¹⁴³ It is often the meat traders who insist on not weighing the animal. They negotiate low prices for live animals and sell the meat per kilo. They make a lot of profit while the livestock farmer gets less value for his/her animal. Pre-sale weighing introduces a quality-based system that determines price of livestock based on its weight, breed, and health provides, provides maximum information to buyers at the point of sale, and enables livestock farmers to sell their animals at competitive prices.¹⁴⁴
181. Despite these benefits, pre-sale weight-based pricing does not occur at all markets. Traders and brokers, who buy two to three animals for sale to intermediate traders, feel

¹⁴¹ James Fairhead, Melissa Leach & Ian Scoones (2012) Green Grabbing: a new appropriation of nature?, The Journal of Peasant Studies, 39:2, 237-261, DOI: 10.1080/03066150.2012.671770

¹⁴² NRT, Livestock to Market at <https://www.nrt-kenya.org/livestock>

¹⁴³ Beef Central, Pre-sale vs post-sale weighing: Which is best? Apr. 28.04.2014 at <https://www.beefcentral.com/news/pre-sale-vs-post-sale-weighing-which-is-best/>

¹⁴⁴ Ibid.

that weighing may expose their profit margins to herders.¹⁴⁵ Even amongst pastoralists, there are sometimes complex cultural resentments of weighing, because people see price negotiations as part and parcel of their culture. Traders and brokers have traditionally used the absence of scales in the communities, or concerns about the quality of scales, to resist weight-based pricing. NRTT's commitment to weight-based pricing is thus considered a strong benefit.

182. Conservancy members naturally prefer selling their livestock immediately after the rainy season when there is plenty of grass and the livestock have gained weight.

183. The link to conservation support is provided by a fee system. At NRTT markets, pastoralist sellers are required to contribute KSh 1,000 (approx. USD 10) from each sale to their community conservancies as an administration fee. In 2020 this amounted to KSh 2.1 million (approx. USD 21,000) paid to conservancies. NRTT also contributes KSh 2,000 (approx. USD 20) per purchase to the conservancy as a conservation contribution. In 2020 this amounted to KSh 6.3 million (approx. USD 63,000) paid to conservancies from the LTM programme.

The two differences between the county livestock markets and the NRT livestock markets are:

1. NRT livestock markets are linked to conservation.
2. Kshs 1000 is deducted per cow sale for conservancy operations and bursaries.

184. NRTT provides the accounting for the fees. It deducts the KSh 1,000 from the amount paid to pastoralist and tops it up with KSh 2,000 from its own funds. The total figure is then handed over to the conservancy. The conservancy allocates 40% to conservancy operations and 60% is deposited in a community account for community projects which mostly comprise bursaries. The decision to deduct KSh 1,000 for every cow sold by the conservancy membership to NRT was made by the NRT Council of Elders on 15th August 2013.

<p>Mike responded that NRT is working on a plan to raise more funds for the loans to get more market for the beads from women. He also commented that there is need to strengthen the relationship between NRT trading and the conservancies of which it's now lacking.</p> <p>On livestock revenue for livestock sales new proposal was made to have sellers deducted Kshs. 1,000 per cow and NRT contribute Kshs. 2,000 per cow. The Kshs. 3000 per cow less Kshs.200 Council fees will be split 60:40 and paid to the Conservancy where the cattle originated to support community development and conservation in that conservancy.</p> <p>The members approved the proposal.</p> <p>The second issue was certification, after the sale of livestock the chairman and the manager to sign to confirm that all the cattle belong to the conservancy to help avoid buying stolen cattle unknowingly. This was agreed and approved by members.</p>	<p>13. Min/COE/13/201 Any Other Business</p> <p>KWS AD Northern conservancy area noted that in northern Kenya Oil and mineral exploration is becoming common and he requested that the communities and the conservancies should be fully involved, secondly we need EIAs done and reports shared, adding that such exploration might have a lot of destruction on biodiversity. The LAPPSET project also has similar effect to wildlife conservation and the habitat.</p> <p>Pauline commented on weak laws on poaching as suspects are arrested and come out on 30,000 fines which are painful to the people doing this work.</p> <p>Kipsol commented on the Kalama NRT open day on the performance of Girgir primary school, that we need to take the same message to our schools and see that our children grow with the same attitude of conservation.</p> <p>Josephine requested Tom to brief the members on the progress of KWCA. Tom gave a brief talk on KWCA that they met on 17th January 2013 to operationalize the office, the CEO will be employed and other staff, funding is available for 3 years. Lucky enough NRT was privileged to have Tom elected as the chairman of KWCA.</p> <p>The Chairman thanked all for active participation from members throughout the meeting and wish them safe journey as they travel back home.</p> <p>There being no other business the meeting ended at 3:40pm following a word of prayer from Josphat Lopir (Conservancy Chairman).</p>
<p>Minutes Taken by Letolye Daniel</p> <p>Signed.....<i>[Signature]</i>.....Date.....15/8/2013.....</p> <p>Chairman NRT Council of Elders.</p>	

¹⁴⁵ John Mugonya, Michael Hauser, [Determinants of quality-based payments for livestock in conflict-prone areas in Kenya](#) (May 2022).

185. It is the conservancy board, in consultation with the conservancy membership, which decides who the bursary beneficiaries will be.
186. Critically, NRTT subsequently takes the purchased livestock to private ranches for fattening on select, high-quality pasture. When the livestock are eventually offered for sale on the Nairobi market, the fattened animals do attract significantly higher prices per kilo.

B. FPIC

187. Another set of allegations target the alleged lack of Free, Prior, and Informed Consent (FPIC) obtained from communities both in (a) the formation of conservancies and (b) the operation of conservancies.
188. FPIC is a specific right that pertains to Indigenous peoples and is recognised in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). It allows them to give or withhold consent to a project that may affect them or their territories. In practice, FPIC enables Indigenous peoples to meaningfully negotiate the conditions under which the project will be designed, implemented, monitored, and evaluated. FPIC is also seen as embedded within the right to self-determination.¹⁴⁶
189. The concept of FPIC developed from sources including ILO Convention No. 169, General Comment No. 23 of the UN Committee for the Elimination of Racial Discrimination, and other sources. In 2007, it was enshrined in the UNDRIP and adopted by a vast majority of states through UN General Assembly vote.¹⁴⁷ Since that time, the authoritative force of FPIC has grown rapidly. It is legally protected by key decisions of the Inter-American Court of Human Rights and the African Court of Human Rights, as well as the high courts and constitutional courts of dozens of countries, and it is commonly discussed and elaborated upon by international financial institutions like the World Bank, UN agencies like FAO¹⁴⁸, and conservation NGOs like Conservation International and TNC.¹⁴⁹ FPIC is understood both as a legal concept and as an institutional norm of best practice. Many international institutions and organisations have chosen to recognize FPIC as normatively binding and committed to applying it, and other Indigenous rights found in UNDRIP, as broadly and effectively as possible.

¹⁴⁶ FAO, Indigenous Peoples, at <https://www.fao.org/indigenous-peoples/our-pillars/fpic/en/>

¹⁴⁷ FAO, Free, Prior and Informed Consent at <https://www.fao.org/3/i6190e/i6190e.pdf>; <https://www.fao.org/indigenous-peoples/our-pillars/fpic/en/>

¹⁴⁸ Ibid.

¹⁴⁹ Conservation International, Guidelines For Applying Free, Prior And Informed Consent (2013) at https://www.conservation.org/docs/default-source/publication-pdfs/ci_fpic-guidelines-english.pdf?sfvrsn=16b53100_2; The Nature Conservancy's Human Rights Guide for Working with Indigenous Peoples and Local Communities, <https://www.tnchumanrightsguide.org/>.

190. Establishing a universal definition of ‘Indigenous peoples’ is problematic and historically prone to abuse. The UNDRIP made a considered decision not to provide a definition and ‘best practice at the international level is avoid the application of a universal definition.’¹⁵⁰ FPIC is also increasingly understood to apply to ‘local communities’ with profound economic reliance and cultural connection to their land. Again, many international institutions and organisations have recognized that FPIC reflects best practice and good governance and have thus chosen to apply it as broadly as possible.¹⁵¹
191. At a practical level, FPIC aims to achieve cooperation and harmony in development projects. Yet it can have a profound and transformational impact when set against historical practice and customary assumptions. Free implies that the consent is free, given voluntarily and without coercion, intimidation, or manipulation. A process that is self-directed by the community from whom consent being sought, unencumbered by coercion, expectations or timelines that are externally imposed. Prior implies that the consent is sought sufficiently in advance of any authorization or commencement activities. Informed implies that the engagement and information that should be provided prior to seeking consent and also as part of the ongoing consent process and consent implies that a collective decision is made by the right holders and reached through a customary decision-making processes of the communities.¹⁵²
192. Satisfaction of all these elements is undoubtedly critical to respect human rights. At the same time, these elements are not singular checkboxes—participants can also do better at ensuring sufficient information, beginning consultation early in the project design process, and establishing conditions such that a communities’ decision is truly free. While the right to FPIC is not subject to ‘progressive realization’ in any given moment, it is unsurprising to see it as a product of progressive realization over the last few decades. Concerns about a lack of FPIC in the past should be understood in this historical context.
193. However, FPIC is properly understood as an ongoing process. Indeed, it is often stated that FPIC includes a right to withdraw consent under certain circumstances.¹⁵³ Participants engaged with Indigenous peoples (and local communities) should be continuously watchful for conditions that would undermine any of the elements of FPIC and seek to ‘refresh’ and maintain FPIC on a periodic basis.

¹⁵⁰ See Forest Stewardship Council, [Implementing free, prior, and informed consent \(FPIC\): A Forest Stewardship Council Discussion Paper](#) (March 2018) at 13.

¹⁵¹ See *The Nature Conservancy’s Human Rights Guide for Working with Indigenous Peoples and Local Communities*, at <https://www.tnchumanrightsguide.org/module-1-learning-early-discussions/> (“TNC and many other conservation and development organisations choose to extend the benefits of protection required for indigenous peoples by law to a wider range of potentially affected local communities.”).

¹⁵² Ibid.

¹⁵³ See Forest Stewardship Council, op. cit., 5.

III. Specific Factual Findings

A. Corruption allegations against Hon. Ali Dima, MCA Chari Ward

194. On page 30 of the Oakland Report, Mr. Ali Dima, Member of the County Assembly of Chari Ward, was labelled a traitor and is accused of being bribed after he bought two vehicles from NRT. The specific wordings of the allegations is that *‘another government official, Mr. Ali Dima, member of the County Assembly of Chari Ward, was labelled a traitor for his close working relationship with NRT and with an NRT Trustee member, and was accused of being bribed after purchasing two vehicles from NRT.’*
195. The source is provided in footnote 224, stating: ‘Testimony of Mr. Ali Dima. Politician, Member of County Assembly, Chari Ward, Biliqo, June 20, 2019.’
196. It seems obvious that Mr. Ali Dima did not accuse himself, in substance, of being a traitor and being bribed. Rather, Mr. Dima was reporting accusations that have been levelled against him. Thus it appears that Oakland Institute does not have a source even for the allegation itself, much less its substance.
197. Nonetheless, the DDA engaged Mr. Ali Dima as part of the larger allegation and decided to take some time to investigate the issue of the vehicle sales. The investigation ultimately included not only Mr. Ali Dima but also NRT officials and staff from 51 Degrees.

NORTHERN RANGELANDS COMPANY LTD

JEWA DOWNS
PRIVATE BAG
3800-80300
KENYA

NORTHERN RANGELANDS
COMPANY
LTD

TEL/FAX +254 64 31405
Cell: +254 752 3036273
Email: info@nrt-kenya.org

DATE: 20th June 2019
To: Ali Dima

RECEIPT No: 673

FOR:

SALE of 2 REFS vehicles	600,000
KRA 32412	6,941,000
	7
	12,941,000

One One million Two hundred ninety four thousand

NRT


NORTHERN RANGELANDS TRUST
PRIVATE BAG 3800
TEL 064 31405

CASH: Deposit

CHEQUE No.

198. It was established that Mr. Ali Dima did buy two vehicles from or through NRT. One was a vehicle that had been recently used by the Reteti elephant sanctuary, sold at a price KSh 1,294,000 on 30th January 2018. Another was purchased at a NRT auction on 30th July 2019. Both are Toyota Land cruisers. Mr. Ali Dima also bought a separate Land Cruiser from 51 Degrees on 1st April 2020 at a price of KSh 3,000,000.

199. The Reteti vehicle (apparently owned by NRT but used by Reteti) was involved in an accident and the vehicle was written off. The vehicle was comprehensively insured with ICEA LION Insurance company. The insurance company paid NRT KES 3.3 million as the insured value of the vehicle and sold back the damaged vehicle to NRT for KSh 1.2 million. NRT's Operations manager, Mr. Osman Hussein, sold the salvage vehicle to Mr. Ali Dima. The DDA confirmed with Mr. Hussein that this was a routine, arms-length transaction.



Sale of Used Motor Vehicle by Tender

Northern Rangelands Trust (NRT) wishes to invite tenders from interested parties to purchase the below vehicle

Vehicle No.	Make & Rating	Model	Year of Manufacture	Duty	General Condition	Other details
1	KBH-009V	Land Cruiser 4164cc.	Toyota Pick-up HZ179 New model	2008	Paid	Good and running (457,140 Kms) With bull bar
2	KBL161M	Land Cruiser 4164cc.	Toyota Pick-up HZ179 New model	2010	Paid	Good and running (345,302 Kms) With bull bar
3	KBH-706Q	Land Cruiser 4164cc.	Toyota Pick-up HZ179 New model	2008	Paid	Good and running (349,416 Kms) With bull bar
4	KBH-241Q	Land Cruiser 4164cc.	Toyota Pick-up HZ179 New model	2008	Paid	Good and running (282,496 Kms) With bull bar

The above vehicle can be viewed at the Lewa Workshop from 16th July 2019 to 30th July 2019 between 10.00am to 3.00pm on working days. Offers must be submitted in sealed envelopes clearly marked "Sale of Vehicle" delivered to below address or dropped in a tender Box located at Matunda:

The Chairman Tender Committee
Northern Rangelands Trust
Private Bag Isiolo, 60300

Deadline for bidding is 3.00 pm on 29th July 2019. Bidders should give their full contact details including the address and telephone numbers. Quotes must be in Kenya shillings and expressed both in figures and words. The highest bidder will be advised as soon as possible after the closing date.

VEHICLE SALE TENDER OPENING PROCEEDINGS REPORT
DATE: 30th JULY 2019 TIME: 02:00 PM

MEETING CALLED BY: Osman Hussein
TYPE OF MEETING: VEHICLE SALE TENDER OPENING
DATE: 30th JULY 2019
FACILITATOR: Osman Hussein
REPORTER: Bena Kimo

ATTENDEES:
1. Osman Hussein - Operations Director
2. Bena Kimo - Procurement Officer
3. Raulohe Raulohe - Procurement Assistant
4. Zakayo Mbatia - Fleet Administrator
5. Eunice Wangari - Admin Officer

AGENDA:
The meeting began at 0840hrs introducing the issue at hand vehicles sale tender opening.

DISCUSSION:
The members present checked through total a of 24 tenders presented and analysis done as follows:

Vehicle No.	Make & Rating	Model	Year of Manufacture	Duty	General Condition	Other details
KBH 706Q	Mumina Konso - Ksh 1,400,000	Yarrow Hassan Ksh 1,000,000	KBH 009V	Golicha Jarco Ksh 1,000,000	KBH 241Q	All Dima Ksh 1,000,000
Kenneth Mwenda - Ksh 1,300,000	Hussein Muhammad Ksh 1,000,000	Benda Travelers Ltd Ksh 1,000,000	Keneth Mwenda - Ksh 1,000,000	Umra Omar Ksh 800,000		
Tunga Jirno Ksh 985,000	Abdullahi Abdussala Ksh 1,000,000	Yarrow Hassan Ksh 850,000	Umra Omar Ksh 550,000			
Umra Ksh 900,000	Murad Abdullahi Ksh 1,000,000	Yarrow Hassan Ksh 850,000				
Hussein Hika Ksh 800,000	Murad Abdullahi Ksh 1,000,000	Yarrow Hassan Ksh 850,000				
Halake Buhe Ksh 700,000	Umra Omar Ksh 550,000	Halake Buhe Ksh 600,000				

CONCLUSIONS:
The members unanimously agreed to award the highest bidder as follows:
• KBH 706Q - Mumina Konso
• KBL 161M - Yarrow Hassan
• KBH 009V - Golicha Jarco
• KBH 241Q - Ali Dima

Minutes Confirmation: _____ Date: _____
Signature: _____

200. The auction vehicle was advertised for sale in July 2019. Hon. Ali Dima placed a bid of KSh 1,200,000. Records indicate that other bids were for KSh 800,000 and KSh 550,000. An NRT committee comprised of Mr. Osman Hussein, Mr. Basra Elmi, Mr. Boniface Mwenda, Mr. Zakayo Mbai, and Ms. Eunice Wangari awarded the vehicle to Mr. Ali Dima as the highest bidder.

P.O Private Bag
Isiolo
01st April 2020

AGREEMENT FOR THE SALE OF MOTOR VEHICLE-KCW 924H

This agreement is made on the 1st of April 2020 between 51Degrees Ltd P.O. Private Bag Isiolo in the Republic of Kenya (hereinafter referred to as "the seller" and Mr. Ali Dima Daba in the Republic of Kenya (hereinafter referred to as "the purchaser").
The vehicle specifications are as below:

1 Make	Toyota
2 Model	Landcruiser
3 Colour	Green
4 Body Type	Pickup
5 Year of Manufacturer	2013
6 Registration Number	KCW 924H
7 Chassis Number	1TLB71J0A0-7A723440
8 Engine Number	1H2-0766867

The seller has agreed to sell the said vehicle and the purchaser has agreed to purchase the vehicle on the following terms and conditions:

- 1) The purchase price for the vehicle is Kshs. 3,000,000.00
- 2) A deposit of Kshs. 450,000.00 is required.
- 3) Balance payable within 30days
- 4) Delivery of the vehicle will be done once payment has been made in full.
- 5) Delivery shall take place at the seller's premises.

Signed by the Seller:
Andrew Batian Craig
For: 51Degrees Ltd

Signed by the Purchaser:
Ali Dima Daba

201. No similar records regarding advertisement or other bids were available for the sale of the 51 Degrees vehicle on 1 April 2020. Records do reflect the price: KSh 3,000,000, considerably higher than the other two vehicles, likely due to condition. Mr. Ali Dima told us that he paid for the vehicle in several instalments.

202. NRT sells its old motor vehicles annually or when need arises. The sales are advertised and interested bidders bid for the motor vehicles. Records and interviews provide no suggestion that Mr. Ali Dima was given favourable terms or that the transactions were not arms-length in any way. The Oakland Report does not explain how the purchase of vehicles at fair market prices can lead to a suggestion of corruption or bribery.

203. The DDA did discover, however, that Mr. Ali Dima, a Gabra, is a relative of Mr. Golicha Jarso, the former area Councillor who initiated the process to establish Biliqo Bulesa Conservancy. Mr. Golicha Jarso is from the Karuyu sub-clan of the Borana community. The continued conflicts between the Borana and the Gabra in neighbouring Marsabit County¹⁵⁴ shapes politics in Chari and Cherab wards in Isiolo County.¹⁵⁵

204. Besides Mr. Dima's Gabra ancestry, he has also openly expressed his support for conservancies and NRT, which is perceived to be supporting the Samburu. And as the minority leader in the Isiolo County Assembly, he has also been leading an active campaign against the Governor,¹⁵⁶ who is from the Sakuye sub clan of the Borana community.

¹⁵⁴ Salad Malicha, *The Silent Undertones of Unending Conflict in Marsabit*, The Elephant, 29 Oct. 2021.

¹⁵⁵ Interview with Mr. Hassan Shano

¹⁵⁶ See for example, Nation on YouTube, *Chaos as Isiolo Minority leader, Dima barred from chambers*, November 2019 at <https://www.youtube.com/watch?v=P8-tzHjukzQ>

205. The DDA did observe, however, that the BCE Report reflects what appears to be a concerted political effort to challenge and unseat Mr. Ali Dima for his support for NRT. For example in page 19 of the report, Mr. Ali Dima *‘was shouted down by the residents when he proposed that some additional three or five conservancies be started in the area. Interestingly, as he spoke this, the tent under which participants sat was blown off by the wind which was interpreted as a sign that his leadership will eventually come to an end soon for taking an anti-people stand.’*¹⁵⁷
206. In conclusion, the DDA finds that the claims of corruption, openly brought to light by Mr. Ali Dima himself, are likely part of the political effort against Mr. Ali Dima. The DDA finds that this allegation has been **disproven**.

B. Allegation that NRT has built four airstrips without the Isiolo County Government’s permission

207. The Oakland Report relays that in a letter dated 16th May 2019, Isiolo Women Representatives, Hon. Rehema Jaldesa wrote to the Chairman of the NRT Board notifying the Board of her resignation from the NRT Board.¹⁵⁸ Among the reasons she cited for her resignation includes *‘illegal airstrips operating in Isiolo whose intentions are questionable.’* The Oakland Report further provides:

*Speaking at a public forum organised by the Commission on Administrative Justice (or Ombudsman) on September 9, 2019, Representative Rehema Dida Jaldesa alleged that NRT has constructed four airstrips without the permission of the Isiolo County government. Kenya’s Civil Aviation Authority (KCAA) is responsible for the oversight of construction, maintenance, certification, licensing and registration and operation of aerodromes, and section 67 of Kenya’s Civil Aviation Act states that a license is required for the take-off and landing of aircraft. According to Jaldesa’s testimony, the management of KCAA appeared before the Departmental Committee on Transport Public Works and Housing in parliament, confirming that they had not authorized the construction and operation of the airstrips.*¹⁵⁹

208. The DDA made numerous attempts to contact Rehema Jaldesa. She never returned any messages or texts. This left the DDA in a position of having to investigate without knowing the names or locations of the allegedly illegal airstrips or why specifically they were considered illegal.

¹⁵⁷ BCE Report at 19.

¹⁵⁸ Oakland Report at 40.

¹⁵⁹ Oakland Report at 39.

209. The names of the ‘illegal airstrips’ or the ‘four airstrips operating without the permission of the Isiolo County government’ have not been provided. However, Isiolo County has an international airport, Isiolo Airport, which is located on the border of Isiolo and Meru counties, with half of the runway extending into Meru County.¹⁶⁰ Isiolo County also has several airstrips including in Garba Tula (operational since 1925 but now within the Garba Tulla Community Conservancy)¹⁶¹, Kinna within Kinna Community Conservancy¹⁶², Shaba Lodge,¹⁶³ Chaffa within Nakuprat Gotu Community Conservancy,¹⁶⁴ Boddji Dera, Joys camp, Ndorobo, Dima Ado, and Babala within Biliqo Bulesa Conservancy and Merti.
210. Others airstrips within a few miles of Isiolo county include Larsens Camp,¹⁶⁵ Kalama with Kalama Community Conservancy,¹⁶⁶ Oryx¹⁶⁷ among others in Samburu County, and Lewa with Lewa Conservancy¹⁶⁸ in Meru county.
211. Though the team could not find any evidence of authorization of the airstrips either by the defunct Isiolo or Samburu county councils, the airstrips have been assigned codes by the International Civil Aviation Organization (ICAO).¹⁶⁹ However, ICAO is not a global regulator and ICAO can never supersede the primacy of national regulatory requirements.¹⁷⁰ Authorization by the Kenya Civil Aviation authority is therefore mandatory. Most of these airstrips would fall under Category E whose registration would only require a self-reporting form.¹⁷¹ In the case of *existing aerodromes*, the written permission from the owner of the land or evidence of ownership of the proprietary interest in the land on which the aerodrome is located.¹⁷² This effectively acknowledges that an aerodrome can exist prior to registration, provided at the time of application for registration there is written permission from the owner of the land—the

¹⁶⁰ Kenya Airports Authority, Isiolo Airport at <https://www.kaa.go.ke/airports/our-airports/isiolo-airport/>

¹⁶¹ ICAO Code HKGT, Coordinates 0.53333, 38.51667

¹⁶² ICAO Code KE-6082, coordinates 0.31667, 38.2

¹⁶³ ICAO Code KE-0191, coordinates 0.65818, 37.70038

¹⁶⁴ ICAO Code KE-0105, coordinates 0.66715, 37.91001

¹⁶⁵ ICAO Code KE -150, coordinates 0.59139, 37.58669

¹⁶⁶ ICAO Code KE-0125, coordinates 0.69442, 37.61199

¹⁶⁷ ICAO Code KE- 0183, coordinates 0.60964, 37.53018

¹⁶⁸ ICAO Code KE -6885, coordinates : 0° 11' 34.00"N, 37° 28' 21.00"E

¹⁶⁹ ICAO is a specialized agency of the United Nations. For more, see <https://www.icao.int/about-icao/Pages/default.aspx>

¹⁷⁰ Ibid.

¹⁷¹ For the categories of aerodromes in Kenya, see Kenya Civil Aviation Authority, Certification of Aerodromes at <https://www.kcaa.or.ke/safety-%26-security-oversight/aerodromes/certification-of-aerodromes>. See also Self-Reporting Form For Category E Aerodromes at <https://www.kcaa.or.ke/sites/default/files/forms/CAT%20E%20self%20reporting%20form.pdf>

¹⁷² KCAA, Category E Aerodromes at <https://www.kcaa.or.ke/safety-%26-security-oversight/aerodromes/category-e-aerodromes>

county councils or county governments in case of trust lands and/or unregistered community lands respectively.

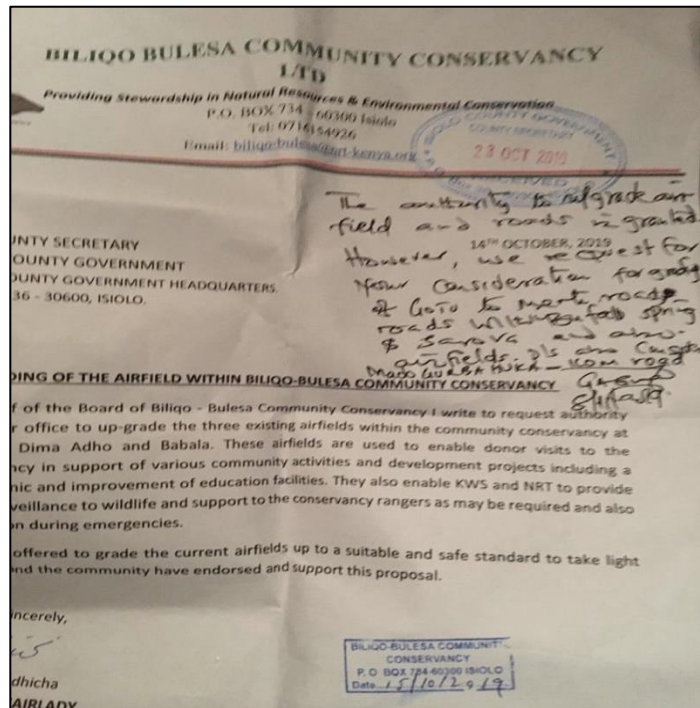
212. The DDA did not find any evidence of such authorizations by the defunct county council or current county government of Isiolo. However, below the team include an application on 15th October in 2019 by Biliqo Bulesa Community to the County Secretary, Isiolo County requesting for upgrade of three airfields with the conservancy.

213. And requests by the Deputy County Commissioner Merti on 15th March 2021 and by the Deputy County Commissioner on 8th February 2022 to NRT for help in upgrading Merti and Kinna airstrips respectively.

214. All the letters mention security as the main reasons for the airstrips, but Biliqo Bulesa includes need for donor visits.

215. It is important to note that aircraft landing and take-off are authorised by the air traffic controllers who help guide *all* planes both in the sky and on the ground.¹⁷³ Air traffic control is a function of the air traffic control service within the KCAA. Air traffic control service is separate from aerodromes licensing.

216. The DDR concludes that there is **no support** for this allegation.



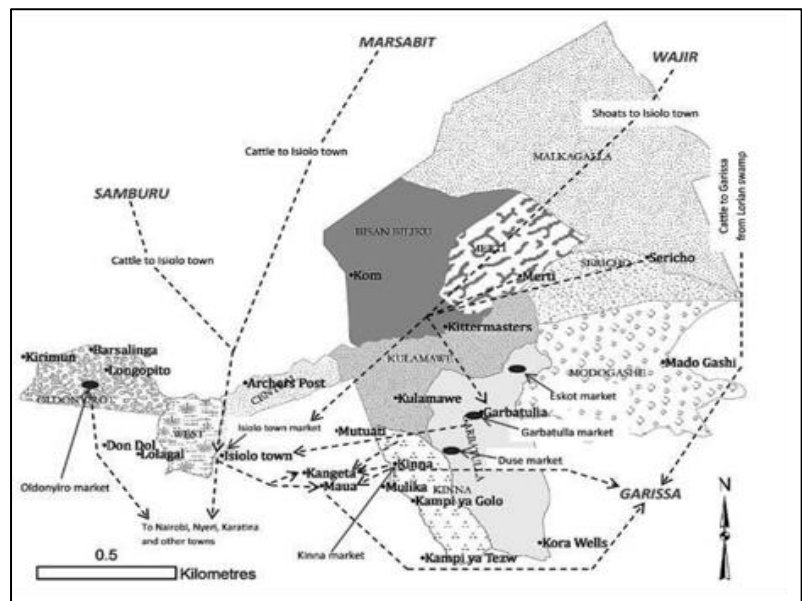
¹⁷³ KCAA, Air Traffic Control Service at <https://www.kcaa.or.ke/air-navigation-services/air-traffic-services/air-traffic-control-service>



Dima Adho Airstrip, Biliqo Bulesa Conservancy

C. Issues around purchase of livestock and bursaries

217. The Oakland Report alleges that NRT's involvement in the livestock trade is that NRT 'competes with the community' in the Chari rangelands and has been 'purchasing cattle at exploitative prices' and later 'selling the cattle at huge profits.'¹⁷⁴
218. The source is provided at footnote 288 and described as a letter by 25 community members of Chari Rangeland to the Governor of Isiolo dated February 2019.
219. The context for NRT (through NRTT) on the purchase and sale of livestock is provided above. In light of this context, the allegations appear to be either inaccurate or stretched characterizations of the relevant arrangements.
220. Concerning the notion of competition and exploitative prices, NRT 'competes' only as any buyer competes with any seller. The level of competition appears to be less given NRT's commitment to weight-based pricing at fixed fair market rates—that is, NRT is not even negotiating or 'haggling' with sellers. And as noted, it is a fair market system: pastoralists are not only free to choose to sell their livestock elsewhere, but there are many options for them to do so. The Isiolo County government operates livestock in various towns or markets daily. The main livestock markets in Isiolo County are Isiolo town which operates every Monday, Wednesday, and Friday, Duse market near Garbatulla which operates every Tuesday, Oldonyiro and Kipsing which operate fortnightly, Belgesh, Bulesa, Biliku, Merti town, Bibi, Korbasa, Madogashe, Sericho, and Malka Daka.¹⁷⁵
-
- Livestock markets and marketing routes in Isiolo County: Source IIED



Livestock markets and marketing routes in Isiolo County: Source IIED

174 Oakland Report at 30.

¹⁷⁵ Benard Chira Gituku, Oliver Vivian Wasonga and Robinson Kinuthia Ngugi, *[Economic contribution of the pastoral meat trade in Isiolo Town, Kenya](#)* (May 2015).

221. The size of these markets is considerable: in Isiolo Town alone, livestock trade employs 448 individuals who, together with business owners, support 2,665 immediate and extended family members. As seen from the above map, livestock traders are not only from the local pastoralist community, but both buyers and sellers also come from neighbouring counties like Samburu, Laikipia, Marsabit, and Wajir, but also as far as Narok and Kajido. Accordingly, it cannot be said that NRT operates as a monopsony or the only realistic available buyer for any pastoralist's livestock.
222. The main difference between these markets and NRTT market days is NRT's use of mobile scales and commitment to weight-based pricing. Buyers and sellers at the other markets typically have no weigh scales and only estimate the weight of the livestock and negotiate a price. As we have seen, weight-based pricing is largely considered advantageous to sellers.
223. In terms of 'exploitative' pricing, the DDA team raised this allegation with numerous interview subjects. All agreed that NRT does in fact pay fixed rate prices based on weight and that the rate is based on prices prevailing in the other markets. Additionally, the free market nature of the system provides evidence that the pricing is fair: If it were not, sellers would simply choose to sell in one of the many other available markets.
224. It is true that NRTT buys livestock and, after fattening them via arrangements with private owners of high-quality pasture land, seeks to sell them for a higher price on Nairobi markets. If this price were extraordinarily in excess than the price paid to pastoralists, frustration by pastoralists would be understandable. But given the free-market basis of the system, it would still not, in the DDA's opinion, amount to evidence of improper or unfair use of pressure.
225. Accordingly, the DDA finds that there is **no support** for these allegations.

D. 'Green-grabbing' of Indigenous Land

226. The Oakland Report claims that 'the fact that KFS (and KWS) sit on NRT's board raises questions about how privatized conservancies may allow green grabbing' and that 'NRT's strategic partnerships and appointments have created a mechanism for green-grabbing on Indigenous land.'
227. 'Green grabbing' is a term of recent vintage. At the most basic level it refers to the appropriation by improper means of land and resources for environmental ends.¹⁷⁶ A critical aspect is that the appropriation may technically be legal, but nonetheless occurs against the will of the affected party and results in a violation of the party's human rights. In practice the term is typically applied to 'large scale private appropriation of

¹⁷⁶ Centre for American Studies, [Green Grabbing: Definition and history of the term](#).

land, resources, and water.’¹⁷⁷ It is supplementary to ‘land grabbing’ in that the appropriation is legitimized with the protection of the environment or financed through mechanisms related to climate change mitigation.¹⁷⁸

228. The claim in the Oakland Report is quite limited. It does not claim that ‘green grabbing’ has occurred, much less describe any instances.¹⁷⁹ It simply offers the opinion that NRT ‘may allow’ or ‘creates a mechanism’ for green grabbing to potentially occur in the future.
229. The Oakland Institute is entitled to its opinion and attention to potential human right impacts, including potential green grabbing, is always welcome. Additionally, because the claim only speculates concerning potential future events, it is effectively outside the scope of the DDR. However, to the extent the Oakland Report can be read to claim that NRT’s board membership creates an imminent potential adverse human rights impact, the DDA offers the following brief observations.
230. Service by government officials on non-profit boards is not prohibited and fairly common in practice, in Kenya and elsewhere. The NRT Board of Directors has three categories of membership: individual, institutional, and *ex officio*. The individual members serve in their individual capacities and not as representatives of the organisations they are affiliated to. For example, Dr. Patricia Kameeri-Mbote, UNEP Head of Law, sits on the board in an individual capacity, not to represent UNEP. High-level KFS and KWS representatives occupy institutional seats, such that they do represent their respective agencies in some capacity. While the DDA did not find any public explanation of the exact nature and workings of that capacity, NRT’s CEO and other leadership assured that the board positions were unpaid and justified board membership by reference to the many practical reasons why KFS and KWS inputs and insights were needed on a regular basis:
- a. KFS because about 10 NRT member conservancies are also registered as Community Forest Associations (e.g., Ngare Ndare). All other member conservancies also hold significant forest areas. KFS has jurisdiction and responsibility concerning applicable forest laws and policies.
 - b. KWS because the nature of NRT operations revolve around wildlife conservation, anti-poaching, and even wildlife relocations, all sensitive issues subject to the jurisdiction and coordination of KWS. NRT conducts numerous operations collaboratively with KWS.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid. See also James Fairhead, Melissa Leach & Ian Scoones, *Green Grabbing: a new appropriation of nature?*, The Journal of Peasant Studies, 39:2 (2002).

¹⁷⁹ Indeed as noted below in Objective 3, there is no evidence that communities have lost land or resources, whether to NRT, KFS, or KWS.

- c. Additionally, the Ministry of Interior is provided an institutional seat. This is because northern Kenya, including in the NRT member conservancies, experience numerous security issues that include illegal firearms, armed conflicts, terrorism, and NRT's '9' teams consist of NPRs with government-issued firearms.
231. NRT could (and does) interface with these authorities as a regulated entity apart from the fact of board membership. Additionally, the role of a board of directors is not to provide supervision of day-to-day operations or decision-making, but rather to advise overall strategic direction and 'supervise' the effectiveness of leadership in pursuing the organisation's strategic goals.
 232. The Oakland Report does not explain its concern with the board membership; that is, *how* board membership would allow for green grabbing or how its perceived mechanism would operate. If the concern is simply that board membership gives NRT and the agencies an opportunity to meet and converse, it seems clear from the substantive interlinkage of issues that such meetings and conversations would be—and should be—happening anyway.
 233. It may be that Oakland's concern is that NRT board meetings are private. If there were specific rules that prohibited such non-public meetings with government officials, there could be a concern. The DDA is not aware of any such rules in Kenya, nor has Oakland cited any. Rather the DDA notes that in Kenya government officials routinely meeting with private individuals and are encouraged to do so as part of their mission to be responsive to communities and citizens.
 234. It may be that Oakland's concern is that board membership raises question of loyalty. The unremunerated nature of institutional membership appears to address that concern.
 235. Persons in positions of authority can and do corrupt things. That is a fact of life. There is no evidence that any NRT board members have done anything corrupt, involving green grabbing or anything else, and there is nothing in NRT's board arrangements that invites corrupt conduct or raises the concern for imminent potential corruption. Accordingly, the DDA finds that there is **no evidence to support** for the inference that the presence of institutional representatives on NRT's board 'creates a mechanism' for green grabbing.

E. Alleged lack of FPIC, especially in the formation of the Biliqo Bulesa Conservancy

236. Biliqo Bulesa is in Chari ward, Isiolo County. The conservancy comprises Biliqo and Bulesa locations, which cover Kom, Biliqo Marara, Biliqo, Godha, and Bulesa sublocations. The conservancy measures approximately 377,300 hectares and the entire conservancy area is managed as integrated livestock and wildlife range. The conservancy is mainly inhabited by Borana community, living in six settlement areas—Dima Adho, Biliqo Marara, Biliqo, Godha, Bulesa, and Awarsitu. The Borana

are traditional semi-nomadic pastoralists who predominantly depend on livestock for their livelihoods.

	Location	Sub-Locations	Settlement	Population (2013)
Charri	Biliqo	Kom	Dima Adho	650
		Biliqo Marara	Biliqo Marara Nyachis	600
		Biliqo	Biliqo	2,600
	Bulesa	Godha	Godha	1,400
		Bulesa	Bulesa	3,600
			Awarsitu	550
			TOTAL	9,400

237. Biliqo Bulesa is the source of most of the allegations in the Oakland Report. This DDR has already reviewed many of those allegations in previous parts of our report. This section considers the allegation that NRT established Biliqo Bulesa Community Conservancy in Isiolo County in 2006 without community members' Free, Prior, and Informed Consent (FPIC), and the conservancy continues to operate without FPIC.
238. Specifically, the Oakland Report alleges the establishment was not in line with NRT's own guidance plans to start a conservancy that 'should be inclusive, wide-ranging and transparent and give sufficient time to ensure the wider community is supportive and committed to the conservancy.'¹⁸⁰ 'This is not what happened in Biliqo,' Oakland claims.
239. Oakland supports the claim with the four sources detailed in the terms of reference above. These are addressed in turn below. However, background concerning the Biliqo Bulesa Conservancy is provided first.
240. Biliqo Bulesa Community Conservancy was established in 2007 as a *community-based organisation* and it combined communal lands Biliqo and Bulesa within Chari ward in Merti Sub County, Isiolo County. It covers a total of 327,600 ha and was the first conservancy in Isiolo County. Biliqo Bulesa Community Conservancy is now registered as a Not for Profit Company (Registration No. CPR/2013/123577).¹⁸¹
241. Biliqo Bulesa Community Conservancy is mainly inhabited by Borana community, living in six settlement areas. Borana are traditional semi-nomadic pastoralists who predominantly depend on livestock for their livelihoods. Biliqo Bulesa was a springboard for other communities in Boranaland to initiate conservation. The

¹⁸⁰ Oakland Report at 29.

¹⁸¹ See [Biliqo Bulesa Community Conservancy Management and Community Development Plan 2017 - 2021](#).

conservancy is an important corridor and dispersal area for wildlife. Resident wildlife include elephant, lion, cheetah, buffalo, leopard, lesser kudu, gerenuk, and other smaller mammals. The area has large populations of game-birds including sand grouse and guineafowl, which were previously utilized in commercial bird shooting which generated revenue for the community.¹⁸² The herders utilized a Dedha system of grazing, which featured rules related to use and access of pastures, water, and other resources that elders were always on standby to arbitrate in case of simmering conflict.¹⁸³

i. Alleged secrecy of conservancy agreements

242. The Oakland Report alleges that ‘agreements signed by NRT and individuals on behalf of the community has remained secret during the entire 13 years that the conservancy has been operational.’ The source is Major Jillo, who we have considered above.
243. The DDA investigated this allegation by asking the chairperson and manager of the Biliqo Bulesa Conservancy about the allegation and requesting to see the agreement itself. The chairperson, Mr. Halkano Golo, stated clearly that the agreement was a public document.¹⁸⁴ The DDA was offered access to it, but the only copy available was in the conservancy office in Kom, which was unavailable for security reasons. Instead, NRT provided a copy of the agreement without any confidentiality requirement.
244. Because neither NRT nor Biliqo Bulesa Conservancy hesitated in sharing the agreement, we find that this allegation has been **disproven**.

ii. Quotes from John Mbaria article

245. Two claims related to the establishment and operation of Biliqo Bulesa are drawn from a news article published by The Elephant,¹⁸⁵ authored by Gatu wa Mbaria (John Mbaria), who is also co-author with Mordecai Ogada of the *Big Conservation Lie*. The first quotes come from Najar Nyakio Munyinyi, who is identified in the Oakland Report as ‘a consultant on Indigenous land rights,’ to allege that NRT ‘contacts and sweet-talks influential personalities’ in the community whom they ‘later deploy to convince fellow community members of the benefits they [stand] to gain from the conservancy.’
246. No information is provided in the article or in the Oakland Report concerning who Mr. Munyinyi consults with or what his connection to Biliqo is. It does not appear that he is a resident, or that he is reporting any facts known to him personally or based on

¹⁸² Ibid

¹⁸³ Reliefweb, [In Northern Kenya, age old traditions combat climate change and help minimise conflict](#), 3 June 2015.

¹⁸⁴ Interview with Conservancy Chairman and Manager in Bulesa.

¹⁸⁵ <https://www.theelephant.info/features/2019/05/02/who-is-running-northern-kenya-causes-of-the-simmering-resource-curse-in-isiolo-county/>

factual research focused on the formation of Biliqo. Rather, the quote appears to contain Mr. Munyinyi's opinions and characterizations. Given the context, the DDA does not see any need for *factual* investigation into the basis of these opinions.

247. The same article also appears to be the source for the claim that the first conservancy board for Biliqo Bulesa was 'sacked' after they 'asked what happened to the promises made by NRT.'¹⁸⁶ The article contains this allegation and more:

We learned that the organisation engineered the sacking and replacement of members of the first board after they demanded to know what came of the promises made to the community. Those interviewed added that finances meant for the Conservancy were banked in an NRT account and that the Conservancy has only held two annual general meetings since it was formed. Further, they said that past and current Conservancy board members have no powers and do not even know what income was earned by the Conservancy.

248. In his article, Mr. Mbaria declines to provide his sources for the allegations in this paragraph. The allegations do have a factual nature. Accordingly, the DDA team addressed them in numerous interviews with individuals in Biliqo, including with Mr. Halkano Golo, the current chairperson of the conservancy, the conservancy manager, Mr. Mohammad Wako, the Peace Ambassador, Mr. Golicha, and a former chair lady, Ms. Lello.

249. These individuals dismissed these particular allegations. The conservancy chairperson and manager both affirmed that an Annual General Meeting has been held every single year, although they continue to face the logistical difficulties noted below. The manager described how the conservancy is managed in accordance with the terms of a management and community development plan,¹⁸⁷ and provided several examples of community decision-making. And he affirmed that no board member has been 'sacked,' although some have not been re-elected at the end of their term of office.

iii. Quotes from Mr. Golicha

250. Finally there is the quote attributed to Mr. Diba Kiyana Golicha, allegedly taken at the June 2019 Biliqo meeting discussed above, asserting that the Biliqo conservancy board consists of "leaders [who] have been at the forefront of 'selling out land to the white man.'"¹⁸⁸

¹⁸⁶ Oakland Report at 30.

¹⁸⁷ Biliqo Bulesa Management Plan, op. cit.

¹⁸⁸ Oakland Report at 30.

251. Like the quote from Mr. Munyinyi, this would appear to be opinion and characterization. It does not require further factual investigation. It is addressed here because the DDA team was able to speak to Mr. Golicha directly about claims of loss of land and grazing rights. As discussed below, Mr. Golicha candidly acknowledged that attacking NRT on land issues was ‘just politics’—albeit politics driven out of a sense of desperation in light of Samburu attacks.

iv. Genuine difficulties concerning FPIC and community participation

252. While the allegations on FPIC and community participation in Biliqo Bulesa were not substantiated, the DDA team’s investigation did begin to reveal the real difficulties that community leaders and partners, including NRT, face in ensuring community participation given the challenges in the region. The investigation also revealed an ‘origin story’ to Biliqo Bulesa that is both roughly consistent with FPIC and at the same time, not entirely inconsistent with the picture painted by critics.

253. Mr. Golicha told the DDA team that the idea of a conservancy in Biliqo Bulesa Conservancy began with his own efforts in 2006 when he was an area councillor. He claims he mobilised a few elders to approach NRT to request help establishing a conservancy. The group of elders included several government-appointed national chiefs. NRT expressed interest and subsequently organised information and education sessions for Mr. Golicha’s small group at Namunyak, West Gate, and Kalama conservancies. On return, Mr. Golicha’s group consulted with the village chief and organised a series of public meetings in all six villages. These meetings included officials from the school and dispensary committees, as well as women’s group leaders. At the meetings, Mr. Golicha and his group strongly articulated the benefits of establishing a conservancy.

254. Because a full investigation beyond the allegations of the Oakland Report was not in the mandate of this DDR, many details remain unknown. The story recounted above is that of one individual, who was personally involved and is still involved and interested to this day. The basic facts of the narrative suggest that the basic foundations of FPIC were met: the communities were not under any coercive pressure to form a conservancy at that time, but rather sought a series of benefits; communities were consulted prior to the formation of the conservancy, albeit not prior to the initial contact with NRT and the momentum that began to build; and community members who attended the meetings were likely provided with basic details about what a conservancy was, how it would operate, and benefits it would hopefully bring.

255. A somewhat contrary analysis is also possible. Bulesa was facing then, as now, the negative security impacts of an increase in Samburu wealth and firearms linked indirectly to Samburu success establishing conservancies. Community members may not have liked the overall presence of conservancies, but felt they had to ‘even the playing field.’ They were consulted only after Mr. Golicha and his group appear to

- have made up their minds on the issue, and the extent and nature of the information they received was likely shaped by that group's already formed preferences. No record was kept of the consultation proceedings or the consent authorization. And while it is critical, if true, that women's groups were especially included, there is no indication of what percentage of the community was ultimately consulted on the issue.
256. NRT representatives were asked about any records or recollections they had with respect to the conservancy formation. They indicated they had none and referred us to the conservancy board. The narrative provided by board chairman Mr. Golicha is not inconsistent with claims such as those made by Mr. Munyinyi in the Oakland Report.
 257. With regards to maintaining *ongoing* FPIC and community participation, Diba Kiyana Golicha, who frankly acknowledges that many allegations made against NRT are 'all about politics,' was also frank about the long road ahead to ensuring true and broad community participation in conservancy affairs. Early governance of the conservancy suffered from numerous 'teething problems,' as community members slowly learned to comprehend new tasks and challenges, despite common struggles with illiteracy and lack of capacity and support.¹⁸⁹
 258. Mr. Golicha and the managers of the Biliqo Conservancy claim that they communicate with community members on a regular basis, but acknowledged during interviews how difficult it was, when organizing an AGM, to bring a significant number of community members to each year's AGM. The conservancy sends its vehicle (and NRT usually contributes its vehicle) to at least bring the village leadership to the meetings. Even when this is successful, it means that hardly 50 people may participate in an AGM. Moreover, since it is only the leadership that attends, it tends to be the same people. This makes the rest of the membership feel excluded from decision making. The few opponents of the conservancy tend to be former board members who were not elected. There are also allegations that Kapaja Trust sponsors a few individuals in Biliqo and Bulesa to generate negative publicity against the conservancy.
 259. Whether the above satisfies effective consultations and decision making per 'ongoing FPIC' is open to question. The shortcoming is driven by a lack of resources, which seems to be a less persuasive excuse in the context of NRT's renowned fundraising success. Additionally, the fact that FPIC has rapidly evolved in the last few years means that it may not be fair to judge the establishment of a conservancy even just 15 years ago by today's standards of FPIC. But the same is not true for ongoing FPIC.
 260. With the mandate of FPIC increasingly demanded, more and more tools are emerging along with experience from which to learn. For example, in 2021, the Pastoralists Alliance for Resilience and Adaptation in Northern Rangelands (PARAN), through IMPACT, commissioned the development of an FPIC toolkit to guide communities on

¹⁸⁹ Interview in Bulesa, 3 May 2022

FPIC in conservation and other projects in northern Kenya.¹⁹⁰ The toolkit emphasizes the importance of working through effective community decision-making structures, which clearly is an issue not only in Biliqo Bulesa but in most other Indigenous communities in Kenya.

261. There is evidence that NRT and its member conservancies are already moving quickly to improve and regularize their FPIC policies and practices. The DDA was able to review a document summarizing the robust FPIC process implemented as part of the [Northern Kenya Rangelands Carbon Project](#). It revealed a far more substantial, informed, and documented FPIC process than described above. Again, this is not at all surprising given the rapid and relatively recent evolution in FPIC best practices.

F. Alleged failure of NRT to deliver promised benefits in Biliqo Bulesa

262. The Oakland Report quotes Mr. Diba Kiyana Golicha concerning complaints about NRT support to the Biliqo Bulesa Conservancy. Mr. Golicha is said to have claimed that NRT promised ‘to provide 40 million Kenyan shillings [about US\$390,000] in the form of an education bursary and jobs for young people as NRT rangers’ but that ‘we never got the benefits and instead it caused a lot of pain, loss of lives, livestock and property.’ The Report continues: ‘Others corroborated these claims, with one man complaining that the community was promised a health centre, education and security, none of which have been forthcoming.’¹⁹¹
263. We have already considered Mr. Golicha’s acknowledgments concerning the political nature of grievances against NRT linked to the communities primary concern about attacks from Samburu. We nonetheless we rely on our primary research to briefly address these claims. We have already discussed the issue of deductions from livestock sales.
264. In the course of the DDA team’s research, we learned the following about projects that NRT has facilitated in the settlement areas that make up Biliqo Bulesa Conservancy:
- **Biliqo** – a fully-fledged dispensary with a laboratory, and maternity and staff accommodation.
 - **Marara** - 9 self-contained teachers’ houses and a water project
 - **Dhima Adho** – A community water project
 - **Bulesa** – 2 classrooms
 - **Kone on Gura** – 25 herders have benefitted from livestock purchase loans

¹⁹⁰ The tool was developed by the Dr. Sena under contract with IMPACT.

¹⁹¹ Oakland Report at 31.

- **Micro enterprise loans** – have benefitted 138 women in all the villages with small business loans
- **Ujuzi mashinani** – 35 youths trained on small business skills that include phone and motorcycle repair and masonry
- **Security** – 30 rangers and a security vehicle. The rangers have 12 rifles which are not enough to counter hundreds of Samburu. Diba Kiyana has asked for more to boost security.
- **A community vehicle** – serves as an ambulance, helps in water, goat recovery, transportation and ferries to Merti and Isiolo at no fee.



265. Biliqo Bulesa Conservancy has recently been paid KSh 36 million by NRT for the carbon in their landscape. 40% of this amount will go toward conservancy operations and 60% will be divided equally for community projects in the six villages through a decision made in an AGM.
266. The DDA found that *all* the community leaders and members interviewed, even critics of NRT for other reasons, supported and appreciated the above projects, wanted more such projects, and wanted more funding and engagement from NRT, not less.
267. The only opposition to NRT that the DDA found in the Biliqo area arose from the perception that NRT supports the Samburu. The community in Biliqo in particular holds this perception very strongly. As noted, the DDA has found no evidence to support this allegation. Yet it remains strong. Some community members in Biliqo have even linked Mr. Ian Craig to the declaration by the Cabinet Secretary for Interior of Kom as ‘disturbed area’ on 2 May 2022.

268. The DDA also observes some inherent difficulties in the fact that the NRT’s extensive efforts in the area combined with minimal government presence has elevated the role of the conservancy and NRT to almost the *de facto* government in terms of benefits and support. As an example of the minimal actual government support, the DDA noted that there are only seven policemen based in Biliqo police post. They have no vehicle and their offices and accommodation are rented mud houses. The conservancy has two vehicles. One of them is used by the conservancy rangers and the police other for all other community purposes – ambulance, water, recovered goats, transportation, etc



Biliqo police post

269. The DDA also observed how sub-clan politics impacts discussions of NRT and conservancy management and how agitation by former conservancy staff has impacted the discussion. For example, see Section III.B.iii to Objective 1.



NRT vehicle stationed in Biliqo and assigned to Peace Ambassador, Elder Golicha Jalso

270. In conclusion: The claim that NRT has failed to deliver promised benefits depends on the extent of those promises (including what individuals may have subjectively heard or

interpreted regarding any such promises) seen in the light of the numerous NRT-funded projects referenced above and the complicating factors of perception and politics noted above. The DDA cannot make a conclusion on people's feelings or opinions. However, based on the investigation and including facts such as the actual construction of a health centre and education facilities, the DDA is able to conclude that there is **no support** for the specific allegations in the Oakland Report, and in fact that several aspects of the allegation have been **disproven**.

IV. Concluding Observations on Objective 2

271. This DDR has not found evidence to support any of the specific allegations of corruption or improper use of influence contained in the Oakland Report.
272. NRT does have influence. Especially in light of prevailing social conditions, it has immense wealth and commensurate power to achieve its goals. This fact co-exists with the substantial evidence that NRT directs its conduct to achieve public interest outcomes and to support community members even when it deals with them in a commercial capacity, for example in livestock sales. Communities—even critics in the Biliqo Bulesa area—appreciate the project work funded by NRT and seek more of it, not less.
273. As it seeks to be efficient and effective, NRT may sometimes move too fast or too firmly in pursuit of its own vision of positive outcomes. The establishment of the Biliqo Bulesa Conservancy (over a decade ago) with only minimal satisfaction of the requirements of FPIC may be seen as an example. Conservancies continue to face challenges in sustaining FPIC on an ongoing basis.
274. See also Concluding Observations on the Factual Objectives, below.

OBJECTIVE 3: ALLEGED COMMUNITY LOSS OF LAND RIGHTS

I. Terms of Reference

275. For this objective, the DDA has been asked to address allegations concerning the following: *'Any gain or loss of rights to land or access to land associated with NRT or its conservancies.'*
276. We begin specifying the allegations and analyzing certain key terms of reference. We then proceed to offer a summary of key background issues that, in our view, serve as key drivers of the allegations and are necessary to a full understanding of the specific factual findings. We then set forth our factual findings on the specific allegations contained in the Oakland Report.
277. Our guiding questions were whether twofold: (a) whether NRT or subsidiaries, partners, or member conservancies has acquired or increased their land holdings generally and in

particular land under conservation, and (b) whether through such acquisition or increase, any community lost rights to land or access to land including grazing and water.

278. Regarding the meaning of ‘gain’ and ‘loss’ in relation to land. The Webster Dictionary defines ‘gain’ as ‘resources including land acquired or increased.’ It is also defined as the ‘act or process of acquiring something’—in this case, land. It can also mean ‘increase in amount, magnitude, or degree’—in this case, of land under conservation.
279. In the sections below, we first consider whether NRT itself has gained concrete ownership or legal or de facto control over lands, at the expense of communities. We consider the few concrete allegations in the Oakland Report concerning loss of access to lands in Kiri Bisan Owo and the Biliqo area. We then consider the related allegation of loss of control via impacts or ‘undermining’ of the Dedha grazing management system.

II. Key Background Issues

A. Deep fears of land loss driven by competing narratives

280. As described in Section II.B.iii to Objective 1, above, conservation ‘politics’ in Kenya is driven by a highly-charged ‘narrative competition’ between ideologies that pose conservation as essential and urgent to address the viability of human life on the planet or, alternatively, a scourge of colonial and racist legacies. These high-profile narratives each emphasize the precious nature of land and do so in a frame that highlights urgency and threat. Not surprisingly, the fear of loss of land is palpable in rural Kenya, even for communities who are barely exposed to the ideological debate itself.
281. The impacts of community conservancies to rights to access and use land can be complex. As Kenyan conservationist Renson Kantai Duff has described:

While the promise of community conservation is often to deliver true ownership and natural resources management on their lands across Africa, the results for pastoralists and other indigenous communities have been a mixed bag. In some cases, they [the pastoralists] find themselves having a seat at the table, but the agenda – of how they can move across the land and use it – is set by other controlling interests. In places like the Maasai Mara in southern Kenya, most community-owned conservancies are very much geared towards tourism, [...] so in many cases, they have given up their land and increasingly their pastoralist way of life to investors, for the promise of tourism revenue. In northern Kenya (aside from much of Laikipia where ranches are private property, owned by families who struggle with issues of extreme privilege, legitimacy and belonging) the trend is more complex. Pastoralists are not giving up their land. There are parallel governance structures of both traditional leadership and conservancy management at play. Ensuring true ownership and inclusion, and that the culture of pastoralism (which really is synonymous with conservation) endures

remains a challenge. Competing interests have sometimes led to elite capture. The pastoralist lifestyle continues, but their collective agreement of how they should use their land, and who decides [this] remains contested.¹⁹²

282. As noted below, the complex impacts and trade-offs now presented by community conservancies will only become more complex as communities begin to register and communally manage their land under the Community Land Act—something that the Oakland Report strongly and repeatedly argues for.¹⁹³
283. Fear that community conservancies will stall or block potential future registration and management under the Community Land Act is a dominant feature in the political discourse about conservancies, as repeatedly evidenced by Oakland’s sources. Some of the concern emerges from the private structure through which the collective management of conservancies is achieved. NRT defines that a conservancy is ‘a **community-based organisation** created to support the management of community-owned land for the benefit of livelihoods. They are legally registered entities, governed by a representative Board of Directors and run by a locally-staffed management team.’¹⁹⁴ And it appears that a majority of NRT’s 43 conservancies are managed through community-based organisations (CBOs). But in Kenya, a community conservancy can be registered either as an association, CBO, company, trust, or any other legally recognized form. Establishing a community conservancy does require the verifiable consent of the membership.¹⁹⁵ However, CBO registration tends to be faster and cheaper. It is done at the Department of Gender and Social Development at the Subcounty level and has less requirements.¹⁹⁶
284. Registration as a CBO can feed the perception of a conservancy being a separate entity detached from the community that forms the conservancy. It is further subject to the critique, leveraged repeatedly by Oakland and others, that only a few individuals or elites supported by NRT are behind the creation and operation of the CBO. The emergence of a non-government entity suddenly making rules and regulations can be disconcerting. And where there is insufficient information and awareness about conservancy decision making processes, tensions can and do arise. The Oakland Report’s efforts to track these tensions is worthy. However, it’s presentation of them is deeply one-sided, completely ignoring the fact that conservancy boards are democratically elected. Moreover, they are

¹⁹² The African report, [Kenya 2022: Beyond Safari postcards lies colonial-era land grabs](#), 7 Oct. 2021

¹⁹³ Oakland Report at 10, 23-24.

¹⁹⁴ NRT, Community Conservation: what is a conservancy at <https://www.nrt-kenya.org/community-conservation-overview>

¹⁹⁵ This is normally a list of names with their ID numbers and signatures. In the context of community lands, a register of members of the community land is developed. What percentage of a community must participate to meet national and international standards such as FPIC is not yet clear as a matter of Kenyan law and practice.

¹⁹⁶ See sample application form for registration of CBO at <https://www.socialprotection.go.ke/wp-content/uploads/2018/11/CBO-Registration-final-26-10-2016.pdf>

elected every three years, so any elitism in the formation of a CBO should be addressed through the democratic process, so long as the elections are free and fair. Oakland does not specifically allege any NRT interference with conservancy board election and the DDA encountered no such allegations in the extensive fieldwork.

B. The nature of NRT's 'influence,' 'ownership,' and 'control'

285. It is undeniable that since it was established in 2004, NRT has steadily increased land under its 'influence,' as it maintains strong relationships with the democratically elected boards of its member conservancies—43 of them, covering 63,000 square kilometres. As examined in Objective 2, not all influence is improper or unfair. It is equally clear that NRT has not expanded its 'ownership' of land—after exhaustive research, the DDA team found only one parcel of land associated with NRT (described below). The key question then becomes whether there is evidence that NRT uses its influence to effectively 'control' land in the style of ownership.
286. Again, NRT does have significant ownership, not just through its relationships with conservancy boards but through its many community support, economic development, and peacemaking programmes, described above. The impacts of these programmes are, as noted, significantly positive. NRT's influence is also applied to its conservation and land protection agenda. Use of influence in these areas is expected when it reflects fair advocacy in a situation, or as to decision-makers, that the party applying the influence does not legally control or effectively dominate. In short, it is 'influence' if there are no guarantees. Where there exists a legal or unquestioned practical ability to create an outcome, an exercise of 'influence' may start to seem like or become an exercise of 'control.'
287. As described below, this DDR finds no evidence of 'loss' of land or categorical denial of access (as opposed to limitation by committee-based regulation) and no instances of NRT assuming ownership or exercising guaranteed control over land. Conservancy bylaws, MOUs, and other sources make clear that NRT lacks outright legal control over its member conservancies, and the DDA found substantial evidence that NRT pursued its goals through regular advocacy, without guarantees. But these same sources and interviews indicated that the grey area between influence and control was often close at hand.
288. NRT's Memorandums of Understanding (MOUs) with community conservancies are typically based on a 'model MOU' drafted by NRT and later approved by conservancy boards. Conservancies are obligated to follow the terms of the Community Management Development Plans (CDMPs), which are typically drafted by NRT before being approved (subject to modification) by conservancy boards.¹⁹⁷ Conservancies are

¹⁹⁷ The CDMPs typically set out a zoning scheme with a 'core conservation (preservation) zone,' a 'buffer grazing zone,' and a 'high intensity use zone.' Again, these plans are approved by the community.

obligated to ‘meet their core mandate of conservation, peace building, and management’ and ‘not to undertake or permit any activities to be undertaken . . . that may undermine any of the objects of the MOU.’¹⁹⁸ Any party who has a ‘dispute or grievance arising under or in connection with this MOU’ may trigger a three-stage process starting with negotiation for at least 30 days, followed by submission to a single mediator for at least 60 days, followed by ‘final resolution by a single arbitrator’ pursuant to Kenya’s Arbitration Act, which provides for legally binding arbitration.

289. It is fair to suggest that NRT is in a superior position in terms of familiarity and resources to be able to ‘enforce’ obligations under the MOUs. NRT indicated that there had been no formal submission of disputes under any MOU to mediation or arbitration. It is still possible that the availability of recourse to arbitration—like a threat of litigation—sets the stage for NRT’s interactions and negotiations with conservancy boards.
290. The case of the Lekurruki Conservancy provides a different but equally complex illustration. In 2009, NRT established ‘the Northern Rangelands Land Company Limited’ therein after ‘NRL’ as a special purpose limited company to purchase three parcels of lands situated in Mumonyot in Laikipia County. NRL was registered as a proprietor in December 2009. During the Mumonyot land adjudication which led to Lekurruki Group Ranch, 16 individuals were allocated parts of the land adjacent to Ranch. Three of them decided to sell their parcels.
291. NRT, with the assistance of donors, established NRL as a special purpose vehicle to purchase the three parcels. NRT made clear at the time and since that it did so specifically for the benefit of the Lekurruki community, which at the time had not organised itself into a legal entity capable of purchasing and holding property. The community subsequently incorporated Lekurruki Limited, which has full legal capacity to hold and manage property as part of Lekurruki Conservancy. In 2022, NRT gifted the land to the Lekurruki community through Lekurruki Limited for management and utilization as part of Lekurruki Conservancy.
292. The donation agreement, however, prescribes five permitted uses, including exclusive use as a community wildlife conservancy for conservation and management of wildlife species and biodiversity; to meet community development goals; to prevent fragmentation of wildlife habitats; and others. It also restricted any sale, subdivision, change of permitted use, transfer, donation to any third party, and prohibited use of the land to raise funds or as serve as security for a loan, without NRT’s permission, and in any event only in the interest of conservation objectives.
293. In interviews on various dates in March and April, officials of Lekurruki Conservancy expressed dissatisfaction with these conditions. They insist that if NRT truly bought the

¹⁹⁸ MOU between NRT, the County Government of West Pokot, and the Masol and Pellow Community Wildlife Conservancies, provided to the DDA by NRT as a sample MOU.

land merely as a way to secure it for the community, NRT should not be using the purchase and subsequent gift procedure to determine how the community thereafter utilizes or manages the land. Lekuruki officials said they were engaging with NRT on this issue and that NRT had thus far been responsive.

C. Grazing-related controversies

294. It is widely recognized that one of the biggest problems in northern Kenya is over-grazing. There have been countless government and community-based attempts to address the issue and fairly allocate grazing rights amongst community members. A particular difficulty is that even when a community successfully achieves a consensus agreement on grazing issues, armed pastoralists can come in from other areas and entirely disregard the local rules.
295. In each conservancy, there are various committees that included grazing committees. The practice of grazing committees is widespread in Kenya, and NRT adopted the system from the view that rangelands are not only degraded and threatened by the climate but also by overgrazing, which is a threat to wildlife as well as to pastoralists. Consequently, it started promoting development of grazing by laws by its member conservancies with the goal of harmonizing rules and rights on access to various rangeland resources, migration patterns, settlement patterns as well as management of areas used or designated for tourism development among various community conservancies in northern Kenya.¹⁹⁹ The grazing committees are elected at the village, conservancy, and regional (several conservancies) level.²⁰⁰
296. The grazing bylaws restricted settlements within the conservation areas and any person found there illegally shall be forcibly evicted by the conservancy with the assistance of the chiefs and with a fine of KSh 10,000 per herd/household or an animal equivalent to that amount of money. They further prohibited grazing of livestock within the core-conservation areas unless approved by the grazing committee in consultation with the tourism operators and other partners. Grazing in core-conservation areas was limited to the conservancy members only.²⁰¹
297. In its Strategic Plan 2018-2022, NRT noted the clash between the cultural and traditional aspects of nomadic grazing systems and the more closed boundary systems that conservancies promote to manage rangelands.²⁰² It also noted that landscape-level livestock movements, often led by armed herders disrespect conservancies' core-

¹⁹⁹ See for example, NRT Grazing, [Grazing By-Laws Development Workshop Report](#), 6-7 July 2013.

²⁰⁰ Kathleen A. Galvin et al., Northern Rangelands Trust (NRT) Rangelands Program Assessment, US Forest Service, 31 July 2021.

²⁰¹ NRT Grazing, op. cit.

²⁰² [NRT Strategic Plan 2018-2022](#) at page 8.

conservation areas, forcibly opting to graze where and when they can, lest someone else takes the grass.²⁰³

298. In *Security Dynamics in Conservancies in Kenya: The Case of Isiolo County*, Kennedy Mkutu explains the Dedha system and the challenges it is facing as follows:

The Dedha system is the traditional Borana grazing system that entails rules for judicious and considerate use of water sources, pasture and forest, to limit overexploitation and also taxes migrating pastoralists who wish to use the land. The system extends down to the village level, with the Ola being the smallest unit overseeing around ten to twenty households, followed by the intermediate unit, the Arda, and the Dedha overseeing a larger area approximating a county ward. 6 The Borana expect pastoral groups entering Isiolo County from outside to respect the Dedha system and practice negotiated access. However, especially at times of climatic pressures, these do not and, instead, forcefully demand access by using their arms.²⁰⁴

299. A key feature of the Dedha system is that it was landscape-scale and not limited or impacted by community conservancy boundary areas. Recognizing this, NRT at one point sought to establish regional grazing committees with representatives from multiple conservancies. This proved difficult to manage and in 2017 NRT stated its intention to phase out these committees and leave decisions on rangeland management to individual conservancy boards and managers.²⁰⁵
300. On access to water, Isiolo County is mostly arid with serious water issues. However, the total demand for human and livestock drinking water in Isiolo District (table 3) is 6,018 m³ per day. This corresponds to about 2.2 million m³ per year. It excludes water demand for agriculture, pasture, and commercial uses.²⁰⁶ River Ewaso Ng'iro North cuts through Isiolo County, but water levels have been reducing while the loss of aquifers has reduced the flow of water. Even though the river has always been seasonal in Isiolo County, the danger of it drying up looks imminent.²⁰⁷ Other sources of water include boreholes and pans distributed in parts of the county.
301. NRT has invested in water provision in its member community conservancies over the years to promote access to safe and reliable water for people, wildlife, and livestock. This includes, for example, water supplies in villages and schools, water pans for wildlife, and

²⁰³ Ibid.

²⁰⁴ Mkutu, Mar. 2020, op cit.

²⁰⁵ Ibid.

²⁰⁶ Bancy M. Mati et al., [Assessing Water Availability under Pastoral Livestock Systems in Drought-prone Isiolo District, Kenya](#) (2006).

²⁰⁷ Pauline Ongaji, Kenya: Once Mighty Ewaso Ng'iro Stares at Grim Reality of Drying Up, All Africa News, 19 April 2021 at <https://allafrica.com/stories/202104200052.html>

water supplies for conservancy headquarters, ranger outposts, and tourism facilities. Specific water infrastructure projects have included drilling boreholes, shallow protected wells, pipeline extensions, spring protections, and investment in rainwater harvesting through guttering and storage tanks, and rock catchments.²⁰⁸ It has designed further water developments strategies for the period 2022-2024.

302. No evidence has been found regarding denial of access to water. Evidence of NRT investments in water indicate a strong commitment to support rather than deny communities' water. Besides NRT, Isiolo County Government and other donors are also addressing water issues for Isiolo County residents.



III. Specific Factual Findings

A. *Alleged taking of community lands*

303. Generalized concern about the loss of land and land rights is woven throughout the Oakland Report, including an early section on 'Land Injustice' in Kenya historically. When it comes to specific claims of loss of land or land rights, however, the Oakland Report abruptly switches its focus from NRT to the Kenyan government, the Kenyan Forest Service, the Kenyan Wildlife Service, and claims of government-backed forced evictions and related human rights violations. Although we acknowledge the long and tragic history and prevailing impacts of colonization and land dispossession practices in Kenya, these claims are outside the scope of this DDR.
304. The Oakland Report does set forth a few allegations and opinions about conservancies setting rules and allocations on grazing rights and a single allegation of loss of access rights related to alleged NRT camp sites. These allegations are addressed in turn below.
305. Despite the Oakland Report's failure to specify any such loss, the DDA team viewed the issue to be of sufficient concern to include in its investigation. The DDA questioned community members and county government officials in Ruko, Namunyak, Il Ngwesi, Lekuruki, Kurikuri, Kinna, and Biliqo Bulesa. We found no evidence of loss of land. To the extent there remained any doubt, the question was presented to Mr. Diba Kiyana Golicha, who is quoted in the Oakland Report as saying that conservancy leaders are 'at the forefront' of 'selling out land to the white man.' When asked directly, Mr. Golicha acknowledged that the issue was politicized in order to draw attention to the desperate

²⁰⁸ NRT, [Water Program Strategy 2020-2024](#).

situation the community faces in terms of security. In his words, claims of land loss and attacks on NRT are ‘just politics—our concern is the Samburu.’²⁰⁹ He added:

‘The conservancy has been in existence for 13 years. Let those claiming that the conservancy will take their land show us a single acre it has taken for the last 13 years.’²¹⁰

The DDA finds **no support** for the allegation that land has been taken from communities.

306. Looking forward, it is worth noting that the registration of community lands in Laikipia, Samburu, and Isiolo has picked up. Most of the lands that have already been registered or are in the process of being registered are also conservancies. The registration will allay fears of land grabs through conservation. Below is a table with information from IMPACT, an organisation that helps communities with the registration process, indicating the status of registration of community lands in the three counties.

County	Name of Conservancy	Group Ranch Transitioned to Community Land	Still in the Process of Transitioning
Laikipia	Il Ngwesi	Il Ngwesi	
	Mayiannat	Mayiannat	
	Kuri Kuri	Kuri Kuri	
	Lekuruki	Lekuruki	
	Naibung’a	Musul Tiamamut Il Polei Nkiloriti	Munishoi Il Motiok Koiya Murupusi Kijabe
Samburu	Seraolipi	Seraolipi	
	Meibai	Ltirimini	Lpus Nkaroni Meibai Sesia Nkutuk Ongiron
	Namunyak		Ngilai East Ngilai West Sapache Sarara

²⁰⁹ Interview, Diba Kiyana and other elders in Bulesa, 4th May 2022.

²¹⁰ Ibid.

Isiolo			*see below
--------	--	--	------------

307. Community land registration in Isiolo has not started because of political differences around how it should be done. The differences between Governor Dr Kuti and Senator Fatuma Dullo, Woman Rep Rehema Jaldesa, Nominated Senator Abshiro Halake, and MPs Abdi Koropu and Hassan Odha of Isiolo South and North has delayed the process.²¹¹ There have been proposals to register the lands in the name of specific communities, but this has been opposed.²¹² Proposals to register the lands at the ward or sub-county levels are also being resisted.²¹³ However, the Chairman of Biliqo Bulesa Conservancy informed the DDA that they are in the final stages of registration as community land.²¹⁴
308. Additionally, several communities have gained land from NRT. The situation of Lekuruki is explained above. Il Ngwesi Community Conservancy has also gained land through conservation. Il Ngwesi community land consists of 8,645 hectares of community-managed land located in Mukogodo Division, Laikipia District, north of Mount Kenya. The ranch is owned and managed by the local population of almost 7,000 Laikipiak Maasai pastoralists. Through the support of Lewa Downs, now Lewa Conservancy, Il Ngwesi established a conservation area in 1995 and Il Ngwesi lodge, an ecotourism facility in 1996. Il Ngwesi, a founding member of NRT, has set aside 80% of its land for conservation and has bought 2,000 acres of land outside its community land to ease grazing pressure.²¹⁵

B. Alleged Restriction on Access and Monitoring of Potential Hotel/Camp Sites

309. The Oakland Report alleges that ‘community members from Kula Mawe claim that NRT planned to build a hotel and a spa where the hot spring is located and that the area was fenced off in 2009 and 2010. . . . In response, people protested and destroyed the fence; however, NRT reportedly continued to monitor the site, blocking the community from accessing the spring.’²¹⁶

²¹¹ Waweru Wairimu, *Leaders differ over Isiolo community land registration as meeting aborts*, 12 May 2021 at <https://nation.africa/kenya/counties/isiolo/leaders-differ-over-isiolo-community-land-meeting-3398250>

²¹² Press Point, *Isiolo Community opposes community land registration in wards*, 15 July 2021 at <https://thepresspoint.com/news-today/somali-community-opposes-wards-community-land-registration/>

²¹³ Tukio News, *Isiolo Speaker’s Angle on Community Land Registration*, at <https://www.tukionews.co.ke/isiolo-speakers-angle-on-community-land-registration/>

²¹⁴ Interview in Bulesa, 3 May 2022.

²¹⁵ Il Ngwesi, supporting communities, April 2016. <http://ilngwesi.com/content/visit/2016/04/04/supporting-communities/>. Also Interview with Il Ngwesi CEO in Nanyuki, March 2022.

²¹⁶ Oakland Report at 30.

310. The text and footnote 255 source this claim to Mr. Ali Abdi Rehman and the BCE Report. The footnote also, unusually for the report, restates NRT's denial of the allegation and offer of proof in the form of radio logs and patrol plans that would show it has no rangers stationed in Kuro Bissan Owo. It does not appear that Oakland requested the radio logs to confirm the allegation before republishing the allegation.
311. The report also alleges that communities 'lost much of their grazing areas and rights to access their lands after NRT attempted to set up camp sites in the area.'²¹⁷ The source is the BCE Report.
312. Kuro Bissan Owo is a natural hot spring found in Chari Ward of Merti Sub-County, Isiolo County. It is located 65km South West of Merti town in the heart of the magnificent Chari drought grazing reserve. The pastoralists' communities living within the greater Isiolo County and even the bordering counties of Samburu and Marsabit have for ages relied on Kuro hot springs for its mystic medicinal value both for human beings and the livestock.²¹⁸ This has made it a tradition for the pastoralist from far and wide to at least ensure their livestock partake of the Kuro Spring Water on an annual basis.²¹⁹
313. Kula Mawe and Kuro Bissan Owo are about 150 to 170 kilometres apart. Kula Mawe is in Kinna Conservancy. Between Kinna and Biliqo Bulesa where Kuro Bisan Owo is located, there is Nakuprat Gotu Conservancy. All residents of Biliqo Bulesa the DDA spoke to were unfamiliar with any plans to build a hotel in Kuro Bisan Owo thus corroborating NRT's denials.
314. Multiple residents of Biliqo Bulesa explained that the area was fenced off by Merti Integrated Development Programme (MID-P) as part of protecting the spring.²²⁰ The team interviewed Mr. Molu Tepo, the Executive Director of MID -P who confirmed that he was the initiator of the fencing at the request of the community. According to Mr. Tepo, in 2014, Borana community members approached MID-P to secure the main eye/source of the water from siltation resulting from livestock and wildlife interference. MID-P did a 1 metre by 1 metre by 1 metre wall and two troughs to prevent livestock and wildlife from accessing the main spring. However, this was destroyed by elephants.²²¹
315. However, on 4 April 2015, a Mr. Boru Godana, a former employee of MID-P described a consultative process to rehabilitate the damaged spring 'purposely to avoid any complaints as was evidenced when a wealthy conservationist in the area went ahead to

²¹⁷ Oakland Report at 31.

²¹⁸ Partners for Resilience, [Building Resilient Communities: Case studies from PFR in Kenya](#).

²¹⁹ Ibid.

²²⁰ Interview with Snr Chief of Bulesa, Guyo Galgalo, Shiekh Adam, Wadera Okoba, and Abdi Noor in Bulesa, 4 May 2022.

²²¹ Phone interview with Mr. Molu Tepo, Managing Director, MID-P, 9 May 2022.

protect the spring only for it to be demolished as they claimed that was a ploy to grab their land and chase them from the area in favour of wildlife conservation.’²²²

316. The DDA did find that management of Biliqo Bulesa Conservancy intended to establish a camp (bandas) at Babala. NRT gave the Conservancy KSh 8 million for the project but they have been unable to implement because of security reasons.²²³ The conservancy had established three rangers posts— Kom, Babala and Kismitir—but they have abandoned the camps because of regular attacks by Samburu morans. The KSh 8 million for the bandas has been reallocated to purchase of a community motor vehicle (KSh 5 million) and bursaries (KSh 3 million) in the coming months.
317. The DDA questioned conservancy managers, community leaders, and community members about whether the referenced camp sites were perceived as threatening loss of access and grazing rights, or if there were any other NRT attempts to set up camp sites in the area. No one had heard of any other camp sites or recalled concerns about grazing related to the camp sites. On the contrary, the current and former management of the conservancy request a lodge in the conservancy to boost the conservancy revenues.
318. The DDA considers that the inclusion of NRT’s flat denial and offer of proof concerning the allegation in the relevant footnote of the Oakland Report constitutes a withdrawal of the allegation concerning NRT attempt to establish a hotel at Kura Bisan Owo and/or to monitor the area. The additional investigation conducted by the DDA confirms that there is **no evidence** for this allegation or the allegation concerning camp sites.



Abandoned ranger camp in Babala



Kismitir, Biliqo Bulesa Conservancy

²²² Boru Godana, Protecting fragile Ecosystem-Kuro Bisan-Owo spring, 4 April 2015 at <https://rsr.akvo.org/en/project/1924/update/9016/>

²²³ Phone interview with Biliqo Bulesa conservancy manager, 9 May 2021.

C. Alleged undermining the Dheda Grazing Management System

319. Community fears over loss of grazing lands and complications concerning allocation of grazing rights is evident throughout the Oakland Report. Grazing-related issues in the communities are certainly many and complex. See above Section II.B. The only allegation in the Oakland Report found to specifically reference the impact of NRT is at page 34:

NRT's entry had changed traditional ways of resolving conflicts. Their involvement has replaced the power and traditional governance structures of communities in the North, in favor of the conservancy model which saw conservancy managers, security scouts, and members of conservancy boards take over decision making roles that were the preserve of elders in the community. This has led to the undermining of traditional resource systems like the Dheda management system which was previously in place to solve community tensions and delineate grazing areas for different communities in times of drought.

320. It must first be observed that the Dheda system is a Borana system so any impact is limited to Borana conservancies. It cannot be denied that the introduction of conservancies has had an impact on rangeland management as well as the free movement of pastoralists. Communities, through grazing committees, are choosing to regulate and allocate grazing rights to address many issues.
321. At the same time, there is evidence that grazing committees and NRT have taken steps to try to harmonize the different interests and management systems involved. NRT describes its efforts as follows:
322. With respect to the allegation of 'undermining,' one critical point is that most if not all community conservancy areas are also seeking to register lands under the Community Land Act. If and when they are successful, these communities would be required to establish managements system with similar managers, boards, bylaws, and committees that have been set up for the conservancies. These community lands institutions would co-exist or 'undermine' traditional management systems to the same or greater extent than what may be evident with conservancies.
323. While the DDA team found evidence of community members interested in strengthening the Dheda system, these members all sought to do so by integrating Dheda and conservancy management systems, not by eliminating conservancies.
324. The DDA concludes there is evidence that conservancies have impacted Dheda management system, but **no support** for the allegation that they 'undermine' that system.

IV. Concluding Observations on Objective 3

325. This DDR has not found any evidence to support the specific allegations or generalized suggestions of community loss of land or access to land contained in the Oakland Report. The DDR has also not found support for the claim that conservancies are undermining the Borana's Dheda grazing management system, although certainly the emergence of conservancies has had a range of impacts.
326. It is undeniable that conflicts over land rights and fear of loss of land rights, including grazing rights, permeate the social and political dynamics of northern Kenya. There are many important and difficult issues. The Oakland Report is not wrong to draw attention to these issues, and it accurately reflects community concerns in a general sense. We note in particular that the registration of lands and establishment of governance mechanisms under the Community Land Act, as urged by the Oakland Report and many others, will also have a range of impacts.
327. NRT, communities, and government actors will all need to be sensitive to potential human rights impacts and social and political dynamics in the region moving forward. NRT should ensure it has fully-integrated human rights policies and reliable, demonstrable HRDD practices in place to continuously understand, monitor, and address issues to avoid escalation of conflicts.
328. See also Concluding Observations to the Factual Objectives, below.

OBJECTIVE 4: OAKLAND'S METHODOLOGY AND SOURCING

I. Terms of Reference

329. For this objective, the DDA has been asked to address 'the methodology and sourcing used by the Oakland Report and the extent of specific factual corroboration provided by sources relied on by the Oakland Report.'
330. The DDA considers that sufficient attention has been provided to Oakland's methodology and sourcing in the foregoing objectives to satisfy this Objective.

CONCLUDING OBSERVATIONS TO THE FACTUAL OBJECTIVES

331. As detailed extensively in this DDR, the role of politics and the practice of strategic leverage of false allegations was woefully underappreciated in the Oakland Report. If the report had considered and discounted these concerns for specific reasons, that would be one thing. But there is simply no attention paid to such concerns in the report at all. As hard as it is to believe given Oakland's apparent calibre and available resources, the DDA is left with the hard conclusion that Oakland researchers essentially parachuted into a highly complex situation and allowed themselves to be manipulated by a small group of politically-motivated and self-interested NRT critics.

332. This account is actually consistent with Oakland's admission that it arrived in the region to research a different issue. As such, it admits it had not done foundational research on NRT and the issues with community conservancies before arriving in Isiolo County for the key meetings in June 2019 analysed above. This would be unproblematic if Oakland had subsequently followed-up with additional meetings designed to ensure representativeness of the views it haphazardly encountered at those early meetings. But the June 2019 meetings appear to be the only on-the-ground field research cited in the report. A failure to more thoroughly investigate and corroborate its original sources with additional field research (not just desk research and electronic communications with existing sources) would be, if true, highly unprofessional. To choose to publish severe allegations based on insufficient and uncorroborated evidence would be even more so.
333. The result of our research is a striking situation where, after extensive efforts in the field including dozens of interviews and documentary investigation, this DDR finds:
- No evidence suggesting that any killing cited in the Oakland Report was linked to NRT in any way.
 - No evidence suggesting that NRT-directed assets (vehicles, weapons) were being used to 'fuel conflict.'
 - Substantial evidence that claims against NRT are being made for reasons of political and personal self-interest, or in some cases in sheer desperation by communities facing a grave insecurity situation and in dire need of attention and resources.
 - No evidence validating or verifying any of the Oakland Report's allegations of corruption, whether or not linked to NRT.
 - No evidence that communities or individuals had lost land rights or access to NRT or its member conservancies. Certainly, there are ongoing grievances about grazing rights and allocations decisions made by conservancy grazing committees, but this cannot be surprising and there was no evidence of NRT itself controlling or impacting grazing rights and allocations.
 - No evidence that the procedures or operations of conservancies identified in the Oakland Report were subject to direct control, coercion, 'strong-arming,' or improper use of influence by NRT.
334. As emphasized throughout this DDR, it is natural, expected, and even welcome that individuals and groups will disagree with NRT's approach. They will organise, share their opinions, petition institutions and leaders, and perhaps even go to court. This is the democratic and social process at work. It breaks down when the rule of law breaks down—violence, corruption, coercion, and contravention of basic human rights guarantees. The Oakland Report tried to make the case that NRT has been violating the

democratic and social process. But as we have seen, it could only do so with demonstrably false and unsubstantiated claims.

335. This vindication does not, however, erase the complexity and controversy resulting from perceptions of NRT's growing role and influence in security, governance, and rights issues in region. This is exemplified by the deeply-rooted perceptions within Borana communities that NRT is favourable to the Samburu. This is a perception, but NRT could have done a better job anticipating and mitigating related impacts, which are important because community perceptions can end up driving cooperation and conflict on a range of issues that impact human rights.
336. NRT's links to the human rights impacts discussed in this DDR are indirect and often unavoidable and/or subsumed by other factors. For example, the increase in firearms in Samburu communities linked to large number of conservancy rangers acting as licensed NPRs is only part of a larger increase including licensed civilian NPRs, who operate with far less accountability. And the increase in wealth and resources available to Samburu communities attributable to their early embrace of the conservancy model cannot be simply condemned, although it could have been mitigated with earlier and more substantial attention to balance of power considerations and corresponding effort to work with Borana communities.
337. Concerning the one conservancy we closely examined in terms of FPIC (Biliqo Bulesa), the DDR finds that the conservancy creation process was driven by a few community leaders with close NRT involvement, and with a speed, efficiency, and lack of documentation that does raise concerns about comprehensiveness. At the same time, the creation process did appear to 'tick all the boxes' for FPIC. This process occurred over a decade ago and more detailed information about whether FPIC was established was not available. Given that FPIC is an ongoing process that must be continuously sustained, the DDA determined that a formal conclusion on FPIC in the creation of Biliqo Bulesa was not warranted. The DDA did find additional problems and concerns regarding 'ongoing' FPIC, which conservancy leaders seemed well aware of and were seeking resources to address.
338. The DDR also finds that NRT's involvement in providing security and seeking to resolve cattle rustling conflicts, while well-intentioned, puts NRT in a difficult situation which, again unsurprisingly, gives rise to a range of community concerns. NRT is not the government, and when it acts like the government without the necessary underlying legitimating authority, it cannot be surprised when aggrieved parties to its actions respond not by not only challenging the result but also challenging the legitimacy of the overall system.
339. The DDR finds the same pattern regarding NRT's undeniably beneficial provisions of market participation, health care, water, and other community services. As detailed in the Recommendations below, NRT must find a way of structuring the services it provides in

a manner more transparently accountable to government authority so that it is not perceived as becoming the government itself.

340. Upon reflection, the DDA team concludes that many of the above concerns emerge from foundational problems with how NRT understands and addresses human rights impacts and how it communicates with communities and with its critics. NRT efforts to mitigate severe human rights issues in the region are plentiful (*e.g.* its conflict resolution and peace-building programmes; its provision of social services) but seem to emerge *ad hoc* rather than from a structured human rights due diligence process that could ensure documentation, transparency, and better rightsholder engagement and co-created mitigation strategies.
341. NRT also displays a tendency to dismiss community perception issues it strongly disagrees with. In so doing, it fails to recognize that the perception issues themselves can come to drive larger dynamics, resulting in lower-quality community engagement and spiralling effects such as false allegations and the emergence of political opportunities for attacking NRT. The tendency we found does *not* characterize NRT's efforts as a whole, but emerges in certain cases which seem to 'hit a nerve' and trigger an unduly personalized and contentious response pattern, including the threat of litigation against community members described above.
342. NRT should have well-structured policies and procedures in place to help it maintain focus on the underlying human rights issues involved even in difficult situations. Instead of responding with a sense of outrage driven by the knowledge that it 'knows' the issues better than its critics, NRT should aim to institutionalize the need to ground responses in de-escalation and cooperation, integrating new expressions of concerns into legitimate, transparent, inclusive, and ongoing human rights due diligence (HRDD) processes.
343. Strong HRDD could have helped NRT address some of the issues identified in this DDR as follows:
 - With respect to the high level of conflict in the region generally, a proper HRDD process that fully highlighted the extraordinary difficulties of working in such environments may have led NRT to adjust away from its typically successful 'fast-forward' approach to conservation and community development and instead to focus on deeply understanding the conflict and the potential impacts of any activity prior to taking any action.
 - HRDD could have uncovered the potential impact that working extensively with Samburu communities out of proportion to Borana communities would have on the regional balance of power, as discussed above. An ongoing HRDD process would not only have flagged the issue but should have involved rightsholder-based processes to develop and monitor mitigation options.

- NRT should have conducted more thorough and transparent HRDD process in response to the BCE Report. NRT strongly disagreed with the findings of the BCE Report and we note our own concerns over the lack of sourcing behind almost all of the claims therein. But these feelings did not justify minimizing the response to the rebuttal analysed above, much less the decision to couch the rebuttal in such a heated tone. NRT should have at least created a clear record of its efforts to engage the BCE on the report and to assess its findings, as this DDR has done with regards to the Oakland Report.
- HRDD could have spurred NRT to invest earlier and more substantially in efforts to support ‘ongoing FPIC’ in member conservancies facing major resource constraints, such as Biliqo Bulesa. NRT’s increased HRDD practices have already led it to increase focus on FPIC, for example in connection with its carbon project.
- Fully integrated human rights policies and robust HRDD practices will be particularly important as NRT moves to address concerns and complex impacts related to its role as a *de facto* authority figure in security and social services, as analysed above.

344. Near the end of the research process, the DDA was allowed to review a draft Human Rights Policy that NRT is developing with the assistance of a leading and experienced international law firm. This is encouraging. There is no doubt that there are many aspects to NRT that this DDR fails to appreciate on account of the limited scope. For this reason and others, the recommendations that follow are presented in an intentionally flexible form—a ‘menu of options’—that NRT and Joint Supporter leadership may consider as they make decisions on next steps.

OBJECTIVE 5: RECOMMENDATIONS ON FURTHER STEPS NEEDED TO FULLY UNDERSTAND THE CONTEXT OF THE ALLEGATIONS

I. Terms of Reference

345. For this objective, the DDA has been asked to provide *‘recommendations as to any further steps that may be needed for Joint Supporters to fully understand the context of the allegations and make determinations of appropriate action.’*
346. The second half of Objective 6 also asks in part for the DDA to provide recommendations of *‘other further steps needed by the Joint Supporters or others to fulfil their human rights due diligence obligations under the circumstances.’* Because of their clear relationship, we will use this section to address both Objective 5 and the second half of Objective 6.
347. The mandate to ‘fully understand the context of the allegations’ aligns with the process of human rights due diligence (HRDD), the first step of which is to fully ‘assess actual and potential human rights’ as part of a multidimensional, ongoing, transparent, and

inclusive process of staying attuned to potential impacts and continuously taking steps to mitigate them. Specifically, the UN Guiding Principles on Business and Human Rights defines HRDD to include at least four components: ‘**assessing** actual and potential human rights impacts, **acting** upon the findings with **mitigation strategies** developed with **rightsholder engagement**, including by using all available **leverage** even where an entity is not causing an impact but is only directly linked to it; **tracking** and monitoring responses; and **communicating** how impacts are addressed.’²²⁴ HRDD should be part of overall policy structure which includes an operationally specific **human rights policy** and an ongoing process to **integrate** policy into operational procedures and practices.

348. The DDA acknowledges that the Objectives reference potential HRDD steps that may be taken *by the Joint Supporters*, although Objective 6 also makes references to ‘others.’ The Joint Supporters are supporters of NRT, the on-the-ground organisation that will ultimately need to implement most potential HRDD steps. Accordingly, the ‘**menu of options**’ presented below as recommendations will focus on what the Joint Supporters can do themselves and what they can use their ‘leverage’ to encourage NRT to do.²²⁵
349. We note that we do **not** consider Objective 5 to expand the scope of factual investigation. Accordingly, the DDA will use information from the investigation into Objectives 1-4 to generate these options and recommendations. The DDA was exposed to substantial information concerning NRT’s approaches and practices to HRDD, including its communication practices as discussed in the Concluding Observations to the Factual Objectives. This information was by no means complete. Additionally, the DDA was not exposed **at all** to information on the Joint Supporters approaches and practices to HRDD. Accordingly, it is expected that NRT and the Joint Supporters may have already implemented, in whole or part or various form, some of the options presented below. This is another reason why options are presented as a ‘menu’ for Joint Supporter and NRT leadership to use in making their own decisions in a transparent and inclusive manner.
350. The DDA observes that this DDR itself is a concrete and substantial HRDD effort undertaken in a timely manner by the Joint Supporters in response to the Oakland Report.

²²⁴ Guiding Principle 17.

²²⁵ We note that ‘leverage’ is an inclusive term that includes not just influence based on funding, but influence by way of encouragement over time in the context of trusting and cooperative relationships.

II. Key Background Issues

A. NRT's practice of Human Rights Due Diligence and response to criticism

351. NRT has devoted significant resources to developing policies and strategies concerning many of the key issues examined in this DDR, including security,²²⁶ water,²²⁷ trading,²²⁸ and more. Many of the operational details reviewed in this DDR amount to HRDD in practice, such as the detailed level of oversight that NRT has established over the locations and activity of its '9' teams.
352. As noted, however, the DDA was exposed to community perceptions, confusions, and complaints that potentially indicate gaps not just in the substance of NRT's policies but in how it goes about developing and implementing those policies. A full assessment of NRT's HRDD practices is not in the scope of the present DDR. Nonetheless, the DDA came to see a link between the concerns encountered in the field and concerns about NRT's approach to addressing and responding to them.
353. NRT's deep well of knowledge and experience on the salient issues is invaluable, but can also at times serve as an obstacle. When NRT strongly feels like it 'knows' the facts of a situation or the answer to a problem, it may be tempting to decide that a more open-ended, impartial, and thoroughly documented investigation is unnecessary. This dynamic is illustrated by NRT's response to the BCE Report.
354. As discussed above in Section II.B.ii to Objective 1, the BCE Report made a number extraordinary claims without any citation to specific evidence, including a claim that up to 70 people had been killed with the assistance of NRT rangers and vehicles. NRT vigorously denied this and other claims in the public rebuttal published in May 2019.²²⁹ When asked about the process of preparing this response, NRT officials indicated that it was conducted by the communications or public relations team; it involved leveraging 'known' information and 'talking with people.' There was no underlying report, structured process, or methodology from which the rebuttal was prepared, and there is no research file documenting the process.
355. The rebuttal itself strikes an outraged and combative tone. It characterizes the allegations as 'wild' no less than seven times. Rather than simply deny many allegations, it cites its own integrity and focuses on its wounded pride—ironically, sometimes leading to

²²⁶ Peace Strategy, op. cit.

²²⁷ See [NRT Water Programme Strategy 2020-2024](#)

²²⁸ Strategic Plan 2018-2022, op. cit.; [BeadWORKS Impact Report 2019](#)

²²⁹ See Rebuttal, op. cit.

answers that fail to make a clear denial.²³⁰ Strikingly, the rebuttal concludes with a clear threat of litigation for damages:

These are wild and defamatory allegations which should be investigated by the Government of Kenya. It is libelous to implicate NRT in these incidences with no evidence, and NRT is considering legal advice to take action against the accusers.

356. NRT acknowledged that this threat was designed to pressure on the BCE to stop making allegations. In our own interviews, we found that it indeed had that effect: Several individuals reported that Borana leaders were very worried about the possibility of legal action at that time. NRT views its response as a success, reporting that after its response the allegations ‘fizzled out’ and did not need to be further examined.
357. NRT also responded to the publication of the Oakland Report. This response reflects some of the same concerns, but also significant improvements. NRT engaged in an exchange of letters prior to the release of the report. The exchange has the same tone and cast as the response to the BCE Report, relying significantly assertions of fact with minimal explanation and focusing on Oakland’s methods and motives.²³¹ NRT’s response following publication, however, was more restrained, committing to ‘thoroughly review all accusations’ and ‘tak[e] any appropriate action recommended by our own internal appraisals.’²³²
358. NRT did thereafter prepare an internal review, which the DDA was allowed to review. As noted above, the DDA respects the confidentiality of the document. However, the DDA is able to convey that the internal review: (a) addresses many allegations with specificity, like this DDR; (b) while it lacks detailed documentation, does provide annexure material in support of many assertions; (c) does not find any substantiation of any factual allegations; and (d) does not find any cause for concern about reports of community fears and discontent, FPIC implementation, or perceptions about NRT’s role,

²³⁰ For example, in response to the allegation that NRT ‘Sent officials to incite and buy off some members of the community’ during a community meeting, NRT responds that ‘NRT has *no business* inciting or buying off members of the community . . . This would go against our core values.’ In response to the claim that it ‘used its influence within the security and administration establishments of Isiolo County to frustrate the desire by the community to hold any meetings,’ NRT responds that it ‘[has] *no power* to prevent any community meetings from happening anywhere at any time.’

²³¹ See https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/pdfpreview/nrt_response_to_oakland_letter.pdf. The response avoided an outright threat of litigation, but just barely. See https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/pdfpreview/nrt_october_2021_response_to_oakland_institute.pdf (‘I would also like to remind you that [you] . . . [have] moral as well as legal responsibilities.’).

²³² See <https://www.nrt-kenya.org/news-2/2021/11/18/nrt-response-to-the-oakland-institutes-report-stealth-game>

and makes no recommendations for further investigation, response, mitigation efforts, or reform.

359. NRT's response pattern reveals a somewhat misguided understanding of the due diligence obligation and an unproductive attitude toward criticism—even unfounded criticism. NRT focuses on truth and falsity, the legitimacy of its critics, and its own injuries. It uses heated rhetoric and adopts categorical positions that are an ill fit for the complexities and nuance evident in many of the salient issues. NRT embraces a win/lose dynamic instead of seeking common ground.
360. Assessment of potential impacts by way of investigation is only one step in the HRDD process. The *purpose* of an HRDD assessment or investigation is also critical: HRDD 'seeks to understand the concerns of potentially affected stakeholders.'²³³ This should be done, ideally, 'by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement.'²³⁴ Where 'such consultation is not possible, [HRDD should rely on] reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society.'²³⁵
361. The obligation to conduct HRDD is not extinguished by a firm belief that the allegations are not true. In fact, such a firm belief may even get in the way. NRT should have considered obtaining an *independent* assessment of the allegations in both the BCE Report and the Oakland Report. If it chose to rely on in-house resources, as it did in response to the Oakland Report, it should have developed and documented procedures aimed at assuring concerned community members that it was genuinely interested in hearing from them.
362. HRDD, as noted above, is a multidimensional, ongoing, transparent, and inclusive process. NRT could have—and still can—designed its response to serve the broader aims of the process, including stimulating stakeholder engagement and building credibility and trust by searching for solutions to grievances and concerns. By focusing narrowly on the truth of certain allegations and ending the inquiry there, NRT may have missed an opportunity to engage with communities—and critics—in a productive manner.

III. Recommendations for Potential HRDD 'Next Steps'

363. The factual findings herein disprove and cast doubt on almost all the severe allegations in the Oakland Report. Accordingly, it is fair to ask whether any responsive actions at all are needed 'in response to' the Oakland Report.

²³³ See UNGP Principle 18 and Commentary.

²³⁴ Ibid.

²³⁵ Ibid.

364. This DDR also confirms the existence and importance of a number of deeply troubling patterns of human rights abuses by various actors in Isiolo County (e.g. the Biliqo insecurity situation) and has found NRT's existing HRDD practices to be lacking in certain respects. As such, it would be inaccurate to interpret this DDR as an 'all clear' signal or a basis to return to 'business as usual.' Careful consideration and diligent efforts toward next steps are in order.
365. The DDA team does not, however, believe that it is well-positioned to make concrete and conclusive recommendations regarding such next steps. ***Such decisions should be made by leadership of the Joint Supporters and NRT***, in an inclusive and transparent fashion, after leadership has had a chance to digest this Report and any further discussion from civil society.
366. Accordingly, the DDA presents below a '**menu of options**' that might be used by leadership to better establish robust and ongoing HRDD processes going forward. ***None of these options is considered necessary or mandatory by itself*** and it would be plainly unrealistic to imagine undertaking all these options at one time. The menu can also be received as a tool to help Joint Supporters and NRT leadership think concretely about HRDD and craft solutions appropriate to their relative contexts.
367. As emphasized throughout, the goal with HRDD is not merely gathering information for a full understanding of actual and potential human rights impacts, but the *full range of process and benefits* of HRDD including improved communication, the building of trust and shared understandings through transparency and rightsholder engagement, and an ongoing process of co-creating and monitoring well-informed mitigation strategies.
368. The DDA is encouraged to learn that NRT is already deep into the process of developing a Human Rights Policy, a process that apparently began before publication of the Oakland Report and that has involved advice and technical assistance from a leading and experienced global law firm.

A. Baseline Recommendation: Human Rights and Security Impact Assessment and/or Conflict Sensitivity Analysis

369. There is one primary exception to the 'menu of options' approach discussed above. This DDR strongly recommends that the Joint Supporters and NRT consider and conduct a detailed strategic analysis on how to pursue their objectives consistent with human rights protection in the context of high levels of violence and ethnic conflict in Isiolo County and northern Kenya generally.
370. The information and strategies that emerge from such an analysis should inform existing peace-building efforts as well as all other efforts and programming. As described in the Concluding Observations to Objective 1, the pursuit of human rights and development objectives in an armed conflict environment presents extraordinary difficulties and risk,

as all issues tend to become framed and driven by the conflict. As a leading peace-building organisation usefully describes:

Well-intentioned aid and investment can influence conflict by bringing new resources and incentives into play. More subtly, they can reinforce and disrupt established cultural norms, hierarchies and authorities in ways that can either reduce or fuel pre-existing tensions. . . It is integral that donors or organisations who engage with conflict-affected contexts fully understand these potential impacts and respond to the effects of their interactions in the area, including gender dynamics.²³⁶

371. The context examined here is a perfect example. Politicians and community leaders from across northern Kenya approach NRT and its activities from the perspective of consolidating political support and generating resources to address urgent security threats. As these efforts variously succeed and fail, NRT and its activities inevitably become interlinked in aspects of the conflict—it can even start to appear like NRT is driving the conflict.
372. Human rights risk assessment in situations of armed conflict is a specialized practice, that draws especially from the experience of efforts to provide humanitarian assistance in conflict areas and similar situations. Another option would be a conflict sensitivity analysis targeted on NRT's actual and potential impacts. Such an analysis would not only provide NRT with information about its impacts and the relevant underlying drivers of conflict but can provide concrete action plans and technical assistance on realistic processes to involve the communities in the identification of conflict sources, explore mitigation options, and build community resilience. A non-exhaustive list of organisations that may be able to help with such an analysis, many of whom are already working in the region, includes Saferworld,²³⁷ Search for Common Ground,²³⁸ Interpeace,²³⁹ the HD Centre,²⁴⁰ Swiss Peace,²⁴¹ and the Life & Peace Institute.²⁴²
373. This DDR strongly recommends that the Joint Supporters and NRT consider commissioning a further assessment on human rights and security issues to strategies and protocols to safeguard human rights risks in this difficult environment.

²³⁶ See Saferworld, *Conflict and Gender Sensitivity*, <https://www.saferworld.org.uk/conflict-and-gender-sensitivity/conflict-and-gender-sensitivity>

²³⁷ Ibid. See Saferworld, *Isiolo County conflict analysis*

²³⁸ <https://www.sfcg.org/kenya/>

²³⁹ <https://www.interpeace.org/programme/interpeace-nairobi-office-1/>

²⁴⁰ <https://www.hdcentre.org/contact/kenya/>

²⁴¹ <https://www.swisspeace.ch/topics/pai/conflict-sensitivity/>

²⁴² <https://life-peace.org/our-work/kenya/>

B. Menu of Potential HRDD Responses and Mechanisms

Category	Option	Involve NRT?	Description
Assessment	HRIA re security / conflict sensitivity analysis	Yes	See Section III.A, above.
Assessment	Follow-up with critics	In part	Seek constructive good faith discussion with Oakland, Borana Council of Elders, and select other critics, despite past relations and histories. Consider proposed next steps generated by discussions.
Assessment	Community consultation	Yes	Host community forums at relevant locations with appropriate timing and funding to ensure participation and openly discuss issues related to community conservancies and NRT's activities.
Assessment	FPIC analysis	Yes	Conduct a more in-depth analysis of how to achieve 'ongoing FPIC' in conservancy operations with available resources.
Tracking	Independent contacts	No	Develop better on-the-ground contacts for ongoing and more independent understanding of impacts.
Leverage	Leadership contacts	Yes	Develop stronger contacts with community leadership and government in order to more effectively push for action to address adverse human rights impacts that are not directly linked to NRT.
Tracking	Coordinated oversight	Yes	Develop coherent periodic (monthly or quarterly) oversight plan involving all major supporters of NRT with clear procedures for receiving and discussing any concerns or issues raised by participants, in the media, or in professional networks.
Tracking	Annual audits	In part	Hire independent advisory firm to conduct annual audits on specified human rights, participation, and governance issues.
Mitigation / Tracking / Remedy	Grievance—reporting aspect	In part	Develop a grievance mechanism (see below) designed to generate information from impacted or concerned communities and individuals. <i>Note</i> that such mechanisms are widely considered ineffective for resource-deprived

Category	Option	Involve NRT?	Description
			communities <i>unless</i> they include significant community education on how the system works and ideally an ‘ombudsperson’ to facilitate potential claimants’ use of the mechanism. Additional impacts that could be generated by such a mechanism must also be considered.
Leverage	Conditional funding	No	Working on a coordinated basis, establish certain HRDD criteria that must be met as a condition to release of Joint Supporters’ funding of NRT. Necessity of this relatively ‘hard’ option may be considered (a) in light of the lack of support for the Oakland Report allegations and (b) the extent of NRT’s self-directed efforts to improve its HRDD processes.
Mitigation	HRDD re future allegations	Yes	Seek from NRT specific plans and procedures on how it will respond to future allegations despite its internal opinions about the validity of the allegations.
Mitigation / Policy	Joint Supporters Human Right Policy	No	Develop a Human Rights Policy tailored to Joint Supporters’ support for NRT. A Human Rights Policy should (a) identify and address key areas of potential impacts and potentially linked NRT practices, and (b) describe an HRDD process for finding and responding to impacts with transparency and rightsholder engagement. See also UNGP Principle 16.
Mitigation / Policy	NRT Human Rights Policy	Yes	NRT is already engaged in this process. See para. 368.
Mitigation	Address ethnic conflict impacts	Yes	Ensure that NRT is taking steps to address adverse impacts linked to its greater level of cooperation with Samburu, especially in proportion to cooperation with Borana. Note that efforts ideally will follow and accord with strategies from the HRIA or conflict sensitivity analysis recommended in Section III.A so as to avoid triggering new or unexpected impacts.
Integration	Review security procedures	Yes	Seek from NRT a review to ensure that its training and operations procedures for NRT ‘9’ teams and other rangers conform to international standards and best practices as reflected in the International Code of Conduct for Private Security and other sources.

Category	Option	Involve NRT?	Description
Integration	Human rights rapid response	Yes	<p>Work with NRT to develop a ‘human rights rapid response’ capacity to address situations of imminent or ongoing human rights violations linked to its operations or over which it has leverage.</p> <p>The necessity of this option may be considered in light of the lack of support for the Oakland Report allegations.</p>
Integration	Community participation and leadership fund	In part	<p>With reference to the FPIC findings and the fact that lack of community participation is a key generator of discontent, establish fund to encourage and institutionalize participation and develop community leadership, including by providing remuneration for community/leadership investment of time and effort.</p>
Remedy	Grievance—compensation aspect	In part	<p>Develop a grievance mechanism (see above) designed to receive complaints of harm from misconduct or abuses linked to NRT or NRT member conservancies, verifying complaints, and providing compensation. <i>Note</i> need for outreach, education, and/or ombudsperson as stated above.</p> <p>The necessity of this option may be considered in light of the lack of support for the Oakland Report allegations.</p>

OBJECTIVE 6: RECOMMENDATIONS ON SPECIFIC ACTIONS AND MEASURES

I. Terms of Reference

374. For this objective, the DDA has been asked, on an optional basis, to provide *‘recommendations as to appropriate actions or measures to promote inclusivity in conservation in Northern Kenya, and suggestions of other further steps needed by the Joint Supporters or others to fulfil their human rights due diligence [HRDD] obligations under the circumstances.’*
375. Recommendations concerning the second half this objective (HRDD steps) have been provided in connection with Objective 5. Accordingly, the DDA will use this objective to provide recommendations as to *‘appropriate actions or measures to promote inclusivity in conservation in Northern Kenya.’*
376. The DDA notes that this is a broad mandate. It should be based on correspondingly broad research and stakeholder engagement, whereas the scope of this DDR is intentionally narrowed to the specific allegations in the Oakland Report. It is true, however, that the DDA team conducted dozens of interviews with conservancy managers, community leaders, community members, and many others in towns and villages throughout the relevant region over the last several months. The team was exposed to a great deal of opinion and perspective, and listened to countless stories of concerns and experiences.
377. Accordingly, while the DDA does not claim an authoritative view on all the issues here, the DDA will offer the following recommendations as a rough translation of what the DDA team heard from the communities as it relates to possible actions and measures that could help improve outcomes on these critical issues in northern Kenya.

II. Recommendations on Specific Actions and Measures

A. Government of Kenya

i. Address security

378. The security situation in northern Kenya must be improved. The situation in Chari Ward is particularly urgent. This is an inherently sensitive area as it is the a critical grazing ground and water source for Borana, Samburu, Rendile, Gabra, and Somali. Despite this, the police camp in Biliqo is not sufficient to contain any community conflict. There are only seven policemen with no vehicle. The office is a rented collapsing mud house and also serves as their accommodation block. They rely on conservancy vehicles for security operations and other issues like access to water. The government should consider elevating the Biliqo post into a bigger police unit with better equipment to monitor and respond to ethnic violence.

379. The JOC at the Isiolo Police headquarters should be made to function more efficiently with proper staff committed to their work.
380. The government should also strategically examine its relationships with private security from NRT and conservancies and take steps to ensure that chain of command is not only institutionalized but also visible to the community. This will lessen the perception in the communities that private security is ‘in charge’ and prone to exacerbate or directly support specific communities.
381. The government should tighten controls around the issuance of weapons to NPRs (rangers and civilians). The DDA recognizes that communities all wish for more firearms. However the DDA saw plenty of evidence that the increase in firearms exacerbates conflict as much or more than it controls it. In particular, the issuance of firearms to civilian NPRs should only occur involving individuals who have been thoroughly vetted and trained, not just on security procedures, but also on human rights. To the extent possible, we also recommend considering installing tracking devices or other technological solutions to monitor firearms held by both civilian and ranger NPRs.
382. Finally, it is necessary to look at those security apparatus and operations in the region to understand the reason why conflicts recur almost monthly. There is a need for a bigger/permanent GSU unit with better weapons, armoured personnel carriers, and drones and standby helicopter to monitor pastoralists’ movements and respond in case of fighting.

ii. Prioritize peace-building

383. In addition to the fundamentally reactionary security efforts noted above, sincere peace-building efforts must be prioritized and funded. All efforts must consider and integrate gender inclusive approaches and methodologies. While gender-based impacts and experiences were beyond the scope of this DDR, it was clear to the DDA team throughout the investigative process that women were uniquely vulnerable to a range of security related impacts. Women appeared to exercise power to ensure consideration and voice, with less power evident (although not absent) in leadership and decision-making. In the security and peace-building area, women’s perspectives and leadership will be essential.
384. The government must recognize that cattle rustling has evolved beyond cultural practices to a more severe pattern of organised criminal activity. Action must be taken with an understanding that criminal gangs are involved. Very little is known about how these gangs are constituted and operate. A first step is a thorough investigation sufficient to understand the nature of these gangs and their connections.
385. Addressing the competing land claims in Isiolo should also be prioritized. This includes accelerating the process of registration of community lands and addressing historical injustices.

386. Investment in infrastructure projects like roads, water, and health are essential to the peace-building process and to centralizing the role of government in the provision of services despite the significant positive investments from NRT and conservancies, that, as noted below, should continue.
387. Finally, politicians who incite violence and conflict, even indirectly, must be held to account. Community education must be undertaken to minimize the ability of irresponsible politicians to exploit tensions and other situations for political and self-interest purposes.

B. Isiolo County Government

388. The County Government Act reflects a process of devolution that was meant to bring services closer to the people, ensuring accountability and participation. The people's connection to and sense of control over the provision of basic services like health care, water, and roads is essential to social functioning and citizenship. The DDA can understand the temptation of the resource-strapped county government to see services being provided by NRT and decide to dedicate resources elsewhere. But that ultimately leads to the many social problems and discontent described in this DDR. The county government must recognize and fulfil its responsibility to provide these services, even where other temporary solutions offered by NRT and international donors are available.
389. Additionally, the facts concerning the provision of services are very concerning in many areas. For example, the dispensary in Biliqo, built by NRT with the support of the government of Hungary, is in dire need of medicine (a responsibility of the county government). In Kula Mawe, the communities are requesting an additional water trough for wildlife away from the community water point because presently when community members go for water they invariably encounter difficulties with wildlife. Ambulances are required in Kula Mawe, Biliqo, Kom, and other towns because of the huge distances and poor road networks to Isiolo referral hospital. These are just some examples.
390. The DDA recognizes the budgetary constraints at issue. Isiolo County had a budget of KSh 5.5 billion in the 2021-2022 financial year. Against a population of about 270,000, this translates to approximately KSh 20,370 per person. However, 63% (KSh 3,373,772,135) was earmarked for recurrent expenses. Additional funding and allocations should be reconsidered so that more funding goes toward development projects and provision of social services.
391. The county government should also take more interest in supporting conservancies in Isiolo County. Though the Oakland Report highlights challenges in Biliqo Bulela Conservancy, the fact is that conservancies now cover almost the entirety of the county. Although participation issues have been highlighted in this DDR, this fact nonetheless indicates an increasing acceptance and desire by communities for well-functioning, income-generating conservancies. Isiolo County might learn from the experience of

Samburu County, which maintains good relationships and funds community conservancies over KSh 100,000,000 annually.

392. The county government should also actively participate in efforts to address the security situation as discussed above.
393. Climate change plays a significant role in the conflicts in Isiolo. The county government should therefore work in collaboration with the national government and the international community to develop robust climate change response strategies in Isiolo. This will include addressing pasture issues, water and desertification, and environmental degradation across the county. Investing in and expanding community livelihoods or opportunities as opposed to just on reliance of livestock should be at the centre of the strategies. However, alternative livelihood opportunities must be analyzed to ensure a strong cultural match.

C. NRT and Member Conservancies

394. The DDA team did encounter concerns and complaints about NRT activities during the research process. Many but not all of these are reflected in this DDR. Based on our experience, the DDA offers the following recommendations of steps that NRT might take to begin to address concerns.
395. Registration of community lands provides a great opportunity for merging the community-based approach epitomized by the community conservancy model with the governance authority needed when many of the complex issues raised by land management are encountered. NRT should prioritize working with communities, conservancies, and the county and national government to accelerate land registration processes, especially in Isiolo County.
396. NRT should fully support and engage with the human rights and security assessment recommended in Objective 5. However, NRT should refrain from implementing any major changes to security arrangements in the region until that process has been completed. The DDA understands that NRT is considering or is in the process of withdrawing the provision of some security services in response to criticisms. This could generate a new wave of human rights impacts to which NRT would be necessarily linked. Changes must be made, but they must be made in a deliberate manner with mitigation strategies in place to guard against additional impacts.
397. NRT should strongly focus on increasing income opportunities for communities in Isiolo and especially focus on increasing income-based opportunities for the Borana to bring them at par with other communities that have benefited from NRT activities over the years. This includes increasing tourism and trading opportunities in Isiolo and continued investment in basic services for the communities in Isiolo.

398. With respect to the broader questions about the role and responsibilities that NRT fulfils for communities in the region, the DDA recognizes the complexity and difficulty of the question presented. The DDA has already expressed humility concerning the making of detailed operational recommendations based on its experience over several months, whereas NRT has ‘lived’ these issues alongside communities for decades. The DDA feels very comfortable, however, recommending the human rights and security analysis, human rights policy integration, and human rights due diligence options discussed in Objective 5.
399. Concrete and institutionalized due diligence procedures will not only help NRT learn more about issues facing communities, but also stimulate ongoing processes of developing and testing mitigation and monitoring strategies in a transparent and engaged manner. Critically, these processes will also help NRT with another strong recommendation: NRT must not just improve, but transform and reimagine its communications strategies and approaches.
400. NRT must recognize that its critics serve a valuable role in surfacing experiences of communities and rightsholders, who must always be at the centre of the discussion. Within the body of critics there will be those who act with pure cynicism in exaggerating and manipulating communities for political purposes and self-interest. This is unfortunate. Yet it should be recognized that the ability of these actors to do this depends to an extent on the existence of real frustrations and difficulties at the community level and, critically, *on NRT’s own actions and responses*. Where NRT responds to criticism by denouncing and threatening to sue, it simply reinforces critics’ ability to manipulate communities into thinking that NRT is dictatorial and self-interested. If NRT develops the ability to respond in a depersonalized manner based on transparent, community-centered human rights policies and processes, a different result may be achieved.

D. Final Recommendation to Donors

401. The DDR provides the following recommendations to the donors who commissioned this report and the donor and international support community generally. We note as well the HRDD-based recommendations provided in response to Objective 5.
402. We start by noting broadly that the Oakland Report claims that NRT and conservancies ‘devastate’ land and lives in northern Kenya. It recommends that NRT funding be stopped and that NRT ‘withdraw’ from the communities. Based on our extensive experience and dialogue with community members and conservancy participants over the last several months, the DDA team could not disagree more. NRT does not devastate land and lives, although the abrupt withdrawal of NRT would certainly do so.
403. As stated at the outset, this DDR recognizes the valuable role and range of responsibilities that NRT fulfils for people and nature in northern Kenya. NRT is a significant source of funding through its conservation, tourism, trading, and now carbon; its peace-keeping

activities help reduce the intensity and impact of community violence; its livestock recovery programme helps reduce conflict; its trading programme is an appreciated and significant part of income solutions for many pastoralists. Poaching and habitat degradation has greatly reduced because of NRT and other partners. There is no question that we urge donors stay committed to supporting NRT programming and development going forward.

404. This does not mean that NRT does not need to undertake significant steps to more fully understand and address the role and impact it is having based on its deep present involvement in so many aspects of community life. NRT's many activities put it right in the middle of countless social controversies and governance problems, and often, due to its resources, leave it in the role of *de facto* government. This is not a sustainable arrangement. Thus it is true that NRT must formulate plans to strategically and gradually 'withdraw' in the form of adjusting its role and responsibilities in accordance with readiness by government and community actors to assume those roles and responsibilities.
405. This process will require significant funding, support, and strategic and technical assistance from donors. Such funding should be provided in the context of a careful human rights and security analysis, the development and integration of detailed human rights policies, and the implementation of robust human rights due diligence processes, as recommended in Objective 5.

As stated at the outset, the contents and views provided in this Due Diligence Review are the sole responsibility of the undersigned. Any errors are also my responsibility alone. At the same time, I offer my gratitude to the many individuals who shared their time and knowledge to help me understand the facts and the background issues as fully as possible.

Great progress has been made on the complex challenges facing communities and nature in Northern Kenya. Many challenges remain, but I am optimistic that diligent and good faith efforts by communities, advocates, and supporters can and will deliver a future of peace and prosperity for this land and its many peoples.



Dr. Kanyinke Sena

ANNEXES

1. Email correspondence between Dr. Sena and Anuradha Mittal
2. Letter dated 31 Mar. 2022 from Dr. Sena to Borana Council of Elders
3. Undated letter from Borana Council of Elders to NRT
4. Letter dated 10 Dec. 2021 from Isiolo Human Rights Defenders to NRT
5. Letter dated 17 Sept. 2019 from the Office of the Director of Public Prosecutions concerning investigation into death of Simon Looru
6. Biliqo Bulesa Conservancy board meeting minutes dated 28 Oct. 2017 and letter dated 30 Oct. 2017.

From: Anuradha Mittal <amittal@oaklandinstitute.org>
Sent: Tuesday, March 29, 2022 3:24 PM
To: Paul Kanyinke Sena <kanyinke@email.arizona.edu>
Subject: Re: [EXT]Re: Link up

Dear Kanyinke,

Thank you for your letter from last week.

Regarding your request for contact information for individuals who are mentioned in our report, as I said in a previous email, it is imperative that you reach out to the respective Council of Elders in the areas these individuals live. You mentioned that you visited Kula Mawe and were not able to find any of them. Community members are pastoral herders who are most often in the rangelands with their livestock. I recommend that you send a letter detailing the background of the investigators, the supporting donors, and an overview of the investigation to the Council of Elders, so they can assist you in your visit and meetings with the community members. I am assuming that they have heard about your visits to different areas and that they are waiting to hear from the investigating team.

I suggest this also because of the intimidation and harassment that has previously been unleashed on individuals sharing their lived experiences with NRT. From our experience, contacting individuals informally on social media or attempts to schedule meetings or phone calls with individuals without proper introduction, go unanswered.

Again, we are encouraged that several NRT donors are taking the allegations raised in our report seriously. The other work examining NRT's impacts, however, should not be overlooked. For instance, the [Fact Finding Report on the Northern Rangelands Trust's Operations in Community Conservancies in Isiolo County](#) done by the Boran Council of Elders & Waaso Professional Forum in April of 2019, petitions that the community members have sent to donors like Danida, may be also be useful. Additionally, you can access some of the documentation used in our report [here](#).

I hope you will find this useful.

Sincerely,

Anuradha

Anuradha Mittal (she/her)
Executive Director, The Oakland Institute
Reframing the Debate, Inspiring Action
www.oaklandinstitute.org

mobile: +1 510 469 5228
twitter: @Mittaloak

P.O. Box 18978, Oakland CA 94619
Follow us on Twitter: @oak_institute
www.facebook.com/oak.institute
www.linkedin.com/company/the-oakland-institute

From: Paul Kanyinke Sena <kanyinke@email.arizona.edu>

Date: Monday, March 21, 2022 at 8:13 PM

To: Anuradha Mittal <amittal@oaklandinstitute.org>

Subject: Re: [EXT]Re: Link up

Dear Anuradha,

Thank you for your email.

As per your request for a letter below, please find attached the letter of request and a list of persons myself and team would like to meet.

Thank you

Kanyinke

On Mar 20, 2022, at 2:49 AM, Anuradha Mittal <amittal@oaklandinstitute.org> wrote:

Dear Kanyinke,

Thanks for your message.

You say that you have reached out to Major Jillo and were unable to find community members on your list in Kula Mawe. It will be helpful to know how you are reaching out to the community and who is assisting you in the outreach.

Given the history of harassment and intimidation faced by the communities on the ground, along with their petitions ignored by the donors for years, as you can imagine, there is very little trust. Instead, there is a lot of fear. It will be important for you to provide a letter to the communities, introducing yourself and an overview of the investigation – including the objectives, timeline, and the names of donors who have contracted you. In the absence of this, it might be difficult for you to obtain interviews and to ask for evidence from individuals and community-based groups.

If you are able to provide us with such a letter, we can share it with our contacts and request their assistance.

Sincerely,

Anuradha

Anuradha Mittal (she/her)
Executive Director, The Oakland Institute
Reframing the Debate, Inspiring Action
www.oaklandinstitute.org

mobile: +1 510 469 5228
twitter: @Mittaloak

P.O. Box 18978, Oakland CA 94619
Follow us on Twitter: @oak_institute
www.facebook.com/oak.institute
www.linkedin.com/company/the-oakland-institute

From: Paul Kanyinke Sena <kanyinke@email.arizona.edu>

Date: Friday, March 18, 2022 at 1:17 AM

To: Anuradha Mittal <amittal@oaklandinstitute.org>

Subject: Re: [EXT]Re: Link up

Dear Anuradha,

Thank you very much for your response.

The fact finding is still in its early stages and I will try as much as possible to contact all mentioned in the report. I will also be happy to reach out to those local communities you mention below. Is it possible to share their contact details? I have also tried to reach out to Major Jillo but he is yet to respond to my requests for a meeting. Please encourage him to meet with me and also to assist with any evidence he might have especially on the extra judicial killings.

I would also appreciate the contact details, including the villages where I can find

1. Enow Aloo Matmolu
2. Ali Noor Ali
3. Son of Guyo Dokata/son of Godana Badasa/Kulat Gashe
4. Adam Issack
5. Eanow Alio
6. Ahmed Abdi Rahman
7. Ibrahim (Kula Mawe)
8. Simon Looru

I visited Kula Mawe and wasn't able to find any of them.

Thank you,

Kanyinke

On Mar 16, 2022, at 8:02 AM, Anuradha Mittal <amittal@oaklandinstitute.org> wrote:

Dear Ole—thank you for reconnecting us – as Kanyinke mentioned, last fall we briefly corresponded over email regarding the proposed eviction of the Maasai from Ngorongoro Conservation Area.

Kanyinke, it is good to be in touch again. Glad to know that you have been brought on to conduct the donor investigation into the serious allegations raised in our report Stealth Game. These allegations echo lived experiences of local communities who have held protests, [signed petitions](#), and initiated [legal action](#) against the presence of NRT on their lands. On March 9, 2022 the community members of the Namunyak Conservancy announced their withdrawal from NRT conservancy membership.

Thanks for sharing that you are reaching out directly to the communities, activists, conservancies, along with NRT and both county and local governments. I should share that I have heard concerns from

local communities who claim that they have not yet been contacted and neither are they aware of your investigation. Past investigations into NRT have been heavily criticized for only consulting a select group of individuals, and we hope that all voices will be heard this time with you leading the effort.

I am available to provide contact information for community-based groups and community members who have long awaited an opportunity to share their experiences with NRT. And I am available to speak to you about our findings and the research.

Thanks for your time and look forward to connecting,

Anuradha

Anuradha Mittal (she/her)
Executive Director, The Oakland Institute
Reframing the Debate, Inspiring Action
www.oaklandinstitute.org

mobile: +1 510 469 5228
twitter: @Mittaloak

P.O. Box 18978, Oakland CA 94619
Follow us on Twitter: @oak_institute
www.facebook.com/oak.institute
www.linkedin.com/company/the-oakland-institute

From: Paul Kanyinke Sena <kanyinke@email.arizona.edu>

Date: Tuesday, March 15, 2022 at 11:56 AM

To: Mali Ole Kaunga <olekaunga@gmail.com>

Cc: Paul Kanyinke Sena <ipacc.director@gmail.com>, Anuradha Mittal
<amittal@oaklandinstitute.org>

Subject: Re: Link up

Dear Kaunga and Anuradha

Thank you so much for the introduction. We had previously exchanged an email or two with Anuradha over Ngorongoro.

Anuradha, i have been tasked by the joint donors of NRT to fact find on the allegations in the stealth report and I am reaching out directly to the communities, activist, conservancies, NRT and both county and local governments. I had planned to reach out to you at a later stage and is still intent on that. Will you be bailable?

Thank yo so much

Kanyinke

Sent from my iPhone

On 15 Mar 2022, at 12:33, Mali Ole Kaunga <olekaunga@gmail.com> wrote:

This is to introduce you To Anuradha Mittal- the director of Oakland institute and key author of the report. It would be good if you reach out formally.

Ole Kaunga

--

It pays to pay attention!

Malih Ole Kaunga

IMPACT

www.impactkenya.org

[A participatory action research programme | Shared Lands \(shared-lands.com\)](#)

T: +254 722 66 30 90

Dr. Kanyinke Sena,
Email: Kanyinke@email.arizona.edu
Phone: +254 725 288 402

The Chairpersons
Borana Council of Elders and Waaso Professionals Forum,
Isiolo
Kenya

31st March 2022

Dear Sirs,

RE: Request for contact information

We have been contracted by the **Joint Donors** supporting the Northern Rangelands Trust (NRT) to investigate certain allegations contained in the Report "[Stealth Game: 'Community Conservancies Devastate Land and Lives Northern, Kenya'](#)" published by the Oakland Institute on 16th November, 2021.

Specifically, we will be looking at: -

1. *Allegations of Killings, physical abuse, harassment, and exacerbation of ethnic conflicts by individuals associated with NRT, with specific focus on allegations contained in pages 33-35 of the report.*
2. *allegations of corruption, coercion, or improper or unfair use of political, social, or personal pressure to influence decision-making regarding the establishment or operations of NRT conservancies, including whether FPIC was undertaken in the establishment and operations of Biliqo Bulesa conservancy among others.*
3. *Any gain or loss of rights to land or access to land associated with NRT or its conservancies*

We had done extensive literature review of Northern Kenya and done preliminary visits to Pokot, Baringo, Samburu and Isiolo counties to understand the broader context of ethnic conflicts in the region, conservation, and human rights and NRT operations in the Counties.

We would like to have the contact details of the families of the alleged victims listed below and a subsequent follow up meeting you to understand the issues further. We will also appreciate any evidence you might have to support all or any of the allegations contained in the report.

We look forward to your cooperation to enable us undertake a thorough and fair fact-finding, in the interest of all parties concerned.

Thank you,

Yours faithfully,



Dr. Kanyinke Sena



BORANA COUNCIL OF ELDERS

P. O. Box 80 – 60300
Isiolo

Tel. 0721 619 264

Email: boranacouncilofelders@yahoo.com

Culture is a vehicle for Unity, Development and Social Advancement. (Culture is Life)

TO WHOM IT MAY CONCERN

We appreciate the historical facts about the inter community conflicts and insecurity challenges it poses in the Isiolo County. We are aware of allegation against the Northern Rangelands Trust (NRT) emanating from insecurity situations and inter community conflicts that is occurring in its area of operations in Isiolo County. For many years, we held view that NRT support other communities especially from neighboring counties who are in conflict with us over the access and use of our rangeland resources without our consent.

We have since initiated two important actions to deal with the problem;

- a) fast track community land registration to address our fears that NRT may supports others through conservancies to take over our community land
- b) initiated discussion with NRT at high level that involves senior Borana elders to understand the intent and input of NRT to community social-economic development in our area.

We have now reached some level of understanding and clarity on the truth about the community conservancies and fact about the NRT model of community development initiatives.

We shall continue with this engagement with objective of resolving all outstanding issues including the allegations against NRT on insecurity matters and community land claims. This initiative has shown positive early results towards harmonious and reciprocal relationships. Four (4) new community groups from the Borana community (Cherab, Sericho, Garbatulla and Kina) have applied to NRT and accepted to join NRT membership as a community conservancy.

We look forward to resolving the issues mutually with NRT and build cordial working relationship in near future.

Yours Sincerely

Borana Council of Elder (BCE)



Contacts: 0712393028/0740502814 /0724508025 / 0724385750

P.O.BOX 350 ISIOLO

Email: ihrdsisiolo@gmail.com

OUR REF: IHRDS/GC/011/2021

**TOM LALAMPAA
THE CHIEF EXECUTIVE OFFICER
NORTHERN RANGELANDS TRUST**

10TH DECEMBER, 2021

Dear Sir,

RE: OAKLAND INSTITUTE REPORT - STEALTH GAME

We acknowledge receipt of your letter regarding Oakland institute report, we as an organization would also like to inform you that we came across the report after it was shared by citizens in different social media platforms.

Though, no any other organization has reached us regarding the same, the following should always remain very clear regarding Isiolo Human Right Defenders (IHRD):-

1. IHRDs being an organization whose line of work and activities is to promote and protect human rights has a properly structured ways of carrying out its program. IHRDs usually engages, work or partner with any organization on any activity in a very clear and formal manner. Therefore, at no time did IHRDs engaged, partnered, or worked with Oakland institute on any activity or project.
2. Banditry and cattle rustling that leads to loss of lives is a common phenomenon among pastoralist community in northern Kenya. There have been allegations of politics and others factors which is based on resources (water / pastures) as the main cause of this heinous act. On many occasions, IHRD has demanded the government to carry out a thorough investigations to bring the perpetrators and those fuelling this crime to book. Therefore, IHRDs has at no time, anywhere and in any document linked any organization to the crime.

3. IHRDs has been in the forefront advocating for community land registration which is a constitutional requirement as per the Community land ACT 2016. In a case of “putting the cart before the horse”, the county government embarked on pushing for conservancy bill instead of fast-tracking the community land registration. As IHRDs, we opposed the conservancy bill not because we are against community-based conservancies but rather, to pressure the county government to fast-track the land registration process.
4. As IHRDs, we cannot deny the existence of individuals or organizations using our name without our knowledge to further their personal or organizational interest.

Finally, in reference to the above, we want to categorically state that we are not part of the Oakland institute report that is misrepresentation of facts.

Yours Sincerely,



IBRAHIM WAKO
COORDINATOR
ISIOLO HUMAN RIGHT DEFENDERS
MOBILE: 0740-502-814

Withdrawn



OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

TELEPHONE: 020-2395001
EMAIL: isiolo@odpp.go.ke

ARDHI HOUSE BUILDING
2ND FLOOR
P.O BOX 739-60300
ISIOLO.

When Replying please quote

Our Ref:

DATE: 17th September, 2019

ODPP/ISO/ADV/2019/(15)

THE SCCIO
DIVISIONAL DCI HEADQUARTERS
P.O. BOX 8,
ISIOLO

RE: CR. 421/344/2019 COMPLAINANT: REPUBLIC THROUGH THE
DECEASED SIMON LOORU
SUSPECT: EKISIN LOTARO AND TACHIRI LOWAKUTOK

Receipt is acknowledged of your letter dated 16th September, 2019 forwarding the above duplicate file for our perusal and advice.

As per the evidence on record, the deceased Simon Looru was in the company of D1 and D2 on 4th September, 2019. The three are charcoal burners and had gone for their business to Burat location. While having lunch, they were shot at by some unidentified attackers who then disappeared. Simon Looru was fatally injured, whereas D1 Raphael Adaban sustained some injuries and was taken to Hospital. D2 Ernest Ekiru managed to escape. D1 and D2 state that they were not able to identify the attackers. Of note however is that both agree that the attackers must have been Somali because of their mode of dressing.

We have carefully perused the evidence and noted as follows:-

- i) The two suspects herein were arrested on the basis of suspicion by a search party which was tracking footprints which may have been left by the attackers (ref. D3 - D6).

- ii) That the two suspects who are members of the KPR, were infact at one point co-opted in the tracking exercise.
- iii) That there is no other evidence linking the suspects to the offence.

In view of the above, we advise that an application be made to court for the release of the suspects who are currently being held at Isiolo Police station for investigations pursuant to a Court Order.

It is noted that the matter is for mention on 23rd September 2019.

In the meantime, the file should remain open and Investigations be intensified to arrest the perpetrators of the offence.

The duplicate file is herewith returned.



JACOB K. MUTAI

SENIOR ASSISTANT OF DIRECTOR OF PUBLIC PROSECUTIONS

FOR: DIRECTOR OF PUBLIC PROSECUTIONS



BILIQO BULESA COMMUNITY CONSERVANCY LTD

Providing Stewardship in Natural Resources & Environmental Conservation

P.O. BOX 734 – 60300 Isiolo

Tel: 0716154926

Email: biliqo-bulesa@nrt-kenya.org

Minute of Board meeting held on 28/10/2017 in Biliqo at 11.30 AM

Members present

1. Habiba Tadicha-Chairlady
2. Jarso Diba-Vise chair
3. Jumale Kunno- Finance chairman
4. Golicha Guyo
5. Hawo Guyo
6. Abdiaziz Adan-V
7. Wako Wada
8. Kutuna Jillo
9. Mahad Abdi
10. Abdirashid Ali
11. Abdi Boya
12. Hawo Golicha
13. Guyo Sora
14. Adan Ali
15. Golicha Jarso
16. Abdi Jattani
17. Gollo Roba

Absent with apology

1. Ibrahim Galgalo-Grazing chairman

In attendance

1. Yasin Mohamed-Regional assistant coordinator
2. Mohamed wako- conservancy manager

AGENDA

1. Matter arising from previous meeting
2. Finance Report

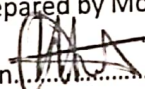
3. Security report
4. Conservancy credit
5. Loan repayment
6. Fate of suspended Rangers
7. Carbon project

Agenda	Discussion	Action
Min,01/28/10/2017	The meeting began at 9.30am with word of prayer presided over by the Kutuna Jillo. Chairlady welcome participates to the meeting and she requested members to respect opinion of each other and encourage members to discuss issues objectively.	
Min,02/28/10/2017	<p><u>Confirmation of the last board meeting</u></p> <p>Manager took members through page by page review of previous meeting and requested members to confirm if minute reflected what had been deliberated during the previous meeting. The minutes was then proposed by Abdi Boya and seconded by Adan Ali.</p>	
Min,03/28/10/2017	<p>Matter arising</p> <ol style="list-style-type: none"> 1. Replacement of rangers- Chairlady confirm to members that NRT had embrace the plea made by board members to replace six rangers who had join other forces and others who resign. NRT representative Mr. Yasin urge board members to conduct awareness on replacement in each effected centers and he proposed that those selected should subject to physical fitness test. 2. Managers Report <ul style="list-style-type: none"> ➤ In managers report extension of Dhima Adho water has been successively implemented in line with NRT Engineers and conservancy management standard. ➤ Construction of Baballa outpost had kicked off with fifty locals gets employed as casual labors. ➤ Drilling of the Qilisa borehole still going on, with 250 fit already drill and only fifty fit remain to get into table of the water. ➤ NRT fix perennial headquarter water crises by installing purification machine (worth 12 million) and machine had capacity of filtering 200 liter fresh water from the salty water in a day. ➤ Manager attended planning week at Lewa, secured preparation of 2018 work plan, Budget, pool fund proposal 	

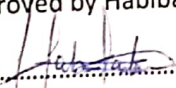
	and working on livelihood proposal. Board members approve livelihood proposal of goat business	
Min 04/03/2017	<p><u>Finance Report</u></p> <p>Manager presented both operation and community accounts to examine if it reconcile with the monthly expenditures for the period under review to enhance prudent financial management. Members scrutinized conservancy expenditures from July to September 2017. Members confirm that manager Not only remit all statutory deduction on time but also paid the conservancy suppliers as soon as NRT finance office credit monthly request to conservancy operation account.</p> <p>The move ensures conservancy adheres to transparency and accountability of conservancy business and sealed loophole subjected to fraud. From the presentation the operation account bank statement read 326,415 inclusive of the salary of six suspended rangers with hold in the account. Finance committees resolute to pay three months salary with hold in the account, October salary and medical benefit in case board terminated the services of suspended rangers. Community account balance remain stagnate (Ksh 102000) for the period under review since there was no transaction. In the budget of 2018 committees proposed inclusion of four x- official members.</p>	
Min,05/03/2017	<p><u>Security Report</u></p> <p>According to warden three elephants were poached, four cases of cattle rustling and five cases of bush burning were reported within the conservancy jurisdiction during the period under review. The conservancy area and beyond did not received rainfall for the whole year thus experienced severe drought which causes hibernation/migration of most of the wildlife. large no of elephants migrated towards Waso block which comprises of settlement area where some locals practises small scale farming, As a result human wildlife conflicts arose which included predator attacks on livestock and crop invasion by wild animals.</p>	
Min,06/03/2017	<p><u>Loan repayments</u></p> <p>Manager claim that some Morans who were given soft loan by NRT T up to date had not repay loan they took and requested their respective board members to take responsibility by ensuring they pay back the arrears effectively. Board members resolute to give one and half month ultimatum for Moran defaulters to clear their bill and failure to that conservancy should seek for legal address.</p>	
Min/07/03/2017	<p><u>The fate of suspended Rangers</u></p> <p>Board members reach consensus on the termination of the services for the four suspended rangers after in depth analyses of their indiscipline cases reported amount to gross misconduct leading to summary dismissal effective from 28/10/2017. The</p>	

	<p>following Rangers were fired</p> <ol style="list-style-type: none"> 1. Halkano Ottona 2. Hussein Guyo 3. Jumale Roba 4. Osman Wario. <p>However, board instructed conservancy management to give them three months salary with hold in operation account and October salary. The two rangers who were not fired should resume to job with last warning letter and not entitle to salary and any benefit for the period they had served suspension.</p>	
Min/08/03/2017	<p>AOB</p> <p>Chairlady presented that driver was not gone for leaf since he was employed as conservancy driver and he support to get leave allowance. According to chairlady, for now conservancy does not have money to pay him. Members resolute to pay him once conservancy gets the income. For long term solution members requested NRT to train two rangers to stay stand by incase normal driver is ill or want go for leave.</p>	
Min,08/03/2017	<p>Closing of the meeting</p> <p>Up on exhausting agenda of the day, meeting was closed at 4.30 pm</p>	

Prepared by Mohamed Wako- Conservancy Manager

Sign.  Date. 26/03/2017

Approved by Habiba Tadicha- Chairlady

Sign.  Date. 28/10/2017



BILIQO BULESA COMMUNITY CONSERVANCY LTD

Providing Stewardship in Natural Resources & Environmental Conservation

P.O. BOX 734 – 60300 Isiolo

Tel: 0716154926

Email: biliqo-bulesa@nrt-kenya.org

FROM: Conservancy Chairperson

To: Halkano Ottona

Date: 30/10/2017

REF: Termination from Services.

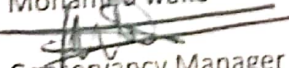
We regret to announce to you that you are fired from serving Biliqo-Bulesa Conservancy as Ranger effective from 28/10/2017. This came after you involved yourself inciting rangers not heed called made by management to resume back to duty station. Apart from that you confronted one board member and you attempted to beat him when he advised you to cool down. The two mistake amount to gross misconduct and board reach consensus of firing you in third quarter Board meeting slated on 28/10/2017.

Board decided to give you three months salary you are serving suspension and this month of October 2017. For conservancy management to facilitate the payment, you must hand over all conservancy assets you poses and also hand over the fire arms to Merti police station.

Hope you are going to cooperate and facilitate smooth transition for you to benefit and for conservancy to get what belong to conservancy.

Regard.

Mohamed wako


Conservancy Manager