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

REFERENCE: AL Indigenous (2001-8)
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21 June 2013

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the rights of indigenous peoples pursuant to Human Rights Council resolution 15/14.

In this connection, I am writing you in connection with allegations received regarding resettlement of agro-pastoralist indigenous groups in the lower Omo valley, in the context of the construction of the Gibe III hydroelectric project and other development initiatives. These issues were the subject of a previous communication to your Government, dated 22 October 2012.

As your Excellency is aware, I have on several previous occasions contacted your Government in relation to the situation of indigenous groups in the lower Omo valley in relation to the construction of the Gibe III hydroelectric dam. Specifically, I sent letters on 10 June 2009 and 18 February 2011, and I also provided observations and recommendations on this situation on 13 July 2011. I was very grateful for your Government's detailed response of 24 August 2011 to my letters. Summaries of our exchange of letters, as well as additional observations I provided in this case, were contained in my 2012 report on communications sent, replies received, and follow up (Ref: A/HRC/21/47.Add.3). I consider that the observations and recommendations I have made in relation to the Gibe III situation are still relevant.

In my most recent letter of 22 October 2012, I transmitted information that I had received regarding the Government's recent resettlement of indigenous agro-pastoralist groups in the lower Omo valley more recently taking place to make way for the Gibe III dam as well as massive commercial agricultural and other development projects in the area, including sugar plantations and road infrastructure. I regret that I have not yet received a response from your Government to my most recent letter of 22 October 2012. However, having cross checked the information received, I consider that in material respects this information is sufficiently credible to indicate a problem that requires attention by the Government of Ethiopia. In an ongoing spirit of constructive dialogue and cooperation, I offer the following observations and recommendations, which I hope

will be of use to your Excellency's Government and to the indigenous peoples involved in this situation.

Observations and recommendations

As a preliminary matter, I urge your Government to immediately undertake an evaluation of the potential effects of any resettlement efforts on the rights of the Suri, Bodi, Mursi, Kwegu and other affected indigenous agro-pastoralist groups in the lower Omo valley. This evaluation should bear in mind relevant contemporary international human rights standards concerning the rights of indigenous peoples, including their rights to property, self-determination, culture, and their rights to set their own priorities for development. The analysis should guide the Government of Ethiopia as it moves forward with development plans within the lower Omo valley area.

I note that, based on the information received and other reliable sources, there are strong indications that the indigenous agro-pastoralist groups potentially affected by the resettlements have been living in the lower Omo valley area for many years, maintaining their culturally distinctive land tenure and way of life, including their traditional flood retreat agriculture practices. Under the United Nations Declaration on the Rights of Indigenous Peoples (article 26) and other international sources of authority, indigenous peoples such as these agro-pastoralist groups have rights over the lands they traditionally use and occupy.

Yet, it appears that, thus far the rights of the agro-pastoralist groups to their traditional lands in the area have not been adequately recognized and respected by the Government of Ethiopia, and are not being taken into account in the resettlement process. The lack of consideration of the potential land and resource rights of affected agro-pastoralist groups runs counter to contemporary human rights standards regarding indigenous peoples, as well as to relevant provisions of the Constitution of the Federal Democratic Republic of Ethiopia. I note that while the Constitution vests all land and resources in the State and the people of Ethiopia (article 40.3), it also recognizes that pastoralists can use land for grazing and cultivation and that they have "the right not to be displaced from their own lands" (article 40.5).

Certainly, like other property interests, the property rights of indigenous peoples based on their traditional land and resource tenure may be subject to limitations for legitimate, non-discriminatory public purposes in accordance with law. I have not received information from your Government regarding the purpose and design of the resettlement programs in the lower Omo valley, although I asked a question in this regard in my letter of 22 October 2012 (question 2). I would continue to welcome any such information. However, I understand from information available that the Government of Ethiopia considers the resettlement to be necessary to make land available for agricultural and other development projects deemed crucial for the national economy.

I will not at this time offer comments about the adequacy of this justification under relevant human rights standards. However, even if, after careful analysis bearing in mind relevant human rights standards, restriction of the rights to land and resources of

these groups is considered a legitimate option, these restrictions should only take place with adequate mitigation measures and, in the case of any removals, with the agreement of the affected indigenous peoples within a participatory, consensus-building process, and the opportunity to return to their traditional lands.

In this regard, I am concerned about the allegations received that no monetary or other compensation has been provided to resettled groups, and that the living conditions in the resettlement areas are inadequate, especially with respect to access to sufficient water to graze livestock and plant crops. Under article 28 of the United Nations Declaration on the Rights of Indigenous Peoples, indigenous peoples have the right “to redress, which can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent”, and “[u]nless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress”.

I am also concerned about the allegations that affected indigenous agro-pastoralist groups have not been participating in the resettlement voluntarily, and that the Government is attempting to coerce specific groups to be relocated, including by preventing individuals from planting crops or from grazing their cattle in the areas from which they are to be moved. In this connection, I would like to note that, while in general removals of people from their traditional lands have serious implications for a wide range of human rights, these implications are greater for indigenous peoples, who generally hold bonds of deep historical and cultural significance to the lands in which they live.

Thus, consent is a precondition for any removal of indigenous peoples from their lands, according to article 10 of the United Nations Declaration on the Rights of Indigenous Peoples, which states that “[i]ndigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned”.

Excellency, given the seriousness of this situation, I urge your Government to evaluate any resettlement efforts in the lower Omo valley to ensure consistency with international standards, including those reviewed in these observations, as well with the Ethiopian Constitution, especially article 40.5. Unless and until any resettlements can take place in accordance with these standards and adequate safeguards are put in place to mitigate any unavoidable impacts on human rights, Ethiopia should cease the resettlement of agro-pastoralist individuals groups in the lower Omo valley.

I would appreciate any comments your Government might have to these observations and recommendations, within 60 days. I undertake to ensure that your Excellency’s Government’s response will be taken into account in any further assessment that I may undertake of this situation and will be reflected in my report on this matter to the Human Rights Council.

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

James Anaya
Special Rapporteur on the rights of indigenous peoples