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Mandate of the Special Rapporteur on the rights of indigenous peoples

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Excellency,

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

In this connection I would like to call the attention of your Excellency's Government to information received regarding **the possible negative impacts of the Lamu Port-South Sudan-Ethiopia Transport Corridor (LAPSSET) project on indigenous peoples inhabiting Lamu County and surrounding areas in Kenya**. The information received alleges that there are serious concerns regarding the effects that the construction of this project would have on the traditional lands, natural resources, and livelihoods of indigenous peoples in Lamu County and surrounding areas.

According to the information received:

The Lamu Port-South Sudan-Ethiopia Transport Corridor (LAPSSET) project is a major infrastructure development project that will span three countries: Kenya, South Sudan and Ethiopia. It will consist of a major shipping port in Lamu County, in the northeastern coast of Kenya, as well as the construction of a major highway, resort cities, airport, oil refinery and pipeline that would interconnect the three countries. The project was officially launched in March 2012, and construction of the port and road has begun.

Concern has been expressed that indigenous peoples within the region encompassing the LAPSSET transport corridor in Kenya, who historically have experienced social, political and economic marginalization, would be particularly affected by the project. Within Lamu County, which has a population of over 100,000 residents, the indigenous peoples consist of hunter-gatherer, pastoralist, fishing and farming groups including the Bajum, Sanye, Aweer and Orma peoples. Outside of Lamu County, other indigenous groups in Kenya that will be potentially affected include the Rendille, Wardei, Samburu, Somali, Borana, Elmolo and Turkana peoples.

The project reportedly will have significant impacts on the lands and livelihoods of indigenous peoples in the LAPSSET corridor, including on lands upon which they traditionally depend for grazing, fishing, mangrove harvesting, hunting and gathering. The project will also allegedly lead to the displacement and relocation of thousands of indigenous people in the Lamu region, severely undermining their

access to traditional land and natural resources. In addition, the population in the Lamu region can be expected to increase up to 1.25 million people over the period of construction of the project, as indicated by a project feasibility study conducted by a private consulting company. Nevertheless, no previous assessment of the social, cultural and environmental impacts of the project was ever carried out.

Further, the situation of land tenure insecurity of indigenous peoples in the LAPSSET project area is not being adequately addressed by the Government. This land tenure security is a result of years of land speculation in the Lamu region, especially by local officials and economic elites, which has led to loss of indigenous traditional lands and access to natural resources. According to the information received, the Government of Kenya has recently taken some steps to address land tenure issues in the region, for example by revoking illegally obtained title deeds in some areas utilized by indigenous peoples, as well as by creating conflict management committees to address conflicts that may arise as the project progresses. However, in general, and despite the recognition of indigenous land and natural resource rights within the new 2010 Constitution, there have been very few government land reform efforts to ensure the land tenure security of indigenous peoples in the Lamu region.

According to the allegations received, no adequate process of consultation has been carried out with these communities. It is alleged that information about the project had been restricted to only a select number of community leaders, members of the Provincial Administration and government officers in Lamu and Nairobi. The majority of the potentially affected indigenous communities have allegedly received very little information about the project itself, and the only meeting with affected communities was carried out three weeks prior to the official launch of the project. In January 2012, a Lamu Port steering committee was created to provide a medium for information to the communities. However, concerns have been raised over the lack of transparency in the selection process of its members and a level of undue external political influence on the members of the committee.

While I do not wish to prejudge the accuracy of these allegations, I would like to draw the attention of your Excellency's Government to relevant international standards that are applicable to the issues brought forth by the situation described above. In particular, I would like to refer to the United Nations Declaration on the Rights of Indigenous Peoples adopted by the General Assembly on 13 September 2007.

Article 20 of the Declaration provides the right of indigenous peoples to "maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities." In its article 26, the Declaration affirms indigenous peoples' rights to the lands, territories and resources that they traditionally owned, occupied or otherwise used or acquired, and for States to give legal recognition to those lands, territories and resources with due respect to their customs, traditions and land tenure systems. Article 32, provides for the right of

indigenous peoples to be consulted “through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploration of mineral, water or other resources.” Furthermore, article 10 provides that indigenous peoples “shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned”.

Further, as I continue to monitor and clarify the circumstances surrounding the present situation, I would be interested in knowing your Excellency’s Government’s views on the accuracy of the information contained in this letter, and I would be grateful to receive any additional information your Government may deem relevant. In particular, I would like to know further information about:

1. The legal status of the lands currently inhabited and used by the indigenous peoples in Lamu County and other areas where the LAPSSET corridor project will be located, and measures taken by the Government to address any claims by these peoples regarding official recognition of their rights over those lands and natural resources;
2. Any consultations that were undertaken with the potentially affected indigenous communities prior to the approval and the official launching of the LAPSSET project, and whether their free, prior and informed consent was sought, particularly concerning any potential relocation and social, cultural and environmental impacts as a result of the project;
3. Any social, cultural and environmental impact assessments were undertaken during the planning phase of the LAPSSET corridor project, and whether the results of those assessments, if any, were made available to the potentially affected indigenous communities;
4. Any measures that have been instituted for providing mitigation, compensation and ongoing monitoring of the impacts of the project on the indigenous communities that would be affected by the project.

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

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

James Anaya
Special Rapporteur on the rights of indigenous peoples