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

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Excellency,

I have the honor 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 bring to the attention of your Excellency's Government allegations received concerning **the alleged recent removal of indigenous consent requirements in the context of infrastructure development projects affecting indigenous forest lands and resources.**

According to the information received:

On 5 February 2013, the Ministry of Environment and Forests allegedly supplanted previous policy orders it had issued in 2009 that made consent by Gram Sabhas (local village councils) mandatory for projects that involve using forest lands for non-forest purposes such as commercial and development projects and activities. Through a circular issued in February 2013 to state and union territory governments (administrative divisions overseen by the national Government), the Ministry of Environment and Forests reportedly created an exemption for consent requirements in the case of modifications to the use of forest lands for the development of what are termed "linear projects". Allegedly, the linear projects contemplated under this circular include the building of roads, canal systems, optical fiber transmission lines, pipelines, and other similar projects that would transverse numerous forestlands. According to the February 2013 circular, such projects are now "exempted from the requirement of obtaining consent of the concerned Gram Sabha(s)" except in the cases where "primitive tribal groups and pre-agricultural communities" are involved.

It is alleged that this consent exemption provision will negatively affect the rights of many indigenous peoples in India who are not "pre-agricultural communities" or "primitive tribal groups" but rather fall under the category of "Forest Dwelling Scheduled Tribes" or "other traditional forest dwellers." According to the

information received, members of Forest Dwelling Scheduled Tribes and other traditional forest dwellers have for generations depended on forestlands for their livelihoods.

The Forest Rights Act of 2006 recognizes the rights of forest-dwelling indigenous peoples to lands they have traditionally used for homestead and cultivation purposes. The Forest Rights Act also affirms the authority of the respective Gram Sabhas to protect forestlands from activities that could affect their natural and cultural heritage and to halt any activity that affects the forests, wildlife and biodiversity of forestlands. Furthermore, under two circulars issued by the Ministry of Environment and Forests in July and August 2009, state and union governments were previously required to obtain the consent of Gram Sabhas for proposed projects that require the modification of use of forestlands to non-forest uses. According to the 2009 circulars, the Gram Sabha must be provided with full details in the local language regarding proposed projects and their related effects. The circulars also required that state and union territory governments obtain a letter from the local Gram Sabha affirming that the Forest Rights Act has been complied with. The letter is also required to state that the respective Gram Sabha consented to the proposed change of forest use and to any compensatory measures related to the project.

It is alleged that removal of the consent requirement will facilitate the development of potentially damaging projects in traditional forestlands without prior consultation or consent of indigenous peoples. Reportedly, the types of projects included within the category of linear projects contemplated under the February 2013 circular include major infrastructure development projects that can result in significant social and environmental impacts. It is alleged that due to their size and scope, these types of projects will traverse numerous indigenous village forests resulting in the clearing of large areas of these forestlands, with negative impacts on local habitat and biodiversity.

It is also alleged that these types of projects could interrupt indigenous peoples' traditional use of their forestlands. Concern has been expressed that areas used for linear development projects require the demarcation of extensive "buffer" areas where traditional forest uses by indigenous peoples may potentially be prohibited. Similarly, concern has been expressed that linear projects may lead to the encroachment on lands inhabited by indigenous peoples and facilitate land grabs by outsiders. Further, it is alleged that the influx of outside workers into the traditional forestlands of forest-dwelling indigenous peoples may cause significant social and health impacts on forest-dwelling communities.

Excellency, in regard to the above information and allegations, I note that the consent requirements established under the 2009 circulars issued by the Ministry of Environment and Forests constituted a Government practice that appeared to be generally consistent with international human rights standards on indigenous land and natural resource rights. The allegations received raise serious concerns that the more recent

circulars issued by that same ministry significantly alter that earlier practice. In light of the above, I would like to draw the attention of your Excellency's Government to relevant articles in the United Nations Declarations on the Rights of Indigenous Peoples, adopted by the United Nations General Assembly on 13 September 2007 and with an affirmative vote by India.

As stated in article 18 of the Declaration, "[i]ndigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures." Under article 19 of the Declaration, "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them." Article 20 affirms 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." Furthermore, Article 32 recognizes the right of indigenous peoples "to determine and develop priorities and strategies for the development or use of their lands or territories and other resources" and 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."

I would be grateful if your Excellency's Government could inform me if the above allegations are accurate and provide any additional information it deems relevant to the situation described in this communication. Specifically, I would be grateful if you could provide responses to the following questions:

1. How does the consent exemption in the February 2013 circular affect the rights of forest dwelling indigenous peoples under the Forest Rights Act and related 2009 circulars?
2. Were forest dwelling indigenous peoples consulted, with a view towards obtaining their consent, prior to the issuance of the February 2013 circular that eases restrictions on consent requirement under the 2009 circulars from the Ministry of Environment and Forests?
3. With the issuance of the 2013 circulars, what legal, procedural, or other mechanisms remain in place to protect the rights of forest dwelling indigenous peoples to lands and resources that may be affected by linear projects? In that connection, are any compensation measures available for forest dwelling indigenous peoples that may be deprived of their lands and resources as a result of the development of linear projects? If so, please provide the details of such compensation measures.

I would appreciate a response within 60 days. I undertake to ensure that your Excellency's Government's response is accurately reflected in the report I will submit to

the Human Rights Council for consideration or in any other public statement I may make in relation to this situation.

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

James Anaya
Special Rapporteur on the rights of indigenous peoples