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Mandate of the Special Rapporteur on the right to food

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Excellency,

I have the honour of addressing you in my capacity as the Special Rapporteur on the right to food pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 13/4.

In this connection, I wish to bring to the attention of your Government information I received regarding the **alleged forced eviction of many subsistence farmers in Northern Uganda and the impact this eviction has had on the affected populations' access to adequate food**. I also wish to draw attention to information received about the delay of the Uganda justice system at providing the affected communities relief.

According to the information we received:

From the 17th to 21st August 2001 the Ugandan army (Uganda People's Defence Force, UPDF), using excessive force, expelled close to 4000 inhabitants of the villages of Kitemba, Luwunga, Kijunga and Kiryamakobe in the Mubende District from their land in order to lease the land to the Kaweri Coffee Plantation Ltd., a 100 per cent subsidiary of the Neumann Kaffee Gruppe based in Hamburg, Germany. Allegedly, a total of 2524 hectares of land were unlawfully seized from these communities.

The affected communities, according to information received, were at all material times lawful bibanja holders and occupants of their respective customary holdings and their tenure was protected by the 1995 Constitution of Uganda and the The Land Act of 1998. According to this Act, specifically Article 29(2)(a), the evictees were bona fide occupants of the land. I understand this to mean that they had occupied and utilized or developed the land unchallenged by the registered owner or agent of the registered owner for twelve years or more. In this case, I am informed that the evictees lived on the land for more than 12 years, unchallenged, and used the land productively for farming purposes.

According to reports, prior to the eviction, the affected communities were food secure. The majority of the evictees were small-scale farmers, producing food both for self-consumption and for sale on the market. Inhabitants with other professions, including teachers, priests and coffee growers, also cultivated plots in the area concerned and produced food for their own consumption.

The affected communities have described the eviction process as brutal and inhuman. According to their reports, the villages were stormed by military personnel who used violent tactics to expel inhabitants from the area. The evictees claim they were forced at gunpoint to leave their homes and land, and that some were beaten. The evictees further report that in the process houses were burnt and demolished, as were a private clinic containing medical equipment and six churches, moveable properties were looted, and subsistence crops destroyed. Once they had the land, the Kaweri Coffee Plantation Ltd. allegedly continued the process of destroying crops and cutting trees and bushes to clear land for the planting of coffee trees.

According to reports almost no compensation was provided to the evicted inhabitants. A few inhabitants allegedly were offered land plots as compensation, but these plots were located in forests, without access to any infrastructure or houses. I have been told that only 2 per cent of the evicted inhabitants were offered this compensation for their displacement, and no other compensation was ever offered.

According to reports living conditions over the last ten years have not been good for those evicted and many do not have proper access to food, either because they no longer have land on which to grow food for their own subsistence, or because there are few sources of employment in the area that pay sufficient wages to provide for a family. With land being a scarce source in Uganda, and as the evictees have lost their source of livelihood, I am told that many have been unable to purchase land elsewhere and have no place to go. In addition,

as many of the evictees have ancestral ties to the land, with their ancestors buried there, they claim leaving the area is not an option.

With nowhere to go, numerous evictees allegedly have been living at the edge of the plantation since the eviction in makeshift homes that they have constructed. In order to sustain their livelihoods, some evictees allegedly have been able to use nearby land for temporary small-scale farming, but apparently this has been insufficient to provide their families with adequate food.

According to allegations received some individuals have been employed at the Kaweri Coffee Plantation Ltd., but are not paid living wages. It would appear that salaries are too low to feed a family, especially given the rise in food prices in the area that resulted from the increased demand in the market caused by individuals losing their farms and food sources in the eviction.

Allegations also suggest that the eviction has reduced access to education for members of the affected community. Firstly, according to reports received, the eviction has led to a decrease in the number of children who can attend secondary school. Parents are either unable to afford school fees, or children are needed to seek wage earning employment to help support their families. Additionally, the building that previously housed the Kitemba primary school is now allegedly used as the headquarters of the Kaweri Company. According to the reports received children of the community are confined to a small area for their new school that is unsuitable for educational purposes.

It appears that in 2002, the evictees sought legal redress for the alleged violations. According to court filings, 2,041 evictees under their association banner Wake and Fight for your Rights, Madudu Group brought the case to the Ugandan High Court (H.C.C.S.No. 179/2002 Baleke Kayira Peter & four others vs. 1. Attorney General, 2. Kaweri Coffee Plantation Ltd.). Reports received indicate that since the filing in 2002 the case has been delayed in Nakawa High Court, Kampala and no substantial decision has been reached. These reports state that there has been yet to be a hearing on the merits. Hearings have been reportedly delayed and postponed because the court was unable to find the case files and due to the transferring of judges and other alleged delay tactics from the Attorney General and the Kaweri Coffee Plantation Ltd.

Allegedly the presiding judge recently requested that both sides submit written affidavits. Allegations received, suggest that the evictees have submitted 10 affidavits, while Kaweri Coffee Plantation Ltd. has submitted one and the Attorney General none. The last hearing took

place on November 1, 2011, and according to reports neither the Attorney General nor the lawyer for the Kawerj Coffee Plantation Ltd. was present. The judge has now reportedly ordered that all future hearings be ex parte, with the next hearing scheduled for 23 January 2012.

Concerns are expressed that the eviction has led to the inability of those evicted to grow or purchase sufficient food for their families. Moreover, concerns have also been expressed about the long-term effects of the eviction on both chronic hunger and malnutrition, but also on the education opportunities of youth. The situation has allegedly negatively impacted the ability of the next generation to gain the education needed to work and to secure resources to feed them and their families today and in the future. Finally, concerns regarding the still pending case have been raised. In the last nine years, allegedly no decision has been taken on the merits of the case, no precautionary measures have been adopted to protect the affected communities and almost no adequate compensation has been provided to the communities for their loss of land and livelihood.

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 the applicable international human rights norms and standards.

Article 25 of the Universal Declaration of Human Rights recognizes the right of everyone "to a standard of living adequate for the health and well-being of himself and of his family, including food." Furthermore article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) -- which Uganda acceded to on 21 January 1987 -- stipulates that States "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions", and requires them to "take appropriate steps to ensure the realization of this right."

The Committee on Economic, Social and Cultural Rights, which monitors the implementation of the Covenant, has defined the core content of the right to food in its General Comment No. 12, along with the corresponding obligations of States to respect, protect and fulfil the right to food. The Committee considers that the core content of the right to adequate food implies, inter alia, availability of food which refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand, and accessibility of food which encompasses both economic and physical accessibility. The obligation to respect existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to fulfil (facilitate) means the State must

pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly. The Committee also emphasizes that any person or group who is a victim of a violation of the right to adequate food should have access to effective judicial or other appropriate remedies, and that all victims of such violations are entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition (E/C.12/1999/5, para. 32). The right to an effective remedy is incompatible with judicial procedures that incur undue delays, as would appear to be the case according to the information received.

The right to adequate food is recognized also in the Convention on the Rights of the Child – ratified by Uganda on 17 August 1990 – in article 24.2(c) and article 27.3. In the Convention, the right to adequate food is to be read in conjunction with the right to life, survival and development stipulated at article 6. States parties to the Convention on the Rights of the Child commit themselves to combat “disease and malnutrition, including within the framework of primary health care, through, inter alia, (...) the provision of adequate nutritious foods and clean drinking-water.”

It is my responsibility under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention. Since we are expected to report on these cases to the Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts summarized above accurate?
2. Has a human rights impact assessment been carried out regarding the eviction that occurred in the Mubende District? If so, who undertook such an assessment and could you please provide me with the conclusions of the assessment?
3. Have any investigations been conducted into the alleged violent tactics employed during the eviction? If so, who undertook such an investigation and could you please provide me with the conclusions of the assessment?
4. Has any compensation been provided to those who were evicted? If so what was the nature of that compensation, how was the amount and type of compensation determined and in what way was the compensation distributed to the affected community members?
5. What measures have been put in place to ensure that the affected communities have access to adequate food?

6. Which measures have been taken to ensure that the claims filed by the evictees shall be addressed diligently by the domestic courts, in accordance with the right to an effective judicial remedy?

I would be most grateful to receive an answer within 60 days. I undertake to ensure that the response of your Excellency's Government will be taken into account in my assessment of the situation and in developing any recommendations that I may make for your Government's consideration pursuant to the terms of my mandate. Additionally, I undertake to ensure that the response of your Excellency's Government is accurately reflected in the reports I will submit to the Human Rights Council for its consideration.

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

Olivier de Schutter
Special Rapporteur on the right to food