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Mandate of the Special Rapporteur on the rights of indigenous peoples

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Excellency,

I have the honor of addressing you in my capacity as United Nations Special Rapporteur on the Rights of Indigenous Peoples, in accordance with Human Rights Council Resolution 15/14.

As you are aware, I have been in contact with your Excellency's Government previously regarding **the situation the Gibe III hydroelectric project on the Omo River in Ethiopia**. I first brought allegations received in relation to this situation to the attention of your Government 10 June 2009. This letter was reproduced in its entirety in my communications report submitted to the Human Rights Council in 2009 (Ref. A/HRC/12/34/Add.1). Again, on 18 February 2011, I contacted your Government about the ongoing information received expressing concern over the Gibe III hydroelectric project. In that letter, I noted that I had also sent letter about this situation to the Governments of China and Kenya, given their alleged participation in this project.

In my most recent communication to your Excellency's Government of 18 February 2011 transmitting the above information and allegations over the Gibe III project, I requested a response within 60 days. To date, no such response has been received. Having cross-checked the information received and transmitted on this situation, and in absence of a response from your Excellency's Government, I consider that in material respects the information is sufficiently credible to indicate a pressing problem that requires attention by the Government of Ethiopia. In an ongoing spirit of constructive dialogue and cooperation, I offer the following observations, which include a series of recommendations, in the hopes that they may assist your Government to address this issue.

Background

According to the information received, Ethiopia is constructing the Gilgel Gibe III hydro-electric dam, which, once completed, will block the south western part of the Omo River on the border of Ethiopia and Kenya, creating a 150-km long reservoir. The Lower Omo River Valley is inhabited by a number of indigenous peoples, including the

Dasenech, Karo, Hamar, Mursi, Murle, Mugugi and Nyangatom, who have developed complex land and resource use practices adapted to the harsh conditions of the region. These peoples rely on the Omo River for grazing and watering livestock, which produce blood, milk, and meat for subsistence as well as income.

I understand that the natural flooding cycle of the river creates the conditions necessary for flood retreat cultivation, an essential agricultural practice in the semi-arid climate of the region. According to the information received, the Gibe III dam will eliminate this natural flooding cycle and reduce the flow of the river, threatening these traditional practices and means of subsistence, and potentially endanger local food security. Further, it is alleged that competition over increasingly scarce land and resources in Ethiopia could also exacerbate inter-ethnic conflict. The Gibe III project will also potentially affect the water and salinity levels of Lake Turkana, the only large body of water in Kenya's arid northwestern region. Lake Turkana is the primary water source for six indigenous ethnic groups in Kenya – the Turkana, Elmololo, Samburu, Gabbra, Rendille and Daasanach – which all together comprise some 300,000 people.

Reportedly, although activities related to the construction of the Gibe III project began in 2006, the Government did not initiate assessment of the environmental and social impacts of the projects until 2008. There were also questions raised about the accuracy and impartiality of the 2009 Environmental and Social Impact Assessment in evaluating the impact of the Gibe III dam. Finally, it is alleged that consultations about the dam were conducted by very few people, as compared to the total number of people affected, and did not take place until after construction of the Gibe III project had begun.

Observations

I note that—although I never received a response from your Government to my letters of 10 June 2009 and 18 February 2011—many of the concerns I raised in those letters have been directly addressed by your Excellency's Government in various public documents issued over the past months, including in the Government's website about the project¹ and in the report developed by the Ethiopian Electric Power Corporation entitled "Reaction to Issues Raised by 'South China Morning Post' concerning the Gibe III HEP"². The principle issues I have raised that are addressed in these public documents related to (1) the effect of the Gibe III dam on the traditional flooding cycles of the Omo River, and consequently on the livelihoods of the indigenous peoples who depend on that river; (2) the effect of the Gibe III project on Lake Turkana and indigenous groups that depend on that lake, in Kenya; and (3) the adequacy of consultations carried out with affected indigenous peoples.

With respect to the effects of the Gibe III dam on the traditional flood retreat cultivation and other traditional practices of affected indigenous peoples, I note that the Government has, in fact, recognized that the dam will replace the Omo River's national flooding cycle, likely affecting some 100,000 people who practice traditional flood

recession agriculture during a portion of the year. However, according to available information from the Ethiopian Electric Power Corporation, measures are being taken to create an artificial flooding system that simulates the natural flooding process of the Omo River, in order to ensure that the traditional flood retreat agriculture practices of indigenous peoples along the Omo River can continue, and to mitigate any adverse impacts in this regard. In fact, your Excellency's Government indicates that the hydroelectric project will actually bring positive benefits, since it will help protect against dangerous flooding of the Omo River and will involve small-scale irrigation projects that provide water resources to the region more consistently than the currently done. Your Government points out that this availability of water, as well as planned fish farming and animal husbandry initiatives contemplated alongside the project, will help stabilize any inter-ethnic conflicts in the region.

With respect to the impact of the Gibe III hydroelectric project on Lake Turkana in Kenya, the public documents issued by the Government assures that the results of studies carried out as part of the Government's environmental impact assessment, as well as independent assessments, have concluded that water levels in Lake Turkana will remain more or less consistent with their present state following construction of the hydroelectric project, with a maximum estimated fluctuation of only 0.6 meters, which will not result in changes to the drinkability of the water. In fact, the Government concludes that the Gibe III project and its artificial flooding initiatives will actually have a "positive impact on controlling the fluctuation of the lake water", especially during the dry season.³ The information provided by the Government also emphasizes that the communities around Lake Turkana have expressed support for Gibe III project.

I cannot help but notice that here appears to be a major divergence of opinion regarding the potential environmental and social impacts of the Gibe III project, both in Ethiopia and in Kenya. On the one hand, the Government hails the benefits of the project and assures that it is taking measures to address in full any potential adverse impacts. On the other hand, sources of information with whom I have been in contact predict catastrophic consequences of the hydroelectric project on the environment and local communities, and indicate that the Government has not put in place adequate mitigation measures to off-set these consequences.

Given the limitations of my mandate, I am of course unable to myself make any in-depth technical or scientific conclusions about the impacts of the Gibe III project. However, I will continue to review all available sources of information about the Gibe III project and may make additional observations in the future, taking into consideration this information. In addition, in light of the divergent views on this project, I encourage the Government to make all efforts to make public all studies on the Gibe III project and to continue to provide constant, impartial information about the hydroelectric project and its impacts to affected indigenous peoples and other stakeholders. Furthermore, the Government and in particular the Ethiopian Electric Power Corporation, should continue to identify and implement alternate or additional mitigation and compensation measures, and make any alterations to the project design, should these be deemed necessary.

Finally, with respect to consultations carried out, the Government has stated that, from 2006-2008, it carried out a public consultation process, in accordance, says that Government, with the Ethiopian Constitution, which states that “People have the right to full consultation and to the expression of views in the planning and implementation of environmental policies and projects that affect them directly” (article 92.3). It is worth noting that the information provided in the public documents of the Ethiopian Electric Power Corporation coincides with the information I have received from other sources regarding the approximate number of people consulted about the Gibe III project. In particular, both the Government and other sources of information with note that only around 2,000 people participated in the public consultation process, even though some 100,000 people may be affected by the Gibe III project within Ethiopia. The Government has expressed that those consulted were “satisfied with the mitigation measures and the proposed plans of the project”⁴ and believe that it “contributes to the attainment of the local, regional and national development goals”⁵.

It is not clear from the Government’s information whether these consultations were in fact carried out in accordance with the traditional decision-making structures of the affected indigenous peoples, as required by article 19 of the United Nations Declaration on the Rights of Indigenous Peoples, which states that “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.” However, information I have received from other sources has alleged that, under the traditional systems of the groups living along the Omo River, decisions are made in meetings involving the entire community, which indicates that consultations with only 2,000 out of 100,000 affected peoples would not conform to traditional decision-making procedures, as required by international standards. In this connection, it may necessary for the Government to carry out additional consultations with a greater number of affected indigenous peoples in order to ensure that they have had the opportunity to consider the project and present their views in response, in accordance with their own representative institutions.

In addition, the Government’s information does not provide a clear picture of the information that was provided to indigenous peoples in this public consultation process. In this connection, I would be grateful if your Excellency’s Government could inform me on the content of information conveyed to the affected indigenous peoples during the consultations. I do note, however, that the Government has stated that the consultations were designed to “inform, and contribute to identifying potential impacts of the project, either negative or positive or both, and prioritize the remedial measures for the identified impacts; include the attitudes of the community and officials who will be affected by the project so that their views and proposals are mainstreamed to formulate mitigation and benefit enhancement measures; [and] increase public awareness and understanding of the

project, and ensure its acceptance”⁶. While some aspects of these stated goals of the consultations coincide with international standards, I would like to express my concern that the consultations were carried out with the goal to “ensure [the project’s] acceptance”, which indicates to me that the consultations were carried out with a predetermined outcome. I would like to stress that under relevant international standards, consultations should involve a genuine opportunity for indigenous peoples to present their views and to influence decision-making, and the option of not proceeding with the proposed project should not be foreclosed during these consultations.

I understand that the Government of Ethiopia has planned future public consultations on the Gibe III projects. In this connection, I emphasize that under article 32 of the United Nations Declaration on the Rights of Indigenous Peoples governments must “consult and cooperate in good faith with the indigenous peoples concerned 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 exploitation of mineral, water or other resources.” In the present case, given the magnitude of the Gibe III dam project and its potential effects on indigenous peoples in surrounding areas, I note that there is a need for concerted efforts to carry out adequate consultations with affected groups and to endeavour to reach consensus with them on all aspects of the project affecting them.

Concluding comments

Excellency, these observations and recommendations represent only an initial assessment of this situation, and I will continue to monitor the case. I would welcome the opportunity to maintain a continued dialogue with your Government in this regard. I welcome any comments by your Excellency’s Government about the accuracy of the above information and observations. As noted earlier, I intend to include these observations in my report to the Human Rights Council for its consideration. If I receive comments by your Excellency’s Government prior to **15 August 2011**, I can make assurances that these will also be included in my next public report to the Human Rights Council.

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

James Anaya
Special Rapporteur on the rights of indigenous peoples