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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Working Group on Arbitrary Detention; the Special Rapporteur on the rights of indigenous peoples; the Independent Expert on minority issues; and the Special Rapporteur on extrajudicial, summary or arbitrary executions

REFERENCE: UA Housing (2000-9) G/SO 218/2 Indigenous (2001-8) Minorities (2005-4) G/SO 214 (33-27)
ETH 3/2012

22 May 2012

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the rights of indigenous peoples; Independent Expert on minority issues; and Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolutions 15/8, 15/18, 15/14, 16/6, and 17/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the **alleged incidents of violence, including against members of the Anywa community and the deteriorating security situation in the Gambella region of Ethiopia following the involuntary displacement of communities from the region.**

From the outset, we would like to refer to a previous communication sent to your Excellency's Government on 13 May 2011 by the former Independent Expert on minority issues and the Special Rapporteur on the Rights of Indigenous Peoples relating to the Anywa community and other ethno-linguistic communities in the Gambella region of Ethiopia and their alleged involuntary displacement from their lands. We regret that to date no reply to this communication has been transmitted to us by your Government.

According to information received:

It is alleged that recent violent incidents in the region have been triggered by the forced displacement of the minority/indigenous people of Gambella from their traditional territories which they have inhabited for centuries in order to make way

for agro business enterprises supported by the Government. The people of Gambella have reportedly been peacefully resisting this involuntary displacement from their territories undertaken by the Gambella regional government under its “villagization program”. In the first phase of the program over 21,000 households were allegedly forcefully relocated from their traditional villages, farms and water resources. At the end of the program 45,000 households (1/3 of the Gambella indigenous population) are expected to be displaced from their territories. It is alleged that, despite the government’s allegations to the contrary, the resettlements have been imposed on Anywa communities to make way for the agricultural projects described in the 13 May 2011 communication sent by the former Independent Expert on minority issues and the Special Rapporteur on the Rights of Indigenous Peoples. In addition, it is reported that none of the Government’s promises of social services in the new areas have been fulfilled. According to information received the displacement of communities has been the root cause of tensions that have resulted in violence that threatens to escalate.

On 16 February 2012 unknown gunmen killed two policemen in Gambella region. In retaliation the government (military forces) killed two people (from the Anywa community) in Okuna village and arrested others whose whereabouts remain unknown. On 12 March, approximately 21 civilians (highlanders and non-indigenous people) travelling to Gambella were also killed by unknown gunmen. Reportedly without having conducted an investigation, the Government’s military forces retaliated against the civilian Anywa people living in Gambella town and villages around Abobo Woreda district. Some people were arrested accused of being relatives of the suspects. The whereabouts of those people reportedly remain unknown. When relatives ask the military they are told that those detained are in different military camps and when the relatives go to those camps they are allegedly told that they have been transferred to another camp. Over 40 people were allegedly detained. In addition to these detentions, there were reportedly isolated cases where military killed students or farmers in different locations including the killing of a high school student by the name of Tedo on 7 April 2012 in the Gambella regional town.

On Saturday 28 April 2012, unknown gunmen attacked one of the camps of Saudi Star Agro Plc., one of the two biggest foreign investors in the region, where some 4 Pakistani nationals (agricultural experts), 6 military personnel guarding the camp and 3 Ethiopian workers were killed. None of the gunmen so far have been captured or killed by the military. According to information received, acts of retaliation have been carried out against the minority/indigenous communities in the Gambella region in general and in Abobo Woreda district in particular where the 28 April incident took place. The Government reportedly organized a demonstration in Gambella town against the 28 April attack on Saudi Star farm which members of local communities consider to be an act to agitate and provoke civilian highlanders against the indigenous people. Allegedly similar agitation provoked an attack against members of the Anywa community on 13 December 2003 which left hundreds dead.

On Tuesday 1 May 2012 in Abobo district, one guard who was working for the Saudi Star Agro Plc. was allegedly killed by the military because he is from the Anwya community. More than 50 people in the villages adjacent to the Saudi Star farm were also arrested on 29 and 30 April including those who work as daily laborers for the farm. One person who was released on 1 May said that they had been tortured. In another incident in Gog district, one family (a father and his two children) were killed in Batgilo village in the early hours of Tuesday around 2:00 am when the military were searching for the unknown gunmen. The wife is reportedly seriously wounded and has been brought by the local police to the nearby health center (Pinyudo Health Centre). On 2 May 2012 reports were received that Pokedi village in Abobo district was attacked by the military and five people were killed by the military. The military allegedly went into the village and shot a teacher, a student and an unarmed police officer. Allegedly two members of the local militia who went to the scene following the shootings confronted the military personnel and asked why they had killed civilians, and were themselves killed.

According to information received, among over 50 persons who were detained by the military in the Saudi Star Compound in Abobo, 5 were killed by the military and buried in a mass grave. Over thirty people were allegedly taken by a military truck to an unknown location and 5 were brought to the Abobo police station. In a separate case a person by the name of Ati Okach was also shot to death by the military in Ochakchala village, very close to the Saudi Star farm. On 4 May the military reportedly went to Dumbang village and stated that they wanted to kill all the villagers. They allegedly asked all the highlander teachers in the village and also one Majangir working as a guard for the clinic to leave the village. The news was leaked to the villagers and they left the village and fled deep inside the forest. The military are allegedly hunting the villagers who have fled.

The region of Gambella is inhabited by five ethno-linguistic groups namely the Anywa, Majangir, Nuer, Opo and Kumo. The Anywa identify as an indigenous minority people who have a long historical attachment to ancestral land in Gambella and have occupied the land for centuries.

While we do not wish to prejudge the accuracy of these allegations, we wish to appeal to your Excellency's Government to seek clarification of the circumstances regarding the above mentioned allegations.

Excellency, firstly allow us to express condolences to the families of all of those who have been killed in recent violence in Gambella region, including community members, civilian contractors and members of the police and security forces. We are deeply concerned by the present situation in Gambella state and the possibility that the current tense situation could deteriorate seriously in the coming days. Previous incidents in the region, including related to land rights issues, have demonstrated the potential for inter-group violence and tensions to rapidly escalate.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

We take this opportunity to recall to your Excellency's Government that between 28 November and 12 December, 2006, the former Independent Expert on minority issues, Ms. Gay McDougall, undertook an official visit to Ethiopia and visited Gambella region where she consulted with the Anywa (Anuak) representatives and community members as well as local authorities. In her report (A/HRC/4/9/Add.3 – 28 February 2007) and recommendations to the Human Rights Council, the Independent Expert raised a number of concerns related to the Anywa population in Gambella, including with regard to their security and protection from violence, and their land rights. The former Independent Expert reported that “in December 2003, according to local sources and international human rights investigators, 424 Anuak were killed in Gambella town by federal military forces and other ethnic groups. The Government has claimed that 65 Anuak were killed. The killings followed an attack on a convoy of local United Nations workers, blamed on Anuak rebels but without a full investigation being carried out at the time. The events of December 2003 were the low point in on-going ethnic clashes which have seen victims amongst all groups and a serious deterioration in security generally.” She noted that “Efforts must be greatly enhanced to ensure security for all communities and to safeguard against future serious incidents. In view of the prevailing circumstances in Gambella and continuing tensions, there remains a significant risk that such incidents could occur, and priority should be given to reducing tensions and building confidence among and between ethnic groups.”

She noted the importance of land issues and highlighted that that she had been informed by representatives of the regional government that the granting of title to land was planned in Gambella through a new proclamation and law. She stated that, while potentially providing greater security of land tenure, this should be sensitively conceived and implemented, to ensure fairness and avoid tensions over disputed lands and territories. Her recommendations to the Government of Ethiopia included that the Government should: “Grant land title in recognition of historic usage in order to ensure security of land tenure for all communities, including minorities facing encroachment on traditional lands. The recognized system of land tenure should include protection of the use of land by pastoralist groups, and recognize individual and a variety of collective ownership arrangements.” In addition she recommended that the Government of Ethiopia should: “Ensure that communities are secure from forced displacement or eviction from their lands and that measures are undertaken to effectively consult with communities regarding decisions that affect them and their respective territories. Communities relocated according to the law must be consulted regarding appropriate compensation and relocation arrangements, including land of comparable quality.” In light of information

received relating to land issues as conveyed to your Excellency's Government in our communication of 13 May 2011, we once again seek your Government's clarification relating to the displacement of communities from their lands.

We draw your Excellency's Government's attention to the provisions of the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The Declaration requires under article 1.1 that "States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity." Article 4.1 of the Declaration establishes that: "States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law."

We would also like to draw to the attention of your Government to the provisions of the United Nations Declaration on the Rights of Indigenous Peoples which sets out standards to be considered in the case of the land rights of the Anywa indigenous people. As stated in article 26 of the Declaration, indigenous peoples have the rights to the lands, territories and resources that they traditionally owned, occupied or otherwise use 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." Additionally, 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..." Furthermore, Article 28 states the right of indigenous peoples to redress, including restitution or just, fair and equitable compensation for traditional lands, territories and resources "which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent."

With respect to the displacement of communities from their land, we would like to remind your Excellency's Government about the procedural protections that should be applied in cases of eviction. Article 11.1 of the International Covenant on Economic, Social and Cultural Rights, to which Ethiopia is a party, states that "the States Parties to present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including housing, and to the continuous improvement of living conditions".

The Committee on Economic, Social and Cultural Rights stressed in its General Comment No. 4 that the right to housing encompasses a number of elements, including legal security of tenure. The Committee observed that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. As repeatedly noted, including in resolutions 1993/77 and

2004/28 of the Commission on Human Rights, forced evictions constitute gross violations of a wide range of internationally recognized human rights and large-scale evictions may only be carried out under exceptional circumstances and in full accordance with international human rights law.

According to General Comment No. 7 of the Committee on Economic, Social and Cultural Rights, the procedural protections which should be applied in relation to forced evictions include: “(a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.” (paragraph 15)

Regarding the alleged killings of and targeted attacks by the military against civilians including children, and in particular against members of minority/indigenous communities in the Gambella region, we wish to stress that the Government has the obligation to protect the right to life of all individuals without any distinction of any kind under articles 2(1) and 6 of the International Covenant on Civil and Political Rights (acceded to on 11 June 1993), and article 6 of the Convention on the Rights of the Child (acceded to on 14 May 1991). All Governments must ensure that the conduct of law enforcement officials complies with international principles and standards. In the performance of their duties, law enforcement officials shall respect and uphold the human rights of all persons pursuant to article 2 of the Code of Conduct for Law Enforcement Officials (adopted by General Assembly resolution 34/169 of 17 December 1979).

In this respect, it should be noted that the use of force by law enforcement officials is governed by strict rules under international law. Under article 3 of the aforementioned Code of Conduct and principles 4 and 5 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990), law enforcement officials may only use force when strictly necessary and to the extent required for the performance of their duty. Not only shall they exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved, but they shall also minimize damage and injury, and respect and preserve human life. Moreover, in order to prevent extrajudicial executions, Governments shall ensure strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as those officials authorized by law to use force and firearms. In accordance with the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Economic and Social Council resolution 1989/65 of 24 May 1989).

Furthermore, with regard to the alleged killings by unknown gunmen, we wish to underline that “the positive obligations on States Parties to ensure [the] Covenant rights [ICCPR] will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties’ permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.” (CCPR/C/21/Rev.1/Add. 13, para. 8).

In any case, there shall be a thorough, prompt and impartial investigation of all suspected cases of extrajudicial, arbitrary and summary executions and the Government must ensure that all those responsible for such executions are brought to justice in accordance with principles 9 and 18 of the aforementioned Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. Additionally, effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extrajudicial, arbitrary or summary executions (principle 4).

In light of the serious nature of the allegations communicated to us and our concern over the possible escalation of tensions and killing in Gambella state, we wish to inform you that we may consider it appropriate to issue a public statement of concern relating to the above incidents which will be shared with you in advance and prior to its release to the media.

Moreover, it is our responsibility under the mandates respectively conferred upon us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the cases accurate?
2. Has a complaint been lodged with regard to the incidents mentioned above?
3. Please provide the details and where available, the results, of any judicial investigation, or any criminal charges and other inquiries carried out.
4. Please provide information concerning the legal grounds for the abovementioned arrests and detentions and how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

5. Please indicate what instructions were given to law enforcement officials with regard to the use of force in the alleged incidents as summarized above and how these comply with international standards on the use of force.

6. What measures have been taken to ensure the security of members of all communities in the Gambella region?

7. Have the affected communities, including Anywa indigenous communities, been consulted prior to the leasing of their ancestral lands for agricultural production purposes and their subsequent resettlement? If so, please provide full details.

8. Please indicate whether compensation has been provided to the families and other members of the Anywa and other communities who have been adversely affected by eviction from their lands.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to prevent further escalation of violence and to guarantee that the rights and freedoms of the above mentioned persons are respected. We call for an independent, impartial and prompt investigation to be conducted to clarify the circumstances of the alleged violations. In the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

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