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**PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

Mandates of the Independent Expert on Minority Issues and the Special Rapporteur on the rights of indigenous peoples

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Excellency,

We have the honour to address you in our capacities as Independent Expert on Minority Issues pursuant to Human Rights Council resolution 16/6 and Special Rapporteur on the Rights of Indigenous Peoples pursuant to Human Rights Council resolution 15/14.

We would like to draw the attention of your Excellency's Government to information received relating to the Anywa community in the Gambella region of Ethiopia.

According to information received:

The Anywa people are located in the lowland of Southwest Ethiopia in the Gambella region. The Gambella region has a long international boundary with Sudan in the west, with the Ethiopian regional State of Oromia to the north and east, and with the Southern Nations, Nationalities and Peoples State to the South. 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. They have reportedly occupied the land for centuries.

The Ethiopian Government has allegedly leased 300,000 hectares of land occupied by the Anywa to the Indian horticulture company Karuturi, and 10,000 hectares to the Saudi Star Company with another 240,000 hectares more likely to be leased to the Saudi Star Company. Reportedly this has been done without any prior consultation with local people. Moreover, the Federal Government has reportedly officially revealed its plan to displace 45,000 Anywa people (half of the total Anywa population) in the coming three years. Gambella, as one of the regional States, is divided into three administrative zones and under each zone there are districts and then Kebeles

(villages). The administrative zones in Gambella are drawn based on the settlement pattern of the major three ethnic groups. Most of the land that is being leased to foreign and local investors is located in the Anywa zone while some is in the Majangir zone.

On June 6, 2009, the Ethiopian Government reportedly signed a deal with the Karuturi Company, which is reportedly the world's largest grower of roses, leasing 300,000 hectares of land in Gambella region, occupied by the Anywa. The company will reportedly grow rice, palm oil and sugar for export. The land in question is located 35 km west of the regional town and encompasses land up to the border with Southern Sudan. In the same year the Saudi Star agriculture company also reportedly signed a deal with the Ethiopian Government for the lease of 10,000 hectares of land in Gambella with a further 240,000 hectares to be negotiated. The farm is located in Abobo, an area about 45 km south of the regional town. According to the company, it will grow rice for export to Saudi Arabia. The company has already purchased farming machinery and trucks for transporting the rice to the port.

According to the information received, in both of these areas enormous numbers of people are going to be displaced. In Abobo district, the Saudi Star agriculture company has allegedly already displaced Ochak-Chala village, Perbongo-Tierkudhi village, Perbongo-Oma and Awita-jwieo villages. The villagers were allegedly not consulted nor compensated. There has reportedly been no discussion with the local people and, according to sources, the regional cabinet or council has not been consulted.

In addition to the displacement, these projects will reportedly have huge environmental impacts on the land and the agrarian Anywa people who depend on rain water for their farms. Lack of rain for these people is a matter of life or death. Due to their rich natural forest, despite repeated famines in Ethiopia, the Anywa people have been known as food-independent people in Ethiopia. This year, for the first time in history, many Anywa villages were affected by drought and many Anywa villagers are reportedly hunting for wild roots and fruits in the remaining forests to sustain themselves.

For the Anywa people forests also carry a spiritual meaning that is vital for the Anywa identity and ancestral heritage. This is manifested in the Anywa traditional religion in which certain forests are seen to be sacred. Not only do people refrain from cutting down trees in these forests, but also from walking through the forests with shoes and modern clothes, which is considered by the Anywa to invite a curse upon them. Certain trees are revered by the Anywa people because they are believed to be the dwelling places of ancestral spirits and local chiefs are buried under these trees. In the Anywa traditional religion, every forest belongs to a certain village and both the village and the forest carry the same name. Therefore, the ongoing

destruction of the Anywa forests causes not only damage to their subsistence economy but also to the psychological and spiritual wellbeing of a community.

Another source of contention for the Anywa people is the influx of highland Ethiopians to their land. According to information received, in the next five years more than 100,000 labourers will be brought into Gambella to work on these farms. According to the experience with existing investors who bring in more than 10,000 labourers every year from different parts of the country, these labourers frequently abandon working on large commercial farms and establish their own farms next to Anywa villages. When the Anywa people complained about others occupying their land, the Government would respond that they have a right to live and settle wherever there is an Ethiopian flag. According to the information received, the Government (Ministry of Agriculture and Rural Development) has also leased a protected forest in Gambella to an Indian company (the New Delhi-based Verdanta Harvests Plc). This forest is reportedly a protected forest under the Ministry of Environment.

According to information received, the Constitution of Ethiopia states under Article 40:3 that. "Land is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange." Article 40:5 of the Constitution states that "Ethiopian pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their own lands". Moreover, according to the federal constitution (Article 43:2) "Nationals have the right to participate in national development and, in particular, to be consulted with respect to policies and projects affecting their community." There has allegedly been no consultation at all with the local communities concerning the current land leases to foreign investors.

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.

We also draw the attention of your Excellency's Government to the provisions of the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Article 1 requires 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 2.3 states that "Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation". In addition, Article 4 of the Declaration states 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”.

Excellency, between 28 November and 12 December, 2006, the undersigned Independent Expert on Minority Issues undertook an official visit to Ethiopia and visited Gambella region where she consulted with the Anywa (Anuak) representatives and community members. In her report (A/HRC/4/9/Add.3 – 28 February 2007) and recommendations to the Human Rights Council, I 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. She noted 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. Communities receiving relocated populations must also consent.” We would be grateful to receive from your Excellency’s Government an account of whether and how the Independent Expert’s recommendations have been implemented in practice.

Furthermore, the third annual session of the Forum on Minority Issues produced recommendations on the issues of minority and effective participation in economic life (A/HRC/16/46). The Forum recommendations recognize that large-scale economic development projects or commercial activities carried out on the lands and territories where minorities live, without prior consultation with these minorities, have had negative outcomes, including forced displacement, the perpetuation of poverty and, in some cases, violence. Recommendations include, that Governments should review, with the full and effective participation of minority groups, the extent to which minorities have equal access to land and security of land and property rights. Land owned or occupied by minorities may be highly valued for industrial growth or urban development because of its minerals, resources or location. Development projects may have a negative impact on the use of land owned or occupied by minorities. This can create significant threats to minorities who lack the political or legal means to challenge land theft, forced displacement, involuntary resettlement or the harmful impact of extractive industries.

Furthermore, the Forum on Minority Issues recommended that strategies for improving security of land rights for minorities must be based on the principle of free,

prior and informed consent to actions that would have an impact on the rights of minorities. Strategies can include a programme of land titling, review and, where necessary, revisions of domestic laws on land tenure, and fair and transparent resolution of land and property rights cases in domestic courts. Particular attention should be paid to land and property rights of women belonging to minorities, including equality in inheritance rights. Systems of shared or collective land rights and customary land tenure and property rights should be recognized and protected within the national legal system. Equally, Governments must provide adequate and equitable compensation options for land and other forms of property, including full restitution and equity shares for land acquisition, in consultation with affected minorities or their freely chosen representatives. In cases in which minorities have lost land rights owing to theft or deceit, forced displacement or eviction, measures should be taken to ensure that they have the possibility to assert claims to these lands or to gaining access to agreed upon equivalent land elsewhere. In post-conflict or post-displacement situations, processes for land and property restitution should be established and implemented.

Removals of indigenous minority peoples in particular have significant implications for a wide range of human rights, given that indigenous peoples usually hold bonds of deep cultural significance to the lands in which they live. For this reason, under the United Nations Declaration on the Rights of Indigenous Peoples, consent is a precondition for any such removal. Article 10 of the Declaration states 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 and after agreement on just and fair compensation and, where possible, with the option of return.

We further note, in light of the Anywa's alleged lack of legal certainty over the lands they have traditionally occupied, that article 26 of the United Nations Declaration on the Rights of Indigenous Peoples states that:

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

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. Have affected communities been consulted regarding the leasing of their ancestral lands? If so, please provide full details.
5. Please indicate whether compensation has been provided to the families and other members of the Anywa community who have been adversely affected by eviction from their lands.

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

Gay J. McDougall
Independent Expert on Minority Issues

James Anaya
Special Rapporteur on the Rights of indigenous peoples