

SURVIVAL INTERNATIONAL CHARITABLE TRUST  
Complainant

v

SALINI IMPREGILO S.P.A  
Respondent

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**SPECIFIC INSTANCE**

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## **Acronyms**

ACHPR	The African Commission on Human and Peoples' Rights
CESI	Centro Elettrotecnico Sperimentale Italiano S.p.A.
Charter	The Charter of African Human and Peoples Rights
DAG	Development Assistance Group
Downstream Communities	The Bodi, Mursi, Kwegu, Kara, Nyangatom and Dassanach peoples of the Lower Omo and the Turkana, Elmolo, Gabbra, Rendille and Samburu of Lake Turkana
EEPCo	Ethiopian Electric Power Corporation
EIA	Environmental Impact Assessment 2006
ESIA	Environmental and Social Impact Assessment 2008
EPA	Environmental Protection Agency of Ethiopia
FPIC	Free prior and informed consent
Governments	The Governments of the Federal Democratic Republic of Ethiopia and the Republic of Kenya
Guidelines	OECD Guidelines for Multinational Enterprises
MNE	Multinational Enterprise
NCP	National Contact Point
The Project	Construction of the Gibe III dam
Salini	Salini Impregilo S.p.A.
Survival	Survival International Italia
WCD	World Commission on Dams

## I Introduction<sup>1</sup>

### Parties

1. For over 40 years Survival International has been the global movement for tribal rights, with over 250,000 supporters in almost 100 countries. It is a recipient of the Right Livelihood Award and enjoys observer status at a number of international organisations. Survival International Italia is our Italian office.
2. We have lodged this complaint under the OECD Guidelines on behalf of the tribal peoples of the Lower Omo in southwest Ethiopia and of Lake Turkana in Kenya ("the downstream communities").
3. The Lower Omo peoples include the Mursi, the Bodi and the Kwegu, the Kara, the Nyangatom and the Dassanach. They number more than 100,000. All these peoples live downstream of the Gibe III dam, and as a result have been or will be dispossessed of land and natural resources on which they depend. In Kenya the Lake Turkana basin is home to approximately 300,000 Turkana, Elmol, Gabbra, Rendille and Samburu, as well as more Dassanach. Although these peoples are predominantly pastoralists, they rely heavily on the Lake both for its fisheries and as a water resource. The dam is likely to significantly diminish the value of these vital means of subsistence.
4. We have conducted field work in the Lower Omo and are in regular contact with individuals who either live in or are frequent visitors to the area. With the knowledge and support of the downstream communities, in April 2012 we filed a petition against the Government of Ethiopia before the African Commission on Human and Peoples Rights. In August 2013 the ACHPR ruled that we were entitled to petition on the communities' behalf and that our petition was admissible. A decision on the merits is awaited. We have also visited Lake Turkana, and have been urged by the communities there to do whatever we can to assist them.

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<sup>1</sup> For an official Italian translation of this complaint, contact [ufficiostampa@survival.it](mailto:ufficiostampa@survival.it).

5. Salini Impregilo S.p.A. was formed in 2014 by the merger of Salini Costruttori S.p.A. and Impregilo S.p.A. The Group has its headquarters in Milan, and 14,000 employees operate across the world. It has built some 230 dams and hydroelectric plants in more than 50 countries. As Salini Costruttori, it built the Gibe I and II hydroelectric power projects, and from 2006 it has been responsible for the construction of Gibe III.

#### Purpose of complaint

6. As a member of the Global Compact Salini is committed “to respect internationally proclaimed human rights” and to “make sure” that it is not complicit in the abuse of those rights. It should be held to account if it fails to honour these commitments, but this cannot be done through the Compact. Under the UN Guiding Principles on Business and Human Rights, Salini should itself have established a “grievance mechanism” for communities adversely affected by its operations, but has chosen not to do so.<sup>2</sup> Legal proceedings in either Italy or Africa would be impractical.
7. The OECD Guidelines appear to offer the only means by which Salini can be made to answer for its failure to respect the rights of the downstream communities or to consult them about its operations. Our hope is that the NCP can facilitate a dialogue between the parties which will lead Salini to offer redress, even at this late stage, for at least some of the harm which Gibe III has done. We discuss how this might be achieved below.

#### Violation of human rights

8. The construction of Gibe III has resulted in the violation of the fundamental human rights of the downstream communities under the African Charter of Human and Peoples’ Rights. Both Ethiopia and Kenya have ratified the Charter, but as we have submitted on the ACHPR petition:
  - (1) the communities were not asked to consent to or even consulted about the Project before it began, in breach of their right to self-determination under Article 20(1) of the Charter
  - (2) they have lost or are likely to lose the vital means of subsistence previously afforded them by the annual floods of the River Omo. This is in breach of their right under Article 21(1) of the Charter freely to dispose of their wealth and natural resources

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<sup>2</sup> UN Guiding Principles on Business and Human Rights, Operational Principle 28: HR/PUB/11/04.

- (3) as a result of the failure to conduct any proper impact assessment of the Project and/or to seek the communities' consent to it, the communities have also been denied their right to development under Article 22(1).
9. Each of these rights is crucial to the survival of the downstream communities, but the most vital is the right to self-determination. For indigenous peoples, this means that their free prior and informed consent is required for any large scale project likely to have a significantly adverse impact upon them.
10. No reasonable person could argue that Gibe III is not such a project. Official sources now confirm what others have said for years: that the changes introduced by Gibe III are likely to result in the near future in the "fundamental and irreversible transformation" of ways of life that until recently have remained "largely unchanged."<sup>3</sup> Nor could any reasonable person argue that these changes have won either the free, or the prior, or the informed consent of any of the downstream communities.
11. The primary responsibility for the breach of the rights of these communities must, of course, rest with the Governments of Ethiopia and Kenya, whose duty it was to protect the rights of their citizens. But Salini must also accept its share of blame, because it was expected to respect human rights in accordance with the OECD Guidelines and has manifestly failed to do so.
12. We have filed our complaint with the Italian NCP because neither Ethiopia nor Kenya has its own NCP. We attach a bundle of core documents, and can supply full references for (or copies of) other documents quoted in the text if and when the NCP asks for them.

## **II The Guidelines**

13. When Salini began work on Gibe III in 2006, the 2000 edition of the OECD Guidelines was still in force, and stipulated that Salini should
- (1) respect the human rights of those affected by its activities consistent with the international obligations assumed by Ethiopia and Kenya [Chapter II(2)]; and

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<sup>3</sup> See the Report of the Development Assistance Group Mission to South Omo 22-29 August 2014 at page 5 of the bundle.

- (2) engage in adequate and timely communication and consultation with the communities directly affected by its environmental, health and safety policies and by their implementation [Chapter V (2)(b)].
14. Work on Gibe III was still in progress when the 2011 Guidelines were introduced. Salini was now expected:
- (1) to respect human rights, which means it should avoid infringing on the human rights of others and address adverse human rights impacts with which it is involved [Chapter IV (1)].
  - (2) within the context of its own activities, to avoid causing or contributing to adverse human rights impacts and address such impacts when they occur. [Chapter IV (2)]
  - (3) to seek ways to prevent or mitigate adverse human rights impacts that are directly linked to its business operations even if they do not contribute to those impacts. [Chapter IV (3)]
  - (4) to have a policy commitment to respect human rights [Chapter IV (4)]
  - (5) to carry out human rights due diligence as appropriate to its size, the nature and context of operations and the severity of the risks of adverse human rights impacts. [Chapter IV (5)]; and
  - (6) to engage in adequate and timely communication and consultation with the communities directly affected by its environmental, health and safety policies and by their implementation [Chapter VI(2)(b)].
15. Although the 2011 edition of the Guidelines is obviously more expansive, we could have based this complaint on the 2000 edition alone. This is because:
- (1) respect for human rights cannot have meant less in 2000 than it did in 2011. The provisions in Chapter IV (1) to (5) of the 2011 edition merely spell out in more detail requirements which were already implicit in the 2000 edition. For example, an MNE cannot “respect” human rights unless it first conducts proper due diligence, because only then can it identify adverse impacts and take steps to avoid or mitigate them.<sup>4</sup>

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<sup>4</sup> See, eg, Principles 17 to 19 of the UN Guiding Principles on Business and Human Rights: A/HRC/17/31. These put due diligence at the core of the duty to respect human

- (2) the 2000 edition called on Salini to respect the rights set out in the UN human rights covenants and the African Charter, because both Ethiopia and Kenya ratified all three before 2000 and they were therefore part of their “international obligations and commitments” under Chapter II (2).<sup>5</sup>
16. It is irrelevant that Ethiopia and Kenya have apparently chosen to ignore their international obligations, because:

*The responsibility to respect human rights is a global standard of expected conduct for all business enterprises [and] exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations.*<sup>6</sup>

### III International Obligations

17. If Salini had been concerned to respect the human rights of the downstream communities to which Ethiopia and Kenya were internationally committed, it would have first taken the trouble to find out what these rights were.
18. There is no evidence that it did this. If it had, it would have quickly discovered that Ethiopia and Kenya had ratified the African Charter as well as both UN human rights covenants, and that

- (1) All three instruments recognised the fundamental human right to self-determination;<sup>7</sup>

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rights, and confirm that this necessarily requires a prior assessment of the project’s impact on affected communities.

<sup>5</sup>These rights are collective or group human rights under international law and have been successfully invoked in other Specific Instances: see, eg, *Survival International v Vedanta Resources plc*. The Final Statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises is available here: <http://www.oecd.org/corporate/mne/43884129.pdf>

Group rights are recognised when the joint interest of individual members of the group in the survival of the group is considered sufficiently important to justify its legal protection. Tribal peoples are perhaps the best known example of this.

<sup>6</sup> UN Guiding Principles: commentary on Principle 11.

<sup>7</sup> Both the Human Rights Committee and the Committee on Economic, Social and Cultural Rights have ruled that the unilateral extinguishment of indigenous peoples’ rights to lands and resources is a breach of the right to self-determination. Ethiopia has also ratified the UN Convention on the Elimination of Racial Discrimination. The Committee established by the Convention has long taken the view that ratifying States must “ensure

- (2) From this right flowed the need to obtain the free, prior and informed consent of indigenous communities to development projects likely to have a significant impact on their way of life.
  - (3) The denial of the right to FPIC is highly likely to result in the violation of the other human rights of indigenous people.
19. Among the many sources in which Salini could have found confirmation of these principles were:

- (1) The 2001 report of the World Commission of Dams,<sup>8</sup> which stated:

*International and national policy making increasingly recognise that historical and continuing wrongs committed against indigenous and tribal peoples call for distinct measures to protect their rights. These measures include the free, prior and informed consent of indigenous and tribal peoples to developments that may affect them. To achieve this, the participation of indigenous and tribal peoples must become an integral part of the decision-making process. This is increasingly being recognised in international and national law.*

- (2) The 2003 report of the U.N. Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, which confirmed that FPIC “is essential for the [protection of] human rights of indigenous peoples in relation to major development projects” because

*Wherever [such projects] occur in areas occupied by indigenous peoples it is likely that their communities will undergo profound social and economic changes that are frequently not well understood, much less foreseen, by the authorities in charge of promoting them. [...] The principal human rights effects of these projects for indigenous peoples relate to loss of traditional territories and land, eviction, migration and eventual resettlement, depletion of resources necessary for physical and cultural survival, destruction and pollution of the traditional environment, social and community*

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that members of indigenous peoples have rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent”.

<sup>8</sup> The WCD was set up by the World Bank and the World Conservation Union in 1998 and its members included representatives of the dam construction sector.



*disorganization, long-term negative health and nutritional impacts as well as, in some cases, harassment and violence.*

- (3) The 2003 resolution of the ACHPR which adopted the findings of a Working Group of Experts that:

*Dispossession of land and natural resources is a major human rights problem for indigenous peoples. They have in so many cases been pushed out of their traditional areas to give way for the economic interests of other more dominant groups and large-scale development initiatives that tend to destroy their lives and cultures rather than improve their situation....Large-scale extraction of natural resources such as logging, mining [and] dam construction... have had very negative impacts on the livelihoods of indigenous pastoralist and hunter-gatherer communities in Africa. So has the widespread expansion of areas under crop production. They have all resulted in loss of access to fundamental natural resources that are critical for the survival of both pastoral and hunter-gatherer communities such as grazing areas, permanent water sources and forest products. This is a serious violation of Article 21 of the African Charter which states clearly that all peoples have the right to natural resources, wealth and property.*

#### **IV Summary of Complaint**

20. Salini does not appear to have had any regard at any stage to any of the principles or sources summarised in Section III.
21. Notwithstanding its size, experience and resources, the Company had no human rights policy. It had no mechanism to ensure that the Company respected the human rights of communities affected by its projects, or to ensure that the Company was aware of and took steps to avoid or mitigate any adverse impacts that its operations might have. Salini has apparently pursued the commercial success of Gibe III with little or no regard to these matters.
22. Our case is that the Company:
- (1) knew before it contracted to build Gibe III, or would have known if it had conducted due diligence, that the dam was bound to have a very significant impact on the rights of the downstream communities

- (2) also knew or should have known that the Government of Ethiopia (or of Kenya, for that matter) had made no attempt to assess the scope of this impact, let alone to avoid or mitigate it;
- (3) should therefore have conducted its own enquiry into these issues but failed to do so;
- (4) as a result, when it signed the Gibe III contract had no idea whether the rights of the downstream communities could or would be protected against the changes which the dam would inevitably bring about;
- (5) made no attempt to enquire into these issues until at least two years after the construction of the dam had begun, when it was too late to change direction. Salini was now contractually committed to complete the dam, however indifferent either Government might be to the rights of the downstream communities; and its overriding concern was to ensure so far as possible that the Project remained on schedule and on budget;
- (6) chose therefore to minimise the adverse impact of the dam and to propose a mitigation plan which it knew or should have known could not adequately address the situation;
- (7) thereby failed in its fundamental obligation under the OECD Guidelines to “respect the human rights” of these affected by its operations; and in any event
- (8) failed “to engage in adequate and timely communication and consultation” with the downstream communities.

## **V The Facts**

### Gibe III dam

23. In a turnkey EPC contract signed in July 2006 Salini Costruttori agreed to construct for the Ethiopian Electric Power Corporation a roller compacted concrete dam and reservoir in the middle basin of the Omo-Gibe River. The contract appears to have been negotiated without regard to one of the cardinal principles of the 2000 Guidelines, that “obeying domestic law is the first obligation of business.”

24. In particular

- (1) Article 25 of Procurement Proclamation 430/2005 required EEP Co to invite open bids for Gibe III, but it chose to negotiate only with Salini.
  - (2) Article 3 of Environmental Impact Assessment Proclamation 299/2002 did not allow Salini to start work on the dam until it had obtained authorisation from the Ethiopian Environment Protection Agency, but it did so anyway. Although EPA authorisation was not issued until 2009, work began on site immediately after contracts were exchanged.
25. Gibe III is now substantially complete, at an estimated cost of some \$1.8 billion. With a maximum height of about 243 meters it is one of the largest dams in Africa. Turbines were switched on in October 2015, and installed capacity is 1,870 megawatts. About half of this output will probably be exported to Kenya, Sudan and Djibouti.
26. The reservoir will stretch back about 150 km north of the dam wall, but this area is sparsely populated and it has not been necessary to resettle significant numbers of people. Below the dam, a very different picture emerges.

Lower Omo

*Before Gibe III*

27. Between 300 and 500 kilometres downstream of the dam, but still in Ethiopia, live well over 100,000 people from six different tribes. From north to south these are the Bodi, the Mursi, the Kwegu, the Nyangatom, the Kara and the Daasanach.<sup>9</sup> Few talk Amharic, and contacts with the outside world are still limited
28. Until recently all these people lived in small, seasonally mobile communities along or close to the River. They relied heavily on 'flood-retreat' or 'recession' agriculture along its flooded banks. Sorghum and maize was planted in September and October, as the annual flood receded, and harvested in December and January.

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<sup>9</sup> See the map at page 1 of the attached bundle.

29. Rainfall in the north allowed the Bodi, Mursi and Kwegu to practice both flood-retreat and rain-fed cultivation. Although they were also pastoralists, the Bodi and the Mursi were as dependent on the River as the Kwegu, because their herds were not enough to sustain them.
30. Further downstream lower rainfall made rain-fed cultivation practically impossible, but the annual flood submerged large areas of grassland away from the immediate banks of the river as well as the delta on Lake Turkana. This enabled the largest of the Lower Omo tribes, the Dassanach, to produce all the grain they needed from flood cultivation alone, and provided them with annual dry season grazing on the flooded 'flats' between November and March.

### *After Gibe III*

31. Like any other hydropower dam Gibe III is designed to regulate the flow of the Omo River - and therefore to eliminate the flood cycle on which the downstream communities depend. The reservoir began to fill in early 2015. The process will take some years to complete, but upwards of 7 billion cubic metres of water are already held back by the dam wall. As a result there was no flood last year, and people may starve. The Dassanach, for example, cultivated over 8,000 hectares of flood-recession sorghum in 2014, but were able to grow no sorghum at all in 2015. This tribe also relies on the flood, of course, to graze its cattle. The Kwegu are in an equally difficult position. They depend on fish from the River Omo (as well as flood-retreat agriculture), but report that since the completion of the dam fishing stocks have been substantially depleted.
32. An important benefit of the regulated river flow created by the dam, of course, is the opportunity it offers for large-scale irrigation. Government maps obtained by Human Rights Watch show that in 2008 the Government began to earmark some 450,000 hectares of land in the Lower Omo valley for commercial agriculture. About 245,000 hectares of this area were to be devoted to state-run, irrigated sugar plantations. More than 200 kilometres of irrigation canals will run parallel to both banks of the Omo River, and some 750 kilometres of roads and several sugar processing factories will be constructed.
33. The plantations themselves will be allocated between three "sugar blocks" which stretch for over 100 km along the Omo. They will appropriate the lands of the Bodi, Kwegu and Mursi on both banks of the River, and a large part of the lands of the Nyangatom. A map produced by Human Rights Watch shows that 30 of 52 Bodi and Kwegu settlements, and 114

of their 157 cultivation sites, are either included in block 1 or have been allocated for other agricultural development. The African Resources Working Group prepared another map which shows large numbers of Dassanach villages in block 3, and that a further 74,000 ha of Dassanach land have been leased to private investors for irrigated farms<sup>10</sup>

34. These plans were not made public until January 2011, when the then Prime Minister, Meles Zenawi, referred to them in general terms in a speech in South Omo, assuring his audience that local pastoralists would now be lifted out of 'poverty and backwardness' and would even be 'given' irrigable land for their own use.
35. The Prime Minister failed to mention, however, that in return for this 'gift' the downstream communities would lose not only their access to the Omo River but their best agricultural and grazing land. Nor did he explain that they would be forced – because they would have no viable alternative – to abandon recession agriculture and move into the resettlement villages that the Government would create for the purpose; nor that they would have to give up the cattle herds which are their only source of wealth, because most of the land around the villages would be given over to sugar cane.
36. A "Villagisation Plan" produced by the zonal authorities in January 2012 speaks of their "firm resolve" to transform the lives of the pastoralists in the Lower Omo, and of the need to raise their awareness of the "benefits" of villagization. There is cogent evidence, however, that the authorities have resorted to less sophisticated techniques when they have been unable to persuade people of the supposed benefits.
37. A series of well-documented reports has highlighted their use of violence and intimidation, and caused sufficient concern in the US Senate that the Appropriation Bills for both 2014 and 2015 specifically banned the use of US aid "to support activities that directly or indirectly involve forced evictions" in the Lower Omo.<sup>11</sup>
38. The same reports prompted the Development Assistance Group, which is an association of unilateral and multilateral development agencies in Addis Ababa and includes the Italian Embassy, to send a mission to the Lower Omo to investigate some of the allegations.

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<sup>10</sup> See the maps at page 2 et seq of the bundle.

<sup>11</sup> Human Rights Watch, *"What Will Happen if Hunger Comes" Abuses against the Indigenous Peoples of Ethiopia's Lower Omo Valley* (2012); International Rivers, *The Downstream Impacts of Ethiopia's Gibe III Dam* (2013); Oakland Institute, *Omo: Local Tribes Under Threat* (2013).

39. DAG refused to disclose a copy of the mission's August 2014 report to Survival, but we were eventually able to obtain this on a Freedom of Information request to the European Commission.<sup>12</sup> The report describes a series of meetings at which the communities talked of their "keenness to maintain their agro-pastoralist way of life" and of their "deep mistrust" of the authorities. At one meeting the mission was told that "before you come back next year, the government will come to kill and finish us."
40. The DAG mission was firmly of the view that communities should be resettled only with their "informed consent"; but its report made clear that this could not have been obtained, for two reasons.
41. First the communities were in no position to give their "informed" consent, because even in 2014 they remained "largely unaware of the full extent of plans for the transformation of the valley."
42. Second, discussions with the zonal authorities had left the mission in no doubt that they had not offered the communities any alternative to permanent villagisation. A "fundamental and irreversible transformation ... of the culture and way of life of Mursi and Bodi" was to take place, whether they wanted it or not.
43. The "rapid pace" of the transition, the mission concluded, "will very likely destabilise communities who have preserved their agro-pastoralist and semi-nomadic traditional practices largely unchanged. Recent reports that land is now being cleared at speed, and that the first sugar factory in the Lower Omo will begin production in February 2016, indicate that the rate of change is about to accelerate.
44. The instability and mistrust described by the DAG mission are typical of a development project imposed on local people without their active involvement. Numerous studies<sup>13</sup> have shown that projects which dispossess indigenous communities of their lands or restrict their access to vital resources invariably result in their economic and social impoverishment, unless before the project is adopted the affected communities have been
  - (1) consulted about and if necessary have given their informed consent to the project; and

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<sup>12</sup> See page 5 of the bundle.

<sup>13</sup> See, most famously, Michael Cernea, 'The Risk and Reconstruction Model for Resettling Displaced Populations,' *World Development* 25(10) 1569 (1997). Cernea was a Senior Advisor at the World Bank and the principal architect of its Involuntary Resettlement Guidelines.

- (2) allowed to collaborate with the project's proponents on detailed plans for benefit sharing and livelihood reconstruction.

## Lake Turkana

### *Before Gibe III*

45. Lake Turkana is the world's largest desert lake. Since the 1960s pastoralists indigenous to the area around the Lake have come to depend increasingly on its fisheries to alleviate famine and destitution.<sup>14</sup> Long before Salini contracted to build Gibe III, the fisheries had become a valuable source of protein in an area where food security is a constant challenge. A study carried out for the African Development Bank in 2010 reported that there were then almost 7000 boats on the Lake, of which more than half were traditional raft boats or "n'gatedie," and that their numbers continued to grow.
46. The critical dependence of the Lake's fisheries on the fluctuations of the Omo and the nutrients that it brings is well known. A series of studies undertaken over many years has confirmed that nearly all of the important species of fish in the Lake depend on the Omo floods for their breeding cycles, and that poor floods are followed by an immediate decline in fish numbers.<sup>15</sup>
47. This is because the floods bring fresh water full of silt, organic matter and nutrients into the Lake. They are large enough to raise the level of the Lake itself, which ensures that nutrients from the soil along the banks of the Lake are released into the water. At the same time the floods significantly reduce levels of salinity. The fresh nutrients and the lower salinity encourage the growth of microscopic plants and algae that are essential links in the Lake's food chains, and provide an ideal habitat for breeding fish.

### *After Gibe III*

48. Since the Omo provides almost 90% of the Lake's freshwater intake and nutrients, the impact of the dam on the fisheries may well be devastating. Some experts predict that the dam and the irrigation projects associated

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<sup>14</sup> Avery, *Hydrological Impacts of Ethiopia's Omo Basin on Kenya's Lake Turkana Water Levels and Fisheries* (2010).

<sup>15</sup> They date from the 1890s and are listed in Avery, *Hydrological Impacts of Ethiopia's Omo Basin on Kenya's Lake Turkana Water Levels and Fisheries* (2010) at paragraph 7a. This report was commissioned by the African Development Bank.

with it could reduce the level of the Lake by up to 20 meters.<sup>16</sup> This could cause the brackish water to increase in salinity and render it no longer drinkable by the indigenous communities around the Lake. Increased salinity could also drastically reduce the number of fish on which the same people depend for their livelihoods.

49. It remains to be seen whether these predictions will be fulfilled, but local people and experts have already reported a receding shoreline, reduced fish production and decreased tree coverage. The chairman of the Kenyan Wildlife Service, Richard Leakey, has recently warned that Gibe III and the irrigation schemes associated with it will result in the Lake's "virtual disappearance."

## VI BREACH OF THE GUIDELINES

### The need for due diligence

50. We have already submitted that companies cannot hope to respect the human rights of communities likely to be affected by their operations unless they first conduct human rights due diligence. They must also, of course, engage in "adequate and timely communication and consultation" with communities in accordance with the Guidelines, insofar as this is not an intrinsic part of due diligence itself.
51. As the UN Special Rapporteur on the Rights of Indigenous Peoples has observed, in remarks directed to the extractive industry but which apply equally to dams:

"Companies should conduct due diligence **before...committing themselves to proceed** with extractive operations without the prior consent of the indigenous peoples concerned and conduct their own independent assessment of whether or not the operations, in the absence of indigenous consent, would be in compliance with international standards, and under what conditions. If they would not be in compliance, the extractive operations should not be implemented, regardless of any authorisation of the State to do so."<sup>17</sup>

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<sup>16</sup> Avery, *What Future for Lake Turkana?* African Studies Centre, University of Oxford (2013).

<sup>17</sup> *Report on Extractive Industries and Indigenous Peoples: A/HRC/24/41* at paragraph 40. See also the Commentary on Principle 19 of the UN Guiding Principles on Business and Human Rights: "There are situations in which the enterprise lacks the leverage to prevent or mitigate adverse impacts and is unable to increase its leverage. Here, the enterprise should consider ending the relationship, taking into account credible assessments of potential adverse human rights impacts of doing so." The Commentary was directed at rolling contracts. Since it is not possible to terminate a turnkey contract



52. Salini made no attempt, however, to conduct due diligence on the downstream communities before it committed itself to Gibe III, although the need for this was blindingly obvious. Even if the company itself had no particular knowledge of the downstream communities, the most cursory of enquiries would have alerted it to the catastrophic effect that unplanned change was likely to have on them.
53. Social scientists have amassed a wealth of evidence about the social and economic needs of these communities, and would have been well placed to advise Salini about the dangers and what needed to be done to minimise them. As far as we are aware, Salini made no attempt to seek the advice of any of these experts.
54. There was also, of course, a “Master Plan” for the Omo-Gibe Basin which had been completed in 1996, some 10 years before Salini signed the Gibe III contract. Financed by the African Development Bank, the Plan’s terms of reference explicitly acknowledged the “transformation of the socio-economic system” of the downstream communities which the development of the Lower Omo would inevitably bring in its wake.
55. The authors of the Plan observed that that “there are indigenous people (mostly agro-pastoralists) who depend heavily on the natural environment of the area for their livelihood.” The Plan did not anticipate the irrigation of the Lower Omo on the scale that has occurred, but warned that any hydropower and irrigation scheme was likely to “substantially alter and disrupt these peoples’ traditional way of life and could seriously threaten their existence.” The Plan was equally concerned, rightly, that the migrant labour inevitably attracted into the area would have “the potential to impact greatly on indigenous people.” The impact of large scale irrigation, it concluded, would require a detailed EIA at the feasibility planning stage.
56. The Plan went on to observe that local people had not been consulted about an earlier project in the Lower Omo or compensated when their traditional lands were annexed, and that this had resulted in “major disturbances.” If the same mistake was not to be repeated, it would be essential to negotiate agreements with local people to ensure that land used for flood-retreat agriculture was affected as little as possible, that proper compensation was paid to communities whose land was taken, and that communities were assisted to achieve their own development priorities.

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while work is still in progress, Salini had to exercise its “leverage” before it entered the contract in the first place.

57. We do not know whether Salini decided simply to ignore the Master Plan, or did not bother to read it in the first place. Either way the company will have failed to conduct due diligence. As a result, before it signed the Gibe III contract it failed either to conduct its own assessment of the downstream impact or to obtain assurances from the authorities that they would do so themselves. It waited until after it had signed the contract before it did anything, and by then it was too late.
58. It is impossible to know what Salini might have achieved if it had carried out due diligence at the right time and sought to avoid the impact on the human rights of the downstream communities which this process would have identified. It should be borne in mind, however, that the company had already built Gibe I and II and was therefore uniquely qualified also to build Gibe III. It would have been well placed to seek pre-contractual assurances from the Ethiopian authorities that the interests of the downstream communities would be protected. The authorities would have had a strong incentive to provide these assurances if their refusal to do so might lead to Salini's withdrawal.
59. But once Salini was committed to the project, this incentive disappeared. However disgracefully the communities might thereafter be treated, Salini would have no choice but to perform its part of the turnkey contract. Its sole concern would now be to protect itself as best it could against reputational damage and financial loss. The company's failure to conduct due diligence at the outset made its subsequent breaches of the Guidelines almost inevitable.

#### Failure to respect human rights in the Lower Omo

##### *The first pretence: no downstream impact*

60. In March 2006 Salini commissioned an Environmental Impact Report from Centro Elettrotecnico Sperimentale Italiano S.p.A. CESI took less than three months to finish the job, enabling Salini to exchange contracts only a couple of weeks later.
61. Salini was able to move with such remarkable speed because, although CESI had been forced to concede that "the operations at dam site will affect natural flows downstream the dam" (sic), Salini could take comfort from the fact that:

*There are no tribal people **in the project area** whose traditional lifestyles could become compromised through the implementation of the proposed hydropower project ... **Therefore, no indigenous development plan will be required.***<sup>18</sup>

62. The EIA at least acknowledged that if “traditional lifestyles” were to be compromised Salini would have had to produce an “indigenous development plan.” But the confinement of the ‘project area’ to the middle basin of the River Omo had the highly convenient consequence, so far at least as Salini was concerned, that it could now ignore the Lower Omo altogether.<sup>19</sup>

63. This appears to have been a deliberate ploy on the part of Salini, and was certainly in breach not only of basic principles of impact assessment but of Proclamation 299 of 2002, with which all EIAs in Ethiopia are supposed to comply. This defines the “environmental impact assessment” required of project proponents as

*a methodology of identifying and evaluating in advance any effect, be it positive or negative, which results from the implementation of the proposed project.*

64. Salini cannot have thought that it could lawfully excise a particular “effect” from the EIA by simply excluding it from a “project area” of its own making. It must have known that this would make nonsense of the Proclamation, as indeed it did.

65. As criticism of the 2006 EIA began to mount, Salini realised that it would have to do something to rescue the situation. The “something” it chose was the production of an “Environmental and Social Impact Assessment.” This was prepared in April 2008 in conjunction with an “Additional Study on Downstream Impact,” a “Public Consultation and Disclosure Plan” and a number of other Gibe III documents which were revised yet again in January 2009. Curiously, none of the new documents made any reference to the 2006 EIA, which for all practical purposes had been expunged from the record. The use of the words “Additional Study” implied that the downstream impact of the dam had already been the subject of an earlier study, but this was not the case.

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<sup>18</sup>Centro Elettrotecnico Sperimentale Italiana) Gibe III Hydroelectric project: environmental impact assessment Milan, 2006 paragraph 7.1.3.4

<sup>19</sup> Op cit., Fig. 3.1, p. 38.

66. The ESIA and the Additional Study were finally approved by the Environmental Protection Agency in July 2009. Given that by now work had been in progress on site for four years, the pressure on the Agency to issue these approvals is likely to have been considerable.<sup>20</sup>

*The second pretence: controlled floods*

67. The Additional Study made the first and only attempt at a ‘downstream mitigation plan’. The central component of this plan was that a “controlled flood” should be released from the dam reservoir over 10 days in late August or early September every year. This, it was said, would replicate the natural flood of the Omo and compensate the communities for ‘**all adverse effects**’ of the dam. At the same time it would avoid the ‘severe damages [sic] to downstream communities’ that had supposedly resulted in the past from ‘large unregulated floods.’
68. These claims were nonsensical, as Salini must have known. It cannot seriously have been believed, for example, that “large unregulated floods” had been a problem that Gibe III was about to solve. The last “large” flood had been in 2006, when the Government itself had described it as “the worst in 100 years.” Local reports indicate that even this flood resulted in very few fatalities.
69. In any event, controlled floods could only help the downstream communities if and to the extent that they were permitted by EEPCo, but:
- (1) an artificial flood would only work if water was released in quantities that would inundate the irrigation infrastructure now in place along the banks of the Omo. EEPCo was hardly likely to countenance the destruction that this would cause;
  - (2) the water would have to pass more quickly through the dam than it passes through the turbines, so that EEPCo would lose income every time it authorised a “flood.” Sogreah, a firm of independent consultant engineers hired by the European Investment Bank to investigate Gibe III, estimated the loss at up to \$10.8 million per annum and considered that it was “probably” not one that EEPCo would tolerate.<sup>21</sup> Events have proved Sogreah right. The first flood

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<sup>20</sup>These studies have themselves attracted much criticism. See, eg, the report commissioned by the European Investment Bank: Sogreah, *Independent review and studies regarding the environmental and social impact assessments for the Gibe III hydroelectric project, final report* (France, 2010).

<sup>21</sup> Sogreah (2010) at page 85.

should have been released in September 2015 but never materialised. No explanation has been offered.

70. It is also relevant that managed flood releases are a complex and relatively untried technique which, as the technical literature confirms, requires close collaboration with the affected communities. Here there was no collaboration at all, and no attempt to exploit the communities' profound working knowledge of the flood regime. These and other factors led the Sogreah consultants to conclude that the proposal in the Additional Study had been put forward without a proper assessment either of the problem it was intended to solve or of its likely effectiveness. Sogreah recommended that further studies should be carried out, but the recommendation was ignored.
71. The reason for this is probably to be found in a press release which Salini issued in March 2010 to counter a Survival International critique of Gibe III. Whether by accident or design the release revealed that, even if controlled floods could be made to work, Salini regarded them strictly as a short term fix:

*This will enable the local people to have a transitory period of a suitable duration when it is deemed opportune to switch from flood-retreat agriculture to more modern forms of agriculture*

72. Artificial floods, it was now apparent, were to be permitted only for a limited period. Thereafter there would be no more flood-retreat cultivation, and no flood to sustain dry season grazing either. Downstream communities would now have to take up more 'modern' forms of agriculture, whatever views they themselves might have about the matter.
73. The temporary nature of Salini's "solution" reflected the fact that, even if artificial releases could eventually be made to work, they would become redundant when Gibes IV and V were built downstream of Gibe III.
74. In short, Salini appears to have done nothing at all to ensure that it would respect the human rights of the communities of the Lower Omo. The position further south is no different.

#### Failure to respect human rights at Lake Turkana

75. A USAID report in January 2009 concluded that "baseline data" about the effect of Gibe III on Lake Turkana were needed, and that the communities

which depended on the Lake would have to be consulted about the project. Salini appears to have ignored these conclusions. The ESIA which it produced a few months later could and should have assessed the impact that Gibe III was likely to have on the peoples of Lake Turkana, but made no attempt to do so. Nor, despite its apparently comprehensive title, did its “Additional Study on Downstream Impact.” There was no mention in either document of the need for consultations.

76. Without an assessment and proper consultations Salini could not know what measures it should take to ensure that it “respected” the human rights of these peoples. The unsurprising result was that it took no measures at all.
77. It was not until 2010, four years into its construction of the dam, that Salini made its first and only attempt, of a sort, to assess the impact of Gibe III on the Lake.<sup>22</sup> But the company’s belated recognition that it had a responsibility to safeguard the Lake against adverse effects did not, unfortunately, extend to the peoples who depended on the Lake for their livelihood. In an observation strongly reminiscent of the claim in its 2006 EIA that there were “no tribal people in the project area,” Salini sought to assure readers of its 2010 report that “the lake area is barely inhabited.” It is difficult to see how it could possibly have believed this to be true.
78. The report went on to conclude that “Gibe III will sensibly reduce the lake level fluctuations.” Gibe III will reduce fluctuations, because it will dispense with the annual floods which produce them; but what was thought to be “sensible” about this was not explained. The notion that reduced variations in water levels might somehow benefit the fisheries runs completely counter to the weight of the expert evidence.<sup>23</sup> As a result the 2010 report entirely failed to address the impact on the peoples of Lake Turkana of both the dam itself and the large scale irrigation which the dam had made possible – and of which Salini must by now have been well aware.
79. This impact will be considerable. As we have said, some 7 billion cubic metres of water are already retained by the dam wall. This is all water that would otherwise have flowed down the Omo and into the Lake, carrying silt and other nutrients along with it. Water levels in the Lake are bound to fall over the several years it will take to fill the reservoir, and the level cycles of the Lake will be permanently altered.

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<sup>22</sup> Salini Costruttori S.p.A. and Studio Pietroangeli s.r.l., *Gibe III impact on Lake Turkana levels* Report no 500 HYD RSP 002A (2010).

<sup>23</sup> See above, *What Future for Lake Turkana?*

80. According to one recent report, a "much more dramatic picture emerges" when one takes account of the irrigation schemes that Gibe III has made possible. At a 60% irrigation efficiency, the author concludes, the Lake "the fisheries will be hugely reduced."<sup>24</sup>
81. The peoples of Lake Turkana have never been consulted about these changes, let alone asked to consent to them, and have thereby been denied their right to self-determination under Article 20(1) of the Charter. They will inevitably be deprived of a vital natural resource in violation of Article 21(1). The failure to conduct any proper assessment of the impact of Gibe III on Lake Turkana or to seek the communities' consent to the project has contravened their right to development under Article 22(1).
82. Salini has conspicuously failed to respect any of these rights. It has preferred to look the other way, and to pretend that the dire situation in which the peoples of Lake Turkana now find themselves is none of its concern.

#### Failure to prevent or mitigate adverse impacts

83. The Guidelines expect MNEs "to seek ways to prevent or mitigate adverse human rights impacts that are directly linked to its business operations even if they do not contribute to those impacts." This is also an essential component of the general duty to respect human rights.
84. Any significant irrigation of the Lower Omo was bound have "adverse impacts" on the rights of the downstream communities, for the reasons summarised in Section V. These were "directly linked" to Salini's operations, because without the dam the annual floods would have continued and there would have been no large-scale irrigation.
85. When it negotiated the Gibe III contract Salini knew or should have known that a dam would not only stop the annual floods but was bound to lead to the irrigation of the Lower Omo, if not on the scale that has subsequently transpired. By the early 2000's the irrigation potential of the area was already widely recognised. The Master Plan had recommended that any dam on the Omo could and should be used to irrigate the region, and a World Bank Concept Note had observed in 2004 that "the Omo Basin has an irrigation potential of 348,000 ha and could be an early candidate for development."

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<sup>24</sup>*What Future for Lake Turkana?*, op cit, at page 49.

86. Salini also knew or ought to have known that the Governments of both Ethiopia and Kenya had made no attempt themselves to assess or mitigate the impact on the downstream communities of either the termination of the annual floods or significant irrigation. It ought therefore to have conducted its own enquiry into these matters, and in the light of its findings discussed with both Governments whether and how they could ensure that the rights of the communities were adequately protected if the dam went ahead.
87. In breach of the Guidelines Salini took none of these steps, and made no other attempt to mitigate or prevent the adverse impact of Gibe III on the downstream communities. There is still no detailed, evidence-based and properly funded downstream mitigation plan of the sort that Sogreah and others have called for, and which a project of this size so obviously requires.

No adequate or timely consultation [chaps V(2)(b)]

88. Both editions of the Guidelines called on Salini to engage in “adequate and timely communication and consultation” with the downstream communities. It appears to have engaged in no communication or consultation at all, and certainly in none that could be described as either adequate or timely. This was despite the fact that, as Salini knew or should have known, there had been no or no proper consultations in either country.
89. In Ethiopia the Government’s Public Consultation and Disclosure Plan reveals that people in the Lower Omo were not consulted until at least 10 months after it had exchanged contracts with Salini. Work was now well under way on site, and would continue in accordance with the contract whatever the views of the affected communities.
90. The Plan also shows that only six meetings were held between May and December 2007 at which a total of only 93 people altogether – or less than 0.1% of those affected - were “consulted.” Not a single Bodi or Kwegu was present at any of the meetings. Even the 0.1% cannot have been consulted about the “Downstream Mitigation Plan, since this had not yet been produced.
91. Unsurprisingly, when a USAID official visited the Lower Omo in January 2009 she discovered that the communities still knew little or nothing about Gibe III. In a separate investigation during the same period the UN Special Rapporteur on Indigenous Peoples found that:



*Most affected individuals reportedly do not understand how the project might affect them, in part because of geographic isolation, linguistic barriers, and political marginalization. Project developers have not attempted to overcome these obstacles and have made virtually no project information publicly available, not even through media coverage.*

92. No more effort has been made to explain plans to irrigate the Lower Omo. The Prime Minister of Ethiopia did not announce them until January 2011, when he declared that the development would start “this year”. People were not to be consulted about what should happen, but told what would happen. Many were not even told that. By August 2014, when the last DAG mission visited the area, most Bodi and Mursi “seemed to remain largely unaware of the full extent of plans for the transformation of the valley.” This and similar reports put paid to any argument that the peoples of the Lower Omo might have given their FPIC either to Gibe III itself or the commercial developments which the dam has brought in its wake.
93. The position of the peoples of Lake Turkana is no better. Salini has never made any attempt to consult them about its operations, whether in an adequate and timely manner or at all.

## **VII REMEDIATION**

94. Under Chapter IV (6) of the 2011 Guidelines, Salini is expected to “provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.”
95. Sections IV to VI show how Salini has “contributed” to impacts on human rights in the Lower Omo that could hardly be more “adverse,” and which are likely to be equally serious for the peoples of Lake Turkana. In this final section we consider the steps that the Company might now take to “remediate” these impacts.
96. One obvious difficulty is that the damage done to a tribal community when it is uprooted cannot be compensated in monetary terms. Nothing can make good the loss of indigenous land or resources, which is why free prior and informed consent must be “prior” and why FPIC is an absolute requirement.

97. The wrongs done to the downstream communities can be put right if their lands and fisheries are restored to them and are protected by law, but only the two Governments, and particularly the Government of Ethiopia, are in a position to bring this about. That is why the communities of the Lower Omo have looked to the ACHPR, in the hope that it can exert sufficient pressure on the Government to take the necessary measures.
98. Even if the ACHPR upholds the complaint, however, and the Ethiopian authorities abide by its ruling, the communities on both sides of the border will need a great deal of support if they are to put their lives back on course. We do not know what form this assistance should take; nor will anyone else until far more is known about their current situation and future prospects, and until they themselves are properly consulted.
99. The impact assessments which should have been conducted years ago are now more urgent than ever, and should be carried out by an independent body with the full participation of the communities themselves. Only then will it be possible to devise the means by which to restore to the peoples of the Lower Omo the right to choose whether they wish to live on their traditional territories or in Government villages, and to protect the peoples of Lake Turkana against the loss of a vital means of subsistence. The establishment of livelihoods trust funds might help to provide this choice, but this too should be for the communities in both countries to decide for themselves.
100. In Ethiopia, it is difficult to believe that those who wish to remain in their homelands cannot be supplied sufficient water to cultivate their crops and graze their cattle, whether by the provision of regular artificial floods or by guaranteed access to irrigation channels. They may also be greatly assisted by the provision of mobile health, veterinary or other services. For those who have already been villagised and decide to remain where they are – freely, and once they have been supplied with all relevant information – adequate water pumps, health services and sanitation may be a priority. In Kenya, much work will need to be done before a plan can be devised to protect the Turkana fisheries.
101. Salini can and should provide the funds required for proper impact assessments, for the consultations which would have to follow and for the implementation of whatever decisions emerge from those consultations. The Company should also commission and pay for a study of the means by which the Government can give practical effect to Article 40(5) of the Constitution of Ethiopia, which stipulates 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. The implementation shall be specified by law.*

If, as we anticipate, those conducting the study conclude that the only way to ensure that the downstream communities in Ethiopia are not displaced from their own lands is to grant them land certificates, they should go on to consider how to ensure that appropriate certificates are issued as a matter of urgency.

102. Salini will require the co-operation of Addis Ababa to put these measures into effect, but is uniquely placed to negotiate appropriate terms. The Company has already started work on the access road to Gibe IV. The negotiation of a new contract is currently in progress and it is expected to be signed later this year. Salini should make it a condition of the contract that it receives such assistance from the Government as it may reasonably require to put into practice any recommendations that the NCP may make. If the Government refused this assistance, donor agencies would be likely to infer that it has cast aside the fundamental human rights of the downstream communities in the name of “development.” This in turn might well result in the suspension or withdrawal of foreign aid.
103. For these reasons we believe that the NCP has a crucial role to play in obtaining at least some form of relief, even at this late stage, for the tribal peoples of both the Lower Omo and Lake Turkana.

Signed:

Survival International Italia

Dated: Milano, 11 March 2016

For an official Italian translation of this complaint, please contact:  
[ufficiostampa@survival.it](mailto:ufficiostampa@survival.it).

SURVIVAL INTERNATIONAL CHARITABLE TRUST  
Complainant

v

SALINI IMPREGILO S.P.A  
Respondent

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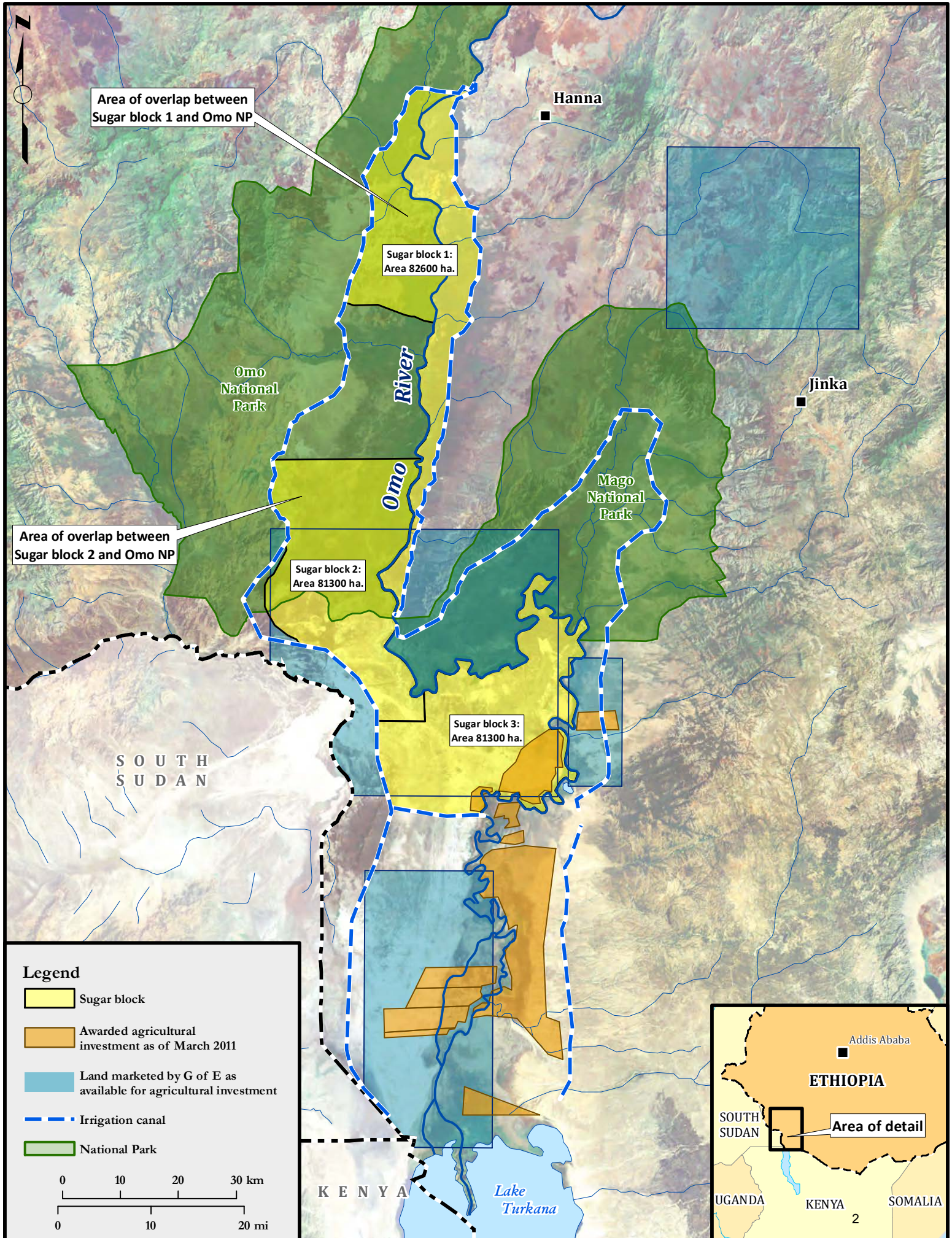
**COMPLAINANT'S BUNDLE**

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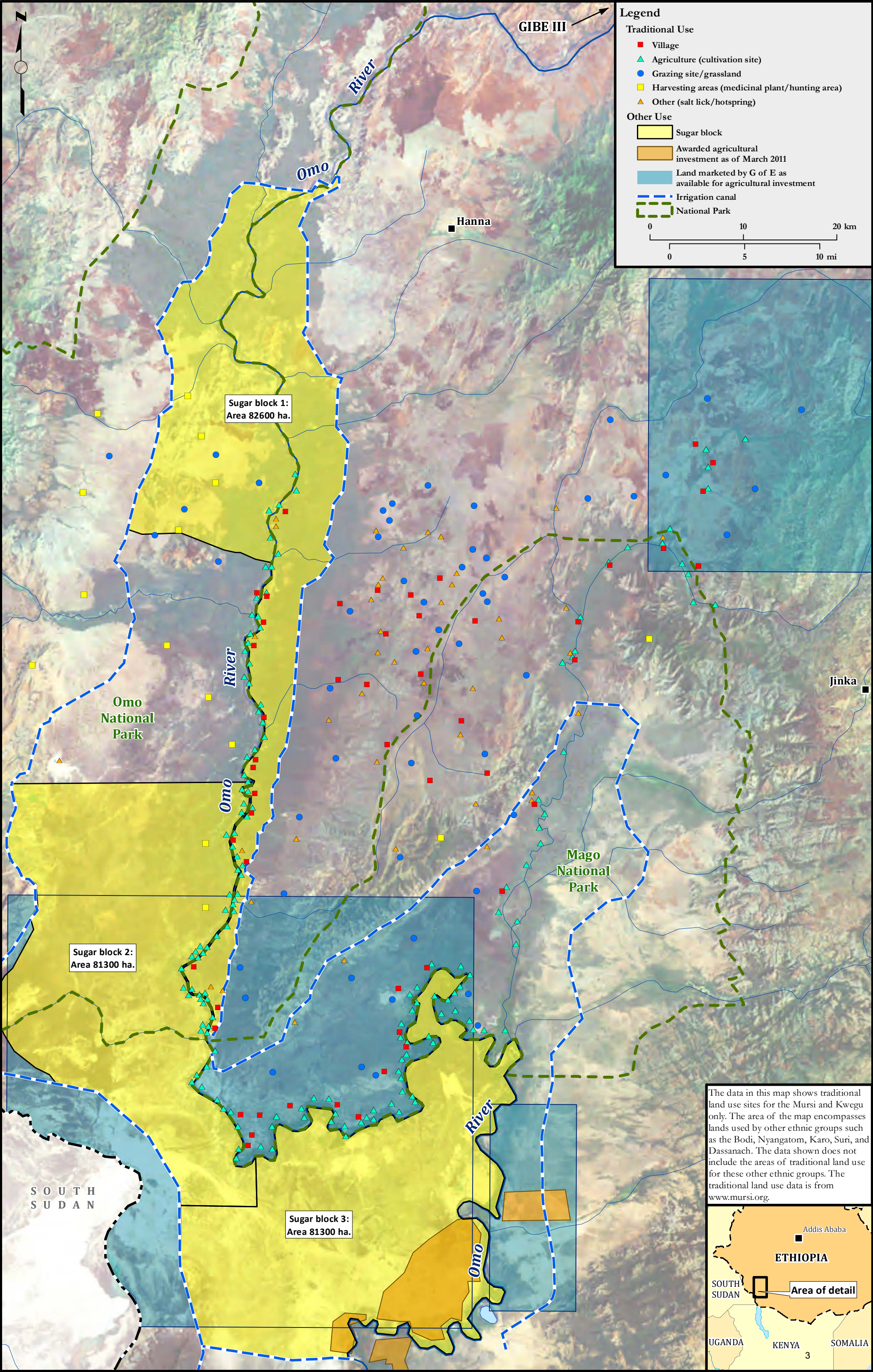
Fig. 3. Ethnic Groups in Tri-Nation Transborder Region





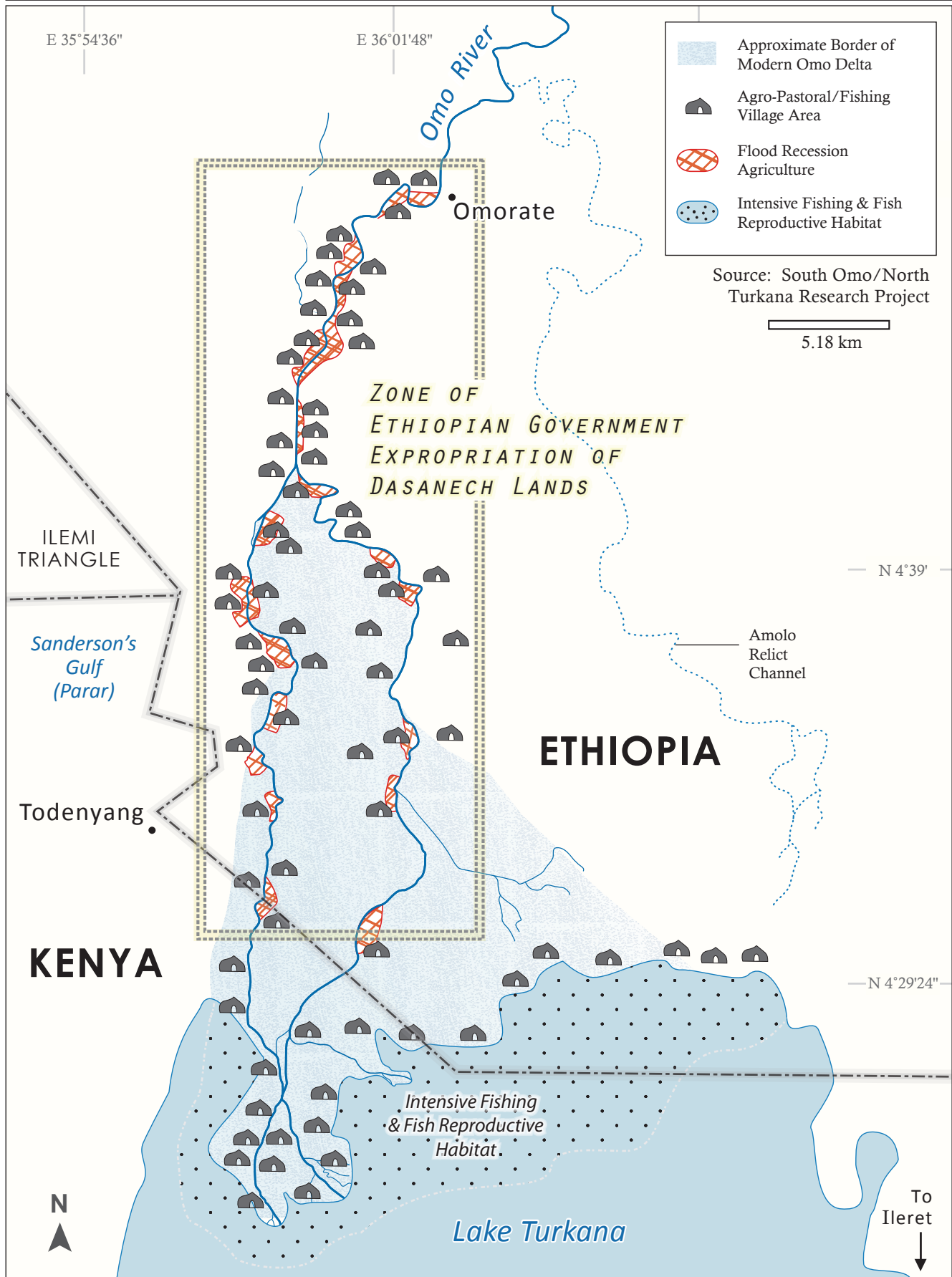








**Fig. 12. Dasanech Villages along the Omo River and Government Expropriation Zones**





# **DAG Informal field visit report**

## **South Omo Zone, Ethiopia**



### **Final Report**

**22 – 29<sup>th</sup> of August 2014**

██████████ (Finnish Embassy), ██████████ (Swedish Embassy),  
██████████ (German Embassy), ██████████ (DFID), ██████████  
(The Netherlands Embassy), ██████████ (USAID), ██████████ (EU)

*This informal report does not constitute in-depth social science research or a full-blown evaluation of Government of Ethiopia resettlement programmes. We believe, however, that it provides a broadly representative snapshot of programme implementation and outcomes. While it is based on notes gathered by all participants, this informal report does not necessarily reflect the position of participating institutions, nor of the DAG as a whole'*

## **Introduction**

To assess implementation and outcomes of state-directed resettlement in south Omo, a team of seven Addis Ababa-based staff from Embassies and bilateral donors visited Selamago Woreda on the eastern bank of the Omo in late August 2014. In this area, responsibility for resettlement is assigned to a state-owned corporation that is developing a 175,000 ha. sugar plantation along both banks of the river. This land is occupied by distinct, relatively small ethnic groups (on the east bank, Bodi and Mursi) who live in small, scattered and frequently-moving communities and pursue largely traditional agro-pastoralist livelihoods (men grazing their cattle over a large area and women cultivating rainfed or flood recession crops); and who appear to feel little connection with or affection for mainstream Ethiopian society or the Ethiopian state.

The team met the [REDACTED], [REDACTED], at the start and end of the visit. Four days were spent conducting a total of 19 focus group discussions and semi-structured interviews in eight sites (four Bodi, four Mursi). The team also met the management of the plantation.

## **Summary of the mission findings and recommendations**

The Government's motivations for pursuing resettlement would seem to include (i) obtaining land for the plantation and the economic development that it is believed this will bring to the valley; (ii) to make it easier to provide basic services (schools, health posts, clean water); and (iii) to 'modernize' these tribes and ensure their integration with the Ethiopian state and society.

The team found no evidence of forced migration. However, it seems clear that local government and the plantation management have decided that resettlement is necessary. Based on our discussions with both the Government and communities, we understand that the Government is not offering communities any alternative but to settle permanently. As such, the focus of consultation appears to be an effort to persuade the communities to go along with this process, rather than debating options.

The Government seems however to realize that communities must see the potential benefits of resettlement if they are to be persuaded to settle. The Government has started to invite people to observe irrigated agriculture as practiced in other localities which have already been resettled. While the Bodi and Mursi have expressed their keenness to maintain their agro-pastoralist way of life, they seem to be interested in at least some of the basic services on offer. However, Government efforts at persuasion take place against a background of deep mistrust towards the Government, as confirmed by our interviews.

According to what we were told, only a limited sub-set of local planning decisions are discussed with communities: this would seem to effectively preclude informed consent (as required in international and Ethiopian policies regarding resettlement). Despite numerous meetings, communities seem to remain largely unaware of the full extent of plans for the transformation of the valley. In our view, once completed, the sugar plantation and the 500,000+ workforce will have a significant impact on the livelihoods and way of life of the Bodi and Mursi, which seems likely to significantly increase the risk of conflict.

Central to Bodi and Mursi concerns is their ability to maintain cattle herds. In this context, the Government has indicated that "grazing land will not be touched". At the same time, however, the Government has indicated that it will not allocate certificates for communal ownership of land.

The rapid pace with which it is proposed to implement planned development (villagisation and the sugar cane plantation) will significantly accelerate what seems to be an inevitable process of underlying social and cultural change, as the Bodi and Mursi are increasingly exposed to external influences. We believe that this combination will very likely destabilize communities who have preserved their agro-pastoralist and semi-nomadic traditional practices largely unchanged. In our view, the culture and way of life of Mursi and Bodi as they exist today are likely to be fundamentally and irreversibly transformed in the near future.

Efforts appear to have been made to improve the standard of living in resettlement villages. In two of the three resettlement villages there was a broad consensus that living standards were similar to, and perhaps moderately better than, life before moving, despite complaints about water pumps, health clinics, and sanitation. [REDACTED], however, was in marked contrast a clear failure. We were informed that consultation had not occurred, the site was completely unsuitable, no services had been provided, and people were suffering from numerous health problems.

Our interviews revealed that access to water, health and veterinary services was generally welcomed, though not at any price, by the local communities. The prospect of access to schooling generated mixed reactions: communities without schools were quite negative about education, while those which now have a school were positive. In our view, there are potential (although only partially-articulated) positive gender aspects to the cost-benefit calculations of resettlement policy: women may benefit more directly than men from healthcare, water and irrigated agriculture.

Some of the recommendations proposed by the mission members are the following (see page 12 for the whole list):

- The authorities should consider the capacity of largely traditional communities to adapt to rapid change; and consider whether a slower pace may generate better, more sustainable results with less risk of conflict. The Government should explore middle ways and adapted proposals that would allow a soft transition, avoiding conflict.
- Re-settlement should be voluntary, based on informed consent, and seek to respect cultural preferences. Greater transparency and more meaningful consultations are needed. Local government and the plantation management should provide communities with a fuller picture of plans for the development of the valley (informed by publication of the environmental impact assessment for the sugar plantation, as required by Ethiopian law), so that they may make informed choices on issues such as resettlement.
- The Government should be able to offer the population meaningful alternatives to moving without denying them access to health, education and other services.
- In planning infrastructure and implementing services, community preferences and priorities should be elicited through participatory consultations and, where possible, taken into account (for example, in adapting the school curriculum or adjusting holidays to harvest cycles). More efforts should be made to involve women in these discussions. Promised services should be in place before people are moved, with arrangements (handover to local government or functioning community management structures) to ensure that these services are maintained to an acceptable standard.
- Government should consider engaging third parties (e.g. NGOs) in this process, in line with the social accountability mechanism of the PBS. There are lessons to be drawn from Maki-Orachaga, where a mission has provided long-term support (over many decades) and development and integration – that is, voluntary villagisation - is occurring, and accepted.
- The Government should provide a formal guarantee on the protection of communal grazing land in order to respond to the concerns of Mursi and Bodi.
- An independent complaints mechanism should be established.
- The authorities should anticipate and seek to mitigate the risk of social problems (alcohol, prostitution, HIV/AIDS) likely to come with a large-scale influx of plantation workers. Drawing on international best practice, the Government should use participatory tools to engage communities for awareness and prevention; and establish sound conflict management mechanisms. The Government should identify ways to ensure ongoing benefit-sharing arrangements so that Bodi and Mursi communities gain from the sugar plantation.

## Latest information on the movement of people, provision of services, etc.

### *The villagisation project and the problems perceived by its participants*

The Government's (re)settlement strategy through villagisation is influenced by three major elements:

- Development of the area, most notably the installation of the sugarcane plantation: the Government strives to mitigate the impact of these developments on the area and its population.
- Access to social services: the Government wants to ensure the indigenous population's access to basic needs like land, water, education and healthcare services. According to [REDACTED], [REDACTED], these services can only be provided if the pastoralists are prepared to settle in permanent villages.
- Modernization of the communities: [REDACTED] expressed the need to "modernize" the traditions and way of life of these tribes. The Government intends to "free them from backwardness", and integrate them with Ethiopian state and society.

The Bodi and Mursi interviewees indicated that they are keen on maintaining their traditional agro-pastoralist way of life. They are not generally opposed to having basic healthcare, veterinary and water services, but are not prepared to gain access to it at all costs.

Furthermore, the interviewees expressed the feeling that the Government is not offering them any alternative but to move, or settle down permanently. [REDACTED] confirmed that the Government had already tried all other solutions and that villagisation now remains "the only good option", but said they will not force the tribes. While the team found no evidence of forced movements, from both our conversation with [REDACTED] and the interviews with the population it seems clear that the Government will keep on insisting until it has convinced the communities to comply.

Moreover, the Mursi and Bodi with whom we spoke feel that the Government's approach to villagisation does not take into account the needs and realities of their communities. In this context, two major issues were raised.

Firstly, interviewees stressed the importance of cattle and the availability of grazing land for their pastoralist lifestyle. Access to grazing land is of the utmost importance for these communities, and as such treatment of this issue would seem crucial to the success of any resettlement strategy. In this context, the Government indicated that "grazing land will not be touched". However, [REDACTED] indicated that they cannot comply with requests to dispatch certificates for communal land, as there is no legal basis in Ethiopian law. Our interviews suggest that the Mursi and Bodi are not convinced by the Government's verbal assurances that grazing land will remain untouched.

Secondly, those interviewed expressed their concern about the speed of change. Mursi and Bodi communities have preserved their agro-pastoralist and semi-nomadic traditional practices largely unchanged, but according to our analysis it is to be expected that – regardless of the arrival of the plantation – recent exposure to the external world (access through new roads, tourism, etc.) will significantly change this way of life. The resettlement programme will in our view accelerate this process significantly. Apart from the question whether these changes are welcome or not, interviewees indicated that the sheer pace of change destabilizes the communities. Representative of this expressed view, [REDACTED] in one of the villages complained that "they should not make the change at our level"; "our children should be the ones benefiting from that change"; "we're too old to change. It's not possible to change in our generation". Clearly, this issue adds to the grievances felt by the tribes, and to their willingness to resist the villagisation programme. While the overall feeling of insecurity and mistrust was shared, women expressed more interest than the men in the services that the Government of Ethiopia was offering, especially health-care and grinding mills, but also for some, education.



Views expressed during discussions with the Bodi and Mursi communities who have been or are likely to be affected by current or future (re)settlement activities suggest deep mistrust towards the Government. . Government and sugar corporation proposals are met with profound suspicion. (see also: social cohesion and conflict)

That does not mean that the tribes are unequivocally refusing all of the proposed changes.

The zonal administration mentioned that they have the desire and obligation to extend development to all Ethiopians equally: and ask rhetorically whether commitments to universal education and the MDGs should be compromised by resistance from traditional 'backward' values.

An example of a good practice that seems to yield voluntary villagisation can be found in the village [REDACTED]. Here, a [REDACTED] is running a school, a clinic and agricultural projects. As a result of these services a number of Mursi have settled down in the village, attracted by the services and the pragmatic and adaptive way in which they are provided (e.g. school schedule adapted to agricultural seasons, teachers from the same ethnic group and teaching in Mursi, etc.). This suggests that if the process is demand-driven and carefully implemented, it might yield desirable results for all the parties involved.

With the current developments accelerating underlying processes, it seems to us inevitable that the culture and way of life of Mursi and Bodi tribes as it exists today will be changed beyond recognition within a relatively short time. The Government claims it is committed to preserving the cultural heritage of these groups by the creation of a museum of Omo cultures in [REDACTED] and 'cultural villages' in several woredas. This approach seems to indicate that this cultural heritage will be confined to a number of selected villages oriented to the tourists.

### *Developments in the South Omo Valley*

When approaching the South Omo Valley from [REDACTED], it becomes clear that a massive reshaping of the valley is under way. Production units are being set up, irrigation canals and new roads are constructed, vast tracts of land have already been cleared for sugarcane plantation or irrigated maize cultivation, and villages and towns for the plantation workers laid out. This amounts to an enormous undertaking by the Government of Ethiopia and the Ethiopian Sugar Corporation. It is estimated that 50,000 hectares of land will be used for the plantation on the eastern side of the river where two factories are under construction. A town for at least 5,000 workers and service personnel will be built adjacent to each factory; in addition, a number of villages shall be constructed for around 2,000 workers per village.

In total, the **Ethiopian Sugar Cooperation** is planning to cultivate 175,000 hectares of land, build five factories with a town to serve each of them as well as ten additional smaller towns and around 50 villages, while up to 500,000 permanent and seasonal jobs might be created. The installations on the western side of the river, primarily in the [REDACTED], will thus be far larger than what is being constructed today on the eastern side. The workforce will be recruited mainly amongst people from the highlands.

In our opinion, the influx of such large numbers of "highlanders" will drastically affect the stability and the ethnic balance in the area. On the east side of the Omo River the indigenous inhabitants of the region are estimated at a maximum of 20,000 people. The Mursi tribe estimates their numbers to be around 9,000 and the Bodi around 7,000, but sometimes lower figures are given in the literature. Other small groups intermingle with the Bodi and the Mursi, such as the Kwegu and some Suri (who are IDPs).

The on-going developments in the valley have and will have in our view a considerable influence on the livelihoods of these agro-pastoralist communities:

- As the land is cleared of trees and bushes the local population already complains about not being able to have access to the beans and leaves and the honey coming from the bee hives

in the trees. Moreover, they have reported that wild animals are coming to the villages and are attacking their cattle since the bushes in which they used to hide have been removed.

- According to the government, a fully developed plantation is expected to use up to 20% of the Omo water when fully functioning. Scientific studies<sup>1</sup> calculate a use of up to 44% of the river water with the current irrigation system. The traditional flood retreat agriculture practiced by these communities might be seriously affected. Although the sugar plantation representatives claim that an Environmental and Social Impact Assessment has been carried out, this document has not been made public as is required by Part Five, Nr. 15 1 of the Environmental Impact Assessment Proclamation (No. 299/2002).
- Access to the banks of the Omo River in order to practice flood retreat agriculture will be made more difficult by the presence of the sugar cane plantation.

Our interviews suggest that the Bodi and Mursi communities have a limited picture of the Omo Kuraz master plan and consequently of the impact that these developments will have on their lives.

From what we have heard, no clear benefit sharing mechanisms have been put in place and it is hard to see that the local population will benefit significantly from the project. Only a few people from Bodi and Mursi tribes will be able to benefit from the job opportunities generated by the sugar plantation due to lack of proper qualifications and lack of adaptation to their current way of life. The only members of these communities that are currently employed by the corporation are working as guards. However, the Government seems to be promoting vocational training targeted to Bodi and Mursi communities in order to improve their employability.

### *The consultation process*

██████████, ██████████, expressed the Government's willingness to continue discussions with those affected – or to be affected – by the (re)settlement and villagisation programme. There is now acceptance that communities must see the potential benefits of resettlement before they can be persuaded to settle permanently. In communities that the plantation proposes should move, the corporation now invites people to observe irrigated agriculture as practiced in other localities which have already been resettled. When the residents of one Bodi village expelled construction workers, the authorities did not force the issue: they continue to try and persuade the community to engage with resettlement, but two years on, the community has not been persuaded and nothing has yet happened.

Moreover, ██████████ indicated that some of the 'negotiations' have been halted for the time being, in order to set up some of the social services and show the benefits it can bring to the communities. To underline this, ██████████ mentioned an agreement with the community ██████████. The Government initially proposed to move the population ██████████ to ██████████, but after consultation promised now not to move them to another place but instead turn ██████████ into a resettlement village, receiving other Mursi population. On the other hand, according to ██████████, some of the Mursi are actually requesting the Government to continue arranging their process of villagisation - though we were not able to confirm this statement following our interviews. He explained that as a result of this change in attitude, the tribes should not feel forced to (re)settle.

Interviews with the Bodi and Mursi population confirm that the Government has made efforts to foster discussion, and arranged visits by the future participants to (re)settled communities. However, there are also indications that in the consultations the tribes do not receive sufficient information about impact, options and formal rights, and are not given the possibility of making an actual choice on the basis of informed consent. In one of the villages it was reported that the construction work by the Sugar Corporation commenced without the community being informed. The community said that they had subsequently "chased out" the construction workers.

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<sup>1</sup> Sean Avery 2014: What Future for Lake Turkana? The Impact of Hydropower and Irrigation Development on the World's Largest Desert Lake. University of Oxford; African Studies Center; Oxford.

In a couple of resettlement villages the population explained that they had first rejected the Government plans but later decided to comply, with some indication that they complied because of Government insistence.

As mentioned above, in several interviews there seemed to be uncertainty about the Omo Kuraz master plan and their impact on people's lives more in detail, for example concerning the (re)settling of outsiders and on land matters.

Some receiving community members felt that services could be desirable, *if* that does not imply other tribes or too many people (re)settling in that area, or other Government interventions that could have a negative impact on the lives of the interviewees.

The participation of the women in the consultations about villagisation seems to have varied. Women stated that they were not involved in any decision-making as it is "the affair of men" and they were not used to meetings and discussions ("this is the first meeting I am attending"). Women expressed more interest in services than men (health-care, grinding-mills, clean water and in some cases, education). In some interviews, they were particularly concerned about maternal health.

An adaptation by the government is that the planned area of the plantation has been revised to avoid national park land.

In conclusion, and on the basis of the interviews and when seen against the good practices guidelines and principles, there seemed to be challenges in ensuring meaningful consultations with the communities, with sufficient participation opportunities. With [REDACTED] as a partial exception, there also seemed to be a lack of enough information on options and rights, as well as resettlement and livelihood alternatives.

From what we heard and saw, the recommendations of the 2013 mission regarding the consultation process do not appear to have been implemented.

### ***Villagisation / re-settlement implementation***

There is a clear sense of commitment and action by the Sugar Corporation / Government to provide services to the villages we visited. Water points have been constructed. A couple of the villages have been promised, or are in the process of receiving, additional water points. Two of the visited villages now have a functioning primary school, and in one of them a secondary school is being built. A couple of new health posts have been erected, and one is under construction. Many interviewees expressed a desire for veterinary services, which are not yet provided adequately.

While the sugar corporation has been (generally) good at construction of social infrastructure - which relates to the core competencies of project planning and engineering that they use in developing the plantation – it would seem to us that their mandate and expertise does not readily encompass the soft skills of community consultations and engineering social change.

### **New resettlement villages (Bodi)**

In one of the two new resettlement villages that had been visited by DAG mission teams in 2012 and 2013, those interviewed indicated that life in their new village is equal to or slightly better than it was in the sending village. However, considerable challenges remain for the implementation of the villagisation programme.

### **Education**

The resettled Bodi show a keen interest in education. They recognize that learning how to write, count and process information could yield better jobs and might improve their children's chances of having a better life. A functioning primary school serves the three villages, though some complain about the distance (a one hour walk) and the lack of food at the schools.

## Healthcare

The Bodi in these communities expressed their need for basic healthcare in order to cope with malaria, diarrhea, measles etc. They noted many problems with the existing services: the absence of qualified personnel and proper medication, the limited opening hours and their distance to the village (though in some cases, interviewees were not aware of a nearby health post). In response, [REDACTED] indicated that health posts have been built for new villages, exceeding the standard national ratio of one health post for every 5,000 people. He noted that these posts are meant for preventive care and not the curative care that residents should seek at a hospital. He said the government aims to train Mursi and Bodi individuals as health workers.

## Drinking water

We heard that access to safe drinking water is still a major issue, three years after the villages have been established. Villagers reported that they were taking their water from the canal and that this is unsuitable for consumption (a view echoed by the Sugar Corporation). The Sugar Corporation has provided water pumps near the new resettlement villages. In many of these, including the (re)settlements visited last year, people complained about limited access to this service (1 or 2 hours of water every 2 or 3 days) because of broken or locked water pumps, controlled by the Sugar Corporation. It was reported that the response of the Sugar Corporation to notifications of these problems has become significantly slower. Other complaints about the pumps included the limited availability of the water during the dry season, the quality of the water (both taste and salinity were reported as worse than in the sending village) and the distance of the pumps from the village. [REDACTED] and the corporation acknowledged these problems and committed to fixing them. More water points are apparently currently being constructed.

## Irrigation and grazing land

The resettlement villages seem to profit from the irrigated land they were provided with. Women we spoke to saw irrigated agriculture as less risky, guaranteeing a harvest in a year of poor rains, even if not matching the potential yield that they could obtain in a good year from the (larger) rainfed or flood recession fields they had cultivated before. The Bodi seem able to produce sufficient maize and sorghum. A bottleneck for food production lies in the availability of grinding mills, which we were told do not have enough capacity to meet the demand. The interviewees indicate that they are less reliant on food-aid now than they were before. Because of the scarcity of grazing land, some of the Bodi still keep their cattle at their old village.

Those people who accepted to settle permanently report that they receive food aid from the Government until the moment they gather the first harvest from the irrigated land allocated. Some interviewees claimed that has been reduced by the Government.

## [REDACTED] Village

A small group of Bodi was asked to move from their village [REDACTED] two years ago; they were placed at a muddy and isolated site, in inferior [REDACTED] huts. Their situation during our visit was deplorable; the absence of sanitation means the villagers are suffering from diseases such as bloody diarrhea, malaria and unspecified headaches. Services are unavailable: the group indicated that it takes a two-hour walk to the nearest canal for bad quality drinking water, while the nearest health post is reported to be eight hours on foot. The group seems unaware that both services are available in surrounding villages. From what we were told in interviews, it seems that consultation by the Government was limited or absent. Despite the dire circumstances in [REDACTED], residents say the Government does not allow this impoverished and vulnerable group to move out. It is not clear why planning and implementation here was so much worse than in the other sites; or why the authorities would not allow (and help) people to leave for one of the other, better sites.



### Receiving villages (Bodi and Mursi)

#### **Education**

The receiving Bodi villagers seem profoundly disinterested in education: they appear to see it as at best useless and potentially corruptive of their children's traditional lifestyle. Interviewees see a need for children to work on the field, and girls especially are not supposed to attend school, as an educated girl might choose her own husband, outside their community, with the result that parents would lose the established brideprice. Similar tendencies can be found amongst the Mursi, though some of them indicated a certain interest in education, as long as the children stay available for work. A long-established missionary-supported school in [REDACTED] was schooling large numbers of children to an apparently high standard, and appeared well accepted.

#### **Healthcare**

Some of the receiving Bodi villagers indicate that they are interested in having a health clinic to cope with the many diseases, as well as frequently reported child-birth related problems – though others seem to prefer not having any help, as 'only few die with childbirth'. Some complain about the limited access to medication and the distance of the available services. The Mursi express interest in a health post as well, and also complain about the inadequacy and distance of this service, as well as the price (though it is similarly priced to the health clinic in [REDACTED]). For both tribes, the absence of latrines while the bushes are being cut down seems to be worrisome.

#### **Drinking water**

The Bodi we spoke to indicated they are still happy to drink water from the river; the Mursi do so as well, but complained about the distance they have to cover to get it (a job done by the women) and the quality of the water. The government is reported to have promised a well, which is not yet constructed.

#### **Irrigation and grazing land**

The Bodi did not display a profound interest in having irrigated land. One interviewee expressed the view (which in our view may have some justification) that managing the allocation of irrigation waters may cause intra-communal conflict, especially for people not familiar with settled agriculture. They seem more concerned with the negative consequences of road construction and the limited availability of Omo water for their livelihoods. The Mursi on the other hand are interested in having wells or other forms of irrigation, since rain-fed crops do not yield sufficient amounts of food; however, they indicate they are not prepared to make any concessions regarding their independence. The government already offered some irrigated land, but the Mursi feel they have not been given a good enough look to accept it. Some interviewees mentioned their concern that if more villagers arrive there might be a scarcity of grazing land.

#### **Potential Sending village**

In a visited Mursi settlement, any help from the government is lacking. The group has been asked by the government to move, but refuse to leave their ancestral land. The interviewees indicated that they are interested in having health or water services, but will not accept any Government interference in exchange. At present, drinking water is collected from the [REDACTED] river at a forty minutes' walk, while healthcare can be had from a small mobile clinic at two walking hours. There is no school or food-aid available for this community.

#### **Gender aspects**

In our opinion there are potential although only partially-articulated gender aspects to the cost-benefit calculations of resettlement policy. In that they imply changes to traditional practices of following grazing cattle over an extensive area, resettlement and the broader set of changes associated with it may be particularly troubling for men, who are responsible for herding. Women however should in principle stand to gain from contact with ante-natal care and (maybe) access to closer and cleaner sources of water. As they have primary responsibility for agriculture, they may

also experience more direct gains from irrigated agriculture. However, female interviewees mentioned that they are only occasionally involved in consultations between the community and authorities, and their understanding of resettlement in particular and the plans for the valley more broadly appears more limited than that of men in the same communities.

### ***The consequences: social cohesion and potential conflict***

Interviews with the Bodi and Mursi indicated that amongst the receiving villagers there is a deep mistrust of the government's intentions across all of the topics investigated. Generally, these tribal communities do not seem to feel a part of the country, but consider themselves sovereign and independent peoples. Generally, the Ethiopian government appears to be regarded as an enemy, along with the police, the Sugar Corporation and its highlander workforce and the construction workers.

In the receiving Bodi villages, the arrival of the sugar plantation and government-assisted construction projects appeared to be regarded with great hostility. Respondents were generally suspicious, associating resettlement with a broader set of problems including traffic accidents on the new road; police confiscation of unlicensed AK47s; and hyenas and lions driven into their villages as forest is cleared for the plantation. In this context, it seems that small events and poor communications can easily trigger conflict. In one settlement chosen to receive additional, resettled households, workers constructing buildings were chased out when the community believed [REDACTED]. This was at a time of sporadic violent confrontations with the police resulting in imprisonment and reported beatings of individual villagers. Nevertheless, it seems that these incidents were not directly related to the villagisation / resettlement activities. All this has resulted in a great sense of hostility towards the government and construction/plantation workers. Participants in more than one focus group discussion appeared to feel really threatened by Government intentions. One group stated that *"before you come back next year, the government will come to kill and finish us"*.

Government-built schools are occasionally perceived as instruments of the authorities to *'make children mad'*, weakening their tribal identity and ensuring that they take the Government's side. This tendency is less apparent amongst already resettled Bodi; though government pressure for their resettlement is reported, they do not seem to have deep feelings of enmity.

The Bodi and the Mursi display a great sense of tribal independence vis-à-vis the government, highlanders, the Chinese, and others perceived to be interfering with their way of life. The government is seen as an outside force, threatening their independence and the availability of grazing land. On the other hand, the Bodi and Mursi communities say they have little or no choice in the resettlement effort associated with this development, and meaningful dialogue has stalled. In the communities we visited which are yet to be resettled (or receive settlers), stances appear to have hardened amid suspicions about government intentions for grazing lands. It is our analysis that this climate of fear and mistrust, deepened by a lack of information, poses a risk of conflict.

Besides the government, the Bodi and Mursi seem to regard other tribes (especially 'highlanders'), with suspicion and enmity: their arrival is seen as a source of potential conflict. Though the interviewed Mursi and Bodi tribes do seem to get along fairly well nowadays, concerns to maintain their independence and the perceived scarcity of grazing land and the fear of losing it seems to provide potential incentive for (armed) conflict with the government and highlanders.

However, the Bodi do not seem to have a huge problem with the Suri, who fled to the area from the other side of the Omo due to conflict with other tribes and with the government. The Suri expressed their willingness to comply with their Bodi hosts: the government appears to be regarded as a shared threat. However, the Bodi indicated that they would be unhappy to host any additional guests.

Poorly planned resettlement of large number of Konso into the area, and resulting tensions and fatal clashes between [REDACTED] farmers and Bodi herdsmen, about 10 years ago, seems to be resolved as

there is no current contact between the tribes. However, the Bodi are afraid that the government will again resettle the █████ – a tribe that they considered very aggressive – in the same area, because the █████s land is “not good”. Though some scimmages with the Mursi are reported, the situation seems manageable because “*with the Mursi, you can make agreement*”.

The conflict between the █████ and the Bodi is often mentioned by local communities as a reference of the consequences of bringing “*highlanders*” to South Omo.

The authorities appear to have absorbed the clear message that resettlement will only succeed if sending and receiving communities belong to the same ethnic group. It now appears accepted that only Mursi will be moved to Mursi sites, and Bodi to Bodi sites.

The potential conflict issues raised above are mentioned by the interviewees themselves. In addition, the team noted that the scale of the Omo Kurza sugar project, the number of external workers needed (up to 500.000 people mainly coming from the High Lands), and the development of new villages and towns to harbor all these people is perceived by the local population as a threat and will bring fundamental changes to life in the lower Omo Valley. Moreover, in our view, it is expected that the arrival of large numbers of workers will also bring in new habits, like the enjoyment of strong alcohol and prostitution, and the risk of HIV. We consider that the creation of large settlements of plantation workers originating from outside the valley will have a significant impact on pastoralist culture and their sense of freedom. Some of the local communities mentioned that if “highlanders” come in large numbers to occupy their land “*there will be a lot of shooting*”.

Communities appear to have very limited knowledge of the broader plans for transformation of the valley. The authorities and the corporation believe that these communities will not be able to understand these plans. Our concern is that communities are being given information, and asked for their opinion, on only a narrow sub-set of local planning decisions (relocation and sedentarisation), and are being asked to make decisions without a good understanding of the wider context and the future impact of these processes in their lives. When the impact does become clear, we believe that there is a high potential risk of conflict. It is also not clear that the authorities have succeeded (or tried) to explain to communities their formal rights. As such, it is our analysis that improvements in consultation, while positive, would seem to fall considerably short of the benchmark of ‘informed consent’ established in international and Ethiopian policies regarding resettlement practice.

### **Methodology and limitations**

In collecting and interpreting data, the team followed the approach outlined in Annex 2 (‘methodology note’) to the August 2013 DAG Terms of Reference (ToR) for CDP / relocation monitoring visits. The methodology note acknowledges the limitations of such short visits as a means of monitoring the full range of practice and outcomes; but attempts to maximise the quantity and quality of information that is collected so that it is possible to draw some working conclusions regarding patterns and trends in the implementation of relocation policy.

The note outlines some basic principles (an inductive approach; triangulation and rapid iteration; conducting discussions without local authorities present) and some principles of sampling (the number and mix of sites to be visited, and respondents within each site to be interviewed). It also discusses the practicality of managing an interview or focus group discussion, from preparation in advance (allocation of team roles), through the conduct of the exercise itself (building rapport, managing expectations, following leads while trying to cover all topics, recording full and accurate notes) to a team review of the interview (clarifying any ambiguities, tidying up notes) as soon as possible after the exercise. Annex 2 provides a condensed summary of the ToR methodology note.

In practice, the team needed to adapt the details of the DAG ToR methodology guidance somewhat. Firstly, a number of the sites visited – including the first one – were neither sending nor receiving settlements, but settlements that local authorities *proposed* to receive relocated populations in the future. This required some adaptation of the semi-structured interview / FGD checklist of questions in the DAG ToR. Some questions were dropped, some re-worded and some added. Information that

it was felt would be useful to collect from these communities would address (i) the nature of the relocation plans as understood by the community and (ii) the degree of consultation involved (as covered in the DAG ToR guidelines); but also (iii) community *perceptions* of future changes (livelihood opportunities and challenges, levels of service provision, etc.) that might result from receiving new households. This involves asking respondents about their feelings regarding a hypothetical situation, which requires some adaptation of the questions. The checklist adapted for these sites is included as Annex 3.

Secondly, it became clear that focussing only on the changes in welfare due to physical relocation (for both those who moved, and those who lived in settlements receiving relocated people) would provide an incomplete picture of the broader context of economic and social change faced by communities affected by relocation. In this visit to the South Omo, the development project that necessitated relocation (the sugar plantation) was also affecting local Bodi and Mursi communities in other ways (e.g. through the clearance of forest which was restricting their access to forest products such as wild honey, and which was also driving predators such as hyenas into their fields and threatening their cattle). These affected many in the areas. Including those who to date had neither moved nor received people moving from another area. In addressing these issues, there is a risk that the visit expands to cover an unmanageable range of issues relating to the tensions between small, traditionally-oriented agro-pastoralists on the one hand and processes of modernisation and state formation on the other. However, to collect and report information only on the specific topic of relocation risks a decontextualized account which fails to capture how relocation is only one aspect of a broader process involving the same sets of actors. For both the sugar corporation and the Bodi and Mursi communities, views on and engagement with the relocation process are shaped by understanding and opinion regarding broader objectives and relationships.

The visit lasted from the 22<sup>nd</sup> to 29<sup>th</sup> of August 2014, with the community data collection between the 24<sup>th</sup> and 27<sup>th</sup>. The team conducted 19 community discussions (FGDs or individual interviews) in eight sites, four of which were Bodi, four Mursi. These interviews covered approximately 220 people. In most places the team interviewed women and men separately. Three - [REDACTED] - were resettlement sites (although sometimes there had been a smaller settlement in that location previously); four - [REDACTED] and another village in the [REDACTED] area - were slated to receive resettled families, but had not yet done so; and one ([REDACTED]) was a sending village. To the best of the team's knowledge, government staff were not present in any of the meetings. Notes from each meeting were reviewed the same day, and then summary points pulled out for inclusion in a pro-forma (see Annex 4).

The team also conducted lengthy and productive discussions with [REDACTED], the [REDACTED], on arrival in [REDACTED], and again before leaving the zone. Finally, the group spent one night at the headquarters of the sugar plantation, and discussed the plans for the plantation with [REDACTED] and other staff. Discussions were conducted through a translator or, in some cases, two translators (one for Bodi to Amharic, the second for Amharic to English).

### Comparison of findings with previous missions

Only 2 of the visited villages had been visited in previous DAG missions, [REDACTED]. The evolution of the situation can be found in the tables in annex

### Recommendations

The mission members have proposed the following recommendations:

- While the Government of Ethiopia has pledged to extend consultations with the Bodi and Mursi in South Omo Zone, a more robust, **participatory approach, including women as well**, is required to help these populations cope with the implications of the developments in the area. This recommendation was already given in 2013 but, in our view, has so far not been taken up by the local government.

- There is a clear need of **building trust** between the Government of Ethiopia and the local communities. **Transparency** should become a priority in order to mitigate the existing mistrust towards the Government and to make the population fully aware of the developments to come. Communities need a broader understanding of these plans so they can make essential choices about their future. Moreover, they will need help to adapt and thrive.
- Based on our analysis the pace of sugarcane development and the villagisation process in the Omo River is far faster than the speed at which pastoralists can alter their livelihoods – and worldview. We would recommend that **change should be more gradual**, respecting traditional ways centered on cattle, while introducing irrigated agriculture, community-led tourism and other livelihood alternatives. We recommend that the Government should search for middle ways and **adapted proposals** that would allow a soft transition avoiding conflict.
- There should be an effort to develop cattle-rearing and make it more profitable, while using the knowledge and experience by the Bodi and the Mursi. As for the cultivation, mainly done by women, the development of their skills in that regard and supportive infrastructure could improve livelihoods.
- The Bodi and Mursi communities would benefit from expert assistance to help them through this pivotal transition. The value of this “change management” is suggested by development gains in [REDACTED], where a [REDACTED] school and health clinic have given young Mursi new tools to live in the modern world, while retaining a connection to Mursi identity and traditions. Coupled with the valuable services (secondary school, health post, veterinary clinic) now being built in the adjacent new settlement area, the development approach in [REDACTED] **appears to offer a model** for leading other communities in the valley toward a more sustainable future. The Government attention to the community-integrated progress in [REDACTED] could go a long way towards resolving tensions and building confidence with other Mursi – and Bodi – communities.
- When undertaken, **resettlement should be voluntary**, based on informed consent, and seek to work with preferences in both the resettled and hosting populations. The Government should be able to offer the populations **meaningful alternatives** to those of moving, without denying them access to health, education and other services.
- While the DAG mission heard that the GoE does not support communal land use certification for cattle grazing lands, there should be **communal involvement in land use planning** that affects these areas. Verbal promises from government officials about the preservation of grazing lands have failed to allay community worries. A formal agreement / contract or a written guarantee signed by the Government might help to respond to the wide concern of Mursi and Bodi over the future of grazing lands.
- In line with the federal Environmental Impact Assessment Proclamation (No. 299/2002), the required **environmental impact assessment** report on the **Omo Kuraz** master plan **should be made public**. Comments from affected communities such as the Bodi and Mursi should be incorporated into the report.
- The Government should identify ways to ensure ongoing **benefit-sharing** arrangements so that Bodi and Mursi communities gain from the sugar plantation. Assigning the corporation responsibility for building resettlement-related infrastructure and providing irrigated land has been a start: creating plantation-related jobs, training or demands for community goods and services (contracts to supply food for the company towns?) would help to facilitate acceptance. Government plans to train Mursi and Bodi health workers to provide services in their communities are sensible and helpful.

- **An independent complaints system should be established** to give both residents and government officials a fair and reliable way to engage over differences. As part of this mechanism, legal aid should be available to assist these populations in bringing complaints and seeking dispute resolution.
- Moreover, these **communities should be involved in the identification of the services to be provided, and on the delivery and monitoring** of new **services** such as health care and education. In this regard, government plans to train Bodi and Mursi residents as health workers mark a promising step.
- The Government should support the communities to develop their livelihoods based on their knowledge and experience.
- Government should overcome their reluctance and consider **engaging third parties** in this process. **NGOs** have of necessity developed approaches and techniques for participatory community-led development which local authorities cannot reasonably be expected to have. Clearly-defined contracts with NGOs to facilitate dialogue would help the authorities to deliver on the requirement of informed consent; and help the Bodi and Mursi to develop the new skills they need (e.g. for community-managed irrigation).
- The Government should **consider the specific needs and interests of women** in this process. Special attention should be given to aspects like maternal health, grinding mills and sanitation. As for the cultivation, mainly done by women, the development of their skills in that regard and supportive infrastructure could improve livelihoods.
- Women should also participate in the consultations and discussions between the Government and the affected communities.
- Promised **services should be in place before people are moved, and** these services should be **maintained to an accepted standard**. This requires that (i) facilities need to be completed to a good standard and (ii) there needs to be a well-managed handover of responsibility from the corporation (which builds the facilities) to normal Government line structures (which then provide the staff, medical supplies, and operation and maintenance budgets). Where it is suitable to engage communities in facility management (e.g. of water points), this needs consultation and close attention.
- The Government should **find sustainable solutions** for the provision of **drinking water** in the Bodi resettlement villages, as the current service provided by the Sugar Corporation is unsatisfactory. As in other parts of Ethiopia, the beneficiary communities in South Omo **should participate in managing water points** and ensuring their proper functioning in collaboration with government offices.
- The Government should ensure **coordination with the Sugar Corporation** so that social services facilities have sufficient staff and supplies once handed over for operation by the government.
- Another aspect of water warrants careful **attention**. **Irrigated land**, while significant for food-insecure populations, **may spark conflict if allocation of water resources isn't effective**. Because irrigable land is an important part of the package of benefits that the government is offering to the Bodi and Mursi pastoralists, water access for these farm plots needs to be reliable and equitable – and supported by suitable agricultural training.
- The high risk of conflict related to the arrival of thousands of highlanders to Mursi and Bodi areas calls for the creation of a solid **conflict management mechanism**.
- As areas on and around the Omo Kuraz plantation add resident workers, social problems such as crime, **HIV and alcoholism** may escalate. The Government should **seek international best practices in mitigating** these challenges and use participatory tools to engage communities for awareness and prevention.