



**Center for International Environmental Law
Report to the Committee on the Elimination of Racial Discrimination**

February 7, 2007

Comments concerning the State Party's Report on the Federal Democratic Republic of Ethiopia ("Ethiopia"), with specific reference to the indigenous tribes in the Omo National Park, Ethiopia.

I. Introduction

The Center for International Environmental Law is extremely concerned that actions by the Ethiopian Government to establish and implement the Omo National Park violate obligations assumed by Ethiopia under the Convention on the Elimination of All Forms of Racial Discrimination.¹ We have not had the opportunity to conduct a fact-finding mission; however we believe that publicly-available information provides a sufficient basis on which concerns can be presented to the Committee.

According to public documents, the Ethiopian Government has moved forward with plans to impose undue restrictions on the Mursi, Suri, Nyangatom, Dizi and Me'en tribes of their use and enjoyment of their ancestral lands. The infringements on tribes' rights include prohibitions on their ability to hunt, fell trees, utilize land for agricultural purposes or move freely through the land. These restrictions, which have been imposed without the tribes' prior informed consent, discriminate against the tribes and present serious threats to their ability to access food and preserve their traditional agricultural and cultural heritage.

II. Background

In 1966, the Ethiopian Government established 4,062 kilometers in southern Ethiopia as the "Omo National Park."² However, the Ethiopian Government never fully legalized (or gazetted) the Park's boundaries³ and did not demarcate the boundaries until

¹ See discussion, *infra* Section VI.

² See The Nyangatom, BBC, <http://www.bbc.co.uk/tribe/tribes/nyangatom/index.shtml> (noting that the Ethiopian Government founded the Omo National Park in 1966); see also, African Parks, *Omo National Park, Ethiopia*, http://www.africanparks-conservation.com/news/2006_03.html (saying that "the Omo National Park was established in 1966 with 4,062 square kilometers" of land).

³ UNITED NATIONS CONVENTION TO COMBAT DESERTIFICATION, Federal Democratic Republic of Ethiopia, National Programme to Combat Desertification, 33-34, Nov. 1998, *available at* <http://www.unccd.int/actionprogrammes/africa/national/2000/ethiopia-eng.pdf> (explaining that the Omo

March 2005.⁴ On November 11, 2005, the Ethiopian Government transferred management of the Park to African Parks (Ethiopia) PLC, a private company that, apparently, is a subsidiary of Stichting African Parks Foundation (“African Parks”), a Netherlands-based organization that manages conservation parks throughout Africa.⁵

Despite claims by the Ethiopian Government and African Parks (Ethiopia) PLC that the prior informed consent of the tribes was obtained for demarcation of the boundaries, the process under which the “consent” was allegedly obtained was wholly inadequate. In addition, the demarcation occurred without the “informed” participation of the tribal communities.

Moreover, it appears that very little, if any, attempt was made to obtain adequate prior informed consent for activities that would restrict tribes’ rights within the park. These activities are contemplated in the Ethiopian Government’s contract with African Parks (Ethiopia) PLC, which enables African Parks (Ethiopia) PLC to assume full management of the Park, including controlling visitor use, constructing a fence in and around the Park, regulating fishing, establishing an “anti-poaching” fund, and charging entrance fees.⁶ In an amazing devolution of State police powers, the contract also provides that African Parks (Ethiopia) PLC staff shall have the authority to manage law enforcement staff (including sole power to dismiss and responsibility to train staff) in the Park – staff with the same powers of law enforcement as government employees.⁷ Although transferring these broad powers to Africa Parks (Ethiopia) poses a serious threat to the indigenous tribes’ security, as well as their ability to continue to access their ancestral land and maintain traditional agricultural and cultural customs that are central to their survival, it appears the tribes were not even consulted about these actions. In fact, the contract even fails to mention the tribes.

The Ethiopian Government’s actions regarding the Omo National Park violate fundamental notions of equality and non-discrimination under international human rights law. While the Ethiopian Constitution appears to provide protection for the rights of these tribes⁸, Ethiopia has not taken the necessary actions to fully safeguard these

National Park never obtained full legal recognition, and that only one park in Ethiopia, the Awash National Park, has been fully gazetted).

⁴ David Turton, University of Oxford, *African Parks Foundation and the Omo National Park* [hereinafter David Turton, *African Parks Foundation and the Omo National Park*] (stating that Omo National Park boundaries were demarcated in March 2005).

⁵ See Agreement Between the Government of the Federal Democratic Republic of Ethiopia and the Southern Nations, Nationalities and Peoples Regional State and African Parks (Ethiopia) PLC Concerning the Management of the Omo National Park, Nov. 11, 2005, [hereinafter Ethiopian Government Contract with African Parks (Ethiopia)]; see also, African Parks Annual Report 2003, 7, *available at* www.africanparks-conservation.com/publications/report2003.pdf (depicting the hierarchy of African Parks subsidiaries).

⁶ Ethiopian Government Contract with African Parks (Ethiopia), at 1.1, 1.10, 1.4, supra footnote 5.

⁷ Id. at 1.2, 2.9, 2.10. African Parks (Ethiopia) is give sole authority to dismiss employees.

⁸ Constitution of the Federal Democratic Republic of Ethiopia, Art. 40(5), 25, 40(4), 32(1), 92(3), 39(2) [hereinafter Ethiopian Constitution], *available at* <http://www.oefre.unibe.ch/law/icl/et00000.html>. (recognizing that “pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their own lands,” and that all persons shall have equal legal guarantees without regard

fundamental rights, and the indigenous tribes of the Omo National Park face becoming, in the State's view, trespassers on their ancestral land.



III. Restrictions of the Tribes Ancestral Rights

1. Traditional Hunting and Land Use

As a result of restrictions on their ability to hunt and use land for agricultural purposes, the indigenous tribes of the Omo National Park suffer discrimination and risk losing their livelihoods. An estimated 40,000 Mursi, Suri, Nyangatom, Dizi and Me'en people depend on the ability to move throughout the region to graze, hunt, and cultivate land. They developed complex semi-nomadic agricultural methods over thousands of years, ensuring tribal livelihoods even in a semi-arid environment with unreliable rainfall.

As part of its intricate semi-nomadic agricultural traditions, the Mursi tribe combines three subsistence activities: flood-retreat cultivation, rain-fed cultivation and cattle-herding in grasslands.⁹ Each riverbank area where the Mursi cultivate food is associated with a certain clan, providing security for each family in case of severe drought.¹⁰ The Mursi have also established a long-standing system of livestock ownership, based on kinship and friendship that manages to spread risk equally throughout the tribe.¹¹ Disruption and restrictions of these traditional land use patterns

to race, the right not to be evicted from land, freedom of movement, the right of public participation in establishing environmental policies, and the right to preserve cultural heritage.)

⁹ David Turton, *The Mursi and the Elephant Question*, Dawn Chatty & Marcus Colchester (eds.) *Conservation and Mobile Indigenous Peoples: Displacement, Forced Settlement and Development*, Berghahn Books, New York/Oxford (2002), available at www.iucn.org/themes/ceesp/Wkg_grp/TGER/Elephants%20and%20the%20Mursi.doc.

¹⁰ Id.

¹¹ Id.

would undoubtedly be detrimental to tribal members' livelihoods and increase their vulnerability.

Unfortunately, these tribes now face a “no-tree felling” policy in the Omo National Park,¹² which would restrict their ability to utilize the land to cultivate crops and maintain traditional agricultural customs. Additionally, African Parks (Ethiopia) PLC controls regulation of fishing,¹³ and appears to have prohibited indigenous tribes from hunting in their ancestral lands; “anti-poaching” patrols have been established within the Park, and the African Parks Foundation’s website refers to “illegal hunting” by the Mursi and other tribes.¹⁴

These regulations pose dire consequences for the indigenous tribes. If tribes are unable to cut down trees in order to cultivate crops and prohibited from hunting on their ancestral lands, they would face malnutrition or be forced to live on food aid. This would violate the tribes’ right to preserve their culture heritage.¹⁵

2. Restriction of Movement

Indigenous tribes’ ability to move freely in and out of the Omo National Park is also severely threatened. The Ethiopian Government’s contract with African Parks (Ethiopia) PLC provides that African Parks may charge entrance fees for “all visitors other than Government Wildlife Experts, senior Government officials and members of the Diplomatic Corps.” That is, the contract does not establish exceptions for indigenous

¹² See African Parks Conservation, *Community Conservation Partnership*, http://www.africanparks-conservation.com/omo_community.html [hereinafter African Parks Conservation, *Community Conservation Partnership*] (explaining that the indigenous tribes of the Omo National Park must adopt “a policy of no hunting and no tree-felling within the Park” in order to receive funds from the Community Conservation Partnership Fund.)

¹³ Ethiopian Government Contract with African Parks (Ethiopia), at 1.1, *supra* footnote 5.

¹⁴ See Ethiopian Government Contract with African Parks (Ethiopia), at 3.3, 1.4, *supra* footnote 5 (stating that “live capture and sale of game may only be undertaken after permission is obtained from the relevant authorities” and referring to an “anti-poaching fund”); see also African Parks Conservation, *Community Conservation Partnership*, *supra* footnote 12, (saying that the indigenous tribes may not hunt on ancestral lands within the Omo National Park if they wish to receive funds from the Community Conservation Partnership Fund); see also, Stichting African Parks Foundation, *Letter for Human Rights NGOs and Anthropologists*, Nov. 3, 2006, available at www.africanparks-conservation.com/documents/letter-omo-agreement-3-november.pdf (claiming that “African Parks will not prevent access to the Park providing there is no hunting and utilization of other natural resources is sustainable and agreed in participatory Park management planning.”); see also African Parks Conservation, *What Are the Benefits and Achievements of Our Approach?*, http://www.africanparks-conservation.com/what_approach.html (describing the African Parks policy of implementing “significant anti-poaching activities,” including “training and equipment for existing and new scouts, extended anti-poaching patrols and law enforcement activities.”); see also Ethiopian Government Contract with African Parks (Ethiopia), at 2.10, *supra* footnote 5 (stating that African Parks (Ethiopia) PLC staff shall have the same powers of law enforcement as government employees, ensuring their ability to monitor and enforce any “anti-poaching” rules); see also, African Parks (Ethiopia) PLC, *Omo National Park Project Monthly Reports*, October 2006, November 2006, December 2006, available at http://www.africanparks-conservation.com/what_parks_omo.html, (reporting on “Anti-Poaching Operations” and describing encounters with tribal members “hunting illegally” within the Omo National Park).

¹⁵ See Ethiopian Constitution, *supra* footnote 8.

tribes.¹⁶ The contract also grants the Park authority over “fencing construction” within the Park.¹⁷ Furthermore, the anti-poaching patrols’ policing activities have likely already restricted movement.¹⁸

Such restrictions pose formidable dangers to the semi-nomadic indigenous tribes’ ability to move throughout their ancestral lands and access new food sources as seasons change. The policies also violate the tribes’ right not to be displaced or evicted from their land and their freedom of movement under the Ethiopian Constitution,¹⁹ as well as their right to “own, develop, control and use” their communal lands and resources.”²⁰

IV. Lack of Valid Prior Informed Consent

The Ethiopian Government and African Parks (Ethiopia) PLC did not obtain valid prior and informed consent from the indigenous tribes in the area in and around the Omo National Park before approving and proceeding with policies and activities that will impact the tribes’ lives and livelihoods. Prior informed consent requires meaningful, informed consent regarding the nature, purpose, impacts and risks of an action, in advance of decisions to commence that action.

The Ethiopian Government and African Parks (Ethiopia) PLC managed to obtain some Mursi tribe members’ thumbprint “signatures” on Omo National Park boundary demarcation documents during a celebration event for the Park in March 2005.²¹ This process was an invalid attempt to obtain the indigenous tribe’s prior and informed consent for several reasons.

First, the Ethiopian Government and African Parks (Ethiopia) PLC did not provide adequate information in the appropriate language to the indigenous tribe. The documents were not translated into the indigenous language, and neither the Ethiopian Government nor African Parks (Ethiopia) PLC gave the tribe copies of the documents. If the tribal members had obtained copies of the documents, they could have obtained translations and discussed the agreement as a community, according to traditional community negotiation processes. The tribe might also have obtained independent legal counsel to review the document and ensure that they understood the full ramifications of the agreement. Obviously, the tribe would likely not have signed the documents if they had known they were agreeing to restrict their access to and fundamental use of their ancestral lands.

¹⁶ Ethiopian Government Contract with African Parks (Ethiopia), at 1.10, supra footnote 5.

¹⁷ Id. at 1.1.

¹⁸ See discussion of African Park (Ethiopia) “anti-poaching” patrols in the Omo National Park, supra footnote 14.

¹⁹ Ethiopian Constitution, Art. 40(5), 40(4), 32(1), supra footnote 8.

²⁰ General Recommendation 23: Indigenous Peoples, Committee for the Elimination of Racial Discrimination, U.N. Doc. A/52/18, annex V; CERD/C/51/Misc.13/Rev.4 (1997) (providing that states should “recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources.”)

²¹ David Turton, *African Parks Foundation and the Omo National Park*, supra footnote 4.

Second, the Ethiopian Government and African Parks (Ethiopia) PLC consultative process with the indigenous tribes did not provide sufficient time for the five indigenous tribes to obtain valid consent according to tribal custom. The indigenous tribe members who put their thumbprints on the Omo National Park boundary demarcation documents had apparently known about the proposed Park boundaries for only fifteen days before signing the documents.²²

Fifteen days is an inadequate amount of prior notice, considering the lengthy nature of traditional tribal decision-making procedures. The Mursi decide on public matters through a series of lengthy and highly democratic public negotiations.²³ Under Mursi custom, the Ethiopian Government and African Parks (Ethiopia) PLC would need to consult with the Mursi in public meetings on Mursi territory, in at least three of the territorial divisions. The negotiating parties would then discuss the proposed Park regulations and activities with indigenous community members and respond to questions or concerns.²⁴ Finally, we understand that any consent would have to be approved by a democratic discussion among the Mursi.²⁵

Third, the Ethiopian Government and African Parks (Ethiopia) PLC obtained thumbprints of a small number of tribal members who did not have authority to make decisions on behalf of the tribe.²⁶ The Mursi do not have hereditary chiefs or elected representatives that can unilaterally make decisions for the tribe.²⁷ Decisions are made in public consultations with the community, and throughout the tribe's territorial regions.²⁸

The thumbprints of a few tribal members on documents that were not translated into the indigenous language do not constitute valid prior and informed consent, and the Ethiopian Government's process of obtaining these thumbprints did not follow Mursi tribal decision-making custom. The Ethiopian Government must take all necessary steps to ensure that the tribes give valid prior informed consent to any Omo National Park-related policies and activities that impact tribal use of the land, particularly considering the severe implications that the Park regulations have on the tribes' access to food sources and ability to maintain their way of life.

V. African Parks: Allegations of Forced Resettlement in Ethiopia's Nech Sar Park

Another situation of grave concern regards Ethiopia's Nech Sar National Park, another park managed by African Parks (Ethiopia). African Parks faces serious allegations regarding forced resettlement and restrictions on traditional resource use in Ethiopia's Nech Sar National Park. According to news accounts, the Ethiopian Government relocated indigenous tribes from the Nech Sar region before African Parks

²² Id.

²³ David Turton, University of Oxford, *Notes on Mursi Subsistence and Methods of Public Decision Making* [hereinafter David Turton, *Notes on Mursi Subsistence*].

²⁴ Id.

²⁵ Personal communication with David Turton, February 1, 2007.

²⁶ Id.

²⁷ David Turton, *Notes on Mursi Subsistence*, supra footnote 23.

²⁸ Id.

assumed management of the Nech Sar National Park.²⁹ Additionally, according to African Parks, Ethiopian Government park officials and local police prohibited tribes from fishing³⁰ and restricted their ability to cut wood³¹ in their ancestral lands in the Nech Sar National Park. News reports also indicate that African Parks plans to build a fence around Nech Sar National Park³² and employ other measures to strictly limit the tribes' ability to move freely in and out of the area.³³ African Parks' grave pattern of violating the most fundamental rights of the indigenous tribes in Nech Sar underscores the potential for tribes to face further restrictions in the Omo National Park.

VI. Protections Under International Human Rights Law

The Ethiopian Government has ratified the Convention on the Elimination of All Forms of Racial Discrimination but has not satisfied its obligations under this treaty. As a step toward complying with international law and safeguarding indigenous tribes from racial discrimination, the Ethiopian Government must ensure that the rights of indigenous tribes to prior informed consent for activities that potentially impact them are respected. Additionally, it is vital that the Ethiopian Government pass implementing legislation or otherwise enforce the constitutional provisions for pastoralists' right to free land for grazing and cultivation, as well as equal legal guarantees in regards to race, the right not to be evicted from land, freedom of movement, the right of public participation in establishing environmental policies, and the right to preserve cultural heritage.³⁴

VII. Conclusion

Activities of the Ethiopian government related to the Omo National Park are discriminating against indigenous tribes by restricting their ability to exercise their

²⁹ See Rodrigue Ngowi, *People vs. Wildlife in Parched Kenya*, WASHINGTON POST, Mar. 5, 2006, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/03/04/AR2006030400336.html> (stating that "Ethiopian authorities have relocated members of local ethnic groups from the Nech-Sar National Park and handed over its management to a private firm"); see also African Parks Annual Report, 2004, 23 (saying that "It was agreed that implementation [of the Nech Sar National Park] would commence once the Government authorities had completed the resettlement of the people who had illegally occupied the park. The resettlement of the Kori and Guji people was an internal affair of the Federal and regional governments, and African Parks had no role to play in the matter.")

³⁰ See Nech Sar National Park – Illegal Fishing, African Parks Foundation, Oct. 23, 2005, http://www.africanparks-conservation.com/peopleparks_illegalfishing.html (noting African Parks' efforts to curb "illegal fishing" within Nech Sar.)

³¹ See Martin Plaut, *People Problems for Ethiopian Game Park*, BBC, Sept. 26, 2005, <http://news.bbc.co.uk/1/hi/world/africa/4272388.stm> [hereinafter Martin Plaut, *People Problems for Ethiopian Game Park*] (stating that indigenous tribes such as the Kore and the Guij-Oromo "have been allowed" to cut wood in the Nech Sar National Park "for a limited period.")

³² See Martin Plaut, *S. African Money for Ethiopian Game Park*, BBC, Feb. 20, 2004, <http://news.bbc.co.uk/1/hi/world/africa/3506291.stm> (last viewed Jan 19, 2007) (describing African Parks' intention to erect a fence around Nech Sar in order to protect elephant, black rhino and buffalo populations).

³³ See Martin Plaut, *People Problems for Ethiopian Game Park*, *supra* footnote 31, (saying that African Parks planned to obstruct the Kore's use of a traditional pathway along grasslands and marshes, perhaps by having the tribe use a ferry service as an alternative route through lakes in the Nech Sar National Park.)

³⁴ See Ethiopian Constitution, Art. 40(5), 25, 40(4), 32(1), 92(3), 39(2), *supra* footnote 8.

fundamental rights to use and enjoy their ancestral land. These restrictions include the inability to hunt, fell trees, use land for agricultural purposes and move freely through the land.

We respectfully ask the members of CERD to raise these concerns with the Ethiopian Government and ask that the Government ensure equality and non-discrimination to the indigenous tribes that live in the Omo National Park. Inter alia, non-discriminatory treatment involves the indigenous tribes' right to provide prior informed consent regarding matters that affect their ancestral lands and livelihoods.

