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We help tribal peoples defend
their lives, protect their lands
and determine their own futures.

To: the Directors of the Africa Development Bank

9 April 2009

Dear Sirs,

Gilgel Gibe III Hydroelectric Power Project P-ET-FAB-005

Introduction

The Board of Directors will shortly decide whether to provide funds for the Gibe III Hydroelectric Power Project. It is not clear that the Directors have been made aware that in their haste to complete the project with the greatest possible speed, the Ethiopian authorities have engaged in a systematic course of conduct which is unlawful, unconstitutional and often criminal. We believe that the Directors should be properly informed of these matters before they make their decision, and provide particulars of at least some of these irregularities in an Appendix attached to this letter.

If the Directors approve the Gibe III application before they have properly investigated our allegations, they may place the Bank in breach of clause 2.5 of its own Environmental and Social Assessment Procedures. This states that:

“The projects financed by the Bank shall comply with the RMC’s environmental and social legislation, policies and guidelines, [and] with local and national requirements on public consultations and disclosure.”

This would have a number of consequences. It would seriously undermine the reputation of the Board, whose specific responsibility it is to uphold Bank policies. It would condone the commission of serious criminal offences under the laws of Ethiopia. It would encourage other RMCs to believe that if they delay their applications to the Bank until projects reach a sufficiently advanced stage, they too can ignore with impunity both the policies of the AfDB and the legal safeguards introduced in their own countries to protect their citizens.

Above all, from our point of view, it would dramatically increase the threat posed by Gibe III to the indigenous peoples of the lower Omo River: the Bodi, Dasanech Karo, Kwegu, Muguji, Mursi and Nyangatom.¹

Indigenous Peoples of the lower Omo

The indigenous peoples who occupy or use lands downstream of the dam probably number around 200,000. They have been living on both banks of the Omo for nearly two centuries.

The Bodi and Mursi depend on a combination of flood retreat cultivation, rain fed cultivation and cattle herding. Each one of these is vital to the long term sustainability of their economies. The Kwegu depend on flood retreat cultivation and rain fed cultivation, and have no livestock. The Kara and Muguji rely entirely on the flood for cultivation, and their goats live on vegetation produced by the flood. The Nyangatom depend on a combination of flood cultivation, rain fed cultivation and cattle herding. The Dassanech obtain all their grain from flood cultivation and are wholly reliant on the flood to provide grazing for their cattle.

None of these peoples have elected representatives or hereditary chiefs. Very few speak Amharic, and their literacy rates are amongst the lowest in Ethiopia. Decisions are made only at meetings attended by all adult males in each community. Elders are occasionally summonsed to appear before

¹ Our concern for these peoples arises out of our charter, which identifies as one of our principal objects the promotion of the rights of indigenous peoples. Survival was formed in 1969 and is a registered charity. We have consultative status at the UN Department of Economic and Social Affairs and observer status at the Africa Commission on Human and Peoples' Rights, and in 1989 were awarded the Right Livelihood Award.

government officials to be informed of plans that may affect them, but since elders have no authority to act for the community this signifies little or nothing.

These groups do not receive food subsidies from government on any systematic basis. Contrary assertions in the ESIA and Additional Study are incorrect.

Indigenous Rights

By Article 9(4) of the Constitution “all international agreements ratified by Ethiopia are an integral part of the law of the land”. One of the agreements ratified by Ethiopia is the UN Convention on Civil and Political Rights, Article 2(2) of which states that “in no case may a people be deprived of its own means of subsistence”. For the reasons explained below, Gibe III is likely to have precisely this effect on indigenous peoples downstream of the dam.

Ethiopia has also ratified the UN Convention on the Elimination of All Forms of Racial Discrimination. As has been confirmed by the UN Committee which monitors compliance with this Convention, governments which fail to recognize and respect indigenous customary land tenure are guilty of racial discrimination. This has led the Committee to call on all state parties “to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources.”

The Constitution of Ethiopia has responded to the call. It guarantees to the peoples of the lower Omo the right to choose their own residence [Article 32]; not to be displaced from their own lands [Article 40]; to be consulted about any State project likely to affect their communities [Article 43]; and to be compensated if their livelihoods are adversely affected by such a project [Article 44].

The need to protect and respect those rights is also acknowledged by the RMC’s official policies. Clause 4.3 of its Environmental Policy, for example, provides that those taking decisions about the development of the country’s natural resources

“must recognise that the Constitution now ensures that the user of land has the right to a secure and uninterrupted access to it and to renewable natural resources on it (for example trees, water, wildlife and grazing).”

Reverse gear

Gibe III has been widely criticised on economic, technical and environmental grounds, by people with considerable expertise in each of those areas. If it had been possible to make these criticisms at the right time – that is to say, before an EPC contract for the whole works was awarded in July 2006 – the Environmental Protection Authority of Ethiopia (“the EPA”) would have been required by law to take them into account.

If the EPA had been satisfied that the negative impacts now identified by the critics could not be “satisfactorily avoided”, it would have had a legal duty to refuse to authorise Gibe III. This would have stopped the project in its tracks, because there is an absolute ban on unauthorised projects refused prior: see in particular Articles 3 and 18 of Proclamation no. 299/2002, which make it a criminal offence for any person to “commence implementation” of such a project.

If the EPA had been satisfied that appropriate measures would either “eliminate the adverse impacts or reduce them to insignificance”, it could only have approved the project on condition that those measures were put into place: see Article 9(2)(c) of the Proclamation. By Article 4(2), in determining whether and on what conditions to authorise a project the EPA would have been required to “err on the side of caution while determining the negative impact of a project having both beneficial and detrimental effects”.

These provisions provide an essential bulwark against ill-conceived or badly designed proposals, but have been entirely cast aside. In particular, although work on the project started in or before December 2006 no EPA “authorisation” was issued until July 2008.

By then two of the three tunnels required to divert water from the dam had already been built. It was therefore no longer possible for the EPA to discharge its statutory duty to “determine whether and under what conditions the project shall proceed.” The purported authorisation, when it eventually came, was of no legal effect, because the Proclamation does not permit the EPA to authorise projects retrospectively.

The problems have been aggravated still further by the failure until almost two years into the project to have any regard at all to the impact of the project on the indigenous peoples for whom we are

concerned. Only with the publication of the so-called “Additional Study” in April 2008 was it possible for outside observers to form any sensible view about the likely impact of a dam on these peoples, or about the measures proposed to mitigate that impact. In other words, the processes prescribed by Ethiopian law were conducted in reverse gear.

This has placed an impossible burden on the consultants eventually hired to prepare the Additional Study. If they had concluded that the negative impact of the project could not be “satisfactorily avoided”, the financial consequences for their employer could have been devastating. Any measures that they might propose to eliminate or reduce the impact were likely to have significant cost implications for which no or inadequate provision had been made in the original contract. This is one reason why ESIsAs are invariably conducted – or are supposed to be conducted – before contracts are awarded.

There must always be doubts about the independence of consultants appointed in circumstances such as these. The doubts are unlikely to be allayed by the widespread hostility that the Additional Study has attracted. Of particular interest is the critique of the Africa Resources Working Group, a body comprised of experts from the United States, Europe and East Africa with extensive experience of hydrodam research and policy in the region: see www.arwg-gibe.org/uploads.

The ARWG argues among other things that

- (1) The reliance placed upon downstream flood simulation as a means of mitigating the adverse impact of the dam is entirely misguided. In fact, the authors claim, there are virtually no instances in Sub-Saharan Africa where downstream seasonal flooding from hydrodams has been successfully sustained, even in the short term. A number of examples are cited where the technique has been tried and failed.
- (2) The assertion that a carefully regulated flow will alleviate grazing conditions for the peoples downstream of the dam is “completely unfounded”. The ARWG contends that the reverse is “overwhelmingly likely to occur: by radically reducing available pasturage and browse near the river, the precipitous drop in river flow will cause massively increased grazing pressure throughout the region’s grasslands.”

- (3) The irrigation schemes and industrial projects described in the ESIA would lead to “additional dispossession and disruption of the ethnic groups of the lowermost Omo basin [and] will precipitate waves of new conflicts among groups already competing with one another over the shrinking natural resource base available to all of them.” Many of these groups are armed.
- (4) In general, the Additional Study is based on “a series of faulty premises”, is subject to “pervasive omissions, distortions and obfuscation”, and relies upon data “selected for their consistence with the predetermined objective of validating the completion of the Gibe III hydrodam. The design and content of the entire environmental and social ‘investigation’ is demonstrably crafted to support this predetermined conclusion.”

These are serious allegations. Had they been put to the EPA before the contract had been awarded, or at least before work on Gibe III had started, the agency would have had to investigate them. If they had been substantiated, the EPA would have had to put a stop to the project before it began or to require substantial modifications to its design. Neither option is now open to the EPA, because it has already issued its purported authorisation.

The ARWG critique is supported by the scientific literature. A seminal paper published in 2000, for example, makes plain that

“Managed flood releases are not a panacea for downstream environmental impact of dams. Many dams are not able to make flood releases or to pass sediment because of their design. Thermal stratification in the reservoir may result in poor water quality, thus limiting the potential for flood releases. Where the target floodplain is someway downstream of the dam, the contributing flows from the tributaries must be forecast, if given levels of flooding are to be achieved. Infrastructure on the floodplain, such as irrigated lands, roads or houses may need to be protected.

Poorly managed floods may have direct consequences for health including drowning and changes in the abundance and distribution of disease vectors. In addition, there may be important indirect health consequences such as malnutrition, contaminated drinking water, injury, stress, communal violence and loss of well-being. Consequently, releases must be carefully managed to avoid negative impacts. Nevertheless, loss of floods may also lead to food shortages through loss of farm and fisheries, and to social disorder, civil and ethnic conflict over resources, as in the case of the Senegal valley...

Successfully managed flood releases require co-ordination of the various institutions involved. In many cases, there are gaps or overlaps in responsibilities of institutions. Institutions often require

capacity building, such as representation skills in community NGOs to convey local aspirations for the floodplain, or technical expertise in the operating authority to plan and implement appropriate and timely releases to achieve agreed levels of flooding”: [Mike Acreman and others, Managed Flood Releases from Reservoirs: issues and guidance].

The Additional Study contains a passing reference to another paper by the same author, but there is nothing to indicate that the EPA read either of them – let alone that it saw any need to make its “authorisation” subject to any terms or conditions designed to reduce or eliminate the dangers to which Acreman refers.

The central issue

All this is or ought to be a matter of considerable concern to the Board. It will also be concerned, however, that the project is now about a third of the way towards completion. The central issue which the Directors must therefore address is whether an RMC should be permitted to rely upon its own illegal actions to escape the rigorous investigation to which, but for those actions, its proposals could and should have been subjected before any loan was approved

If the Board accedes to the EEPCo application it will inevitably be seen to have answered this question in the affirmative. This will set a dangerous example that other RMCs will be quick to exploit. And if only some of the dire predictions made by the ARWG are borne out by subsequent events, there is every prospect that Gibe III will return to haunt the Bank in the years ahead.

A better option would be to reject the application outright. EEPCo will have no one to blame but itself if the Bank takes this course.

A third possibility would be to defer a decision pending a genuinely independent review of the downstream impact of the dam. There is ample precedent for this. After the World Bank was criticised for its support of the Sardar Sarovar projects in western India, for instance, it commissioned an independent review. When many of the criticisms were found to be justified, the Bank made its future support for the projects contingent on a revision of the borrower’s proposals to ensure that proper account was now taken of the interests of the tribal and other peoples affected by the projects.

Conclusion

An anthropologist with an intimate knowledge of one of the downstream communities has observed that for them, “the annual flood is like the rising and setting of the sun. It affects everything they do. It is impossible for them to imagine what life would be like without it.” If the effect of Gibe III had been truly brought home to them in the so-called consultations, they would surely have expressed the most profound dismay about what apparently lies in store for them.

That no such sentiment finds its way into the Additional Study is remarkable only if this was a genuine attempt to record the real views of real communities. If it was intended merely to foster an impression that communities have lent their support to a project of which in fact they know almost nothing - but which is itself now urgently in need of the Bank’s support - the omission is entirely unsurprising.

We have focussed on legal and policy instruments in some detail, because the detail is important but conspicuously absent from the materials that EEPCo has presented to the Bank. These materials are not merely aspirational, designed to give way in favour of any economic or commercial considerations with which they happen to collide. On the contrary, it is vital that the RMC should comply with them if a sensible balance is to be achieved between the needs of the national economy and the interests of affected communities.

The RMC has made no attempt to strike that balance. Instead it has played fast and loose with its own laws and policies and with the policies of the Bank. This has already led to one CMRU request by the Friends of Lake Turkana, and we understand that a second is on its way. Whether Survival will file yet another request may depend on the Directors’ response to this letter, but we shall consider all the possibilities.

Our hope, however, is that this will not be necessary, and that the Bank will either refuse this application outright or defer it until such time as it has had the benefit of an independent review of the concerns we have identified. Due diligence demands no less.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Stephen Corry".

Stephen Corry
Director

cc: Governors of the Africa Development Bank

Nzabanita Emmanuel, Gibe III project task manager, AfDB

Per Elder Sovik, Director, Compliance Review and Mediation Unit (CRMU)

Giulio Tremonti, Minister of Economy and Finance, Italy

Franco Frattini, Minister of Foreign Affairs, Italy

David Miliband, Secretary of State, FCO, UK

Douglas Alexander, Secretary of State, DfID, UK

Lesley Johnston, USAID, USA

APPENDIX

1. Procurement

- 1.1. The procuring entity, the Ethiopia Electric Power Corporation (EEPCo), has asked the Bank to fund electro-mechanical equipment required for the dam. The Bank has already issued a “no objection” to an APA, but has done so on the express footing that the APA is undertaken at the sole risk of EEPCo and that the Bank is not committed in any way to make the loan
- 1.2. In its invitation for tenders for the supply and installation of this equipment EEPCo has specifically stated that the electro-mechanical works forms an “integral part” of the “EPC Contract for the whole of the Works” that it has already awarded to Salini Costruttori S.p.A.
- 1.3. We have not yet seen this contract, but the EEPCo description indicates that the original intention of the parties was that the specialist suppliers would be sub-contracted to Salini. The parties appear to have subsequently agreed that EEPCo should now appoint specialist suppliers itself, in the hope that the Bank could be persuaded that at least these contracts have been awarded in accordance with its procurement policy. This tactic is designed to circumvent the requirements both of the Bank and of the RMC, and should not be permitted to succeed.
- 1.4. Public procurements in Ethiopia are governed by Procurement Proclamation 430/2005. By Article 54(3) any person appointed by a procuring entity who performs his duties in breach of the Proclamation commits a criminal offence. On conviction he is liable to a fine of not less than 50,000 Birr and to a prison term of not less than 10 years. The severity of these punishments reflects the threat posed to the Ethiopian economy by corruption in public procurement.

- 1.5. As a wholly owned state entity, EEPCo is bound to comply with the Proclamation to the letter.
- 1.6. Article 25 of the Proclamation required EEPCo to place the Gibe III contract through an open bidding process. It was particularly important that one of the largest hydroelectric projects ever undertaken in Ethiopia should be the subject of competitive bids if subsequent allegations of impropriety were to be avoided.
- 1.7. In deliberate breach of Article 25 EEPCo negotiated only with Salini, with which it entered an EPC contract on 19 July 2006 worth Euros 1.4 billion. There was no competitive bidding of any sort. The Minister of Trade and Industry is the Chairman of the EEPCo board, and two other Ministers are directors. They must each have known of and approved the violation. It is inconceivable that they were not also aware of the provisions of Article 25. It is difficult to see that any of them would have a defence to a criminal prosecution under Article 54.
- 1.8. It was apparently this conduct (among other matters) that persuaded the World Bank to withdraw its previous expression of interest in the project. It had been asked to fund the purchase of the hydro-mechanical equipment, and was therefore in largely the same position as AfDB. As the World Bank director for Ethiopia recently observed in an interview with BBC Television:

“I think we have an obligation not only to do the right thing but to demonstrate very clearly that we are doing the right thing”: <http://news.bbc.co.uk/1/hi/world/africa>.

[See also <http://www.youtube.com/watch?v=sL2SKelDbdQ> (Part 1 of the televised programme; and <http://www.youtube.com/watch?v=FFvJEil1stc&feature=related> (Part 2)]

- 1.9. The AfDB should follow suit, especially in the light of the central importance attached to international competitive bidding in its own Rules and Procedure for Procurement of Services and Works.

- 1.10. The BBC has also spoken to the General Manager of EEPCo, Ato Miheret Debebe. Interestingly, Mr Debebe did not even try to deny that EEPCo had broken the law. On the contrary he believed that it was fully entitled to do so, because “Africa is in the dark. If we have to use very luxurious preconditions we wouldn’t develop any hydro-power”: *ibid*.
- 1.11. If the Bank shares that view, it might just as well consign its own policies and guidelines to the waste bin. If it does not it should refuse to fund any part of the monies due to Salini under the EPC contract, at least pending an independent review.
- 1.12. The Bank’s position ought not to be influenced by the fact (if it is a fact) that the supplier of the electro-mechanical equipment is now to contract or has already contracted directly with EEPCo. As EEPCo itself acknowledges, the electro-mechanical equipment forms an “integral part” of the main contract and it would be wholly artificial to consider it separately.
- 1.13. The Bank’s Rules and Procedure for Procurement of Services and Works support this view. Para 1.2, for example, lists four considerations which “generally guide the Bank’s requirements”. The first of these, unsurprisingly, is “the need for economy and efficiency in the implementation of the project, including the procurement of the goods and works involved.”
- 1.14. It follows that the Bank must concern itself not just with the procurement of the particular goods or works for which its assistance has been sought, but with the economy and efficiency with which the borrower will implement the project of which those goods or works form only a part.
- 1.15. The economy and efficiency with which EEPCo will implement Gibe III will largely depend on whether the terms it has negotiated with Salini are the most favourable that were reasonably available to it. But in the absence of any ICB, it will be impossible for the Bank to come to any informed view on this point unless the Salini contract is first subjected to a thorough-going independent review.

- 1.16. Para 1.5 of the same Rules and Procedure point to a similar conclusion. This accepts that the Borrower may adopt its own procedures for the procurement of goods and works which are not to be financed by the Bank. But it goes on to state that

In such cases, the Bank shall be satisfied that the procedures to be used will fulfil the Borrower's obligations to cause the project to be carried out diligently and efficiently, and that the goods and works to be procured:

- (a) are of satisfactory quality and are compatible with the balance of the project;
- (b) will be delivered or completed in timely fashion; and
- (c) are priced so as not to affect adversely the economic and financial viability of the project.

It is difficult to see how the Bank could be satisfied on any of these matters without an independent review of the Salini contract.

2. Environmental and Social Assessment

- 2.1. By clause 2.5 of the Bank's Environmental and Social Assessment Procedures

The projects financed by the Bank shall comply with the RMC's environmental and social legislation, policies and guidelines, with local and national requirements on public consultations and disclosure

- 2.2. Gibe III has not complied with the environmental legislation of Ethiopia:

- 2.3. The Environmental Impact Assessment Proclamation no. 299/2002 stipulates that

2.3.1. no person shall commence implementation of any project that requires environmental impact assessment ... without authorization from the EPA" [Article 3]

2.3.2. the proponent of the project must undertake "an environmental impact assessment [which] identifies the likely adverse impacts of his project and incorporates the means of their prevention or containment" and submit the assessment to the Authority for its consideration [Article 7]

- 2.3.3. any person who violates either of those provisions commits a criminal offence [Article 18].
- 2.4. Salini commenced work on the project shortly after the signature of the EPC contract in July 2006. It did so before any EIA had been carried out, and therefore before the EPA was in a position to issue any authorisation.
- 2.5. In fact, no authorisation was issued until 8 July 2008, at least eighteen months after the works had commenced. By then two of the three tunnels required to divert water from the dam had already been built. It was therefore too late for the EPA to discharge its duty under Article 8 of Proclamation no. 299/2002 to “determine whether and under what conditions the project shall proceed.”
- 2.6. The purported authorisation is plainly void, because the Proclamation does not permit the EPA to authorise projects retrospectively. On the contrary, the Proclamation is based upon the premise that authorisations must be obtained prospectively. That is why it is made a criminal offence to start work without one.
- 2.7. It follows that Salini and EEPCo have plainly committed and continue to commit offences under Articles 3 and 7 of the Proclamation respectively. Both must have been well aware of the effect of these provisions from the outset. Their offences are deliberate.
- 2.8. Gibe III also contravenes many of the key principles of the RMC’s Environmental Policy. By way of example only, there have been breaches of several of the policies contained in clauses 3.5 and 4.9. These include requirements that
- 2.8.1. public sector development programmes and projects recognize any environmental impacts early and incorporate their containment into the development design process
- 2.8.2. environmental impact assessments consider not only physical and biological impacts but also address social, socioeconomic, political and cultural conditions ; and

- 2.8.3. feasibility studies for hydroelectricity facilities include rigorous environmental impact assessments to allow informed decision-making that maximizes benefits to the community and to the country at large and eliminates or at least minimizes damage to the natural resources base and/or to environmental well-being.”
- 2.9. When International Rivers brought these violations to the attention of Bank officials, they were informed that “according to EEPCo, the ESIA report could not have been submitted until the final level design was ready.” If the officials have taken any steps to verify this claim, they have not explained what they were. In any event
- 2.9.1. There is no provision in the laws of the RMC or in AfDB policies or guidelines which permits the RMC to press on with a project before an ESIA has been submitted and approved. On the contrary:
- Without authorization from the Authority or from the relevant regional environmental agency, no person shall commence implementation of any project that requires environmental impact assessment”: Article 3 of Proclamation no. 299/2002
- 2.9.2. Article 11 of the same Proclamation specifically allows for occurrences that could not have been foreseen when the SEIA was first prepared:
- If an unforeseen fact of serious implication is realized after the submission of an environmental impact study report, the Authority or the relevant regional environmental agency may, as may be appropriate, order the environmental impact assessment to be revised or to be redone in order to address the implication.
3. Consultation
- 3.1. The failure to conduct an ESIA until after the decision had been made to proceed with Gibe III has deprived downstream communities of their right to be effectively consulted about the project.

3.2. This right is firmly acknowledged in Bank policies. The AfDB Policy on Information Disclosure, for example, provides that

3.2.1. Local populations shall be informed of the results of the ESIA and their opinions about proposed recommendations solicited [section 4.24]

3.2.2. Before the Bank proceeds to an appraisal mission for category 1 projects, available ESIA studies shall be released in the borrowing country at some public place accessible to potential beneficiaries, affected groups and local CSOs [section 4.25]

3.3. In accordance with this policy, para 3.3.2 of the Executive Summary of the EISA assures the Bank that “IFC’s eight Performance Standards will be adhered to throughout the operation of the Gibe III project”. IFC Performance Standard 7 on Indigenous Peoples (“IPs”) stipulates that

3.3.1. The client will establish an ongoing relationship with the affected communities of IPs from as early as possible in the project planning and throughout the life of the project. In projects with adverse impacts on affected communities of IPs, the consultation process will ensure their free, prior, and informed consultation and facilitate their informed participation on matters that affect them directly, such as proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues ... In particular, the process will include the following steps:

- Provide sufficient time for IPs’ collective decision-making processes
- Facilitate the IPs’ expression of their views, concerns, and proposals in the language of their choice, without external manipulation, interference, or coercion, and without intimidation
- Ensure that the grievance mechanism established for the project, as described in Performance Standard 1 is culturally appropriate and accessible for IPs [para 9]

3.3.2. If the client proposes to locate the project on, or commercially develop natural resources located within, traditional or customary lands under use, and adverse impacts can be

expected on the livelihoods, or cultural, ceremonial, or spiritual use that define the identity and community of the IPs, the client will respect their use by taking the following steps:

- The IPs land use will be documented by experts in collaboration with the affected Indigenous Peoples without prejudicing any Indigenous Peoples' land claim
- The affected communities of IPs will be informed of their rights with respect to these lands under national laws, including any national law recognizing customary rights or use
- The client will enter into good faith negotiation with the affected communities of IPs, and document their informed participation and the successful outcome of the negotiation [para 13].

3.4. One of the “key guiding principles” of the Environmental Policy of the RMC is the “acquisition of power by communities to make their own decisions on matters that affect their life and environment”. The Policy goes on to acknowledge the need in particular

3.4.1. to involve water resource users, particularly women and animal herders, in the planning, design, implementation and follow up in their localities of water policies, programmes and projects so as to carry them out without affecting the ecological balance [clause 3.4(f)];

3.4.2. to empower local communities so that they may acquire the ability to prevent the manipulated imposition of external decisions in the name of participation, and to ensure genuine grassroots decisions in resources and environmental management [clause 4.2(d)]

3.4.3. to ensure that all phases of environmental and resource development and management, from project conception to planning and implementation to monitoring and evaluation are undertaken based on the decisions of the resource users and managers [clause 4.3]

- 3.4.4. to recognize that public consultation is an integral part of EIA and ensure that EIA procedures make provision for both an independent review and public comment before consideration by decision makers [clause 4.9] ;
- 3.5. Under Article 43(2) of the Constitution of Ethiopia its citizens “have the right in particular to be consulted with respect to policies and projects affecting their community.” In theory they also have the benefit of Article 15 of Proclamation no. 299/2002, which provides that:
- 3.5.1. The EPA shall make any environmental impact study report accessible to the public and solicit comments on it.
- 3.5.2. The EPA shall ensure that the comments made by the public and in particular by the communities likely to be affected by the implementation of a project are incorporated into the environmental impact study report as well as in its evaluation.
- 3.6. The RMC and its contractors have once again chosen to ignore these legal and constitutional safeguards:
- 3.6.1. No “indigenous water resource users” on the lower Omo - whether women, animal herders or anyone else - was involved in the planning or design of any part of Gibe III. They could not be, because they knew nothing about the project until long after its planning and design had been completed.
- 3.6.2. There was no “independent review” of the project before the “decision makers” decided to proceed with it. Nor could decision makers have considered any comment that the communities might have wanted to make, because they had still been told nothing about the project when the EEPCo decided to proceed with it.
- 3.6.3. No “ongoing” (or any other) relationship was established with downstream communities “as early as possible in the project planning” or otherwise. There is still no relationship.
- 3.6.4. On the contrary the Additional Study confirms that the first consultations with the downstream communities did not take place until December 2007, several years after

“project conception.” There are reasons to suppose that these “consultations” were designed to allay any concerns on the part of the Bank rather than to elicit the genuine views of the communities:

- 3.6.5. Only six days were spent in the field, and during that period meetings were held with a mere 175 people. This could not conceivably have allowed “sufficient time” for IPs to consider the matter, let alone to do so by any “collective decision-making process.”
- 3.6.6. The Additional Study indicates that those persons were “selected so that their views could represent the entire attitudes of the community” (sic). The method by which they were selected is not explained. As we have said, the peoples with whom we are concerned do not act through representatives but at meetings of all male adults. Any meaningful attempt to solicit their views would require meetings in their major territories. Separate meetings would have to be held to solicit the views of the women.
- 3.6.7. So far as we have been able to establish, no such meetings have taken place even now.
- 3.6.8. We are aware that questionnaires apparently intended to record the views of indigenous people were usually completed by wareda officials without reference to the communities. This may have been partly borne of the knowledge that almost none of the indigenous people downstream of the dam would have been able to read the form, but it was also expedient: One of the questions, for example, asked respondents for their preferred solution if they were no longer able to practice flood retreat cultivation. Officials invariably wrote “irrigation” on every form, which happens to accord with the solution “preferred” by the government itself.
- 3.6.9. These are precisely the circumstances likely to nurture a “manipulated imposition of external decisions in the name of participation”, and least likely to ensure “genuine grassroots decisions”
- 3.6.10. No copies of the ESIA or the Additional Study were “released at any public place accessible” to any indigenous peoples downstream of the dam before the Bank conducted its appraisal mission in April 2008.

- 3.6.11. No systematic attempt has been made, by the use of experts or otherwise, to “document the land use” of the indigenous peoples in the area, with or without their “collaboration.”
- 3.6.12. No attempt has been made to inform any of the affected peoples of their rights over the lands they use and occupy.
- 3.6.13. Nor has there been any attempt to negotiate any agreement with these communities, in “good faith” or at all. Among other things any agreement would have had to
 - 3.6.13.1. be preceded by independent studies of the needs of the downstream communities, and of how these needs were to be accommodated in an area where infrastructure is conspicuously absent
 - 3.6.13.2. on the basis of those studies define the mitigation measures that were to be put in place, and in particular how dam flows were to be managed. If irrigation was to be offered, there would have needed to be detailed provisions as to the number, type and location of the pumps, and binding commitments for their service, repair and replacement over the life of the project
 - 3.6.13.3. establish a grievance mechanism in conformity with IFC Performance Standard 1. This would have had to ensure prompt and effective redress if and when indigenous lands were adversely affected. This in turn would probably have required the creation of an independent trust to fund remedial measures and to compensate those who had suffered loss.
- 3.6.14. Downstream communities have not been “informed of the results of” the ESIA or the Additional Study and their opinions have not been “solicited” on their “proposed recommendations”