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**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,
POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS,
INCLUDING THE RIGHT TO DEVELOPMENT**

**Report of the Special Rapporteur on adequate housing as a component
of the right to an adequate standard of living, and on the right to
non-discrimination in this context, Miloon Kothari***

Addendum

**SUMMARY OF COMMUNICATIONS SENT AND REPLIES RECEIVED
FROM GOVERNMENTS AND OTHER ACTORS**

* The present document is being circulated in the languages of submission only as it greatly exceeds the page limitations currently imposed by the relevant General Assembly resolutions.

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Introduction

1. In the context of his mandate, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, receives a large number of communications alleging violations of the right to adequate housing and related rights worldwide. Such communications are received from national, regional and international non-governmental organizations, as well as intergovernmental organizations and other United Nations procedures concerned with the protection of human rights.
2. The present addendum to the annual report of the Special Rapporteur contains, on a country-by-country basis, summaries of communications sent by the Special Rapporteur to States, responses received from States, observations of the Special Rapporteur, and follow-up communications and activities relating to earlier communications, from the period of 1 December 2006 to 4 December 2007 and replies received for the period of 1 December 2006 to 23 January 2008.
3. Where appropriate, the Special Rapporteur has sent joint urgent appeals or letters with one or more special procedures of the Human Rights Council where the allegations raised concerned the right to adequate housing as well as rights addressed under other mandates.
4. During the period under review, the Special Rapporteur sent a total of **50 communications**¹ concerning the right to adequate housing to 25 States as well as **1** communication to the United Nations Interim Administration Mission in Kosovo (UNMIK). Of these **51 communications** transmitted, **17 replies were received from Governments and 1 from the UNMIK.**² In one case, a response was received on a case sent by the Special Rapporteur in preceding years.
5. The Special Rapporteur appreciates and thanks the concerned States and UNMIK for these replies. However, he regrets once again that the majority of Governments have failed to respond, or when they have, have done so in a selective manner that does not respond to all the questions arising from the communication. These communications remain outstanding and the Special Rapporteur encourages Governments to respond to every communication, and all concerns raised in each communication.
6. A large number of the communications in the period under review are related to cases of forced evictions. Forced evictions constitute prima facie violations of a wide range of internationally recognized human rights and large-scale evictions can only be carried out under exceptional circumstances and in full accordance with international human rights law. In his

¹ During this period the Special Rapporteur transmitted 26 Joint Allegation Letters, 10 Joint Urgent Appeals, 9 Allegation Letters, 4 Urgent Appeals, and a document elaborated following a joint visit to Mexico regarding a specific case (entitled “Reflexiones sobre algunas implicaciones en materia de derechos humanos del proyecto Hidroeléctrico La Parota”).

² This number includes three replies received in Chinese which at the moment of finalizing this report were under translation and which will be published in the next communications report.

communications, the Special Rapporteur has referred the Governments to the Basic principles and guidelines on development-based evictions and displacement that can be used as a tool to prevent human rights violations in cases where evictions are unavoidable.³

7. The Special Rapporteur notes with concern that a growing number of communications relates to threats, harassment, and imprisonment of human rights defenders and activists working on the right to adequate housing. The Special Rapporteur also notes that a large number of complaints and reports he receives relate to indigenous peoples and minorities, including Roma population.⁴

8. Through his mandate, the Special Rapporteur has sought to engage in a constructive dialogue with States and to provide practical and concrete solutions aimed at the realization of the right to adequate housing. The communications sent by the Special Rapporteur have to be understood in this context. In a spirit of cooperation, the Special Rapporteur urges all States and other actors to respond promptly to his communications, to immediately take appropriate measures, to investigate allegations of the violation of the right to adequate housing and related rights and to take all steps necessary to redress the situation.

9. To the extent that resources available to the mandate permit, the Special Rapporteur continues to follow up on communications sent and monitor the situation where no reply has been received, where the reply received was not considered satisfactory or where questions remain outstanding. The Special Rapporteur also invites the sources that have reported the alleged cases of violations, to review cases and responses included in this report, and send, when appropriate, follow-up information for further consideration of the cases.

I. SUMMARY OF COMMUNICATIONS SENT TO GOVERNMENTS AND REPLIES RECEIVED

Argentina

Comunicaciones enviadas

10. El 9 de Febrero 2007, el Relator Especial, juntamente con el Relator Especial sobre el derecho a la alimentación, envió una carta de alegación con respecto al sistema de provisión del agua y saneamiento para la ciudad de Buenos Aires y sus alrededores. Los Relatores Especiales se felicitaron de que al rescindir el contrato de concesión con la empresa Aguas Argentinas S.A. mediante Decreto 303/06, se hubiera hecho expresa mención de que el agua es un derecho

³ The Basic principles and guidelines on development-based evictions and displacement are contained in report A/HRC/4/18. See also the Special Rapporteur's web page on forced eviction: <http://www2.ohchr.org/english/issues/housing/evictions.htm>.

⁴ See: Governments should take positive steps to protect Housing Rights of Roma in Europe, Joint Statement by *the Council of Europe's Commissioner for Human Rights, Thomas Hammarberg, and the Special Rapporteur on the right to adequate housing of the United Nations Human Rights Council, Miloon Kothari 24, October 2007.*

humano. Asimismo encomiaron la declaración efectuada del proyecto de ley sobre el marco regulatorio de Agua y Saneamientos de Argentina S.A. que fue aprobado por la Cámara de Senadores el 13 de diciembre de 2006, en el sentido de que los principios del derecho humano al agua deben iluminar el nuevo marco regulatorio del servicio. En este sentido resulta preocupante que el proyecto de ley haya sido enviado al Congreso sin publicidad, y sin un previo debate participativo. A su vez, pareciera ser que el proyecto de ley no prevé la consulta y participación de los usuarios y de las organizaciones de la sociedad civil respecto de las decisiones de la Agencia de Planificación que será responsable de establecer y modificar los planes de expansión de los servicios, así como tampoco respecto de las que adopte la Autoridad de Aplicación, que tendrá a su cargo la determinación de las tarifas. Los estándares internacionales de derechos humanos estipulan con claridad que los costos del agua y el saneamiento deben ser asequibles para todos, incluso para los grupos desaventajados. En este sentido los Relatores Especiales pidieron al Gobierno la inclusión, en el proyecto de ley, de una tarifa social.

11. El 22 de marzo de 2007, el Relator Especial, juntamente con el Relator Especial sobre el derecho a la alimentación, envió una carta de alegación respecto del desalojo violento de las familias campesinas indígenas del Lote 4, Pozo de Toba, Departamento J. F. Ibarra el 15 de noviembre de 2006 ordenado supuestamente por el juez Fernando Curet del Juzgado Civil de Cuarta Nominación de Santiago de Estero. Según las informaciones recibidas, esta orden no tenía ni fecha ni hora de emisión y afectó algunas familias que parecen hayan ejercido una posesión pacífica y continua por más de 20 años. Las familias afectadas que forman parte del Movimiento Campesino de Santiago del Estero (Mocase-Vía Campesina) denunciaron que el desalojo fue efectuado por 120 policías armados que actuaron de parte de los productores de soja. Según estas informaciones, aunque en 1994 las autoridades judiciales reconocieron la posesión natural de la tierra de los campesinos indígenas, desde entonces ha una creciente presión por la adquisición de dichas tierras, especialmente por los productores de soja. Para contrarrestar este problema, la Cámara de Diputados del Parlamento argentino aprobó el 1 de noviembre de 2006 la Ley 26160 que declaró una moratoria durante cuatro años para la tierra ocupada por comunidades indígenas y suspendiendo los desalojos durante ese mismo periodo. En este contexto el desalojo arriba descrito aparecería ilegal. Además los informes recibidos indican que este desalojo ha impedido el acceso de las comunidades afectadas a los recursos de los cuales necesitan para su sustentamiento incluso el acceso a una alimentación adecuada y suficiente y a recursos para obtener esta alimentación.

12. El 27 de marzo de 2007, el Relator Especial, juntamente con el Relator Especial sobre el derecho a la alimentación y el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, envió un llamamiento urgente con respecto al desalojo de comunidades diaguitas de sus tierras ancestrales en la Provincia de Tucumán. El 2 de marzo de 2007, la policía habría procedido al desalojo de 22 familias indígenas de sus viviendas, ubicadas en las tierras ancestrales de la Comunidad indígena de Los Cuartos en el Valle de Tafí. Según las alegaciones, en el curso de dicho desalojo se habrían destruido las viviendas de estas familias, incluyendo el incendio provocado de algunas de estas. Asimismo, la policía habría hecho un uso excesivo de la violencia en contra de miembros de estas familias, incluyendo niños, mujeres y ancianos, con un saldo de 15 comuneros heridos por el impacto de balas de goma. Según las informaciones recibidas el desalojo forzoso de la comunidad de Los Cuartos es consecuencia de la medida cautelar provisoria otorgada por la juez Emma Lidia de Nucci, del Juzgado Penal de Instrucción II Nom, para asegurar los títulos de dos familias que supuestamente cuentan con títulos de dominio privado sobre las tierras ancestrales de la

Comunidad. El mismo día, en una acción supuestamente promovida por el Gobierno de la Provincia de Tucumán, la policía Ecológica de Montero, en coordinación con el Director de Flora y Fauna de dicho Gobierno, habrían allanado las viviendas de varias familias indígenas. En el curso de dicho allanamiento, supuestamente llevado a cabo sin orden judicial, los funcionarios policiales habrían roto las puertas de las viviendas allanadas, procediendo posteriormente a confiscar las artesanías de los comunitarios. Como consecuencia de dicha acción, varios comuneros habrían resultado heridos de diversa consideración. Se informa que el área objeto de los allanamientos forma parte de las tierras tradicionales del pueblo diaguita, aunque la comunidad carecería de un título formal reconociendo dicha propiedad. Se informa asimismo que esta área es reivindicada por la Secretaría de Recursos Naturales para su propio uso. Adicionales procesos estarían en curso para desalojar a la familia Moya de la comunidad indígena de Amaicha de Valle, a dos familias en la comunidad indígena de Quilmas. En ambos casos, se alega que las parcelas pertenecen a las tierras tradicionales de la comunidad, ahora registradas a nombre de un terrateniente no indígena, quien habría procedido a la venta de parcelas a otro propietario privado. Una cuarta amenaza de desalojo se estaría llevando a cabo en contra de la familia Donato Nieva de la comunidad indígena de Tolombón. Según las informaciones recibidas, dicha familia se habría visto forzada a suscribir un contrato de arrendamiento con los terratenientes que ostentan el título privado sobre las tierras ancestrales de la comunidad. Una situación similar ha sido reportada en relación con aproximadamente otras 20 familias de la vecina comunidad indígena de Rodeo Grande. Al igual que en el caso de la comunidad de Tolombón, las familias se habrían visto forzadas a suscribir convenios de arrendamiento con los detentadores de títulos privados de propiedad sobre las tierras ancestrales indígenas, aprovechándose del analfabetismo de las familias y de su ignorancia de las consecuencias derivadas de la suscripción de dichos convenios. Según las informaciones, las familias diaguitas de la provincia de Tucumán carecen de títulos de propiedad formal sobre sus tierras ancestrales, a pesar de sus numerosas denuncias y reclamos.

Comunicación recibida

13. Por carta de fecha 4 de julio de 2007, el Gobierno respondió al llamamiento urgente solicitado juntamente con el Relator Especial sobre el derecho a la alimentación y el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas el 27 de marzo de 2007. El desalojo de las 22 familias de la Comunidad del Valle Tafi ocurrió el día viernes 2 de marzo de 2007, en la localidad de Los Cuartos. La comunidad solicitó la inscripción de su personería en el año 2000 ante del Instituto Nacional Contra la Xenofobia, la Discriminación y el Racismo, obteniendo su registro recién en el 2005. Es la segunda vez que se realiza un desalojo, ya había sucedido otro el 22 de Septiembre de 2006. Las tierras en las que habitaban las familias eran tierras de uso comunitario hasta hace unos años. Con relación a las parcelas afectadas, de la documentación disponible de la comunidad surgiría que solo un sector sería materia de desalojo, por presunta propiedad de Ernesto Chenaut, el resto donde habitan 17 familias sería espacio público. El juicio de desalojo se sustancia con el Juzgado Penal de Instrucción N.º 11 a cargo de la juez Emma Lidia de Nucci. Con relación a la comunidad y a los comuneros desalojados, se trata de gente oriunda del lugar en proceso de asumir su identidad indígena. Con relación a las tierras, no se cuenta con documentación suficiente, pero de la existente surge que el juicio solo afectaría a cinco familias. Existe una inconsistencia entre la parcela por la cual se ordena el desalojo y la del desalojo efectuado, que es mayor, en principio. Los hechos ocurren cuando se encuentre vigente la ley N.º 26610, que suspende los desalojos en las tierras que habitan las comunidades indígenas por el plazo de cuatro años y ordena al

Instituto Nacional de Asuntos Indígenas (INAI) que en el término de tres años realice acciones necesarias a fin de relevar las tierras en las que habitan las comunidades indígenas, garantizando los derechos y la participación de las comunidades en el transcurso del programa de relevamiento territorial. El día 12 de abril, Viviana Canet, de la Dirección Nacional de Derechos Económicos, Sociales y Culturales, Delfín Jerónimo, delegado del Pueblo Diaguita y representantes de la Comunidad del Valle Tafí se reunieron. Los principales elementos que surgieron de la reunión fueron: *a)* los comuneros son oriundos del valle y así vienen peleando el desalojo de las tierras en las que habitan desde el año 2002; *b)* la comunidad se encuentra integrada por comunidades de base que van recuperando su vida comunitaria en el marco de un territorio que se ha convertido en el lugar de fin de semana de la burguesía tucumana y donde abundan nuevas y costosas edificaciones. Con relación a la ejecución del desalojo, la policía desalojó la totalidad del predio, cuando se ordenaba una parcela. Además ha habido abuso de autoridad por las lesiones ocasionadas y la destrucción de vivienda. La comunidad manifiesta que se quiso hacer la denuncia ante la policía que se negó a recibirla. Finalmente, hubo un acuerdo entre el cacique de la comunidad y el Dr. Nievas con el Intendente del lugar, perteneciente a la línea política del vicegobernador de la provincia, con el objetivo de sancionar una ley de expropiación de la totalidad del predio. En base a este compromiso político, el Dr. Nievas se entrevistó con la juez, quien suspendió el desalojo (en octubre de 2006) para dar lugar a la ley. Dada la fecha de los hechos, y las circunstancias relacionadas a un conflicto político entre el vicegobernador y el actual gobernador de la provincia de Tucumán, pareciera que esta situación tuvo incidencia directa sobre la decisión del desalojo. En primer lugar, la Secretaria de los Derechos Humanos está solicitando informes a la jueza interviniente y notificando al Secretario de Derechos Humanos de la provincia de Tucumán para que brinde una solución conforme a derecho y respete los derechos de los pueblos indígenas. En segundo lugar, se ha recibido denuncia de la Comunidad sobre el allanamiento de viviendas de varias familias indígenas que se dedican a la producción y venta de artesanías en los Menhires del Valle de Tafí, sin orden judicial y confiscación de mercaderías, y se realizan en la actualidad las gestiones correspondientes para el encarecimiento de los hechos. En tercer lugar, respecto a los procesos de desalojo de las familias indígenas de sus tierras ancestrales que a continuación se detallan: familia Moya de Amaicha del valle; Rafael Marcos González y Sra. De Caro de la comunidad indígena de Quilmas; familia Donato Nieva de la comunidad indígena Tolombón y 20 familias de la comunidad indígena rodeo Grande, la Dirección Nacional de Derechos Económicos, Sociales y Culturales no cuenta con denuncia alguna. Sin embargo, se ha solicitado informe a la comunidad de Quilmas, la que ha manifestado que si bien se han planteado estas situaciones, la comunidad ha intervenido para la restitución de los predios a sus legítimos poseedores, y los comuneros se encontrarían actualmente en posesión de los mismos.

Observaciones

14. El Relator Especial le agradece al Gobierno por su detallada respuesta a la comunicación conjunta de fecha 27 de marzo. El Relator Especial sigue monitoreando esta situación, en particular con lo que se refiere al resultado del proceso judicial relativo a la propiedad de las familias desalojadas de la comunidad de Los Cuartos, así como de los otros casos que fueron objeto de esta comunicación conjunta. En este sentido, los Relatores Especiales han enviado una comunicación de seguimiento al Gobierno que será incluida en el próximo informe sobre comunicaciones.

15. El Relator Especial lamenta que en el momento de realizarse este informe no haya recibido ninguna respuesta del Gobierno a sus comunicaciones de fecha 22 de marzo y 9 de febrero de 2007 y espera que se establezca un dialogo también en relación con estos casos.

Bangladesh

Communications sent

16. On 1 March 2007, the Special Rapporteur sent an urgent appeal regarding forced evictions in Dhaka, as well as in other parts of the country that allegedly begun on 24 January 2007. According to information received, there were two types of ongoing evictions carried out in order to recover Government owned lands. The first concerned lands which had been taken up in the recent past by the political leaders of the past ruling Government, influential land grabbers and businessmen, and where they had illegally constructed various establishments, including offices of political parties, election camps, social clubs, shopping malls, factories, stone and brick crushing mills, etc. The second were part of measures for uprooting terrorism and restoring law and order, and reportedly concerned so far 24 slums in Dhaka and more than 40 slums in other divisional cities. Reports indicated that in Dhaka nearly 10,000 households have been evicted by Dhaka City Corporation (DCC) and Bangladesh Railway, while nearly 3,000 households were evicted in other divisional cities. Reportedly, over 1,500 structures along railway tracks and in various other locations have been demolished including along the river banks of the Buriganga, Turag, Ichhamati, at Karwanbazar rail gate, Shyampur Kadamtala, Mirpur, Gendaria, Jurain and Shewrapara in Dhaka, Barolekha in Sylhet, Ashuganj in Brahmanbaria and Gafargaon in Mymensingh, and in Rajshahi. Allegedly, the evictees did not receive prior information, were not consulted and have not been provided with resettlement or rehabilitation. The communities affected are being evicted from Government lands where they have, in many cases, been living for more than 30 years. Clashes between evictees putting up resistance and police forces erupted in locations such as Chittagong resulting in various injuries. It is reported that these people now find themselves homeless, exposed to the heat during the day, and winter cold during nights, and suffering from hunger and disease, especially the children, women and elderly. In Dhaka, reportedly, the affected communities remain in the city in order to continue with their work and livelihood as far as possible, and therefore have either moved to open lands where available, in other slums, road sides, etc. The information received also relates to the eviction of street hawkers from various footpaths and roads at Gulistan, Phulbaria, Bangabandhu Avenue, Ramna Bhaban, Baitul Mukarram, Motijheel, Purana Paltan, Naya Paltan, Bijay Nagar, Kakrail, Malibagh, Moghbazar in Dhaka, among others.

17. On 14 August 2007, the Special Rapporteur sent an urgent appeal jointly with the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression regarding Mr. Rabindra Ghosh, the President of the *Dhaka Chapter of the Human Rights Congress for Bangladesh Minorities (HRCBM)*, a non-governmental organisation (NGO) dedicated to the promotion of human rights that has special consultative status with the United Nations. According to information received: On 7 August 2007, police officers came to the home of Mr. Ghosh in the Western Bazaar area of Moulovibazar town. They issued him with an arrest warrant, informing him that he had 24 hours to comply with the warrant and present himself at Bogra police station. The following day, Mr. Ghosh proceeded to the station, but was not arrested; he was instead threatened to be arrested should he continue his work. It is alleged

that the arrest warrant was ordered by Upazilla Nirbahi Officer, in reaction to Mr. Ghosh's campaigning for the recovery of the historic Bhabani Temple at Bogora. The temple was reportedly destroyed by national armed forces on 13 February 2007, in violation of a High Court order to protect the building. The historic temple reportedly existed for hundred years and a minority community, including caretakers of the temple, lived in the premises for generations and were forcefully evicted when the building was demolished.

Response received

18. On 11 January 2008, the Government replied to the above communication on the situation of Mr. Ghosh. The note verbal indicated that the allegations contained were groundless. According to the Government, Mr Rabindra Ghosh was not present at the Bhananipur Temple when the eviction was carried out by the Joint Forces in February 2007. Furthermore, the authorities report that a case was filed to the Court of the Assistant Judge concerning the evictions activities of the Joint Forces, which was rejected. No mention of torture was made in this case. The Government states that the arrest of Mr. Ghosh was connected to a complaint by the local Upazilla Nirbahi Officer over allegations that Mr. Ghosh had threatened him over a mobile phone. An investigation was carried out and upon completion, Non-FIR Prosecution No 31 dated 24 April 2007 as per Article 189 of the Penal Code was submitted to the Court. Mr. Ghosh appeared before the Court voluntarily and was then granted bail on appeal. The Government further asserts that the allegations concerning threats directed against Mr. Ghosh or his arrest by law-enforcement agencies is unfounded, as he has left Dhaka for California on 7 October 2007 and has not come back yet.

Observations

19. On 7 March 2007, the Permanent Mission of Bangladesh acknowledged receipt of the communication of 1 March 2007 and channelling it to the capital. However, the Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted any reply to his communication. The Special Rapporteur continues to monitor the situations described above with interest.

Brazil

Communications sent

20. On 2 March 2007, the Special Rapporteur sent an urgent appeal concerning imminent forced evictions in central São Paulo. According to information received, 468 families, representing 1,724 people including 315 children and 380 teenagers, who had been living in the derelict Prestes Maia building in central São Paulo for over two years, were to be evicted before 4 March 2007 by the municipal authorities, following the issue of a new order from a judge on the grounds that the building was not fit for human habitation in its present condition. Reportedly, the families had been scheduled for eviction on 15 April 2006, under a previous eviction order, but lawyers working for the Movimento Sem-Teto do Centro (MSTC), Homeless Movement of Central São Paulo, lodged an appeal on the grounds that the families had been living in the building for over a year and therefore had rights as residents. The São Paulo State Supreme Court had subsequently issued an order postponing the eviction indefinitely. Reports indicated that the evictions had been scheduled for 25 February 2007 and the affected families

were not going to be provided with secure tenure in adequate alternative accommodation, or compensation. Allegedly, the municipal government's offer to the residents was to give them temporary accommodation in hostels, and provide some help transporting belongings there from Prestes Maia so as to clear the site for commercial development. Reportedly, the families complained that the authorities' offer fell far short of the undertaking given by the previous municipal government, which had agreed to re-house all the families in temporary accommodation while the Prestes Maia building was converted to flats for them to occupy. Furthermore, the authorities had allegedly rejected the lawyers' requests to include the families in recognized municipal or state programmes to provide financial support to homeless people. There was the concern that a lot of the families affected would have ended up living on the streets in central São Paulo. Senior police officers reportedly met with the families and their representatives to discuss the conduct of the eviction, to ensure that none of the residents would be ill-treated. However, concerns were expressed regarding a possible confrontation with the military forces responsible for carrying out the evictions.

21. On 8 June 2007, the Special Rapporteur sent a joint allegation letter with the Special Rapporteur on the right to food and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people on the situation of Raposa Serra do Sol (RSS), in the state of Roraima, including the traditional lands of over 16,000 Ingariko, Macuxi, Patamona, Taurepang and Wapichana people. The situation in RSS was the subject of a joint communication sent to the Government by the Special Rapporteur on adequate housing and by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people on 18 March 2005, calling to address the demarcation of RSS as a matter of urgency. According to several reports received in recent years, the process of demarcation of Raposa Serra do Sol began formally in 1977, when the Fundação Nacional do Índio (FUNAI) began its first activities aiming at the identification of indigenous lands. The various delays in the process of demarcation and titling of RSS led to the filing of a petition before the Inter-American Commission on Human Rights, which in March 2004 issued precautionary measures to protect rights of the indigenous communities of the area. Following the procedure established in Brazilian legislation, the demarcation of RSS was eventually ratified by Presidential Decree on 15 April 2005. Inter alia, the Decree called for the removal of "non-indigenous occupants present in the area of Raposa Serra do Sol", which should be carried out "within a reasonable timeframe," and in any event, not over the deadline of a year after the approval of the Presidential Decree. It has been alleged that the measures taken to date by the Government have not led to the effective removal of powerful rice-growers, whose refusal to leave indigenous lands has increased the climate of tension in the area. The continued presence of rich rice-growers and producers in RSS with farms whose size ranges from 1,300 to nearly 9,000 hectares, and the lack of effective measures to demarcate and title the indigenous territory have reportedly generated continued tension in the area as well as continuing deforestation and burning, soil erosion, water and soil contamination and illegal fishing which has affected communities' livelihoods and food security. It also appears that the rice-growers have built illegal dams and have carried out unsustainable agricultural practices. On 1 March 2007, the Inter-American Commission on Human Rights renewed the precautionary measures originally issued in December 2004, calling on Brazil to protect the indigenous communities of RSS. RSS was also the subject of a letter to Brazil dated 14 March 2007 from the Committee on the Elimination of Racial Discrimination, which expressed its concern with the situation. It is further reported that on 12 August 2005, a group of major rice-growers (Itikawa Industria e

Comercio Ltda, Ivalcir Centenaro, Luiz Afonso Faccio, Paulo Cesar Justo Quartiero, and Nelson Massami Itikawa) filed an injunction at the Supreme Federal Court (STF), seeking the suspension of the Presidential Decree (MS. 25.483-1). This group has repeatedly opposed official notices and other administrative procedures of removal, and remain in the area to this day. In March 2007, FUNAI notified the remaining rice-growers personally that they would have to leave RSS by a new deadline of 30 April 2007. This decision was equally opposed by the same group of rice-growers, which filed a new injunction at the STF. On 3 May 2007, the STF issued a decision suspending the removal of the rice-growers and any land restitution to the indigenous communities, until a final decision is taken regarding the pending injunction of August 2005. Concern has been expressed that the recent Supreme Court decision will entail further delays in the process of demarcation and titling of RSS, and that the continuous presence of rice-growers in the area may lead to additional violations of the rights of the indigenous communities living in the area. Concern has also been expressed about the possibility that a forthcoming decision of the Supreme Court may invalidate the 2005 Presidential Decree, and thus the legal recognition of indigenous peoples' rights over their traditional lands in RSS, in favour of powerful economic groups with an interest in the area.

22. On 19 July 2007, the Special Rapporteur sent a joint allegation letter with the Special Rapporteur on the right to food, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Special Representative of the Secretary-General on the situation of human rights defenders concerning the recent attack against members of indigenous communities of the Surumú region, in Terra Indígena Raposa Serra do Sol (RSS), in the state of Roraima. The case of RSS was the subject of a communication transmitted on 8 June 2007. At this regard the Special Rapporteur expresses his appreciation for the recent STF decision of 4 June 2007, overturning its earlier injunction and thus allowing the removal process to move forward. It has to be noted that the recent STF decision did not resolve all of the other pending legal challenges that are still before the Court in relation to the demarcation, titling, and removal process in RSS. Moreover, in spite of this favourable STF decision, the Government has not publicly announced a new expected date for the total removal of non-indigenous occupants pursuant to the Presidential Decree of 15 April 2005. In addition, according to the information received there were new threats and attacks against members of the RSS indigenous communities reportedly perpetrated by non-indigenous occupants who are opposing the process of demarcation and titling of the indigenous land. It is reported that on 14 June 2007, seven members of the indigenous communities of the Surumú region initiated an action of peaceful reoccupation of a traditional place known as Paruwani, part of the ancestral lands of the Makuxi indigenous people, located in the proximities of the rice farm "Depósito e Canadá." As part of this action, they initiated the construction of housing structures in the area. Since the beginning of the reoccupation, they started to receive threats from agricultural workers from the neighbouring farm. On 17 June 2007, at approximately 12.00, Mr. Anselmo Dionísio Filho, Tuxaua (traditional chief) from the Barro Community, was followed by a white car (L200) on the road accessing the Municipality of Uiramutã. When he stopped at the road to the community, the white car also stopped, its passengers got out of the vehicle, and started filming. The passengers were identified as Mr. Paulo César Quarteiro (former prefect of the municipality of Paracaima), Mr. Márcio Junquiera (representative of the State of Roraima at the Federal Congress), and three other individuals. Tuxaua Anselmo asked these persons to leave the place and stop filming. After a tense discussion, they came back to their vehicle and moved to a distance of 50 m., where they

continued filming, and eventually left. On the same day, at approximately 2 p.m., two individuals, identified as Mr. Paulo César Quarteiro and Mr. Anísio Pedrosa, driving the same white car, entered the indigenous communities' settlement into the Paruwani area, observed the situation, and left. A few minutes after, the white car, followed by a white 3/4 truck, carrying a group of men wearing balaclava helmets, and armed with guns, clubs, and knives broke into the settlement. They left the two vehicles and pointed their guns at them, shouting that, if they did not leave the area immediately, they would open fire; some of the gunmen fired their guns at the air. The members of the indigenous communities were forcibly taken into the truck, where they were made bow their heads and detained. While in detention, the gunmen reportedly turned around and burned the housing structures built by the indigenous communities in the location, along with their possessions. Subsequently, the gunmen drove the indigenous people to the proximities of the municipality of Uiramutã, took them out of the truck and left. While on the road, they were pejoratively treated as "lazy" and "invaders," and they were threatened that if they returned to the Paruwani area, they would "not be able to tell their story." Concern has been expressed for the security of the members of RSS indigenous communities as a result of their peaceful defence of their traditional lands and their continuous calls for the demarcation and titling of their lands pursuant to the Presidential Decree of 15 April 2005, and that the continuous presence of rice-growers in the area may lead to additional violations of the rights of the communities living in the area. Particular concern is also expressed by the reported direct involvement of local and national authorities in the attack of 14 June 2007, which would support the powerful economic groups opposing the demarcation and titling of RSS lands.

23. On 9 November 2007, the Special Rapporteur sent an allegation letter jointly with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, the Special Rapporteur on the right to food and the Special Rapporteur on violence against women, its causes and consequences, regarding the situation of the Guarani Kaiowá community of Nhanderu Marangatu, in the state of Mato Grosso do Sul, including allegations regarding abuses perpetrated by private security guards contracted by local farmers. According to the information received, the Guarani Kaiowá community of Nhanderu Maragantu, integrated by 500 members, have been gradually expelled from their traditional lands in Mato Grosso do Sul by the opening of large commercial farms. Since 1999, they lived in an area of 26 hectares on the margins of road MS 384, in tarpaulin shacks, in the access to the ranches Fronteira, Morreo Alto and Cedro. Since 2004, the Guarani Kaiowá started to reoccupy their traditional lands then in hands of private owners, occupying an area of 400 hectares within the boundaries of several private farms. The Nhanderu Marangatu Indigenous Land was officially recognized by Presidential Decree of 28 March 2005, which ratified the demarcation previously undertaken by the National Indian Foundation (FUNIA) of the Guaraní Kaiowá traditional lands. The land demarcated included an area of 9,317 hectares within the municipality of Antônio João, in the State of Mato Grosso do Sul. The process of official recognition of the Nhanderu Marangatu indigenous land was however suspended by injunction of President of the Federal Supreme Court (STF) on July 2005, in response to an appeal filed by local farm owners, ordering the forceful eviction of the Guarani Kaiowá settlement in the Fazenda. On 15 December 2005, the eviction took place with the support of more than 150 members of the armed forces, including Federal police and military police. During their eviction, several of their properties were reported to have been set on fire by private security guards contracted by local farmers. As a result of this eviction, the community was resettled in the earlier location of 26 hectares on the margins of the road MS 384, in precarious conditions. During their resettlement, they reportedly experienced

severe shortage of food and water, and unsanitary conditions, and numerous cases of malnutrition and maladies of the community's children were reported. In August 2007, the Guarani Kaiowá community, in the framework of an agreement between the authorities and the local ranchers, returned to occupy 100 hectares of their traditional lands within the area homologated by the Presidential Decree, in order to allow for the asphaltting of road MS 384. In their current location, the community awaits the final decision of the courts in order to take possession of their traditional lands, as identified in the 2005 Presidential Decree. Following the information received, several human rights violations would have been perpetrated by private security guards employed by local farm owners against the members of the Guarani Kaiowá community of Nhanderu Marangatu. It is alleged that these abuses have increased after the indigenous community was evicted from their traditional lands on 15 December 2005, and that are committed with the intention of intimidating community members against their attempts to recover their traditional lands. Reported abuses include the killing of Mr. Dorvalino Rocha, a 45 years-old Guarani Kaiowá, on 24 December 2005. Mr. Rocha was reportedly shot in cold blood by a security guard employed by the Fronteira farm. According to the information received, the reported abuses by security guards have increased since the community moved to their temporal resettlement within the private ranches of Nhanderu Marangatu, in August 2007. Since their resettlement, an approximate of 30 private security guards of the Gaspem company have been contracted by local landowners, have been deployed in the vicinities of the community's encampment, leading to a situation of increased tension. Various episodes of sexual violence against Guarani Kaiowá women by private security guards have been reported. On 12 October 2007, at approximately 10.00 am, a group of four security guards attacked Ms. Elisa Ramos and her husband, Mr. Veríssimo Nunes, while they were searching for firewood. After the guards battered her husband, Ms. Ramos suffered an attempted rape. During the same day, at approximately 4.00 pm, a similar attack was suffered by Ms. Silvina Romero and her husband Mr. Armido Fernandes Vilhalva, in the company of their 9 years-old son. While Mr. Fernandes taken away and was severely beaten by the guards, Ms. Silvina Romero was hit with a rifle butt and thrown to the ground, where she received several blows and was subject to sexual violence, in front of her child. Reportedly, Ms. Romero eventually managed to escape, but she had to be hospitalized with strong pain on her chest. In addition, according to the allegations, private security guards have repeatedly harassed the indigenous community, including by firing shots in the air. In this connection, it is reported that, on 5 October 2007, security guards opened fire at a distance of 50 m from the community's houses as a form of intimidation. On 30 October 2007, security guards fired shots in the air near a group of children while they were playing. Moreover, it has been reported that the personnel of the neighbouring farms have continuously subjected the community to surveillance, taking films and pictures of community members in the distance. On 31 October, a police patrol reportedly interrupted during a ceremony being performed by the community in homage to the dead. The police's operation was allegedly in response to denounces made by local ranchers, which claimed that the community was trying to invade ranch lands.

24. On 20 November 2007, the Special Rapporteur sent a joint allegation letter with the Special Representative of the Secretary-General on the situation of human rights defenders concerning the situation of Ms. Elaine Guenze da Silva, acting State secretary of the National Union for Popular Housing, an organization defending the right to housing, overseeing the settling of families and monitoring public planning policy, government social programmes and the regulation of public finances. Following the information received, on 14 August 2007 at

approximately 8.30 am, armed members of the Municipal Guard of Curitiba forcibly evicted Ms. Elaine Guenze da Silva from the headquarters of the Force of a Greater Power Tenant's Association in Villa Sambaqui and then demolished the building, without presenting any judicial order. It is alleged that the Municipal Guard were carrying out orders received from the Mayor of Curitiba, the President of the Foundation for Social Action (FAS) and the Municipal Secretary of Urban Planning. Construction materials and other items were also removed from the site. Following the information received, when Ms. Elaine Guenze da Silva protested, she was restrained by five Municipal Guards who proceeded to attack her with a club, handcuffing her and dragging her to a vehicle. Elaine Guenze da Silva was then detained and was later charged under Article 331 of the Brazilian Penal Code with "disrespecting authority". Her hearing was scheduled for 22 November 2007. Concern is expressed that the forced eviction and detention of Ms Elaine Guenze da Silva, including the use of excessive force against her, may be related to her human rights activities, in particular her work to defend the right to housing in Brazil.

Observations

25. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted any reply to any of his communications. The Special Rapporteur continues to monitor the situation with interest.

Cambodia

Communications sent

26. On the 5 February 2007, the Special Rapporteur sent a joint allegation letter with the Special Rapporteur on the right to food, regarding the received allegations that numerous cases of economic land concessions have encroached upon the rice fields and farm land of communities, depriving them of their source of livelihoods and leading to food shortages. For example, at a concession in Sre Ambel district, Koh Kong province (granted to two companies partly-owned by Senator Ly Yong Phat) the concession company has destroyed local villagers' rice fields and orchards to make way for a sugarcane plantation. Some villagers have lost all of their agricultural land: those whose rice fields were destroyed are currently surviving on rice from last year's harvest, but do not know what they will do next year, when they have no rice remaining and no rice to harvest. Similarly, at the Global Agricultural Development and Asia World Agricultural Development concessions in Sambo district, Kratie province companies granted economic land concessions have destroyed villagers' agricultural land, which has affected their current and future livelihoods. These allegations claim that the activities of economic land concessions also restrict communities' access to forests, where they collect non-timber forest products to supplement their diet or to sell to earn a living. Without access to non-timber forest products, many communities will lose an important source of livelihoods. The Special Rapporteurs noted that cases of forced evictions in urban areas have negatively impacted on communities' livelihoods. In Phnom Penh, for example, the livelihoods of families have been compromised by their eviction from the Tonle Bassac area and relocation to sites far from the city. For example, in Andong, one of the relocation sites, it is reported that many families have

been deprived of their means of livelihoods due to the distance of the relocation site from Phnom Penh and the high cost of transport. Previously, they were reportedly able to sell food around central Phnom Penh. In addition, in Andong, water is not provided by the Government and people have to pay for it.

27. On 7 June 2007, the Special Rapporteur sent a joint allegation letter with the Special Rapporteur on the question of torture and the Special Rapporteur on the right to food on forced evictions and home demolitions in the coastal town of Sihanoukville that reportedly took place on 20 April 2007. According to this information, police forcibly evicted 117 families from the community of Mittapheap 4, in the coastal town of Sihanoukville, following a protracted land dispute started in 2006 when a complaint was filed with the Mittapheap 4 commune chief, claiming the villagers were “illegal squatters”. However it is alleged that no competent judicial authority has made a determination of the land ownership claim, as is required under the 2001 Land Law of Cambodia, according to which, person(s) who have lived on a plot of land for more than five years without any land ownership-related disputes are entitled to ownership of the land. Allegedly, most of the affected villagers had been living on that land since 1985. Therefore, although the families concerned have fulfilled all the requirements relating to land ownership, they have never officially received the titles for the land from the government, despite their repeated requests. Reports also indicate that on the day of the eviction, the community was surrounded by armed security forces. Violent clashes between the police and members of the community followed with the police reportedly firing live ammunition in the air and into the ground, beating people with electric batons and dispersing them using water cannon, while some villagers defended themselves with machetes, bottles and barbed wire. This resulted in the injury of several people on both sides. The detainees have been charged under the UNTAC (United Nations Transitional Authority in Cambodia) law, which is still in force, with “battery with injury” (article 41) and “wrongful damage to property” (article 52). On 2 May 2007, one of the detainees, a 16-year old fisherman, was released on bail, while the investigating judge turned down the defence lawyer’s request to release the other 12 detainees on bail as well. Reportedly, over 100 homes were destroyed during the evictions that took place on 20 April, leaving around 200 to 300 villagers without shelter. Many of the forcibly evicted families are now living in destitution along the roadside of National Road 4 under tarpaulins provided by NGOs and have reportedly lost their meagre livelihoods, lack food and drinking water. According to the reports, local authorities began negotiations in 2006 with 17 of the families in an attempt to resettle them, but these families allegedly rejected an offer of US\$500 per family or alternatively a plot of land in an area they perceived to be located too far from the sea for them to continue making a living from fishing. On 19 January 2007, over four months before the eviction, the Sihanoukville municipality reportedly issued an eviction order giving the villagers seven days’ notice to clear the area. However, reports indicate that this eviction order was issued without any judicial oversight and was not preceded or followed by any consultation with most of the families concerned. The reports we received suggest that the forced evictions and house demolitions carried out were actions taken by the police and military police while executing a separate warrant issued by the Sihanoukville Municipal Court to search for illegal weapons. No such weapons were allegedly found.

Observations

28. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted any reply to any of his communications. The Special Rapporteur is concerned that forced evictions apparently continue to occur with regularity in Cambodia and that the recommendations contained in his mission report seem not to have been implemented.⁵

Cameroun

Communication envoyée

29. Le 20 avril 2007, le Rapporteur spécial a envoyé un appel urgent au sujet d'expulsions forcées qui se déroulaient dans plusieurs régions du Cameroun, incluant Yaoundé et Douala. D'après l'information reçue, le Conseil de la ville de Yaoundé a conduit des expulsions forcées depuis le mois de novembre 2006 dans les quartiers de Carrière, Mbankolo, Etetak, Fébé et Oyom-Abang. Selon l'information reçue, les hommes, femmes et enfants affectés se sont trouvés sans logement puisqu'aucune zone de relocation n'a été prévue et qu'aucune compensation ne leur a été fournie. Des inquiétudes ont été exprimées quant à la santé de ces personnes, notamment à l'approche de la saison des pluies. Tout en sachant que ces expulsions ont été dictées par le besoin d'adhérer aux réglementations urbaines et aux questions de sécurité, l'information reçue indique que la mise en œuvre de ces expulsions n'a pas été conforme aux obligations internationales de l'État. Selon d'autres informations reçues, des expulsions forcées ont également lieu à Douala, suite à la démolition de certains immeubles. Suite à la décision du Conseil municipal d'élargir certaines voies de passage, un certain nombre d'immeubles adjacents qui ne semblait pas détenir de permis de construction ont été détruits. D'après les rapports reçus, il semblerait que cette politique viserait également les banlieues de la ville. Il semblerait que le Gouvernement effectue ces démolitions de maisons et magasins, sans notification préalable suffisante, n'attribuant aucune compensation et sans proposer d'alternative de relocalisation. Alors que certains résidents auraient eu le temps de démonter leurs maisons de façon à sauvegarder des matériaux et des affaires personnelles, d'autres n'auraient pas réussi à faire de même. Par ailleurs, il semblerait que la population affectée payait fréquemment une taxe immobilière au Conseil municipal leur permettant d'utiliser les terrains occupés. D'après d'autres rapports reçus, des résidents de la province nord-ouest du Cameroun ont incendié 300 maisons et ainsi forcé des milliers de personnes à fuir les villages de Bawock et Bali Nyongha en raison d'une dispute ancestrale au sujet des droits à la terre pour pratiquer l'agriculture dans la région.

Observations

30. Le Rapporteur spécial regrette qu'au moment de la finalisation du report, le Gouvernement n'ait pas encore répondu à sa communication en date du 20 avril 2007. Le Rapporteur spécial continuera de suivre la situation avec intérêt.

⁵ See mission to Cambodia report of the Special Rapporteur E/CN.4/2006/41/Add.3.

China

Communication sent

31. On 10 May 2007, the Special Rapporteur sent a joint allegation letter with the Special Rapporteur on the independence of judges and lawyers and the Special Representative of the Secretary-General on the situation of human rights defenders in relation to Mr. Liu Dehuo, Mr. Cui Yongfa, Ms. Shao Xiaobing, Mr. Chen Ningbiao, Mr. Chen Zhibiao, Mr. Shao Xixia and Mr. Guo Jianhua, human rights defenders working to protect their land from forced land annexation. On 10 April 2007, the District Court of Sanshan, in Nanhai County, Guangdong province sentenced to jail the above mentioned persons all charged with illegally obstructing an approved construction project in Sanshan District. Upon hearing the verdict all of the defendants announced that they would appeal the decision. According to reports, the seven defendants were detained by Nanhai police in June 2006 and have been in detention since then. They were charged with extortion and blackmailing the Yingshun Tank Farm, a gas and petrochemical company, which had reportedly taken over 1 hectare of land in Sanshan without official approval for use as a construction site. The company was reportedly requested to hand over 50,000-yuan to compensate villagers or the construction site plan would be exposed. However the company filed a complaint for blackmail against the defendants before making any payment. Mr. Liu Dehuo, Ms. Shao Xiaobing, Mr. Chen Ningbiao, Mr. Chen Zhibiao, Mr. Shao Xixia and Mr. Guo Jianhua were tried on 6 December 2006 without legal counsel. Mr. Yongfa's wife acted as his legal representative. Concern is expressed that the aforementioned events form part of an ongoing campaign against human rights defenders in China. Concern is also expressed at reports that Mr. Liu Dehuo, Mr. Cui Yongfa, Ms. Shao Xiaobing, Mr. Chen Ningbiao, Mr. Chen Zhibiao, Mr. Shao Xixia and Mr. Guo Jianhua did not receive a fair trial.

Response received

32. By letter dated 31 July 2007, the Government replied to the above joint allegation letter. The Government informed the case of extortion brought against Chen Ningbiao and other persons, numbering seven in all, was considered by the Nanhai district people's court in Foshan city, Guangdong province, and on 10 April 2007, in accordance with the law, the court rendered its judgement in criminal case Nan Xing Chu Zi (Nanhai criminal court of first instance) No. 1913. The court found that the facts of the case were as follows: at about 6 a.m. on 16 May 2006, Liang Mingji, a driver employed by Fanghua elementary school in the Liwan district of Guangzhou city, was driving the school bus (registration Guangdong A24695), transporting schoolchildren, when, at the Yidong Market intersection in the Sanshan area of Pingzhou, Guacheng neighbourhood, Nanhai district, he encountered Chen Ningbiao, sitting on his motorcycle, registration Y61470, and blocking the road. Liang sounded his horn and proceeded slowly forward, but Chen would not let him through, whereupon Liang brought his vehicle to a stop with a space of more than 10 centimetres between it and Chen's motorcycle. Chen picked up a rock and used it to threaten Liang, preventing him from leaving, and, claiming that his motorcycle had been struck, demanded that Liang pay him 200 yuan compensation. When Liang refused to pay, Chen made telephone calls to Chen Zhibiao, Liu Dehuo and other residents of Sanshan village, totalling 10 in all, summoning them to his assistance. When Chen Zhibiao and Liu Dehuo arrived at the scene, they saw that Chen Ningbiao's motorcycle had sustained no damage, but the three men still gathered round the school bus and started making a commotion, pushing and shoving Liang Mingji and demanding that he pay the

compensation, and also blocking the path of the traffic police who had come to investigate the incident. Following this, the owners of the bus, Zhao Jiandong and Zhao Jiannan, made their way to the scene, to find out what was going on. At this point, Chen Ningbiao let the air out of the bus's tyres, to prevent it from proceeding into Sanshan, and threatened to smash it up, demanding 5,000 yuan in damages from the bus owners, while Chen Zhibiao and Liu Dehuo noisily repeated his threats. Under duress, Zhao Jiandong and Zhao Jiannan agreed to pay 3,500 yuan in compensation. On the suggestion of Chen Zhibiao and Liu Dehuo, Chen Ningbiao used a false name, "Chen Yidong", on the receipt slip. The plot of land situated in the area called "Meichong" in Pingzhounan village on Guacheng Street in the Nanhai district of Foshan city had been expropriated as State land on December 1997 by the Guangdong province cadastral office and was managed by the Nanhai district land resource centre. At a later date, because the land was not yet developed, it was allocated to the Nanhai farmer Li Bin for his use. In April 2006, Li Bin was granted permission to rent the piece of land to the Shunying fuel depot in Nanhai district. The general manager of the depot, Chen Zhujia, hired a digger to excavate a pond on the land for use as a fish farm. At about 9 a.m. on 20 May 2006, Chen Ningbiao, Chen Zhibiao, Cui Yongfa, Liu Dehuo, Guo Jianhua and other villagers from Sanshan, numbering more than 10 in all, gathered at the fuel depot and started creating a disturbance, claiming that damage had been caused to the piece of land in "Meichong", threatening to set fire to the digger and demanding compensation from the person who had rented it for the excavation of a fish-pond. The defendant Zhao Xiaobing then went up to a motor vehicle parked in front of the depot gates and threatened to let the air out of its tyres. Chen Zhujia was worried that the villagers might damage the fuel depot, so he pretended that the piece of land in question had been leased to someone else and undertook to go and call that person. All 10 and more of the defendants, Chen Ningbiao, Chen Dehuo, Cui Yongfa, Guo Jianhua and the other villagers from Sanshan, forced their way on three separate occasions into the fuel depot and urged Chen Zhujia to go and fetch the person who had rented the land for use as a fish-farm. At about 3 p.m. that afternoon, Chen Zhujia realized that the safety of the fuel depot was under threat and was therefore constrained to try and find the depot's legal adviser, Lin Jiaqing, and ask him to masquerade as the person who had rented the land for use as a fish farm and to enter into discussions with the villagers. Chen Zhibiao, Liu Dehuo, Cui Yongfa, Shao Xixia and other persons, claiming to be acting on behalf of the village, went up to Lin Jiaqing, standing on the embankment nearby, and demanded payment of damages. Basing the claim on the damage which Lin Jiaqing had allegedly caused to the plot of land, Liu Dehuo demanded that he pay 150,000 yuan in compensation. Chen Zhibiao and the other persons took up the same demands, but were met with refusal from Lin Jiaqing. Undeterred, Liu Duhuo, Cui Yongfa and the others, arguing that Lin had allegedly signed an "illegal agreement", demanded that he pay them at least 75,000 yuan. In the meantime, Shao Xiaobing and a group of villagers dragged over some water pipes which they found lying around in the vicinity and used them to block the main gate into the fuel depot. They then continued creating a disturbance, shouting and threatening. Chen Ningbiao and Guo Jianhua then joined the other villagers on the embankment, demanding payment of damages. Chen Zhujia realized what consequences all this might have for the safety of the fuel depot and its operation and, under duress, suggested to Lin Jiaqing that he pay 50,000 yuan in compensation. After Chen Zhibiao and the other persons had received the payment of 50,000 yuan, the villagers present at the scene were each paid out an amount of 200 yuan by Shao Xixia. It has been ascertained in addition that, before this piece of land in "Meichong" was expropriated, it had been the property of the Nanshan village collective and none of the seven defendants belong to that village collective. The Nanhai district people's court in Foshan city,

Guangzhou province, determined that Chen Ningbiao, Chen Zhibiao and Liu Dehuo had engaged in two acts of extortion, to an amount of 53,500 yuan; that the defendants Cui Yongfa, Shao Xixia, Guo Jianhua and Shao Xiaobing had engaged in one act of extortion, to an amount of 50,000 yuan, and that the amounts obtained by extortion were substantial. In the course of jointly committing the offence of extorting money from the Shunying fuel depot, Chen Ningbiao, Chen Zhibiao, Liu Dehuo, Cui Yongfa, Shao Xixia and Shao Jianhua had played the main role and were therefore the primary culprits: they should be punished in a manner commensurate with the commission of the full offence; Shao Xiaobing had played a secondary role and was an accessory to the offence: in accordance with the law she should receive a lighter punishment. In accordance with the provisions of article 274, article 26, paragraphs 1, 3 and 4, and article 27 of the Criminal Code of the People's Republic of China, for the offence of extortion the defendants Chen Ningbiao, Chen Zhibiao and Liu Dehuo were sentenced to four years' fixed-term imprisonment, the defendants Cui Yongfa, Shao Xixia and Shao Jianhua were sentenced to three years' and six months' fixed-term imprisonment and the defendant Shao Xiaobing received a sentence of two years' and six months' fixed-term imprisonment. In the course of these proceedings, the court, acting in accordance with the law, informed the defendants of their right to receive the services of court-assigned defence lawyers or to appoint their own defence lawyers. Of the seven defendants in the case, Liu Dehuo, Cui Yongfa and Shao Xiaobing separately appointed defence lawyers (Cui Yongfa appointed two defence lawyers). After being notified by the court as required by law, Zhang Jiankang and Wang Quanzhang, the lawyers appointed by Liu Dehuo and Cui Yongfa, respectively, still failed to appear in court. Huang Liuxiao, the other lawyer appointed by Cui Yongfa, and Zhu Daohua, the lawyer appointed by Shao Xiaobing, did appear in court and participated in the proceedings. The other defendants did not appoint their own defence lawyers but, in court, in accordance with the law, all fully exercised their right to conduct their own defence. Article 34 of the Code of Criminal Procedure of the People's Republic of China stipulates as follows: "In the event that the defendant is blind, deaf or mute or is a minor, and has not appointed a defence lawyer" or "may incur the death penalty and has not appointed a defence lawyer, the people's court shall designate a lawyer, who shall be duty-bound to provide legal assistance in that person's defence". The above-named defendants did not fall into the categories specified as necessitating the appointment or assignment by the court of defence lawyers. After the Nanhai district people's court in Foshan city, Guangdong province, had passed sentence at first instance, the seven defendants lodged appeals within the time limit set by law. The case is currently being heard at second instance by Foshan city people's intermediate court in Guangdong province.

Communication sent

33. On 10 May 2007, the Special Rapporteur sent a joint allegation letter with the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on adequate housing in relation to Ms. Mao Hengfeng, a well-known petitioner against family planning policies and forced evictions in Shanghai since 1989. According to information received: On 16 April 2007, Ms. Hengfeng was informed by the Municipal No.2 Intermediate People's Court in Shanghai that her original sentence of two and half years was to be upheld. The court session lasted 10 minutes during which time the judgment was read out. Neither Ms. Hengfeng nor her lawyer was authorized to present an argument in her defence and only family members were allowed to attend the hearing. On 12 January 2007, Ms. Hengfeng was sentenced to two and a half years in prison by Shanghai Yangpu District Court for allegedly damaging hotel property whilst in

detention by Shanghai's Yangpu Public Security Bureau at a guest house in Beijing. It was alleged that Ms. Hengfeng had broken two table lamps in the guesthouse and she was subsequently arrested on 30 June 2006 on charges of 'intentionally destroying property'. During the trial Ms. Hengfeng was prevented by prison guards, from verbally protesting against the mistreatment and abuse which she was subjected to whilst in detention. According to reports, prior to her trial on 16 April Ms. Hengfeng was detained in a small cell in which the floor was covered with excrement with the smell preventing her from sleeping. Reports also claim that prison guards had covered the only window in the cell. Ms. Hengfeng's current conditions of detention are unknown.

Response received

34. On 12 July 2007, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the question of torture, the Special Rapporteur on violence against women and the Special Representative of the Secretary-General on the situation of human rights defenders regarding Ms. Mao Hengfeng, a well-known petitioner against family planning policies and forced evictions in Shanghai since 1989. Ms. Mao Hengfeng was the subject of joint appeals sent on 10 May 2007, 1 February 2006 and on 5 January 2006. The Special Rapporteur notes Government responses received in this regard, including those dated 18 April and 14 June 2006. On 15 May 2007 at approximately 6 am, Ms. Mao Hengfeng was reportedly transferred from the police detention centre to prison, where she was left practically without clothing, beaten by police officers and placed in solitary confinement. Ms. Mao Hengfeng embarked upon a hunger strike to protest against her situation and reportedly she was subjected to forced-feeding on three occasions by prison guards who tied her hands and forced a tube down her throat. She was placed under constant surveillance by inmates that had been assigned the task by prison guards. These prisoners seem to have also been ordered to harass Ms. Mao Hengfeng and they proceeded to verbally abuse her. Ms. Mao Hengfeng is currently in poor health, suffering from high blood pressure and arthritis. These conditions are further aggravated by her inadequate living conditions since she has neither been provided with chairs, nor a bed and has to lie on the floor, often in cold and damp conditions. Ms. Mao Hengfeng was visited by her husband, on 28 June 2007, who reported her ill-treatment and requested that the prison officials grant Ms. Mao Hengfeng's lawyers access to prepare for her upcoming appeal.

Response received

35. By letter dated 15 August 2007, the Government sent a response to the above communication on Mao Hengfeng, female, born 1961, Shanghai city. The Government indicated that on 16 April 2007 she was sentenced by the Yangpu district people's court to two years and six months' fixed-term imprisonment for the offence of causing malicious damage to property, to run from 30 May 2006 to 29 November 2008. She is currently serving her sentence in the Shanghai women's prison. Upon being admitted to prison, Mao underwent a physical examination which showed that, apart from an inclination to high blood pressure, all other indications were within the normal range. Mao is currently sharing a cell with two other women prisoners, she has not been sent to the punishment cells nor has she been placed in solitary confinement. Her eating and sleeping arrangements are normal. With regard to the issue of appeal, to date Mao has not submitted any written application, nor has she applied to see her lawyer, so there is no case here of the prison not allowing her to lodge an appeal. The prison

officers, acting in accordance with the law, treat the prisoners in a civilized manner. Mao enjoys her rights on the same footing as the other prisoners, including the right to health and the right to appeal. The allegation that Mao has been subjected to ill-treatment is not supported by the facts.

Communication sent

36. On 27 July 2007, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders regarding Mr. Zheng Enchong and his wife Ms. Jiang Meili. Mr. Zheng Enchong is a human rights lawyer in Shanghai sentenced to three years' imprisonment on charges of 'illegally providing State secrets overseas'. He was released on 5 June 2006 and has been under house arrest and subject to police surveillance ever since. On 5 July 2007, Mr. Enchong signed a petition, along with 100 other evicted house-owners from the neighbourhood of Dongbakuai and calling for a public trial of Mr. Zhou Zhengyi, the former president of Nongkai, a property development firm in Shanghai, who has been detained and faces charges of fraud and bribery. The petition also called for evictees to be allowed to attend the trial and testify as affected parties. According to information received: On 24 July 2007, Mr. Zheng Enchong went to the Shanghai Municipal Higher People's Court with his wife, in order to register to attend the trial of Mr. Zhou Zhengyi. On their arrival at the courthouse Mr. Zheng Enchong and Ms. Jiang Meili were reportedly surrounded by six police officers, namely Mr. Tang Wei, Mr. Wu Yanan, Mr. Qian Guoqiang, Mr. Wang Zhenlin, Mr. Li Wei and Mr. Feng Jianping. Mr. Tang Wei and Mr. Wu Yanan, with the help of the other officers, then proceeded to knock Mr. Enchong to the ground. They dragged Mr. Enchong along the ground for a distance of almost 200m while they subjected him to an assault which lasted for an hour. Mr. Enchong sustained injuries to his left hand in the assault which was observed by hundreds of residents in the vicinity. The police officers then allegedly forced Mr. Zheng Enchong and Ms. Jiang Meili into a taxi and went to the home of Ms. Jiang Zhongli, the sister of Ms. Jiang Meili, on the Baochang Road. Here they were met by five police vehicles and more than 30 police officers who prevented them from leaving. That same day, at approximately 9.00am, more than 50 displaced residents from the neighborhood of Dongbakuai presented themselves at the Shanghai Municipal Higher People's Court in order to register to attend the trial of Mr. Zhou Zhengyi. Security guards and police officers prevented them from entering the building. Concern is expressed that the aforementioned alleged harassment of Mr. Zheng Enchong may be as a result of his peaceful and legitimate human rights activities as a human rights lawyer in Shanghai. Further concern is expressed for the physical and psychological integrity of Mr. Zheng Enchong and Ms. Jiang Meili.

Response received

37. By letter dated 18 December 2007, the Government replied to the above communication. The Government informed that Zheng Enchong (male, born in September 1950, ethnic Han Chinese) was formerly a practising lawyer in Shanghai and that in March 2001, because he had conducted activities in breach of relevant provisions of the Lawyers' Act of the People's Republic of China, the Shanghai Judicial Bureau decided to revoke his licence. On 28 October 2003, for the offence of unlawfully providing State secrets to bodies or persons outside the country, he was sentenced by the Shanghai intermediate people's court No. 2 to three years' fixed-term imprisonment (to run from 6 June 2003 to 5 June 2006) and stripped of his political rights for one year. Zheng refused to accept the verdict and lodged an appeal.

On 18 December 2003, after hearing the case at second instance, the Shanghai people's high court dismissed the appeal and upheld the original verdict. On 5 June 2006, Zheng was released from custody on completion of his sentence (his sentence of one year's deprivation of his political rights expired on 5 June 2007). The authorities underlined that following his release from custody, Zheng was not placed under house arrest. In relation with the trial of Mr. Zhou Zhengyi the authorities specified that the second division of the Shanghai city people's procurator's office only filed charges against Zhou Zhengyi with the Shanghai people's intermediate court on 17 August 2007 and that it was therefore not possible for anyone to have attended the trial at the Shanghai people's high court on 24 July. The authorities also informed that the six persons named in the letter as being members of the police are not to be found among the judicial police of the Shanghai people's high court. Finally, they indicated that at about 9 a.m. on 24 July, dozens of people claiming to be forcibly relocated residents from "Dongbakuai" ("Lot East 8") demanded to attend the trial of Zhou Zhengyi, but following a perusal of the schedule of court hearings, and confirmation and notification that the Shanghai people's high court was not holding any hearings that day, the people that had gathered promptly withdrew, no one tried to gain entry to the court and the security guards and police did not need to take any preventive action.

Communication sent

38. On 3 October 2007, the Special Rapporteur sent an allegation letter jointly with the Special Rapporteur on the right to food and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples regarding the severe impact of resettlement programs and forced evictions implemented in Tibetan areas of the People's Republic of China (PRC). According to the information received, tens of thousands of Tibetans are being negatively affected by nomad settlement and resettlement, land confiscation and fencing policies, which are mainly implemented in Golok (Guoluo) and Yushu districts of Qinghai province, but also in the Tibet Autonomous Region (TAR) and other provinces that have large Tibetan populations, including Gansu, Sichuan and Yunnan. Allegedly, these policies have had a very adverse impact on the traditional lifestyles in Tibetan areas, affecting directly the fabric of traditional Tibetan life and devastating the economy of these communities. The implementation of these policies contributes to the challenges that Tibetan cultural and religious identity face today. The reports received indicate that in many rural areas, inhabitants are evicted from their homes and forced to move into newly built, Chinese-style dwellings as a result of infrastructure projects, mining activities and hydropower projects. The government policies reportedly also include the forced resettlement of herders, who have been required to slaughter most of their livestock and move into newly built housing colonies or near towns, abandoning their traditional livelihoods and way of life. In addition, it is reported that both farmers and herders are told to take grassland and farmland in particular out of production in return for a guaranteed 10-year grain subsidy. The allegations received claim that displacement and forced resettlement resulted in hardship and lower standard of living for many herders and their families. According to these allegations, in certain areas with a usual holding of up to a hundred or more yaks, sheep and goats per household member, a limit of five livestock per household member has now been enforced and the exceeding stock has to be slaughtered or allowed to die. In addition, it is reported that for one yak over the limit allowed, herders have to pay a fine of about 1,000 yuan (USD 130). An estimated 2.25 million herders live with their herds in the Northern and Eastern regions of the Plateau. According to the information received, a number of public policies have affected herders' ability to maintain their livelihoods and usual access to food over the past 50 years and

particularly the Grassland Law adopted in 1985, the 1999 “convert farmland to forest” policy, the “revert pasture to grassland” and the “Do-it-Yourself Program”. This latter is implemented mainly in the TAR and allegedly it often forces the poorest to take on loans which they find difficult to repay, while the designs of the new housing do not allow Tibetans to continue to practice their traditional means to generate income. Reportedly, since the launch in 2003 of the “ecological migration policies,” the provincial government of Qinghai resettled 28,000 people and constructed 14 “migrant urban districts.” Moreover, in 2005, Du Ping, director of the Western Development Office under the State Council, China’s cabinet, stated that 700,000 people in western China had been resettled since 2000 because it was “the most effective way to restore land to a healthy state.” The current government policies are apparently geared to introduce the affected populations into the urban economy for their benefit, but allegedly often result in greater impoverishment, dislocation and marginalization in the new communities. Housing opportunities and cash or food handouts are often offered in return for compliance with the policies, but allegedly the proposed compensations are not honoured in a timely way and may create dependency. Although in certain areas the environmental arguments for relocation may be compelling, authorities remain obligated to respect herders’ right to an adequate standard of living, including adequate food, housing access to essential services and economic opportunities, as well as culturally adequate conditions in the new location. Although national legislation requires that those who are to be moved out from their land or to have their property confiscated must be consulted and eventually compensated for their losses and articles 41 and 111 of China’s Constitution guarantee the right to consultation as does the 1989 Administrative Procedure Law, it is alleged that when relocation decisions are made, there is a lack of due process, including transparency, consultation in advance of planned relocations, and the right to challenge proposed relocations before an independent arbiter.

Response received

39. By letter dated 21 December 2007 the Government replied to the above communication. At the time of the finalization of this report, the reply was still under translation. A complete summary will be provided in the Special Rapporteur’s next communication report.

Communication sent

40. On 9 October 2007, the Special Rapporteur sent an urgent appeal jointly with the Working Group on arbitrary detention, the Special Rapporteur on the question of torture, the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression regarding the situation of Mr. Zheng Dajing, a petitioner and human rights defender. According to the information received: Mr. Zheng Dajing was arrested and detained on 9 September 2007 by officials of the Public Security Bureau of Shiyan City, Yunxi County, Hubei Province, on criminal charges of “petitioning leading to disturbance of social order.” Mr. Zheng was believed to be held at the Yunxi Detention Centre, however, on 18 September 2007 it appeared that Mr. Zheng is being detained at Yancao Station in Hongtai Yuansigou Village, where he has reportedly been beaten and subjected to other forms of ill-treatment. Yancao Station is reported to be an unofficial detention facility established by local authorities for the purpose of detaining petitioners. Before Mr. Zheng was arrested he had been forcibly returned from Beijing to his hometown on 7 September 2007 by unidentified officials believed to be from the Hubei Province. In Beijing he had met with other petitioners and

received information about the destruction of a village where other petitioners were living. Local Government officials in Beijing also attempted to forcibly return Mr. Zheng's wife, Ms. Cao Xiangzhen, to the Hubei Province. Earlier, on 5 September 2007, Mr. Zheng published a letter addressing leaders at the Asia-Pacific Economic Cooperation (APEC) meeting on 8 and 9 September 2007 about the human rights situation in the People's Republic of China. His seven year old daughter and his wife were previously detained for 65 days in July 2006. Mr. Zheng has been petitioning for several years because his house was seized by the local Government. Since early 2007, Mr. Zheng has also actively helped hundreds of other petitioners and defended their rights. Concern is expressed that the arrest and detention of Mr. Zheng might solely be connected to his reportedly peaceful activities in defense of human rights. In view of his custody at a reportedly unofficial place of detention further concern is expressed as regards his physical and psychological integrity.

Response received

41. By letter dated 15 of January 2008 the Government replied to the above communication. At the time of the finalization of this report, the reply was still under translation. A complete summary will be provided in the Special Rapporteur's next communication report.

Communication sent

42. On 5 November 2007, the Special Rapporteur sent an allegation letter jointly with the Special Representative of the Secretary-General on Human Rights defenders, the Special Rapporteur on the question of torture, and the Special Rapporteur on violence against women, regarding Ms. Mao Hengfeng, a well-known petitioner against family planning policies and forced evictions in Shanghai since 1989. According to information received, on 13 September 2007, prison authorities reportedly ordered a fellow inmate to beat Ms. Mao Hengfeng in punishment for revealing that she had been held in solitary confinement for 70 days in July and August 2007. This was in violation of article 15 of the Chinese Prison Law which stipulates a maximum of 15 days for the solitary confinement of prisoners. Reportedly, Ms. Mao was badly bruised as a result of the beating. On 24 September 2007, prison authorities allegedly sent Ms. Mao to the Nanhui Prison Hospital. She had previously refused to undergo a medical examination for fear that she would be forcibly injected with drugs, as had happened when she was held in a psychiatric institution in the 1980s. At the Nanhui Prison Hospital Ms. Mao's clothes were allegedly removed and she was tied to a bed and force-fed by other inmates. Ms. Mao's husband, Mr. Wu Xuwei, was prevented from visiting her at the Shanghai Women's Prison until 26 October 2007. During his supervised visit Ms. Mao was repeatedly silenced by prison guards when she attempted to inform him of having been force-fed. Concerns are expressed that the arrest, detention and aforementioned ill-treatment of Ms. Mao Hengfeng may be directly related to her peaceful work in defense of human rights in China. Further concern is expressed for the physical and psychological integrity of Ms. Mao whilst she is in detention.

Response received

43. By letter dated 15 of January 2008, the Government replied to the above communication. At the time of the finalization of this report, the reply was still under translation. A complete summary will be provided in the Special Rapporteur's next communication report.

Observations

44. The Special Rapporteur thanks the Government for its reply to his communications of 10 May, 12 July and 27 July and welcomes the fact that the authorities have responded to all his communications. The Special Rapporteur will continue to monitor these situations with interest.

Czech Republic

Communications sent

45. On 1 May 2007, the Special Rapporteur sent an allegation letter jointly with the Independent Expert on minority issues, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Rapporteur on the right to education regarding living conditions in socially excluded localities in the Czech Republic, affecting mainly persons belonging to the Roma minority. According to information received: A recent study conducted for the Ministry of Labour and Social Affairs of the Czech Republic identified 310 socially excluded Roma localities in the country, 35 per cent of which have emerged in the last 10 years. Reportedly, these localities possess a considerably sub-standard quality of housing, which in turn affects negatively the quality of life and related human rights of these individuals, such as access to work, health care and education services. Furthermore, it is alleged that Roma children do not receive the same standard of education as other pupils. According to the information received they have separated classes in regular schools, secondly they attend schools with a bad reputation regarding the education's quality and finally more than a half of the population of Romani children attend schools for children with disabilities (zvláštní pomocná škola), now renamed as ordinary basic schools (základní škola). Moreover, it is reported that among the reasons why number of Romani children attend the special schools, there is that the diagnosis of mental capacity is carried out at an early stage (6 years old) and does not take into account children's ethnic and social background and that schools prefer to label them as children with mental disabilities, in order to obtain extra financial resources. This is worsened by the fact that the new Education Act No. 561/2004 establishes that aliens are obliged to prove the lawfulness of their stay at the Czech Republic at the beginning school attendance at latest. In addition, Romani children are allegedly excluded from certain advantages allowed only to Czech and EU citizens, for example free educational services, such as counselling and accommodation facilities. Reportedly, 90 per cent of the municipalities where socially excluded communities are found do not have any concept or strategy of integration of Roma, while only 1 per cent has an explicit one. Furthermore, according to the information received, the system in place for providing public housing owned by municipalities is not transparent, and the criteria are often indirectly discriminatory, which may result in disadvantaged Roma communities being unable to obtain adequate housing. This situation is reportedly aggravated by the attitude of some regional representatives towards issues of social exclusion, which applied consciously or unconsciously, would lead to the perpetuation of existing problems of those Roma localities, thus reinforcing their social exclusion and even their segregation. As an illustration of this social exclusion, in the eastern town of Vsetín, reportedly in an attempt to solve the problem of 42 (mostly Roma) families living in a big house in the centre of town which was in critical condition, the local government decided to demolish the house and resettle the inhabitants. It is alleged that most of the resettlements were carried out late at night, and without the families having prior knowledge of the housing conditions they were

moving into. Some of the families were resettled in new flats on the outskirts of the town; however, these flats are allegedly situated next to the former waste dump in an area which is full of toxic substances and they are cut from the centre by an industrial zone. Furthermore, it is reported that the flats were built out of metal containers used for shipping, and shortly after the families moved in mould appeared inside given that the flats have inadequate air ventilation and are overpopulated. According to the information received, the rest of the families were moved some hundreds miles away into houses that have been described by experts and local public officials as uninhabitable, given that there is no potable water, roofs are full of holes, rafters are rotting, and the electricity distribution is unsuitable and even life-threatening.

46. On 21 August 2007, the Special Rapporteur sent a second joint allegation letter with the Independent Expert on minority issues regarding housing conditions and evictions of Roma minority communities. According to information received, Roma communities in the Czech Republic face discrimination and various other violations of their right to adequate housing, including living in overcrowded and substandard housing conditions, being subjected to forced evictions and the alleged family disruption and institutionalization of Roma children as a result of these evictions, homelessness, and discrimination in the allocation of state or municipally-owned housing. It is reported that an amendment to the Civil Code (Law No. 107/2006 Coll, approved on 31 March 2006), has changed the rental housing regimes permitting unilateral increase of rent on flats. This law authorizes landlords to evict tenants without court approval under certain circumstances, and uses expressions that are not legally defined, such as “good behaviour”. Reportedly, little public discussion took place on the passage of Law 107/2006 and those at risk of being consequently evicted were not consulted and had little or no opportunity to prepare for these changes in their tenancy rights. Reports also indicates that prior to the enactment of these laws, in case of evictions of families with minor children, the courts could order that the landlord provide the evicted family with alternate accommodation (in some cases even permanent accommodation). Under the new law 107/2006, a court can only reach such a verdict if the tenant files a legal action to have the eviction reversed within 60 days of the eviction notice. Even though written eviction notices must instruct tenants of the option to file such a motion, socially disadvantaged tenants may not be able to use such an option without legal aid that is, in most cases, unavailable to them. Because of their economic situation, persons faced with eviction orders cannot in most cases afford legal counsel and must apply to the Czech Bar Association or an NGO for pro bono assistance which is scarce and underdeveloped. It is further reported that municipal and private landlords take advantage of Roma tenants’ limited legal awareness. Reportedly, according to Czech law, once municipal property is transferred to a private owner, the terms of any existing leases remain in effect. However, it is alleged that in practice new private owners present new leases to the tenants, raise rents, and evict tenants unable to pay. New private landlords usually demand the new leases be signed without allowing the tenants to consult lawyers, and municipalities do not instruct the tenants about their right not to sign the new lease changing their rental conditions. Open-ended leases are also frequently changed to fixed-term leases without the tenants’ clear knowledge or agreement. In this context, the Czech Justice Ministry reportedly announced on 22 June 2007 that it will be proposing amendments to the Civil Code which would make it possible for landlords to evict tenants at will after a two-year notice. The bill would take effect after 2011, when rents are expected to be completely deregulated. Because of the discrimination and the vulnerable situation they face, Roma communities would very likely be one of the groups that will be particularly affected by these further changes in the Czech Republic legislation. Reports indicate that Roma communities

affected by evictions are sent to the outskirts or out of their town in large groups and often allocated housing in isolated areas. The information received reports cases of evictions with public expressions of racism and intentional discrimination by public officials in connection with the resettlement of Romani residents of city-owned property as part of the election campaigns of the politicians. For instance, it is reported that in the northern Moravian town of Bohumin, Mayor Petr Vicha announced in February 2005 that the city would purchase a hostel with 250 inhabitants, mainly Roma tenants, with the intention of evicting them and renovating the property. Under pressure and harassment by officials, most residents left the building, but four families, who had always paid their rent and utilities bills, filed lawsuits against the eviction and obtained a preliminary injunction against it. The injunction specified that the landlord, the city of Bohumin, was obliged to maintain a number of services in function in the building for the duration of the injunction. In July 2005, the city countered the suit; the eviction was granted and the tenants then appealed. The preliminary injunction reportedly remained in effect pending the outcome of the appeals. During the course of these lawsuits, the city allegedly cut off the water and heat of the building. Even when exterior temperatures reached as low as minus 26 degrees Celsius, the heating was reportedly not resumed. The mail was also reportedly not properly delivered to these tenants. The families filed two complaints to have the original preliminary injunction enforced while waiting for their appeal to be heard. It is alleged that alternate accommodation was offered to families with children under the condition of separating children from their parents and institutionalisation of Roma children. The city also allegedly hired a private security company to prevent visits to the tenants, including their family members. On 5 October 2005, several representatives of non-governmental organizations, as well as Deputy Public Defender of Rights and Czech Government Human Rights Commissioner Svatopluk Karasek were refused entry to the hostel for more than five hours, despite having been invited onto the premises by residents. Despite the fact that a court injunction permitted normal use of the facility by the residents, including the right to receive visitors, the Czech Police officers summoned to the scene declined to intervene on behalf of the residents and their visitors. The tenants were reportedly billed by the City for the security company's services. In July 2005, the bill amounted to 76 549 Czech Koruna (approximately 2 580 euros) to be divided among the four families. It was also reported that the monthly rent previously charged per flat was changed to a per resident charge, i.e., if a six-member family lived in one flat, their rent increased six-fold. This situation forced families into debt and made them ineligible for social housing until the debt is paid. For the concerned families, the debt per tenant is the equivalent of thousands of Euro, and the court issued payment orders for the amounts within four days of the city filing suit in 2006. Objections were filed against the orders to pay, but almost a year later, hearings on those objections had reportedly yet to be scheduled. In this context, the four families gradually left the property without any alternative housing solution proposed by the city. As of June 2007, one family had moved in with relatives in Bohumin who have no electricity; one family was living in a single room in another hostel; one family was living in a hostel in Prague; and one family was in rental accommodation in the town of Ostrava. On 10 May 2007, the Special Rapporteur sent a joint allegation letter about the situation of the Roma in the Moravian town of Vsetin. Further information was received subsequent to this communication concerning eviction of Roma families in the Poschla neighbourhood on the edge of town, creating a racially segregated housing estate. Reports indicate that in October 2006, the town of Vsetin completed construction of housing comprised of metal containers in the Poschla neighbourhood on the outskirts of town, into which officials intended to move some of the 42 Romani families residing in a building slated for demolition in the centre. Reportedly, on 5 October 2006, the town of

Vsetin held an official opening of the Roma's new housing area, which was attended by 40 municipal representatives from different towns of the Czech Republic, and presented to the press as a model project. Funding for the container housing had reportedly been provided in part by the State Fund for Construction. The container tenants received month-to-month contracts and Vsetin Mayor Jirí Cunek has reportedly stated that anyone with whom the contract had to be terminated would be immediately "put out on the street." It is further alleged that fees for electricity used for the heating in the buildings were charged at a very high rate. The information received also indicates that three of the relocated Roma families wrote letters to the Ombudsman, the President and a political party to draw attention to the policy of the Vsetin town towards the Roma community. On 13 October 2006, Mayor Cunek stated that Roma families, including these three "problematic" families, would be transported not just out Vsetin, but as far as 230 kilometres. The Mayor stated that he has reached an agreement with the families by purchasing properties in isolated areas throughout the neighbouring Olomouc region and was providing them with loans to buy these houses. It has been alleged that some social workers employed by the city of Vsetin (with Council funding) have been telling the families that, should the parents refuse to sign the purchase agreements, they might end up in inadequate housing conditions, which may lead to the institutionalization of their children. Reportedly, these Roma families were forcibly transferred to villages throughout the Jeseník district. Children, accompanied by their fathers, were separated from their mothers during the travel. They report being left hungry after buses dropped them off in the middle of the night in front of their new "homes", which are derelict farms. Olomouc regional officials were never notified that these families would be placed in these isolated premises. In addition, these areas have reportedly a very high rate of unemployment which may result in depriving the Roma families of a livelihood.

Observations

47. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted any reply to any of his communications. The Special Rapporteur continues to monitor the situation with interest and remains concerned about the living and housing conditions of Roma communities.

Egypt

Communications sent

48. On 21 August 2007, the Special Rapporteur sent an allegation letter on forced evictions in Qal'at Al-Kabsh, on informal housing settlement in the Cairo district of Zainhum. According to information received, a fire broke out in Qal'at Al-Kabsh on 20 March 2007, destroying more than 300 wooden shacks, leaving an estimated 1000 people (about 350 families) homeless. Not having been provided with alternative shelter or compensation, the victims demonstrated in front of Parliament on 21 March 2007. Reportedly, on the morning of 22 March 2007, the Egyptian security forces asked the residents to leave the remnants of their homes and to leave the area without prior notice, including the residents who were not directly affected by the fire. In reaction to protests by the resident's opposition to this injunction, the security forces allegedly attacked the residents with teargas bombs, injuring a large number of people including children and elderly people. Although national authorities had promised alternative housing and emergency aid to the victims, out of 350 families whose homes were destroyed by the fire,

only 200 families have been reportedly relocated to housing units in Al-Nahda and Al-Salam cities. The other 150 families remain without shelter and sleeping on the ruins of their shacks because of various problems related to the allocation of new houses, including corruption and the obligation for the families to show the housing contracts that were lost in the fire. Reports indicate a lack of consultation with the relocated families concerning the relocation sites. It has been reported that the cities of Al-Nahda and Al-Salam do not possess adequate public services such as sufficient transportation and that relocated people are far from their work places and sources of livelihood. Furthermore, on 29 May 2007, security soldiers, bulldozers and cleaning workers reportedly arrived to demolish the remaining houses. The information received indicates a lack of consultation with the affected residents and insufficient prior notice. For instance, in some cases families were reportedly informed that their houses were to be demolished just minutes before the bulldozers moved in. The detention of several residents who protested against demolitions has also been reported. It is alleged that the evictions are linked to a plan approved in 2001 to upgrade the area of Qal'at Al-Kabsh. Reports indicate that complaints were subsequently filed with the Attorney-General by more than a hundred residents of Qal'at Al-Kabsh.

Observations

49. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted any reply to his communication. The Special Rapporteur continues to monitor the situation with interest.

Greece

Communications sent

50. On 20 July 2007, the Special Rapporteur sent a joint allegation letter with the Independent Expert on minority issues and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance regarding forced evictions of Roma communities in various locations around the country, including the city of Patras. According to reports received, since late July 2006, about 60 families, representing more than 400 persons, of the Riganokampos and Makrigianni Roma communities have been evicted in Patras without being given prior notice, offered alternative housing or adequate compensation. Reportedly, the Roma in Makrigianni settled there in 1996, while the Roma in Riganokampos have been living in that area for several decades going back to at least 1977. The order for these recent evictions was given by the deputy mayor of Patras and head of municipal social services unit. As a result, several Roma families allegedly have had no other option than to sleep and to live precariously in their cars, and in inadequate health and sanitation conditions, particularly for women and children. It has been reported that between 27 July and 25 August 2006, the Municipality of Patras reportedly demolished the homes of Roma families in the Makrigianni district who were absent for seasonal work, served the remaining families with notices of emergency police measures of eviction, and without waiting for their confirmation by a prosecutor proceeded to forced evictions. It is further reported that in June 2006, all Roma families of the Riganokampos district were referred to a criminal trial for illegal squatting on state land, and they were told to leave in August 2006 by a court order. These Roma families have reportedly never been provided with official documents attesting the legitimacy of their residences, and these evictions have been described by the authorities as "administrative acts of evacuation and expulsion in

response to the unlawful occupancy of land and to arbitrary and illegal settlement of tracts of public land.” However, these actions were reportedly taken without proper administrative or legal procedure in the first case and despite the fact that in October 2005 magistrates had reportedly annulled as abusive such administrative protocols of eviction which were being requested at the time and the related criminal charges were dropped. Furthermore it has been reported that following his visit to the eviction sites in Patras in September 2006, the Council of Europe Commissioner for Human Rights stated that in his view the “procedures” for eviction were in total contradiction to human rights standards. Information received states that the Ministry of the Interior has secured a credit line of 320,000 euros to be used for the purchase of adequate land and settlement of the Roma families of these two communities, and that in the context of the Integrated Action Plan for the social inclusion of Greek Roma (IAP), 47 housing loans have been allocated until now to Greek Roma registered in the municipality of Patras, under favourable terms and under the guarantee of the Greek state. Additionally, a Special Committee has reportedly been set up within the administration of Western Greece with the task of identifying a suitable site to set up a permanent settlement for the Roma families. However, this body has not come up with any concrete solution for the permanent settlement of these families yet. While it has been reported that the municipality is renting apartments for 18 to 22 of the evicted families until the Government approves loan applications for them to buy their own homes, concerns have been expressed on the part of these families as to what will happen once the initial, financially subsidized period of rent is over, as they have no money to pay for the rent on their own. In addition, further reports indicate that most local Roma from these communities are sleeping rough, have left Patras or are looking for a home. Reportedly, these evicted families also face problems of discrimination to access adequate housing, that landlords are reluctant to rent them houses, thus forcing them to constantly change their place of residence. Allegedly, the relocation plans foreseen for the Patras Roma communities has failed because of strong local community reactions against the settlement of Roma families in their neighbourhoods. Concerns have been expressed that the situation is not being dealt with adequately and in a sustainable manner by the authorities for political and electoral reasons. In this context, it is reported that in an interview in a weekly newspaper published on 2 February 2007, the then Chief Appeals Prosecutor of Patras and now Deputy Supreme Court Prosecutor reportedly made discriminatory statements against Roma in connection with last year’s evictions and recommended similar eviction of immigrants who live in similar wretched settlements in that city. Reportedly, the evictions mentioned above seem to follow a pattern of forced evictions of Roma in Greece. In 1997, about 2,000 Roma were allegedly expelled from a rundown district of Thessaloniki. Reportedly, they camped on the banks of the Gallikos River for three years before being relocated to a former military barracks. Furthermore, in 2003, about 200 Roma were removed from the affluent Athens suburb of Maroussi to make way for the Olympic complex before the 2004 Games. Currently, about 200 Roma allegedly face eviction from a large site in Votanikos, central Athens, which is earmarked for the construction of a soccer stadium and the capital’s first mosque by 2009. While there are no official statistics available, it is estimated that there are 200,000 to 300,000 Roma in hundreds of settlements across the country, at least half of them living in extreme poverty and inadequate housing conditions.

Observations

51. On 11 October 2007, the Permanent Mission of Greece acknowledged receipt of the communication of 18 July 2007 and informed that the Greek authorities would need some more time to provide for an accurate reply which needs to be coordinated between various Greek

Ministries and Agencies. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted any further reply to his communication. The Special Rapporteur continues to monitor the situation with interest.

Honduras

Comunicación enviada

52. El 17 de julio de 2007, el Relator Especial envió una carta conjunta de alegación con el Relator Especial sobre el derecho a la alimentación en relación con las amenazas de desalojo forzoso con las que 74 familias campesinas del movimiento Tierra Nuestra MOCATIN situadas en Los Limones, municipio de La Lima, departamento de Cortés, se vieron enfrentadas. Según esta información, la comunidad de Los Limones habita desde el año 1951 en un terreno ubicado dentro de las fincas bananeras de La Tela Railroad Company. Según la información recibida los miembros de la comunidad han vivido allí durante toda su vida, puesto que fueron trabajadores de la compañía o son descendientes de personas contratadas por la empresa. Se informa de que el grupo afectado está constituido por 74 familias, con un total de 178 personas, entre ellos 45 niños y niñas. Los informes recibidos indican que en el año 2005 la empresa quería trasladar la comunidad a otras tierras con el objetivo de sembrar palma africana en los terrenos donde las familias campesinas han vivido y cultivado granos básicos y hortalizas. Según estos informes, aunque algunos de los miembros de la comunidad aceptaron la oferta, otros la rechazaron dado que no estaban de acuerdo con las condiciones de la propuesta; desde aquel momento estas familias habrían sido víctimas de varias formas de violencia e intimidación. Por ejemplo se recibió información que indica que en 2005 agentes de la empresa de seguridad de la compañía destruyeron con tractores las viviendas de los campesinos y árboles frutales, y que en el mismo año les cortaron el agua y la energía eléctrica, que no ha sido conectada desde entonces. La comunidad continúa abasteciéndose de agua a través de un tubo que escasamente surte a todas las necesidades de las familias. Además en noviembre del año 2006 se les impidió a los campesinos el transporte de frutas al mercado, lo que afectó a los recursos que les procuran acceso a una alimentación adecuada y suficiente. Últimamente 17 miembros de la comunidad habrían sido procesados por usurpación, aunque ya viven en esta tierra desde años.

Observaciones

53. El Relator Especial lamenta que en el momento de la finalización de este reporte, el Gobierno no haya transmitido ninguna respuesta a su comunicación. El Relator Especial continúa observando la situación con interés.

India

Communications sent

54. On 23 April 2007, the Special Rapporteur sent a joint allegation letter with the Special Rapporteur on the right to food on the threat of imminent forced evictions in the Nandigram rural area of East Midnapur district, West Bengal, where violent clashes between government security forces and villagers protesting against these evictions occurred in January and March 2007, that have resulted in numerous injuries and deaths. According to these allegations, on 31 July 2006, the State Government of West Bengal signed an agreement with an Indonesian corporation part

of the Salim Group to implement various developmental projects. It is alleged that the implementation of such plan will lead to the eviction of around 40,000 to 100,000 villagers who live in this area, mainly small and marginal farmers, sharecroppers and agricultural labourers, and that no compensation or rehabilitation package has been proposed to them so far. Allegedly, without access to these lands, their subsistence and livelihoods would be put in danger and the realisation of their right to food jeopardized, given that they would be unable to find alternative livelihood opportunities. In addition it is reported that approximately 80% of the population of Nandigram belongs to scheduled caste and minority communities, who lack access to adequate productive resources, education, health and other social facilities. It is reported that, following a notification issued by authorities at the neighbouring Haldia port identifying sites to be acquired for the SEZ in Nandigram, protests against the land acquisition process began on 3 January 2007 and have intensified since then. Reportedly, on 3 January the police attacked a peaceful demonstration and on the night of 6 January, two villages (Sonachura and Tekhali) were attacked by an unidentified group, allegedly in connection to the ruling party in West Bengal, with bombs and guns, while allegedly the police refused to intervene even though they were informed at the time by local villagers. Reportedly at least 8 people died in January, including children, and at least 20 others have been injured. Petitions were introduced by the aggrieved peasants into the High Court and Apex Court, yet so far the state government has failed to arrest the culprits. Reports indicate that farmers have carried out attacks on local government offices in the area forcing them flee elsewhere. According to information received, on 13 March 2007, local villagers demonstrated in front of Nandigram Police Station and protesting the announced entry of the police in Nandigram, while engaging in religious rituals (conducting Puja or reading Quran), and warned against application of any force by the police. It is alleged that on 14 March 2007, shortly after midnight, security forces consisting of state police, Rapid Action Force, Eastern Rifles and other West Bengal state security forces, about 5,000 men strong, entered the Nandigram area to restore the severed communication links with the region, which had been cut off by protesters who reportedly had set up road blocks on all access roads to it and had driven out all cadres of the governing state party transforming it into a 'no-entry' zone for the state administration. It is further alleged that in the villages of Sonachura and Gokulnagar, these men fired tear gas, rubber bullets and finally live ammunition against the group of protesters, mainly women, trying to prevent their entry by forming a human shield. As a result, it has been reported that at least 14 villagers were killed and over 100 seriously injured were admitted to Nandigram Block Primary Health Centre and Tamluk Sub-Divisional Hospital. At the time of writing this communication there wasn't a clear picture on the actual number of casualties which could range above 50 and allegedly injured and dead persons were carried to different locations in an attempt to cover up the actual number of casualties, some dead bodies having been thrown into the Haldi River. One report indicates that 27 bodies have been found on the banks of the river Haldi, and at least 19 persons are reported missing. Further reports indicate that many women in the villages were raped and that huts were demolished and burned down, by police forces and state government activists. In relation to these incidents, we would also like to make reference to the recent communication sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Philip Alston, which provides further details on the alleged massacre of 14 March 2007 in Nandigram (UA G/SO 214 (33-24) IND 8/2007). The information received claims that the Calcutta High Court has ordered the Central Bureau of Investigation (CBI) to carry out an investigation into the events and a CBI team is reported to be at work in Nandigram, interviewing witnesses and collecting physical evidence. Reportedly, 10 people have been arrested so far with regard to the incident. It has also been reported that the state

government has ordered an executive inquiry by Burdwan Range Commissioner Balbir Ram into the incident, whose report will be submitted within 45 days. In a broader context, it appears that in a bid to boost national economic growth, the Central Government has been promoting SEZs across the country. In this regard, the reports received indicate that the West Bengal State Government plans to set up at least six other major industrial projects in the state, including SEZs, necessitating the acquisition of at least 10,000 hectares of land. Whilst noting that for the time being, the State Government has publicly expressed that no land will be acquired for industrialisation in Nandigram, interest is expressed in following the developments concerning these plans particularly as they relate to relocation and resettlement of small farmers and villagers. Concerns are also expressed that the alleged situation in Nandigram, as well as a similar situation occurring in Singur, Hooghly district, also in West Bengal, is symptomatic of a broader problem affecting not only the State of West Bengal but the rest of the country as well, and which would require changes at the federal policy level, in order for these problems not to re-emerge. With regard to the Singur case, which has already been the subject of a previous communication sent by the Special Rapporteur on the right to food, on 22 August 2006 (AL Food (2000-6) IND 24/2006) it has been reported that in order to acquire land from the peasants in the area to be handed to a car manufacturing plant owned by Tata Motors, the government ordered the peasants to stop sowing paddy on their land and accept their decision to acquire the land and evict them, allegedly offering only a one-time monetary compensation not considered adequate. The situation there has also deteriorated over the past months, with reports stating that fences have already been erected around 997 acres of land with the use of police forces. Allegedly, following a period of increased violence, on 2 December 2006 the police beat up several villagers, set their homes on fire and arrested several people, and on 8 December 2006, they indiscriminately attacked protesters at a peaceful rally, injuring several protesters and media personnel. It is further reported that on 18 December 2006, a teenager activist was raped and murdered inside the fenced area. Information received states that the Supreme Court will review the land acquisition process since it is alleged that the state has not followed the proper procedures to acquire land to be given to the private company. However, 15,000 villagers remain under the threat of losing their livelihood resources due to eviction from their lands.

55. On 7 June 2007, the Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on the right to food on the farmers in Jagatsinghpur in the eastern state of Orissa, who protested against their proposed displacement for a new industrial project and have feared forced evictions at the hands of the police. According to these allegations, tensions have raised after approximately 1,000 police officers encircled Dhinkia, Nuagaon and Gadakujang panchayats in April 2007 apparently preparing to enter the area which has seen protests by farmers for the last 14 months. The farmers have reportedly protested against their displacement due to an integrated steel plant by the South Korean firm, POSCO, which could affect their access to adequate and sufficient food. It is reported also that the adivasis indigenous communities in Ghateha village, Rewa district, Madhya Pradesh, are at continuous risk of forced evictions involving use of violent methods over land disputes. According to these allegations, on 19 April 2007 approximately 50 police vehicles and bulldozers under the direction of the police and Forest Department officials arrived at the village to evict villagers without a court order. Villagers resisted and during the confrontation it is alleged that police fired teargas shells and live bullets injuring six people. It is also alleged that villagers' thatched huts and other structures were destroyed with bulldozers or burnt down and property was looted. It is reported that these adivasis communities have been cultivating for at least four years the land in question which

amount to 375 hectares and upon which their livelihoods and access to sufficient and adequate food depend. In December 2006 the Parliament passed legislation recognizing the land rights of adivasis communities across the country. As a result in March 2007 the adivasis communities in Ghateha laid claims to this land by erecting thatched huts. While these communities claim that since 1974 the land has been categorized as non-forest land and they can therefore legally cultivate it, the State Forest Department contends that their action amount to encroachment on forest land. On 5 April 2007, the department framed charges of encroaching on forest land against 17 adivasis activists, nine of whom were subsequently arrested and detained in Rewa jail.

56. On 19 July 2007, the Special Rapporteur sent a joint allegation letter with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples on the alleged threat of eviction of Adivasi families in the state of Chhattisgarh. According to the information received: Numerous Adivasi families face eviction from their traditional land due to the plan to construct a TATA steel plant in the Lohadiguda Block, Bastar District, Chhattisgarh. The Bastar District is home of the Gonds, Abhuj Maria, Darda Maria, Bison Horn Maria, Munia Doria, Dhruva, Bhatra, Halba and other Adivasi peoples, constituting 70 per cent of the population. These groups are protected by special legal safeguards following the declaration of the Bastar district as a Schedule Area (V) under the Indian Constitution. The construction of the TATA steel plant is allegedly the result of a memorandum of understanding (MoU) signed on 4 June 2005 between TATA Iron and Steel Company Ltd. (TISCO), a part of the transnational company TATA Group, and the Industrial and Mineral Resources Department of Chhattisgarh State Government. The MoU will not reportedly become a public document until the TATA company has entered into a formal agreement with the State Government and all clearances have been granted as provided for in the memorandum. According to the allegations, the MoU provides that the Chhattisgarh State Industrial Development Corporation (CSIDC) will acquire an extension of 53,000 acres of private lands in the Lohadiguda Block, in Bastar district, close to Jagdalpur town. CSIDC will subsequently hand the land over to TISCO within a period of six to nine months after having received the formal application from the company, on a long-term lease of 99 years. The operation of the proposed steel plant would further involve the extraction of large quantities of iron ore, coal, dolomite, lime stone and other minerals; the pumping of an estimate of 35 million gallons of water per day from adjacent rivers; the construction of rail and road links, plants, pipe lines, residential colonies and other infrastructure. The reports brought to our attention claim that the area affected by the construction of the TATA steel plant belongs to the ancestral lands of ten Adivasis villages of Lohadiguda Block, including Dabapal, Dhuragaon, Bade, Paroda, Beliapal, Belar, Badanji, Takarguda, Sirisguda, Kumhali, and Chindgaon, that have traditionally relied on this land for their livelihoods and access to food. The proposed plant would result in the eviction of an estimated 1,500 families from these villages. Reportedly, nor the village council meetings nor the families directly affected by the plan have been consulted by the State Government before it took the decision of allocating their lands to this project. According to the reports, the compensation package offered by the authorities to the affected families is perceived to be insufficient to fully compensate for the loss of livelihood that the displacement would cause. In this connection, it is reported that compensation would be restricted to those families that can prove land ownership. This would allegedly exclude a large number of potentially affected families who are small sharecroppers and have not been found to be eligible to land titles. For those families that can provide such a title, the monetary compensation would be limited to 50,000 INR/acre for non-irrigated land, including grazing land; 76,000 INR/acre for non-irrigated single crop land; and 100,000 INR/acre for irrigated

double croup land. Payment for planted trees and other properties have not allegedly been included in the compensation packages. It is further reported that on 23 February 2007 a notification of land acquisition was published without giving the mandatory 30 days required by the law for filing objections, thus officially initiating the compulsory land acquisition process. On 4 March 2007, this process would have been suspended for unknown reasons. The potential displacement that the proposed plant construction would cause could also exacerbate the climate of insecurity that the members of tribal communities in the Bastar district have been living with and could contribute to fuel violent incidents.

57. On 23 August 2007, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Special Rapporteur on violence against women and the Special Representative of the Secretary-General on the situation of human rights defenders regarding attacks on the Dalit communities, particularly women, in Somebhadra District, Uttar Pradesh, India. It is reported that in Sonebhadra District, the poorest District in Uttar Pradesh with a large Dalit population, Dalit families have been cultivating and living in a Government's waste lands, the Gram Sabha's, for years. Reportedly, the land ownership has always been a conflicting issue between the Upper Caste controlling land resources and Dalits and tribes. Reports indicate that Dalits' reclaim of land has led to conflicts with forest officials and the Police, especially after the adoption of the "Schedule Tribe and other Forest Dwelling Communities (Recognition of Forest Rights) Act of 2006". It is further alleged that since the Act is not yet operational, the forest department officials have been harassing the activists working for the rights of the forest dwellers and the tribes, with the aim to ensure that evictions take place before the clauses of the Act are enforced. Reportedly similar actions are taking place in other parts of the country including Maharashtra, Madhya Pradesh and Orissa. In this context, on 3 August 2007, Ms. Roma and Ms. Shanta Bhattacharya, two members of the National Forum of Forest People and Forest Workers (NFFPFW) who have been working in the Sonebhadra District for the past seven to eight years, were arrested in Robertsganj under charges of provoking Dalits and Tibals to encroach forest lands. They were arrested under section 120 (B) and 447 of Penal Code; they are in Mirzapur jail and their bail applications have been rejected at the Circle Judicial Magistrate. On 5 August 2007, Lalita Devi and Shyamlal Paswan were arrested from a local market in Rangarh, they are also in Mirzapur jail. As a consequence of these imprisonments, people have been staging a protest since 4 August in front of the District Magistrate (DM) office in Sonebhadra demanding immediate release of the activists. New charges have been brought against Ms. Roma under article 4 of the National Security Act on 10 August. Reports also indicate that on 10 August 2007, at around 9 p.m., the police attacked Dalit women in Chanduli Village, in Sonebhadra District, leaving fifteen women seriously injured. Two trucks loads of Police along with Upper Caste representatives of the locality descended on Chanduli village in Sonebhadra district. They were allegedly heavily armed, and demanded to see Bachchalal, an active member of the local organisation Kaimoor Kshetra Mahila Mazdoor Kisan Sangharsh Samiti (KKMMKSS). According to information received, when they did not find Bachchalal in the village, they started attacking women present in the village. Police and upper caste representatives barged into the house of Bachchalal and attacked his pregnant sister and sister-in-law; pulling them out and attacking them. In three hours, the police and upper caste representatives beat up around 15 women and destroyed their houses. At the time of the incident, there were very few male members in the village as most of them were staging a protest in front of the DM's office in Sonebhadra against the arrest of Ms. Roma, Ms. Shanta Bhattacharya,

Lalita Devi and Shyamlal Paswan. This was allegedly the third attack of this kind against Dalits in less than two weeks and reportedly a consequence of the Dalits families' requests for land that started in the last two years, as a response to the forest department's Government Resolution of 2002-3 to clear forest lands from any encroachments. During the events, the police reportedly left the village giving an ultimatum to remove the bricks of the houses by 11 August 2007, or they would come back with the administrative order to destroy the houses.

Observations

58. The Special Rapporteur regrets that at the time of the finalization of the present report, the Government had not transmitted any reply to his communications. The Special Rapporteur continues to monitor the situation with interest.

Israel

Communication sent

59. On 21 August 2007, the Special Rapporteur sent an allegation letter jointly with the Independent Expert on Minority Issues and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people regarding forced evictions faced by several Bedouins indigenous communities in Israel and in territories under Israeli's occupation. The Special Rapporteurs and the Independent Expert acknowledge receipt of the letter received from the Permanent Mission dated 9 August 2006 regarding the Bedouin village of Al-Sira, as a response to the communication sent by the Special Rapporteur and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people on 19 October 2006. The Jahalin Bedouins are mostly 1948 Palestinian refugees, originating from the area of Beersheva (Bir el Sabe'e) in the Negev (Naqab), Israel, and currently living in the West Bank. Since the implantation of Jewish settlements in the West Bank in the 1970s, it is reported that most have subsequently been internally displaced within the occupied West Bank allegedly as a result of threats and/or home demolitions. Particularly with regard to this Bedouin community, it is alleged that the establishment in 1976 of Ma'ale Adumin and its continued expansion since then has led to their recurring forced eviction and displacement away from the expanding settlement. On one occasion in 1997, reports state that even though a group of Bedouins had challenged the displacement in court, the army eventually forcibly evicted them to shipping containers onto the Jabal, next to the Jerusalem garbage dump in Abu Dis. Since the establishment of the permit regime in the mid-1990s and the construction of the Wall in 2002, access to markets in Jerusalem neighbourhoods, has been substantially reduced, further affecting the Bedouins' livelihood. According to recent reports, up to 2,700 members of the Jahalin Bedouin indigenous community in the Occupied Palestinian Territories are facing threats of forced evictions around the Jewish settlement of Ma'ale Adumin and near the villages of Anata, Abu Dis, and Al' Zaryya. The Jahalin Bedouin community, presently scattered among 31 localities on the hills and roads in the desert, allegedly faces home demolitions, as well as restricted access to land and essential services, as a result of the construction of the Wall in the occupied West Bank and of the planned expansion of the current settlement of Ma'ale Adumin, east of Jerusalem. This expansion plan, called the E1 Plan, allegedly intends to appropriate approximately 12.5 square kilometers of the Palestinian villages of Al-Tur, Anata, Al Eizaryieh, Abu Dis, Al Essawyieh and Hizma. Together with the planned route of the Wall around the E1-Ma'aleh Adumim settlement block, it will apparently encompass, if implemented, 52 square

kilometers and over 50,000 Jewish settlers, de facto including this part of the occupied West Bank in Israel's "Greater Jerusalem". Reports received claim that these plans will require the displacement of these Bedouin communities outside of the route of the Wall. The Government reportedly claims that the shacks in which the Bedouin community live have been illegally built on "state land", but there would be evidence to prove that the land belongs to the local communities. According to the reports, the Government has informed those affected that they are required to leave the area that will be encompassed by the Wall, and that it plans to displace them onto permanent clusters on lands belonging to the adjacent Palestinian villages of Abu Dis, Anata, Al 'Zaryya, Eastern Sawahrah, Al Za'ym, and Sheikh Sa'ad, all on the eastern periphery of Jerusalem. These villages are said to be host communities to the Jahalin Bedouins who live semi-nomadically on the land. Nevertheless, the current residents are against the permanent settlement of the Bedouins in the area. It is alleged that the displacement to these villages threatens the traditional semi-nomadic way of life of the Jahalin Bedouins, as according to the future plans, they will be effectively surrounded by the Wall, cutting them off from Jerusalem and from other parts of the West Bank. Reportedly, they have also expressed their wishes to remain in their homes and a strong desire to preserve their traditional way of life while improving their living conditions. In addition, reports received have alleged that one of the relocation sites envisaged today by the authorities is again located on the Jabal in Abu Dis, on the site of the Jerusalem garbage dump, which is still reportedly polluted and unsuitable for habitation. On the basis of further information received, similar concerns are raised with regard to the reported demolition of buildings and homes of Bedouin indigenous communities living in the unrecognized village of Attir-Umm al-Hiran in the Negev Desert, South Israel. The communities have reportedly lived in the Negev area for centuries. However, in 1965, the communities were forcibly removed by Israeli authorities, which failed to recognize their ancestral lands, and relocated them in Attir-Umm al-Hiran. According to the reports, on 25 June 2007, a large contingent of Israeli police forces acting together with the Israel Border patrol and acting upon the direction of the Israeli Ministry of Interior and the National Security Council, proceeded to demolish 28 structures, including 25 houses in this village, leaving over 150 Bedouin men, women and children homeless. These demolitions were allegedly carried out as part of a larger plan to resettle the Bedouin communities in one of seven Government townships, and also to build a town for Jewish settlers. Since 2005, the inhabitants of this village had allegedly been regularly presented with demolition orders from the Israeli authorities and had been asked to evacuate the village. They did reportedly not receive prior notice about the demolitions on the day nor were given time to remove their possessions from the buildings and their homes. On 24 June 2007, Israeli authorities reportedly informed one of the residents in the village that they would present on 25 June 2007 a compensation proposal with a view to obtaining their agreement to leave the village voluntarily. However, to date, no alternative housing or compensation has been allegedly provided. On the basis of further information received, concerns are also raised with regard to forced evictions of Bedouin indigenous communities in the Jordan Valley, east of the West Bank, much of which have been occupied by military facilities or have been taken over by Israeli settlements. According to this information, more than a hundred residents of the Bedouin indigenous villages of Hadidiya and Humsa, in the Jordan Valley, are facing threats of house demolition and forced eviction. On 10 April 2007, the residents of the Bedouin village of Haddidiya received demolition orders, asking them to leave their homes by 21 April. The same situation reportedly occurred in the nearby village of Humsa, where the residents received a written notice on 29 May 2007 ordering them to leave the area. It is reported that the official reason for the eviction orders is that this area is a closed military area,

from which the Bedouin population is barred. Reportedly, on the morning of 13 August 2007, the demolition of several houses began in Humsa, including the houses of numerous families with a large proportion of children. According to reports, house demolition has been widely used as a mean to force Bedouins and Palestinians to leave the Jordan Valley. Reportedly, Bedouin families often receive the house demolition orders written in Hebrew, a language which most of the Bedouins do not understand or read. It is reported that sometimes house demolition orders are not directly given to the families but simply left on the soil and families often only know of the order when the army arrives to demolish their homes. Furthermore, it is alleged that Bedouin communities are forbidden from building permanent structures, and thus are forced to live in tents and shacks, which provide little shelter from the heat, cold and external elements, and they are not allowed to use infrastructure including wells and roads in the area, as these are for the exclusive use of the nearby Israeli settlements. It is also reported that the army does not allow the installation of basic services including running water, electricity and other essential facilities in the Bedouins villages. The army has reportedly set up military checkpoints and blockades which restrict the Bedouins' movements. Allegedly these restrictions and measures are intended to force the Bedouins out of the area.

Response received

60. By letter dated 23 August 2007, the Government replied to the communication sent on 21 August 2007 by the Special Rapporteur jointly with Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Independent Expert on minority issues. The Government underlined that in one paragraph, the communication refers to the case of Bedouins in territories under Israeli occupation while the allegation letter also mentioned Bedouins living in Beersheva and the Negev which are located within Israel, and are not occupied territory. The Government also indicated that the allegation letter refers to "Naqab" instead of Negev and it specified that peoples who live inside Israel are Israeli citizens and not "Palestinian refugees". The Government therefore requested a rectification from the Special Rapporteur.

Response received on cases sent by the Special Rapporteur in preceding years

61. By letter dated 9 August 2007, the Government replied to the allegation letter transmitted by the Special Rapporteur on 19 October 2006 jointly with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and concerning the Bedouin village of Al- Sira, In 1980, following the peace accords with Egypt according to the *Negev Land Acquisition ("Peace Treaty with Egypt") Law, 5740- 1980*, areas surrounding the Nevatim Airport were expropriated for the purpose of establishing military installations. The Bedouin residents living nearby were subsequently evacuated in 1983. Most resettled in the permanent Bedouin towns of Kseife and Araara, while some moved to the Bedouin town of Rahat, or to other areas in the centre of Israel. Additionally, in 1980 a fence was erected around Al-Sira area, and it was made clear to residents that the land was henceforth expropriated and that at some point they would have to relocate according to law. Nevertheless, residents of the Al-Sira community began to dismantle the fence surrounding the area. Residents furthermore petitioned the Supreme Court requesting it to abolish the land expropriation. However on the recommendation of the Supreme Court's president, the petition was revoked. In September 2006, the State initiated action against illegal construction in the area of Al- Sira and inspectors from the Ministry of Interior visited the village in order to identify the owners of the illegal dwellings.

However, due to the fear of penal proceedings, it has been found that in the majority of cases residents are neither present nor willing to declare in which of the building they reside. In addition, out of respect for the special status of Bedouin women, State officials do not pressure women to identify themselves. Al-Sira is situated on State land. The Bedouin residents claiming ownership of that land are either very old or have passed away. As those who built illegally were more often distant relatives, rather than the ownership claimant themselves, it has proved almost impossible to ascribe illegal buildings to specific persons. Efforts were made to identify building owners and initiate proceeding against them using data available via other inspection units, such as the Bedouin Administration and the Green Police. An *ex parte* demolition is issued as a final resort, and only when it is impossible to file an indictment against the owners under the usual circumstances, or when every other alternative has been exhausted. Unless a resident identifies the illegal building within two-week period, a request will be submitted to the Magistrates Court to render and *ex parte* demolition order. In any case, such an order becomes valid only after having posted a demolition notice for 30 days, during which time the owner of the building is entitled to submit a reservation. The owner is further entitled to contest the demolition order and raise his own claims during the court hearing. In the case of Al-Sira, demolition orders were rendered by the Magistrates Court according to article 212 to the *Planning and Building Law*, and were procedurally posted on the illegal buildings. The residents of the buildings were given an extended period to submit an application for reversing the judgement, but most opted not to approach the court.

Observations

62. The Special Rapporteur thanks the Government for its reply to his communication of 19 October 2006. The Special Rapporteur also thanks the Government for the letter received regarding the joint allegation letter transmitted on 21 August 2007, he takes note of the comments submitted by the Government and hopes that the Government will respond on the substance of this case.

Italy

Communication sent

63. On 18 October 2007, the Special Rapporteur sent an allegation letter jointly with the Special Rapporteur on the human rights of migrants, the Independent Expert on Minority Issues and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, concerning incidents of evictions of Roma communities in Rome and Pisa which allegedly would form part of a pattern of discrimination against Roma communities. According to the information received, Roma communities in Italy face discrimination and violations of their right to adequate housing, including being subjected to forced evictions. Reportedly, on 19 July 2007, the Italian police in cooperation with the Romanian police forcibly evicted approximately 1000 Roma from a settlement in Via dell'Imbarco, Magliana suburb, Rome. Earlier in July 2007, the police and the municipal wardens forcibly evicted approximately 100 Romanian Roma from a settlement in Bagno di Tivoli, near Rome. During both operations personal belongings and dwellings were allegedly destroyed. Following an official visit to Romania of the Rome's mayor, Mr. Walter Veltroni, an agreement was signed between the Italian and Romanian governments whereby the police of these countries would collaborate concerning the eviction, identification and repatriation of Roma of Romanian origin living in

settlements in the city of Rome. Despite the declaration that this would be a plan for “voluntary return”, there are allegations that the intention is to repatriate Roma settlers forcibly. It has also been reported that the Vice-President of the European Commission, Mr. Franco Frattini, stated that “it is not true that European citizens cannot be repatriated... There is a very clear directive, valid for all citizens of the European Union that provides for the expulsion for all those who cannot prove to have adequate means of subsistence to live in a dignified way”. This statement has been allegedly used by politicians in anti-Roma speeches. For instance, the mayor of Verona, Mr. Flavio Tosi, who had previously been sentenced to two months imprisonment for racist propaganda against Roma, used the above statement to affirm that many of the Romanian Roma living in a “nomad camps” can be repatriated. The Special Rapporteur received also information concerning the case of four Romanian Roma children, Lenuca, Danchiu, Dengi and Eva, who, on 11 August 2007, died in a fire that burned down, for reasons yet unknown, in the hut where they were temporarily living with their parents in Livorno, following their forced eviction from Pisa in May 2007. Following the information received, their parents are currently in detention, charged with abandonment of minors and parental negligence.

Response received

64. By letter dated 21 December 2007, the Government of Italy replied to the joint allegation letter sent on 18 October 2007 by the Special Rapporteur on adequate housing, the Special Rapporteur on the human rights of migrants, the Independent Expert on minority issues and the Special Rapporteur on racism. The Government first noted that the question of the living conditions of the Roma populations, as laid down in the Consolidated Text 286/1998 as amended and integrated by Act 189/2002, was a competence of Local Bodies and that local institutions were still proceeding with the adoption of all pertinent interventions. Within this framework, several initiatives aiming at setting up small camps and/or focus on integration measures are in the process of being implemented in different part of the country as in Naples, Milan, Rovereto and Rome. More specifically, in the case of the Municipality of Rome, it was noted that actions aimed at the reception and integration of Roma communities have been increased and strengthened. The Government informed that the “Pronta Accoglienza” (Welcome reception centres) received thousands of Roma people while *ad hoc* structures have been realized specifically for mother and child groups. Concerning the removal of a Roma settlement located in “Magliana” - Via dell’Imbarco - Rome (July 19, 2007), the Government informed that the Roman police, in agreement with the Municipality, the “Nucleo Assistenza Emarginati” (Outcasts Assistance Nucleus) and the Municipal Police carried out the removal of a Roma illegal settlement located under an overpass, in an area subjected to overflow and that was found in appalling hygienic and sanitary conditions. A decision to intervene had been previously agreed within the Provincial Committee for Public Order and Security and had been repeatedly requested by the Municipal Agency for Electricity and Water in order to allow urgent maintenance works close to the settlement. Evacuation of the area was carried out with medical units, charity institutions and sanitation experts. The Government informed that the removal affected about 500 (not 1.300) people belonging to a Romanian ethnic group who, being informed about the impossibility to remain in an unsafe area, voluntarily moved away. Just a few of them, who did not intend to leave the premises, immediately received assistance from the Roman Social Service. Following the event, the police and social workers intervened in order to assist the more disadvantaged categories, like the mothers and children. Concerning the removal of a Roma settlement in “Bagni di Tivoli”, former “Stacchini” powder warehouse (July 26, 2007), the Government reported that, according to a decision taken by the “Illegal

Roma Settlement Issues Working Group” of the local “Prefettura”, the police, the Carabinieri, the Civil Protection and other competent offices of the Tivoli Municipality carried out the removal of an illegal settlement within the private area of the former powder warehouse. This action had been made necessary as a consequence of requests by the owner of the site and other private citizens. During the intervention, 80 Romanian citizens have been requested to pick up their belongings and leave the place. Concerning the removal of a Roma settlement in Pisa (May 2007), the Government reported that the removal of a small community from the so-called “CEP” area in Pisa had been planned and carried out by the Municipal Police of Pisa. Goods of subsistence and meal tickets were supplied and the only family with minors was assisted. An alternative accommodation at a nearby landlord in the area has been offered to this family. The Government underlined that this family was not one of the families involved in the terrible episode occurred in Livorno. Furthermore, in 2002, the city of Pisa started a specific programme called “Le Città Sottili”, mainly aimed at the final closure of the Roma settlement. Four out of five Roma camps have been definitely closed. At the time the government sent this communication, there were still two areas where some family groups had been temporarily accommodated and various housing possibilities had been already foreseen for them. In the area of Coltano, they have started to build up a village in order to accommodate by the spring 2008 about 15 family groups. The Government specified that out of 572 Roma citizens coming from various regions of the Balkans the half benefited from the programme “Le Città Sottili” and were offered an adequate housing and that another relevant number was well-placed in temporary solutions. The Government also reported that each single family group was backed by a specific project in order to cope with the integration process autonomously and that all persons still staying within the settlement and in the transition areas were supported with targeted interventions. The Government also indicated that all the children in the age of compulsory education had entered a school and had a sufficient level of attendance and that all of these projects have been approved by the social cooperative societies and local associations. As to the Roma from Rumania, during the summer 2004, after the removal of illegal settlement in Pisa, the authorities detected hazardous situations for the health of some minors and consequently five Romanian Roma family groups were resettled along the line drawn with “La Città Sottile”. Two of these family groups then decided to move autonomously. In April 2005, after the fire of a warehouse, 11 families were accommodated in temporary facilities within the Municipality of San Giuliano Tm. In spring/summer 2006, the Municipality joined the programme and paid for those families who benefited from the above mentioned projects. In its reply the Government noted that after the arrivals of a number of Roma from Rumania, especially at the beginning of 2007, several situations of marginalization and poverty arose in the territory of Pisa. By the end of 2006, the “IRRMA” (“Regional Intervention against Marginality”) project started. This project was developed by the Tuscany Regional Administration in cooperation with the “CNCA” (Reception Communities National Coordination Board), managed within the Pisa territory by the social cooperative “Il Cerchio” and aiming to taking care of the Romanian Roma. It was added that two family groups had been supported for housing projects along with a number of people looking for employment, and this with good results. The Government indicated that the Municipality of Pisa was committed to activating further interventions addressed to family groups with a sufficient income to guarantee an integration path, and/or had a particular health situation. It was also reported that actions would be developed with the commitment to closing the illegal settlement and preventing the creation of new ones. Concerning the events of Livorno (August 11, 2007), the Government reported that around midnight, the Fire Brigade was requested to extinguish a fire in the outskirts of the town, where three huts made of wood and

plastic were on fire. The charred corpses of four children were found and identified, according to their parent's statements, as Romanians of 4, 7, 8 and 11 years of age. Late in the night, the police arrested the parents of the victims who were questioned by the judge and finally they were considered guilty of child abandonment and consequently of their death. Following investigation, and despite the parents' allegations, there would be no responsibility of a third person and the possibility of a racist or a xenophobic attack has been excluded. The authorities also specified that the victims weren't living temporarily in Livorno because of their forced eviction from Pisa and that just the householder of one of the family groups could have been present in Pisa and been removed. Concerning Non-Discrimination, the Government recalls that besides article 3, c.2 of the Italian Constitution, the Law decree No. 286/98 settled the procedures for civil action against discriminatory acts due to racial, ethnical, national or religious reasons committed by a private or by the public administration. It was noted that this decree established measures of social integration as the organization of training courses tailored for public officers and private corporations in charge of foreign citizens or working in the immigration field. The government also explained that the National Office against Racial Discrimination (UNAR), was offering free legal consulting to victims of discrimination who report to competent jurisdictional authorities. Periodical meetings with the Rom associations have permitted to this Office to play an intermediation role and to determine the main sectors of potential intervention by the State or by the local Authorities, including housing, health and legal status. Finally, the Government mentioned the very recent agreement signed in Bucharest, on 20 December 2007, by the Italian Minister for Social Solidarity and the Romanian Minister of Labour. It was explained that this agreement would aim to establish a partnership in order to reduce, in both countries, the level of poverty of Romanian citizens, in particular Roma people. It was finally noted that this agreement is providing the utilization of national and European funds for the implementation of joint projects in the fields of labour, education and housing.

Observations

65. The Special Rapporteur thanks the Government for its reply to his communication of 18 October 2007. The Special Rapporteur continues to follow the situation closely, in particular the implementation of the agreements that have been signed.

The Lao People's Democratic Republic

Communications sent

66. On 10 May 2007, the Special Rapporteur sent a joint allegation letter with the Independent Expert on minority issues, the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, and the Special Rapporteur on the right to food on thousands of men, women and children from the Hmong ethnic minority, who have been living in hiding in the jungle and on the run from the military, have been driven to destitution and lack food, water, clothing, housing and medical care. According to these allegations, these persons are unable to cultivate crops because they fear that it would make them easily detectable by the military particularly from the air. They reportedly live from what they can gather in the forest although it is alleged that they do not pick up any visible quantity of wild fruit in certain areas in order to evade being found and do not hunt animals. The information received indicates a high level of malnutrition within this group particularly of children who have reportedly distended bellies, bleached hair and skinny frames as a result. The reports brought to our attention also claim that

regular violent attacks around and on encampments and its inhabitants have led to continuous displacement which affects their right to an adequate standard of living including shelter, drinking water and food. According to these reports, armed attacks by the military on people in the jungle have occurred on many occasions while they forage for food including roots and husks. For example, it was reported that in one of these incidents, in April 2006, 17 children were among the 26 people who were killed while they were searching for food.

Response received

67. By letter dated 3 August 2007, the Government replied to the joint letter sent on 10 May 2007 by the Special Rapporteur, the Independent Expert on minority issues, the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, and the Special Rapporteur on the right to food. The Government commented that the information contained in the communication is completely false and unfounded. There has never been either a policy or practice of the Lao PDR Government to deprive its own people of their right to an adequate and equitable standard of living. On the contrary, international reports from the United Nations and international assistance agencies confirm that the Government of the Lao PDR has put into implementation a long-term socio-economic development strategy with a view to moving the country out of least developed status by the year 2020. This strategy aims to achieve the overall policy objectives of the Lao PDR to bring about the health and prosperity to all Lao ethnic people regardless of race, ethnicity, sex, gender, age, religion, language and social status. The Government further stated that under the current Sixth Year Socio-Economic Development Plan, poverty reduction remains the priority of the Lao Government in line with its National Growth and Poverty Eradication Strategy (NGPES). The Government of the Lao PDR has in so far adopted 11 major programs and 111 projects to implement this plan, which are designed with strong public participation in order to promote the social-economic and cultural rights of all our ethnic people, including Hmong. The Government brought also to the attention the adoption of the Prime Ministerial Decree on the Establishment of Villages and Communes for Development issued on 7 May 2007. In addition the Government has promoted various domestic and foreign investment projects throughout the country, especially in the region of Nakai plateau located in central Laos. For example with regard to the Nam Theun 2 hydropower project, all ethnic people living near the project site enjoy the opportunity to attain permanent employment and to improve their living conditions. On the international scene, the Lao Government has also carried out a humanitarian policy towards all Lao citizens, living legally and illegally abroad. LAO PDR takes pride in monitoring a purposefully high degree of ethnic diversity (including numerous Hmong) within all levels all authority, the civil service and the armed forces. Therefore, the claims about discrimination towards the Lao Hmong are incongruous with the reality.

Observations

68. The Special Rapporteur appreciates the response from the Government to his communication and hopes that continued dialogue will result in a resolution of the human rights situation being faced by the Hmong community affected. The Special Rapporteur continues to monitor the situation with interest.

Malaysia

Communication sent

69. On 14 December 2007, the Special Rapporteur sent a joint allegation letter with the Special Representative of the Secretary-General on the situation of human rights defenders on the detention of a number of activists and villagers who were arrested while protesting against the demolition of houses in Kampong Berembang. On 20 November 2006, S. Arutchelvan, Chang Lih Kang, Lechumy Devi Doraisamy, Kumaraveel, Mohan, Parames Elumalai, Ramachanthiran Ananthan, Ramalingam Thirumalai, Sevan, Thevarajan Ramasamy, V. Wani, Sugmaran, Ebrahim Haris Awalluddin, Fiqtriy bin Al Hakimi, Sivarajan, Adli Abdul Rahman, Ahmad Tamrin, Awalluddin Sharif, Azman Mohd, Faezae Ramzi, Mohd Rajis and Sabariah Ayoub were arrested as they protested against the demolition of houses in Kampong Berembang located in Jalan Ampang. Sources indicate that the police supported by the Ampang Jaya local council enforcement unit, the Majlis Perbandaran Ampang Jaya (MPAJ) used force to disperse the crowd at the demolition site and one villager, Norhasliana binti Osman, was reportedly beaten unconscious. In addition, on 22 and 23 November 2006, the agents of the MPAJ allegedly tried to demolish the praying room which is the last structure which remains intact in the village where the former residents continue to live in tents and makeshift houses. According to reports, 50 families who had lived on the disputed land for more than 30 years were forcefully evicted before their alternative homes were completed under Selangor's policy of "Zero Squatters". Furthermore, it is reported that the land in question is still the subject of an ongoing court case which the Shah Alam High Court recently postponed until April 2007.

Observations

70. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted any reply to his communication. The Special Rapporteur continues to monitor the situation with interest.

México

Comunicaciones enviadas

71. El 15 de Marzo 2007, el Relator Especial, juntamente con el Relator Especial sobre el derecho a la alimentación, envió una carta de alegación con respecto a las comunicaciones enviadas al Gobierno el 31 de agosto de 2004 por el Relator Especial sobre una vivienda adecuada, y el 30 de marzo 2006 por el Relator Especial sobre el derecho a la alimentación y el Relator Especial sobre una vivienda adecuada en relación con el Proyecto Hidroeléctrico La Parota, a las respuestas recibidas del Gobierno de 6 de diciembre 2004 y de 13 de julio 2006, así como a la información adicional transmitida por el Gobierno el 20 de diciembre de 2006. Según informaciones adicionales, la Comisión Federal de Electricidad (CFE) habría incurrido en desacato en relación con las resoluciones judiciales del Tribunal Unitario Agrario de Distrito 41 y del Juzgado Tercero de Distrito, que decretan la protección a los terrenos comunales afectados por la construcción de la represa y prohíben a la CFE que invada estos terrenos para efectuar obras y acciones relacionadas con la represa. Esta prohibición afectaría a la construcción de carreteras de acceso para la construcción de la represa hidroeléctrica que, de acuerdo con el proyecto original de La Parota, afectarían a cuatro de las comunidades amparadas por las

resoluciones judiciales. Según las alegaciones, a pesar de las resoluciones judiciales, actualmente se encuentra en construcción la carretera que comunica Tunzingo con el poblado de San Isidro Gallinero, y que atraviesa el núcleo agrario de Cacahuatepec, y para ello se habría introducido maquinaria en los terrenos comunales de Cacahuatepec. Asimismo, se informa de los planes para construir la carretera entre Dos Arroyos y Los Huajes, Altos del Camarón, Agua de Perro y La Venta, que contaría ya con un presupuesto asignado. Según las informaciones, un grupo de personas, que se habrían identificado como miembros de un comité para la construcción de la carretera, se habrían presentado en el núcleo Dos Arroyos en diciembre de 2006 para comunicar que abrirían un nuevo camino de la Autopista del Sol a la localidad y para dialogar con los dueños de los terrenos que se verían afectados. Según las informaciones recibidas, la construcción de estas carreteras no estaría siendo llevada a cabo por la CFE, sino por el Gobierno de Guerrero. Se alega que las autoridades estatales estarían sirviendo de conducto a la CFE para llevar a cabo estas obras, y que su mediación sería una maniobra para evadir el cumplimiento de las resoluciones judiciales mencionadas. Se alega también que, aun si estos dos caminos fueran obras del Gobierno del Estado, serían ilegales, ya que ni el Gobierno estatal ni el Gobierno federal cuentan con los convenios de ocupación previa que exige la Ley Agraria para la realización de trabajos relacionados con La Parota, y que los terrenos ejidales y comunales que serían afectados con las obras de las carreteras no han sido expropiados ni han cobrado el derecho de vía. Junto con la situación de desacato a las resoluciones judiciales que protegen a las comunidades afectadas por la construcción de la represa, se han recibido alegaciones en torno a supuestas inconsistencias existentes en los documentos preparatorios del proyecto. Así, los datos relativos al número de personas afectadas por la construcción de la represa proporcionados por el Gobierno (3.039) no concordarían con la cifra que sostienen los comuneros y ejidatarios que habitan la zona (25.000), ni con la Manifestación de Impacto Ambiental (MIA) del Proyecto de 2004, que indica que unas 2.488 personas se verían afectadas en localidades totalmente inundadas, y otras 7.697 personas en localidades inundadas parcialmente. Específicamente, el poblado de Dos Arroyos, ubicado en el Municipio de Acapulco y con una población de 2.100 habitantes, que se vería inundado parcialmente, no fue incluido en la lista de poblados afectados aportada por el Gobierno. También se alega que no se hace mención con respecto al número de los afectados indirectos (río abajo), que sufrirán por el resecamiento y salinización de las tierras, ni tampoco respecto a las 14 comunidades que según el mismo proyecto de la CFE se verán evacuadas en un segundo momento a causa de la construcción de dos represas de mitigación. Las informaciones recibidas se refieren además a las disposiciones relativas a la compensación de los comuneros afectados incorporadas en el documento Participación comunitaria en el reacomodo de poblados del Proyecto Hidrológico La Parota elaborado por la Dirección de Proyectos de Inversión Financiada, Subdirección de Construcción, Coordinación de Proyectos Hidroeléctricos de la CFE. Dicho documento se referiría a la dotación de mejores viviendas a los afectados, pero no mencionaría la restitución de tierras de cultivo ni la indemnización. De acuerdo con la información recibida, no existiría ninguna experiencia precedente en el país en la que los reubicados por las presas hayan mejorado sus condiciones de vida gracias a las formas de compensación derivadas de proyectos, citándose los ejemplos de las represas de El Caracol (1986), Los Huites (1994), y El Cajón (en curso). Asimismo, algunos de los afectados por la construcción de la represa declaran no haber recibido información suficiente sobre el proyecto por parte de la CFE que les permita valorar los costos y beneficios del proyecto. En la misma MIA (capítulo IV sobre el impacto socioeconómico del proyecto, en la parte llamada “elementos críticos”) se reconoce que “[a] pesar de los esfuerzos realizados por la CFE, la labor informativa no ha podido transmitir con claridad los impactos que

sufriría cada una de las comunidades”. En relación con la Reunión Pública de Información sobre la MIA que tuvo lugar el 24 de agosto de 2004, se alega que este mecanismo es de naturaleza eminentemente ambiental y que por lo tanto no tomó en cuenta las afectaciones sociales del proyecto, incluyendo cuestiones agrarias o de derechos humanos, y que por consiguiente no puede considerarse como un procedimiento válido de consulta en relación con todos los aspectos del proyecto. Esta situación de falta de información no favorecería las negociaciones que se llevarán a cabo próximamente con las partes afectadas, y habrían generado un clima de confusión e incertidumbre en las comunidades, contribuyendo a la división al interior de las mismas. Los Relatores Especiales fueron también informados de que se habían producido múltiples irregularidades en las asambleas comunales y ejidales convocadas para la discusión del proyecto al interior de las comunidades afectadas. Se alega que en las asambleas realizadas, los campesinos incluidos en las listas (padrones) de los que tienen derecho al voto constituyen un porcentaje mínimo de la población, ya que las listas no se encuentran actualizadas y sólo toman en consideración a las personas que tienen derechos agrarios sobre las tierras y no a los poseedores, avicinados y ciudadanos en general que viven en la zona. Asimismo, de acuerdo con las informaciones recibidas, cuatro de las asambleas realizadas (Bienes Comunales de Cacahuatpec y ejidos Dos Arroyos, Los Huajes y La Palma) habrían sido impugnados y sujetos a procedimientos administrativos, habiéndose producido supuestas violaciones a los procedimientos establecidos en la Ley Agraria. Entre otras se menciona: que las convocatorias no fueron circuladas en los núcleos agrarios que debían participar en ellas; que no fueron expuestas en lugares visibles y no se expidieron en los tiempos previstos por la ley; que se impidió con el uso de la fuerza pública la participación de los campesinos opositores al proyecto; que no se verificó el quórum establecido para que legalmente se votara la expropiación de las tierras; y que las asambleas no se llevaron a cabo, según establece la ley, en los lugares tradicionales sino en municipios aledaños. Por último, se han recibido alegaciones en relación con la situación de inseguridad, hostigamiento y manipulación que sufren los afectados, y que no les permitiría trabajar y emprender los proyectos productivos de desarrollo que les permitirían mejorar su economía campesina. La defensa emprendida desde hace tres años, según se alega, los ha obligado a abandonar el trabajo, las actividades cotidianas y las familias, y a vivir constantemente bajo presión y temor de ser desalojados en contra de su voluntad.

72. El 19 de octubre de 2007, el Relator Especial, conjuntamente con el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los pueblos indígenas envió el documento “Reflexiones sobre algunas implicaciones en materia de derechos humanos del Proyecto Hidroeléctrico de La Parota”. Este documento, fruto de las distintas opiniones e informaciones recabadas durante la visita efectuada por los dos Relatores Especiales entre el 7 y el 11 de septiembre de 2007 para analizar el impacto sobre los derechos humanos de las obras de construcción del Proyecto Hidroeléctrico La Parota, incorpora una serie de observaciones y recomendaciones dirigidas al Gobierno de México.

73. Este documento de reflexión se reproduce integralmente a continuación.

**Reflexiones sobre algunas implicaciones en materia de derechos humanos
del Proyecto Hidroeléctrico de La Parota, Estado de Guerrero, México**

74. “El desarrollo de un proyecto de la magnitud del de la Hidroeléctrica La Parota, en virtud del cual, entre otras cuestiones, posiblemente se inundarán 14.000 hectáreas de tierra y se reubicará un total de 4.000 personas pertenecientes a 15 núcleos de la población, sin duda

requiere ser estudiado desde muchas perspectivas y analizarse en toda su complejidad. Esto implica que no sean relevantes sólo los aspectos técnicos del proyecto, sino también el impacto social, humano y ambiental que se producirá en caso de llevarse a cabo. De manera particular, la experiencia internacional nos demuestra que generalmente los desalojos o desplazamientos de personas a causa de proyectos de desarrollo tienen serias implicaciones en un conjunto amplio de derechos humanos. Los Principios básicos y directrices sobre los desalojos y el desplazamiento generados por el desarrollo, presentados en 2007 por el Relator Especial sobre el derecho a una vivienda adecuada como elemento integrante del derecho a un nivel de vida adecuado (A/HRC/4/18, anexo I), señalan que en este tipo de proyectos con frecuencia son vulnerados los derechos humanos a la vivienda adecuada, a la alimentación, al agua, a la salud, a la educación, al trabajo, a la tierra, a la seguridad de la persona, a la seguridad del hogar, a la libertad de tratos crueles, inhumanos y degradantes, a la libertad de circulación y al medio ambiente. En virtud de los compromisos internacionales que ha contraído en materia de derechos humanos, el Estado mexicano ha asumido la obligación general de implementar las medidas y prácticas necesarias para salvaguardar los derechos humanos de las personas con motivo de la realización de este tipo de proyectos de desarrollo. En este sentido el objetivo principal de la visita de los dos Relatores Especiales fue el de analizar si en el caso del Proyecto Hidroeléctrico La Parota el Gobierno ha tomado las medidas necesarias para garantizar que los derechos humanos de las personas afectadas directa e indirectamente por la construcción del Proyecto no se verán irremediamente vulnerados. Después de hacer una visita al lugar y valorar objetivamente la información recibida de las autoridades responsables y de diversas organizaciones de la sociedad civil, así como los testimonios de las personas que habitan las comunidades que posiblemente serán afectadas, los dos Relatores Especiales consideraron que existen algunas inconsistencias en las medidas que el Estado mexicano ha adoptado con el fin de garantizar los derechos humanos de las personas afectadas por la realización del Proyecto Hidroeléctrico La Parota.

Derechos a la información, a la consulta y al consentimiento previo, libre e informado

75. El derecho a la información se reconoce en diversos instrumentos internacionales que el Estado mexicano ha ratificado, como el Pacto Internacional de Derechos Civiles y Políticos y en la Convención Americana de Derechos Humanos. Además de ello se encuentra consagrado en el artículo sexto de la Constitución y reglamentado en la Ley Federal de Transparencia y Acceso a la Información. Pública Gubernamental (LFTAIPG). Las obligaciones del Estado con respecto al derecho de la persona a buscar y recibir información incluyen no sólo la obligación negativa de no restringir ni obstaculizar el ejercicio de este derecho, sino, también, una obligación positiva de facilitar el acceso a la información que obre en poder de las distintas autoridades e instituciones públicas. El Convenio N.º 169 de la Organización Internacional del Trabajo (OIT) sobre pueblos indígenas y tribales en países independientes, de 1989, ratificado por México, establece el derecho de los pueblos indígenas a ser consultados mediante procedimientos apropiados y en particular a través de sus instituciones representativas, cada vez que se prevean medidas legislativas o administrativas susceptibles de afectarles directamente. Las consultas llevadas a cabo en aplicación de este Convenio deberán efectuarse de buena fe y de una manera apropiada a las circunstancias, con la finalidad de llegar a un acuerdo o lograr el consentimiento acerca de las medidas propuestas. Por otra parte, la Declaración de las Naciones Unidas sobre los derechos de los pueblos indígenas, promovida por México en el Consejo de Derechos Humanos, afirma en su artículo 10 que no se procederá a ningún traslado sin el consentimiento libre, previo e informado de los pueblos indígenas interesados. En relación con el Proyecto Hidroeléctrico La Parota, la Comisión Federal de Electricidad (CFE) ha elaborado un conjunto de documentos

que contiene información sobre diversos temas, tales como la situación socioeconómica de los municipios y núcleos agrarios que serían afectados; la delimitación de las tierras que serían inundadas; la superficie que sería afectada por las obras de construcción; el número de viviendas que serían reubicadas total o parcialmente; el cronograma de actividades de construcción y los compromisos que se han adquirido con las comunidades en cuanto a la realización de obras de compensación. Sin embargo, en base a las entrevistas y reuniones que los Relatores Especiales sostuvieron con los diversos actores, tanto a favor como en contra de la realización del Proyecto Hidroeléctrico La Parota, pueden afirmar que la información generada por la CFE no ha logrado realmente llegar de una manera clara y precisa a los pobladores de la zona que se vería afectada. Incluso, las autoridades de la propia CFE han reconocido que sus estrategias de información a la población no han sido eficaces. Los estudios sobre impacto ambiental e impacto social del proyecto, encargados por la CFE a instituciones académicas reputadas, no han sido dados a conocer, ni han sido debatidos públicamente por los interesados. Para que las personas puedan decidir sobre si están a favor o en contra del Proyecto Hidroeléctrico La Parota, el cual, sin duda tendría un impacto definitivo en sus vidas, es necesario que cuenten con información veraz y objetiva y que esta información provenga de manera directa de las autoridades responsables del proyecto. Existen ciertos temas claves sobre los que las personas no han sido informadas y que constituyen una condición necesaria para poder adoptar una decisión libre e informada, incluyendo el monto de la indemnización por las tierras que posiblemente les serán expropiadas, el lugar preciso en el que serán reasentadas las familias afectadas, y si se les dotará o no de tierras para el cultivo. Para obtener el acuerdo de la población afectada, las autoridades han promovido en los distintos núcleos agrarios (ejidos y comunidades de bienes comunales) las asambleas agrarias correspondientes, pero este proceso ha sido denunciado en repetidas ocasiones por una parte de la población por haber adolecido de diversas irregularidades, con la consecuencia que se han producido profundas divisiones sociales y políticas en estos pueblos, con instancias de violencia y la intervención injustificada de la fuerza pública. Recientemente, un Tribunal Unitario Agrario del estado anuló algunas de estas asambleas por las mismas razones.

Derecho a la participación

76. El derecho a participar en la dirección de los asuntos públicos se reconoce en el Pacto Internacional de Derechos Civiles y Políticos. La observación general 7 (1997) del Comité de Derechos Económicos, Sociales y Culturales sobre el derecho a una vivienda adecuada (párrafo 1 del artículo 11 del Pacto): desalojos forzosos, señala que el derecho a una vivienda adecuada, reconocido en el Pacto y la consecuente prohibición de los desalojos “forzosos” exige que entre las garantías procesales necesarias para que sea justificable un desalojo figure una auténtica oportunidad de consultar a las personas afectadas y recuerda que la obligación de los Estados de utilizar todos los medios apropiados para promover el derecho a una vivienda adecuada incluye la de velar por que se estudien en consulta con los interesados todas las posibilidades que permitan evitar el recurso a la fuerza en relación con los desalojos. Los Principios básicos y directrices sobre los desalojos y el desplazamiento generados por el desarrollo establecen que de la mano del derecho a la información, las personas que podrían verse afectadas tienen el derecho de participar y ser tomados en cuenta a lo largo de todo el proceso de planeación e implementación de los proyectos basados en el desarrollo. En el caso del Proyecto Hidroeléctrico La Parota, los Relatores Especiales pudieron constatar que las personas de las comunidades afectadas adquirieron conocimiento del proyecto una vez que éste ya estaba completamente definido y sólo cuando la CFE empezó a realizar los primeros trabajos en la zona para iniciar el proyecto. Aún hoy en día entre las comunidades existe un gran desconocimiento en torno a lo

que sucederá con el Proyecto Hidroeléctrico. Esta situación genera especulaciones y rumores que terminan por incrementar los niveles de tensión social en la zona. Este factor habla por sí mismo de la poca transparencia con la que parecen haber sido tomadas las decisiones acerca del Proyecto.

Estudio de impacto social y humano

77. Por otra parte, los Principios y directrices a los que se ha hecho alusión recomiendan que antes de proceder a la realización de un proyecto de desarrollo que implique el desplazamiento y desalojo de personas se deben elaborar estudios amplios e integrales sobre sus efectos sociales y sus consecuencias en los derechos humanos de las personas que serán afectadas. Este tipo de estudios son indispensables para asegurar que los costos sociales, humanos y ambientales que implica un proyecto de esta magnitud no sean desproporcionados en relación con los beneficios que se intentan alcanzar, pero, sobre todo, para que las personas puedan tener alguna certeza de lo que pasará con ellos y cuál será su situación socioeconómica una vez que se realice el proyecto. En su visita, los Relatores Especiales pudieron constatar que tanto las personas que están a favor como las que están en contra del Proyecto Hidroeléctrico coinciden en un punto que también es reconocido por las autoridades. Ambos grupos denuncian que viven en una situación de marginación y abandono y, por lo tanto, coinciden en demandar mayores oportunidades de desarrollo en la región. La divergencia radica en que aquellos que están a favor ven el proyecto como la única alternativa que tienen para el desarrollo de sus comunidades y para mejorar el nivel de vida de sus familias, mientras que para los que están en contra el Proyecto acabará con las únicas fuentes de riqueza que tienen - la tierra y el río - y trastocará por completo el esquema vital de sus comunidades. El hecho es que, debido a la inexistencia de un estudio de impacto social que pueda proyectar las consecuencias que el Proyecto tendrá en la vida de las personas y en el ejercicio de sus derechos, las comunidades no pueden saber con certeza si la realización del proyecto tendrá un impacto positivo o negativo en su propio desarrollo. Todo se reduce a una cuestión de confianza en las promesas que las autoridades federales y locales les han hecho, pero que están lejos de constituir un convenio negociado con la plena participación de las comunidades afectadas.

Obligación de agotar todas las alternativas

78. La prohibición de los desalojos forzosos definida como parte del derecho a una vivienda adecuada establece que aquellos proyectos de desarrollo que impliquen el desalojo o desplazamiento de personas deberán ser excepcionales. Por lo tanto, se requiere que, antes de ser aprobados, el Estado busque otras alternativas a través de las cuales se puedan satisfacer las necesidades que justifican este tipo de proyectos sin necesidad de desplazar a las personas de su lugar de residencia. Asimismo, se debe conceder un espacio para que las personas posiblemente afectadas puedan también proponer alternativas a la realización del proyecto. En la entrevista que los Relatores Especiales sostuvieron con los directivos de la CFE, se les informó que existen varias alternativas para satisfacer las demandas de energía eléctrica de México para los próximos años. Incluso les comunicó que en sustitución del Proyecto Hidroeléctrico La Parota se habían iniciado ya los trabajos de construcción de otra central hidroeléctrica denominada "La Yesca" en los Estados de Nayarit y Jalisco. En este caso nadie tendría que ser desplazado ni desalojado.

79. Por lo demás, una de las principales consecuencias previstas de la construcción del proyecto de La Parota sería la transformación del régimen de aguas del río Papagayo, que tendría efectos considerables sobre la vida de alrededor de 25.000 personas que habitan en la región afectada. Es seguro que esta transformación tendría consecuencias a mediano y largo plazo sobre el desarrollo económico y social de toda la zona. En septiembre de 2007, durante la visita de los Relatores Especiales, una juez de distrito con sede en Guerrero, concedió un amparo al Centro mexicano de Derecho Ambiental en nombre de las comunidades de la zona, mientras se resuelve por la vía judicial el asunto de la falta de un estudio completo de impacto ambiental y la supuesta inconsistencia de la obra de La Parota con la legislación nacional en materia de aguas y medio ambiente. Mientras se lleva adelante el juicio, la juez instó a la CFE suspender toda actividad en la región afectada.

80. Independientemente del objetivo principal del Proyecto, que es el de generar energía eléctrica, un desarrollo regional de tal magnitud tendría que hacerse con la plena participación y en beneficio de la población local como indican las normas internacionales. Nada de esto ha sido planteado hasta ahora abiertamente a la población afectada, y ni las autoridades federales ni las estatales informaron a los Relatores Especiales de proyectos alternativos bajo consideración. Se mencionan, eso sí, en términos generales los posibles beneficios que obtendría la población de nuevas actividades económicas como serían la pesca y el ecoturismo, o la producción y comercialización de víveres para alimentar a la creciente población del polo turístico de Acapulco y Punta Diamante. Pero la CFE parece subestimar las complejidades y la problemática asociadas a una profunda transformación de la vida económica y social de las comunidades que implicaría este megaproyecto regional.

Marco institucional

81. Una cuestión que ha llamado la atención de los Relatores Especiales se relaciona con el entramado institucional que se ha desarrollado en torno al Proyecto Hidroeléctrico La Parota. Aunque la CFE tiene como principal objetivo la generación de electricidad para satisfacer las necesidades del país, en este caso concreto ha tenido que asumir competencias y facultades que rebasan por mucho su objetivo fundamental. En su visita, los Relatores Especiales pudieron constatar que la CFE tenía que ocuparse de asuntos de vivienda, salud, trabajo, agricultura, comunicaciones y transportes, o medio ambiente, entre otros. La preocupación de los Relatores Especiales al respecto se dirige a la falta de presencia o de coordinación con las dependencias del Gobierno Federal responsables de estos temas, así como con la cuestión de si debido a su propia naturaleza institucional la CFE cuenta con el mandato, las capacidades y experiencia para asumir la responsabilidad en estos temas. Por otra parte, también llamó la atención de los Relatores Especiales la aparente falta de participación de otros organismos que, por razón del posible impacto el Proyecto, deberían de acompañar el proceso, como son la Comisión Nacional de los Derechos Humanos, la Comisión de Defensa de los Derechos Humanos del Estado de Guerrero o la Comisión Nacional para el Desarrollo de los Pueblos Indígenas.

Consideraciones generales sobre los proyectos de desarrollo que implican el desplazamiento de personas

82. Tanto el Gobierno del Estado de Guerrero como la CFE consideran al Proyecto Hidroeléctrico La Parota no sólo como un centro generador de electricidad, sino también como un catalizador de desarrollo económico en una de las regiones más pobres de México. Aunque

no se pone en duda que la eventual realización del Proyecto puede constituir un importante foco de atracción para la inversión económica el tema central que los Relatores Especiales desean subrayar es si megaproyectos de desarrollo de este tipo realmente constituyen la mejor estrategia para alcanzar un desarrollo regional y, así, mejorar la vida de las comunidades desde una perspectiva de derechos humanos. Uno de los principios fundamentales de la Declaración sobre el derecho al desarrollo, de 4 de diciembre de 1986, es que la persona es el sujeto central del desarrollo y que, por lo tanto, debe ser el participante activo y el principal beneficiario de él. De manera más específica, el Convenio N° 169 de la OIT y la Declaración de las Naciones Unidas sobre los derechos de los pueblos indígenas reconocen el derecho de los pueblos indígenas a determinar y elaborar prioridades y estrategias para el ejercicio de su derecho al desarrollo. En términos prácticos esto implica que el tipo de desarrollo que debe ser promovido por los Estados debe respetar y promover los derechos humanos de las personas en una forma equitativa. Por otra parte, los Estados que se han comprometido a respetar los estándares internacionales de derechos humanos no pueden imponer a las comunidades y pueblos indígenas sus propios conceptos y estrategias de desarrollo, sino que, de manera conjunta, deben buscar las estrategias y alternativas que de mejor manera puedan promover el desarrollo regional de la zona de acuerdo a las propias prioridades establecidas por las personas indígenas. Según información del CONAPO, las comunidades que habitan la zona afectada por la realización del Proyecto Hidroeléctrico La Parota se encuentran en un contexto de alta a muy alta marginación. Esta realidad no debe considerarse como una justificación para llevar a cabo este tipo de proyectos de desarrollo. Por el contrario, se trata de una señal para asegurarse que este tipo de proyectos no traerá como consecuencias indirectas graves violaciones a los derechos humanos. Esta preocupación es producto de estudios recientes realizados a nivel mundial, como el Informe final de la Comisión Mundial de Presas de 2000, que han demostrado que generalmente los costos sociales y ambientales de las presas los asumen en mayor medida las comunidades directamente afectadas, mientras que los beneficios son para otros sectores de la población del país que se encuentran en mejores condiciones socioeconómicas. Los impactos negativos suelen ser aún más drásticos en aquellas personas que sufren de un contexto de discriminación en sus sociedades, tales como las mujeres, los adultos mayores, las personas discapacitadas y las personas indígenas. Sin duda la construcción del proyecto hidroeléctrico generaría miles de empleos directos temporales y actividades secundarias durante un tiempo limitado. La derrama financiera (se habla de centenares de millones de dólares de los Estados Unidos de América durante unos cinco años) atraería a la zona a muchas personas de distintas partes del país. Este fenómeno tiene tendencia a generar presiones inflacionarias considerables, como lo demuestra la experiencia en otras partes del mundo, lo que a su vez acelera la desigualdad social y la marginación de una buena parte de la población. A menos que se prevean a tiempo las medidas para mitigar estos efectos, el resultado de este proceso sobre la vida de las personas y la estabilidad de las comunidades sería muy preocupante. Los Relatores Especiales no tuvieron constancia de que estas consideraciones hayan sido tomadas en cuenta en las decisiones en torno al Proyecto. Lo anterior los lleva a subrayar la necesidad que perciben de que en México se inicie un proceso más amplio de discusión acerca de las mejores estrategias para promover el desarrollo humano equitativo y sustentable, y en las que se considere también la importancia que a nivel mundial están tomando diversos proyectos de desarrollo regional a pequeña escala y en el que las propias comunidades pueden seguir conservando y gestionando sus recursos naturales.

Recomendaciones

83. En base a las anteriores consideraciones, los Relatores Especiales solicitan al Gobierno de México que hasta no haber satisfecho plenamente las cuestiones que aquí se han abordado y haberse dado todas las garantías de que los derechos humanos de las personas afectadas serán respetados, y haberse analizado seriamente todas las alternativas posibles, se suspendan los trabajos de realización del Proyecto Hidroeléctrico La Parota. Parte del conflicto y la tensión generada entre las comunidades se debe al vacío legislativo relacionado con los mecanismos para hacer efectivo el derecho a la consulta de las comunidades afectadas. Por ello se acudió a otras figuras jurídicas supletorias que, al no adecuarse estrictamente a la naturaleza y fines del derecho a la consulta, generaron mayores inconformidades y disputas jurídicas. En este sentido, quisiéramos destacar la necesidad de reglamentar el derecho a la consulta que se encuentra reconocido en el artículo 6 del Convenio N.º 169 de la OIT, y en los artículos 18 y 19 de la Declaración de las Naciones Unidas sobre los derechos de los pueblos indígenas; el derecho a no ser desplazados forzosamente, regulado en el artículo 16 del Convenio y en el artículo 10 de la Declaración; así como los diversos aspectos recogidos en el artículo 2 de la Constitución mexicana en relación con los pueblos y comunidades indígenas. Los Relatores Especiales también consideran necesario que el Gobierno mexicano cuente con una política exhaustiva sobre el tema de los posibles desalojos con motivo de proyectos de desarrollo que se adecue a los estándares internacionales que se han asumido a nivel internacional en materia de derechos humanos. Actualmente las comunidades que viven en la región se encuentran divididas y enfrentadas por causa de la construcción del Proyecto Hidroeléctrico La Parota. Hemos podido constatar que en ocasiones la agresión verbal y la descalificación mutua entre los grupos polarizados generan niveles peligrosos de tensión y conflictividad social. Los Relatores Especiales consideran que independientemente de la suspensión de la realización del Proyecto es necesario promover un proceso de diálogo y reconciliación entre las comunidades. A este respecto, agradecen la confianza que les ha expresado el Gobernador del Estado de Guerrero al solicitar sus buenos oficios para facilitar espacios de diálogo entre las comunidades, propuesta a la que estamos dispuestos a dar seguimiento en consulta con las autoridades mexicanas correspondientes y la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos. Finalmente, los Relatores Especiales quieren destacar la urgencia de fortalecer los programas de desarrollo social y humano en la zona. Llama la atención de los Relatores Especiales el que a menos de 50 kilómetros del desarrollo turístico de Acapulco y Punta Diamante se pueda encontrar una zona con niveles de marginación tan altos. Aunque los Relatores Especiales sean conscientes de las múltiples necesidades que tiene el Estado de Guerrero y los problemas presupuestarios que enfrenta para promover el desarrollo en distintas regiones, consideran que el Estado mexicano tiene la responsabilidad de asegurar las condiciones y tomar las medidas necesarias para ampliar las oportunidades de desarrollo de las personas y las comunidades que viven en la región fortaleciendo el acceso y disfrute de sus derechos humanos, en especial, de sus derechos económicos, sociales y culturales.”

Comunicación recibida

84. El 8 de enero de 2008, el gobierno de México transmitió sus comentarios y observaciones en torno al documento “Reflexiones sobre algunas implicaciones en materia de derechos

humanos del Proyecto Hidroeléctrico de la Parota” enviado el 19 de octubre de 2007 por el Relator Especial juntamente con el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los pueblos indígenas. Dicha respuesta se reproduce integralmente a continuación.

**Comentarios y observaciones del Gobierno de México en torno al documento
“Reflexiones sobre algunas implicaciones en materia de derechos humanos
del Proyecto Hidroeléctrico de la Parota”**

85. México mantiene una política de apertura y cooperación con los órganos y mecanismos internacionales de derechos humanos. En el marco de dicha política y con motivo de la visita relativa al Proyecto Hidroeléctrico La Parota, el Gobierno de México organizó las diversas entrevistas que sostuvieron el Relator Especial sobre una vivienda adecuada como elemento integrante del derecho a un nivel de vida adecuado y el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas con las autoridades federales y estatales competentes; otorgó las facilidades necesarias para visitar el sitio del Proyecto; y entregó a los Relatores Especiales información amplia y completa sobre los distintos aspectos del mismo.

86. El Gobierno de México coincide con los Relatores Especiales en que los grandes proyectos de desarrollo requieren ser estudiados desde diversas perspectivas y valorados en toda su complejidad y que dichos proyectos deben partir del respeto a los derechos humanos de las personas que de una u otra forma resulten afectadas.

87. En el caso particular del Proyecto Hidroeléctrico La Parota, la CFE inició a mediados de la década de los ochenta los primeros estudios de campo y análisis preliminares de ingeniería, para determinar su viabilidad técnica y económica. No obstante, no fue sino hasta el año 2002 cuando se determinó que el Proyecto era prioritario para el Sistema Eléctrico Nacional, ello, debido a su cercanía a la zona central del país, la de máxima demanda, y por ser una fuente de energía limpia; en consecuencia se incluyó en el Programa de Obras e Inversiones del Sector Eléctrico. Esta situación originó la necesidad de complementar algunos estudios técnicos faltantes para integrar la ingeniería de licitación pero, particularmente, los correspondientes al impacto ambiental, de acuerdo con la Ley General del Equilibrio Ecológico y la Protección al Ambiente (LGEEPA) así como la evaluación de impacto social.

88. En ese mismo año (2002), se llevaron a cabo las primeras reuniones formales con diversas autoridades estatales y municipales y se visitaron algunas comunidades del área de influencia del Proyecto, todo ello, con la finalidad de informar acerca de su posible construcción y solicitar los permisos para poder realizar los estudios. Es preciso destacar que en todos los casos se obtuvieron las anuencias de las autoridades y de la población para estas actividades. También cabe señalar que aunque al interior de la CFE estuviera definido el interés por realizar el Proyecto, son las autoridades competentes del ámbito federal y estatal las que expiden los permisos necesarios para la construcción y para ello se requieren muchos estudios y trabajos específicos que permitan integrar los expedientes que sustentan las solicitudes respectivas.

89. Los estudios de impacto ambiental iniciaron a principios del año 2003 y fueron realizados por la Universidad Nacional Autónoma de México (UNAM) a través del Programa Universitario del Medio Ambiente (PUMA). En su momento, se solicitó la participación de esta prestigiada

institución con la finalidad de asegurar la calidad de los estudios y para que los grupos de interés de la sociedad mexicana tuvieran la plena seguridad de la total imparcialidad de los mismos. Empero, este estudio ha sido descalificado por los grupos opositores, los cuales nunca aportaron elementos técnicos que hayan sustentado sus críticas. De conformidad con la LGEEPA, la Manifestación de Impacto Ambiental del Proyecto Hidroeléctrico La Parota fue presentada a la Secretaría de Medio Ambiente y Recursos Naturales, dependencia que dictó a finales de 2004 el Resolutivo favorable mediando 14 términos, 11 condiciones y cuatro recomendaciones. Dichos estudios fueron sometidos al procedimiento de evaluación por parte de la Secretaría de Medio Ambiente y Recursos Naturales (SEMARNAT), realizándose una reunión pública de información el 24 de agosto del 2004, con la participación de los diversos actores interesados en el proyecto.

90. En el mes de julio de 2003, un grupo opositor de uno de los 19 núcleos agrarios implicados en el Proyecto bloqueó el acceso al sitio de la cortina al personal encargado de los estudios. Desde entonces, este grupo se ha negado a establecer un diálogo constructivo y respetuoso con la CFE, a partir del cual pudieron haberse implementado los mecanismos que aseguraran que todas las comunidades de los Bienes Comunales de Cacahuatpec involucradas tuvieran el acceso a la información veraz y objetiva del proyecto, tal y como se hizo en el resto de los núcleos agrarios, salvo el de Colonia Guerrero, y con base en ello decidir libremente respecto a aceptarlo o rechazarlo, tal y como lo han señalado los Relatores Especiales.

91. Es un compromiso del Gobierno mexicano en general y en particular de la CFE impulsar los proyectos de infraestructura en un marco de sustentabilidad, razón por la cual para el desarrollo del Proyecto se ha planteado la importancia de realizar las acciones necesarias para generar oportunidades para mejorar la calidad de vida de la población involucrada y para conservar y recuperar la calidad ambiental y los recursos naturales. Es decir, el proyecto es concebido no tan sólo como generador de energía eléctrica sino también como detonador del desarrollo aprovechando su efecto multiplicador. En este sentido, durante el desarrollo de los estudios encargados a la UNAM, se observó la necesidad de realizar esfuerzos adicionales para atender además de la variable ambiental los aspectos sociales, toda vez que el grueso de la población que se asienta en el área de influencia se encuentra en situación de pobreza extrema, tal y como lo indican los índices de marginalidad del CONAPO en sus últimos informes. Para ello, se definieron con especialistas de la Universidad Autónoma de Guerrero los alcances para elaborar el Plan de Desarrollo Integral, involucrando, entre otros aspectos, los temas relacionados con la reubicación de los nuevos poblados y la restitución de actividades productivas para garantizar los derechos a la vivienda adecuada, a la alimentación, al agua, a la salud, a la educación, al trabajo, a la tierra, a la seguridad, a la incorporación de las mujeres y los jóvenes y a la conservación del medio ambiente. En general, lo que se pretende es que durante el período de construcción de la cortina, se vayan creando las condiciones para que sean los habitantes de la zona los primeros beneficiados y quienes aprovechen las nuevas condiciones que se crearán. Para concretar tal propuesta se pusieron en marcha proyectos productivos demostrativos, se capacitó en oficios que requerirá la construcción de la presa (mecánica, electricidad, albañilería carpintería) así como en aquellos que pueden tener una gran demanda (cocina, corte y confección, peluquería) por la cantidad de trabajadores que se concentrarán en la obra.

92. El Plan de Desarrollo Integral ha implicado un intenso trabajo con las comunidades para alcanzar su definición, logrando finalmente la participación de la gran mayoría de los habitantes, incluyendo a niños, mujeres y adultos mayores. En particular, se ha incorporado a la población en todas las etapas de definición de diseño de viviendas, poblados, proyectos productivos, formas de organización y participación de la comunidad, actividades de recuperación y conservación del medio ambiente. Por ello ha requerido de mayor tiempo del originalmente previsto. Conviene volver a destacar que sólo en dos comunidades, Arroyo Verde y Colonia Guerrero, este esfuerzo no ha podido fructificar en virtud del rechazo intolerante hacia las acciones emprendidas por la CFE.

93. El Plan de Desarrollo Integral, en su versión regional, ha sido presentado al Gobierno del Estado además de siete planes para igual número de localidades que serán reubicadas, ello para establecer estrategias conjuntas e involucrar a las demás dependencias federales y municipales que actúan en la zona de influencia. También se tiene considerada su presentación y discusión en amplios foros democráticos de participación ciudadana. Debe subrayarse que la CFE y las autoridades estatales respectivas siempre han insistido en que el proyecto sólo se llevará a cabo si las comunidades así lo deciden, con pleno ejercicio democrático de sus libertades. Debido a la complejidad del proyecto, aún no hemos logrado la aceptación del total de las comunidades involucradas, pero se continuará con esta labor hasta lograr que el proyecto sea aceptado por todas ellas.

94. Cabe destacar que las propuestas contenidas en el Plan de Desarrollo Integral han tomado en cuenta las recomendaciones que han realizado diversos organismos internacionales para la ejecución de este tipo de proyectos, incluyendo la Comisión Mundial de Presas, el Banco Mundial, la Comisión Económica para América Latina y el Caribe (CEPAL), los objetivos de desarrollo del Milenio, la OIT y las experiencias de reubicados por construcción de presas en México, así como aspectos de presupuesto participativo, sobre todo en lo relativo a la conformación de Consejos de Desarrollo Comunitario, toda vez que ello garantizaría una permanente participación de los habitantes durante las distintas fases que implicará el proceso de construcción. Además, el citado Plan se orienta a la posibilidad de optimizar los recursos públicos en los diferentes niveles de Gobierno, necesarios para abatir problemas como la pobreza extrema y los problemas de marginación existentes en la zona, a fin de establecer las bases encaminadas a lograr un desarrollo sustentable.

95. De los estudios existentes a la fecha se desprende que de las 14.200 hectáreas de tierra que serán inundadas, sólo son utilizadas aproximadamente 2.800 hectáreas, toda vez que son terrenos con pendientes superiores a los 35 grados lo cual hace prácticamente imposible su uso. En la zona del embalse, de acuerdo al censo de población y vivienda 2000 y al conteo 2005, así como a los censos realizados por la Universidad Autónoma de Guerrero, el número de personas que serían reubicadas es de 3.095, distribuidas en 14 localidades. Otro resultado relevante de los estudios, es que debido a las condiciones naturales de la región y la forma en que son utilizados los recursos naturales por la población, se ha producido una degradación y pérdida de los recursos, en especial del suelo y la biodiversidad, sin que los habitantes logren satisfacer sus necesidades.

96. Se ha puesto especial atención en que las reubicaciones no impliquen transformaciones radicales de la forma de vida de las personas que serán reubicadas, así como de aquéllas que de una u otra forma sufrirán algún tipo de afectación. A la fecha, se tienen determinadas 11 de

las 14 localidades que serán reubicadas y se cuenta con actas de validación de las asambleas generales de dichas localidades. Cabe señalar que los sitios propuestos no están a más de un kilómetro de donde actualmente se encuentran; algunas sólo se moverían 50 metros. Los sitios de reubicación fueron propuestos por los propios habitantes y después sometidos a una rigurosa evaluación por parte de la Universidad Autónoma de Guerrero, para después de hacer la evaluación, volverlos a someter a reconsideración por parte de la Asamblea, momento en el cual se determina el sitio de reubicación.

97. Para el adecuado seguimiento del Plan de Desarrollo Integral, el Gobierno del Estado de Guerrero ha propuesto la creación del Consejo de Desarrollo para el área de influencia del Proyecto, el cual se integraría por representantes de los distintos consejos de desarrollo comunitario que se conformarán en cada comunidad del área de influencia, además de los representantes de cada dependencia federal, estatal y municipal. Dicho consejo sería el órgano de decisión del conjunto de programas y proyectos que se tengan contemplados para el área de influencia y que posibiliten alcanzar los objetivos del Plan de Desarrollo Integral.

98. Cabe aclarar que la CFE no ha iniciado el proceso de licitación, ni ningún trabajo constructivo de la presa. Los únicos trabajos realizados en el área de influencia se han restringido a estudios e información requerida para diversos trámites de autorización, así como para concluir los diseños de ingeniería. Aunque se han llevado a cabo algunas obras de desarrollo social en las comunidades, a petición expresa de las autoridades y pobladores, no ha mediado para ello el requerimiento de apoyos o acuerdos favorables hacia el Proyecto a cambio de las obras realizadas.

99. El gobierno de México coincide plenamente en la necesidad de promover un clima de conciliación entre los habitantes del área de influencia del Proyecto, condición fundamental para el desarrollo de toda el área. Las diferencias se han dirimido por los cauces legales pertinentes, mientras que el Gobierno, tanto federal como local, trabaja responsablemente para encontrar las coincidencias, en un marco de respeto a las decisiones de las mayorías.

100. El Gobierno de México quiere agradecer a los Relatores Especiales el interés que han mostrado en el tema de los derechos humanos de los habitantes de la región donde se ubica el Proyecto y las reflexiones que han tenido a bien compartirle. Todas ellas son de gran utilidad para que las autoridades competentes complementen el estudio de impacto social y con ello mejorar las prácticas de información y discusión del Plan de Desarrollo Integral en las comunidades.

Comunicación enviada

101. El 16 de noviembre de 2007, el Relator Especial, juntamente con el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas y el Relator Especial sobre el derecho a la alimentación, envió una carta de alegación con respecto a la situación de la comunidad huichola (wixárika) de Bancos de San Hipólito, en el Municipio de Mezquital, Estado de Durango. La situación del pueblo huichol (wixárika) fue referida en el informe sobre la visita a México del Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas en 2003, como uno de los casos más destacados de comunidades indígenas que “no poseen seguridad jurídica en cuanto a la tenencia de la tierra, por la lentitud y la corrupción que ha caracterizado a los trámites agrarios, así como los intereses

de diversos particulares” (E/CN.4/2004/80/Add.2, párr. 20). La situación del derecho a la tierra de las comunidades huicholas (wixárika) fue asimismo objeto de una reclamación ante el Consejo de Administración de la Oficina Internacional del Trabajo en virtud del artículo 24 de la Constitución de la Organización Internacional del Trabajo, en la que se alegaba la violación por México de las disposiciones del Convenio N.º 169 sobre pueblos indígenas y tribales en países independientes (GB.272/7/2). De acuerdo con la información recibida la comunidad de Bancos de San Hipólito es una comunidad wixárika que se encuentra ubicada en el Municipio de Mezquital, en el Estado de Durango. Desde tiempos inmemoriales, la comunidad de San Hipólito formó parte de la misma unidad territorial de la vecina comunidad de San Andrés Cohamiata. Las tierras de ambas comunidades fueron reconocidas en un título virreinal otorgado por la Corona Española en 1725. Sin embargo, según se informa, tras el procedimiento de confirmación y titulación de bienes comunales de San Andrés Cohamiata, Bancos de San Hipólito quedó segregado y sin reconocimiento sobre su territorio, el cual fue otorgado a un núcleo de población formado por colonos mestizos, San Lucas de Jalpa, por Resolución Presidencial de 28 de julio de 1981, posteriormente confirmada por acta de posesión y deslinde de 28 de julio de 1981. San Lucas de Jalpa, que carecería de presencia ancestral en el territorio, habría asumido desde entonces tanto la titularidad de las tierras como la representación agraria de Bancos de San Hipólito. A pesar de esta situación irregular, la comunidad indígena de Bancos continuaría usando sus tierras tradicionales, de conformidad con su derecho consuetudinario, usos y costumbres, en un área aproximada de 10.720 hectáreas, que se encuentran dentro de las tierras formalmente reconocidas a San Lucas de Jalpa. En dicha área, según los informes, los miembros de la comunidad de Bancos practican todavía la agricultura rotativa, de acuerdo con criterio de pertenencia a linajes familiares tradicionales. Dicha actividad agrícola procura a esta comunidad acceso a los alimentos necesarios para su subsistencia y está íntimamente vinculada con ceremonias y ofrendas en lugares sagrados, que se considera que refuerzan las relaciones recíprocas con el mundo natural y con sus ancestros. Existiría una correlación entre los centros ceremoniales, los lugares sagrados y el número de rancherías, cuyo gran número y dispersión serían la consecuencia de la topografía accidentada, de la escasez del agua y de la dispersión de la agricultura itinerante. Desde 1968, las autoridades de Bancos habrían emprendido una serie de acciones legales ante las autoridades mexicanas para lograr el reconocimiento formal de sus tierras a través de un procedimiento de dotación, sin conseguirlo. A raíz de los trabajos de regularización realizados por el Programa de Certificación de Derechos Comunales (PROCEDECOM), implementado por la Secretaría de la Reforma Agraria, a favor de San Lucas de Jalpa, la comunidad de Bancos habría interpuesto recursos ante el Juzgado de Distrito en Materia Administrativa en el Estado de Durango, en 2000, y ante el Tribunal Agrario del Distrito VII del Estado de Durango, en 2002. El 27 de octubre de 2007, el Tribunal Superior Agrario del Estado de Jalisco emitió la sentencia definitiva sobre el caso. En su sentencia definitiva, el Tribunal Superior Agrario habría confirmado la propiedad de las tierras a favor del núcleo agrario de San Lucas de Jalpa, ordenando a la comunidad indígena de Bancos de San Hipólito a que entregara a favor de la primera las tierras de las que se encuentra en posesión, con excepción de “aquellas áreas de asentamiento humano, construcciones en donde radican los indígenas huicholes y de superficies destinadas a la agricultura.” El 10 de agosto de 2007, la comunidad habría interpuesto un recurso de amparo ante la autoridad constitucional en contra de la sentencia agraria. Según las alegaciones, la obligación de restitución dictada por el Tribunal Superior Agrario afectaría a la mayor parte del territorio que tradicionalmente usa y ocupa tradicional Bancos de San Hipólito de conformidad con sus usos y costumbres, incluyendo áreas ceremoniales y de significación espiritual, rancherías, pastos, bosques, fuentes de agua y áreas

reservadas a la agricultura itinerante. Se expresa la preocupación de que la ejecución de dicha sentencia equivaldría al desalojo forzado de la comunidad de sus tierras ancestrales, privándola de cualquier posibilidad de supervivencia ni material ni cultural como comunidad. Sea alega asimismo que la situación jurídica que enfrenta ahora la Comunidad de San Hipólito sería el resultado de la falta de adecuación en el derecho interno mexicano de las normas internacionales en materia de los derechos de los pueblos indígenas sobre sus tierras y recursos naturales, que incluyen el derecho de estos pueblos sobre la totalidad de los territorios que han usado tradicionalmente. En este sentido, se expresa la preocupación de que la Comunidad de Baños de San Hipólito carezca de mecanismos eficaces en el derecho interno para la defensa de los derechos sobre su territorio, tal y como son reconocidos por las normas internacionales.

Observaciones

102. El Relator Especial le agradece al Gobierno por su apoyo durante la visita a La Parota, por el dialogo franco y constructivo que ha entablado con el Relator Especial con respecto a este tema. y por sus comentarios y observaciones en torno al documento “Reflexiones sobre algunas implicaciones en materia de derechos humanos del Proyecto hidroeléctrico de la Parota”. El Relator Especial espera que estos esfuerzos contribuyan a encontrar una solución a esta situación.

103. El Relator Especial lamenta que en el momento de la finalización de este informe, el Gobierno no haya transmitido respuesta a su comunicación del 16 de noviembre de 2007.

Nepal

Communications sent

104. On 4 September 2007, the Special Rapporteur sent a joint allegation letter with the Independent Expert on minority issues, the Special Rapporteur on the right to food, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people concerning indigenous and minority population, located around the Royal Chitwan National Park (RCNP), in Nawalparasi District, gazetted in 1973 and declared a World Heritage Site by the United National Education and Science Organization (UNESCO) in 1984. According to the information received the Ramandar settlement in Makawanpur District, Manahari, where there are approximately 1,200 households, is mostly composed of Tamang and Chepang (Tsepeng) indigenous communities and Dalits. According to this information, these families were resettled in 2002 in this area as a result of displacement caused by floods and landslides. It is reported that the new settlement area for the above communities provides space for housing but does not have adequate areas for food cultivation. Due to the public policy introduced in 1995 whereby forests are attributed to the responsibility of certain communities, the inhabitants of the Ramandar settlement are no longer able to access the nearby forests of Manakama and Churia Regia, which, for example, have been put at the disposal of the Pashupati/Manakamana and Babargunj communities respectively. It is also reported that, despite the presence of several tube wells within walking distance, the residents of the Ramandar settlement are denied access to the wells and must obtain its water from a nearby stream where the water is reportedly murky and dark. The primary source of food is a type of root (tarrow) which is obtained by digging down to a depth of approximately five feet; this root is boiled and mashed, sometimes mixed with rice if available and salt. It is reported that the community is often able to eat this meal two times a day

but often they have enough for one meal per day. Although some find work as agricultural labourers, this work appears to be unreliable and available for two or three months per year. It is reported that the men earn Rs.100 per day (\$1.50 CDN) and the women earn half that amount, which is less than the prescribed minimum wage. This situation seems to be exacerbated by the lack of participation by Ramandar settlers in local resource benefit sharing schemes and limits their ability to qualify as agrarian reform beneficiaries further limiting their ability to access sufficient food. Concern has been expressed that the residents of the Ramandar settlement, and particularly children, could face risk of starvation during the monsoon period due to the extreme poverty, marginalisation and chronic food insecurity they have suffered. According to the information received there have been inadequate responses from local authorities and no government representatives or aid agencies has evaluated the situation nor had any emergency food aid been received. In addition concerns are expressed with regard to the situation of the Piprahar indigenous community (Majhi-fisherman and Bote-boatman) who has lived for decades as fishers on the vicinities of RCNP. The community's primary source of food was traditionally the fish caught in the Narayani River, supplemented by fruits, yams, roots and vegetable gathered from the nearby forest, and with cash earned from work as ferryman and panning for gold in the river sands. It is alleged that these means of securing adequate food for the community were lost with the establishment of RCNP. According to the allegations received, RCNP has a mandate to protect and breed crocodiles, which require abundant amounts of fish to survive and, to this end, the park's authorities declared a ban on fishing in the Narayani River, thus limiting the Piprahar community's traditional fishing practices. It appears that the Piprahar community has now only access to fishing in the tributary streams, which does seem to provide a sufficient amount of fish to fulfil their dietary requirements. It also appears that additional restrictions on the size of fishing nets were introduced, and that in some cases fishing nets of these communities were burnt by the authorities. Families caught fishing in the river and collecting vegetables in the nearby forest experienced beatings and fines. The problems seems to be exacerbated by a downstream dam located across the border inside India, which reportedly blocks the natural migration of fish during the winter and sweeps them away during the annual monsoon season, thereby further decreasing fish stock levels, as well as by the establishment of a paper mill and a brewery located upstream on the bank of the river, which have been releasing waste directly into the river killing fish and further decreasing the amount and size of fish available. In addition, it is reported that the traditional means of supplementing have also been lost, including the prohibition of gold-panning and that, while some members of the community have been able to adapt to new means of livelihoods such as porters, labourers and workers in agricultural fields, others who try to derive their livelihoods from their traditional economies are unable to access sufficient and adequate food. Following the information received the buffer zone benefits under the park's benefit-sharing schemes do not accrue to community members, partly because they do not participate in user committees and partly because the benefit-sharing projects are irrelevant to the community's needs. Finally, the situation of the Pripahar community seems to have deteriorated as a result of the displacement of the community due to the flooding of late 2006, which have forced them to abandon their settlement on the river banks and resettle in the nearby highlands in extremely poor and temporary conditions, and they have reportedly received no appropriate humanitarian assistance.

Observations

105. On 11 September 2007, the Permanent Mission of Nepal acknowledged receipt of the communication of 22 August 2007 and channelling it to the capital. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted any reply to his communication. The Special Rapporteur continues to monitor the situation with interest.

Philippines

106. On 11 October 2007, the Special Rapporteur sent an urgent appeal concerning two evictions in Manila, one scheduled for October 15 and the other presumably after the end of Ramadan. According to the information received the first threatened eviction concerned a group of slum dwellers residing along an “estero” (canal) called Tripa de Gallena Estero in Pasay, in the Manila local districts Barangay 43 and 46. According to this information, on 19 August 2007 the Metropolitan Manila Development Authority, together with security officials, destroyed extensive properties and dwellings in Barangay 46. As a consequence, the majority of the almost 150 affected families remained in situ, in extremely precarious living conditions. Following the information received, this eviction would have affected an additional 148 families in Barangay 43. Following the threats of eviction, these families proposed to be resettled in the neighbouring municipality of Montalban which appears to be willing and able to accommodate their request. At the time of sending the urgent appeal this proposal appeared to be blocked at the level of the Home Guarantee Corporation, an institution under the National Housing and Development Authority (HUDCC). Following the information received the second eviction would have affected the Mosque community, located in Pasay, district of Manila. These people have reportedly been living on a plot of reclaimed land since 1992. Evictions of this community allegedly began in 1999, but the eviction actions increased consistently during 2007. Allegedly there are plans for developing this area with malls and a casino. Following the information received, in January 2007, four people belonging to this community were shot during a raid by security authorities and three of them apparently died later. It is also reported that at the time of sending the urgent appeal any criminal investigation would have been undertaken nor any disciplinary proceedings against the perpetrators. It has also been alleged that in June 2007 authorities ordered the “voluntary demolition” of 700 houses, and shut down the main access road. In addition, they would have surrounded part of the Mosque area, including the path leading to the local school and disconnected water and electricity. An application for mobile water provision was rejected by authorities, who justified the decision with the fact of the closed access road. As a result, there have reportedly been seven cases of malaria among the children living there, as well as instances of heat exhaustion. Moreover around thirty children would have been withdrawn from school, due to the fact that the route providing access to it is now very long. Following last June eviction, around half of the community appears to have left and taken up rental accommodation in the area, but the rest stayed and set up shanty accommodations around the walls of the mosque. According to the information received there are 376 families living in the Mosque area and on 15 October 2007 a court should have reviewed a temporary injunction against further evictions and deciding whether to extend it or not. Allegedly, the above mentioned families have not been offered alternative accommodation and it also appears that in the view of the relevant authorities they should go back to Mindanao, where they are from.

Observations

107. The Special Rapporteur regrets that at the time of finalizing this report, the government has not transmitted any reply to his communication. The Special Rapporteur continues to monitor the situation with interest.

South Africa

Communication sent

108. On 30 July 2007, the Special Rapporteur sent an allegation letter regarding the KwaZulu-Natal Elimination and Prevention of Re-emergence of Slums Bill, 2006. According to the information received, the Provincial Bill was recently approved by the KwaZulu-Natal Legislature and is currently awaiting signature by the KwaZulu-Natal Premier to enter into force. The Special Rapporteur has been informed that certain provisions of the Bill may contradict both international obligations on the prohibition of forced evictions and human rights guaranteed by the Constitution of the Republic of South Africa, in particular section 26(1), 26(2), 26(3) and 28(1). The Special Rapporteur notes that the Bill refers to of the “control and elimination of slums” and focuses on land owners to prevent informal occupation and in cases of existing informal occupation to institute eviction procedures. The purported aim of the Bill, however, seems to contradict the Prevention of Illegal Eviction from Unlawful Occupation of Land Amendment Bill (PIE), which focuses on establishing rights for informal occupiers, and protecting them from forceful and undignified eviction. It has been further alleged that the Bill does not foresee a comprehensive plan regarding alternative land available which was set out in the Constitutional Court decision in the *Republic of South Africa v. Grootboom* (CCT 11/00) case. The formulation of the Bill: “In the event of a municipality deciding to make available alternative land or buildings for the relocation of persons living in a slum...” seems to suggest that the municipality may not have an obligation in this regard. Furthermore, there seems to be no requirement for consultation with the persons that would potentially be affected by these decisions. This may be in contradiction with the national housing policy “*Breaking New Ground*” (2004) which promotes a cooperative and participatory approach to informal settlement in-situ upgrade programme. According to information received also other provinces are considering the adoption of similar bills. As the Special Rapporteur had to finalize its report within two weeks, he would have been grateful if the Government could have provided him with information on the position of the Government in regard to this Provincial legislation and whether it had been foreseen that the constitutionality of the Bill and its compliance with international obligations would have been reviewed.

Response received

109. By letter dated 30 October 2007, the Government replied to the above communication. The Government firstly informed the Special Rapporteur that the project of law KwaZulu-Natal Elimination and Prevention of Re-emergence of Slums has already been signed into law by the Premier, having been assented to on 18 July 2007 and, thereafter, duly published in the KwaZulu-Natal Provincial Gazette No.22 (Notice No.4) on 2 August 2007 as the KwaZulu-Natal Elimination and Prevention of Re-emergence of Slums. Before responding to the specific queries submitted by the Special Rapporteur, the authorities summarized this Act. They indicated that in essence, the purpose of the Act is to progressively eliminate “slums”, which are defined in

section 1 of the Act as:” overcrowded or squalid land or buildings occupied by predominantly indigent or poor persons, without security of tenure and with poor or non-existent infrastructure or sanitation, and “slum conditions” has a corresponding meaning.” Amongst the measures introduced by the Slums Act to prevent the re-emergence of slums there are: the prohibition of unlawful occupation of land or building without the consent of the owner or person in charge thereof; the prohibition of sub-standard accommodation to persons for financial benefit; a provision which entitles municipalities to order unscrupulous landlords who provide sub-standard accommodation to other persons for financial gain to effect the necessary improvements or repairs thereto, failing which to institute proceedings for the eviction of the occupants thereof; the obligation for any owner or person in charge of vacant land or building to take reasonable steps to prevent the unlawful occupation thereof. It was also specified that it was deemed necessary to establish the extent of the slum problem throughout the KwaZulu-Natal Province before taking the necessary and appropriate steps to address it. Therefore, before the programme for the elimination of slums in terms of the Slums Act can commence, each Municipality is required to prepare and submit to the MEC a status report containing, inter alia, the number of existing slums within its area of jurisdiction, together with its proposed programme for the elimination thereof. Thereafter, in order to enable the MEC to monitor the progress made by municipalities in their slum elimination programmes, each municipality is required to submit to the MEC a progress report for each financial year reflecting, inter alia, the steps taken by such municipality in the implementation of its slum elimination programme in that financial year, as well as the improvements made in the living conditions of the people concerned as a result thereof. The MEC is, in turn, required to report to the KwaZulu-Natal Legislature on the progress made by municipalities province-wide in that regard. In relation with the possibility that the Act contravenes international and constitutional provisions on forced evictions, the authorities indicated that the Act does not contain any provision for the forced eviction of slum dwellers. Instead, it specifically provides that any eviction pursuant to its provisions must be carried out in accordance with the applicable provisions of the PIE Act, the Constitution, and any other national legislation protecting the housing or occupational rights of persons. The implementation of the Slums Act will therefore not result in a wholesale or apartheid-style eviction of people from informal settlements before alternative land has been found or secured for their relocation. In the event of an eviction of people from an informal settlement being considered necessary by a municipality in the public interest, such as the need to protect life or health of the persons concerned, the Slums Act makes provision for the establishment of transit areas by municipalities within their areas of jurisdiction, and also gives them the right to expropriate land for that purpose should this become necessary. They further informed that “elimination of slums” in terms of the Slums Act is to occur progressively and is intended to operate alongside the sustainable housing development process embarked upon by the Government of the Republic of South Africa and the KwaZulu-Natal Province, in terms of the Constitution, the National Housing Act as well as the KwaZulu-Natal Housing Act, No.12 of 1998 (“the KZN Housing Act”), so as to ensure the replacement of slums with adequate housing and to avoid anyone being rendered homeless as a result of the slum elimination programmes to be adopted by municipalities in terms of the Slums Act. They also underlined that any progress made by the KZN Provincial Government in the provision of adequate housing to the existing slum dwellers is continuously undermined by land owners who fail to prevent unlawful occupation of their land or premises thus perpetuating the existence or re-emergence of slums. Invariably, such owners end up taking no responsibility for the provision of basic services to the unlawful occupiers concerned and, in some instances, resort to exploiting them for financial gain

by charging them exorbitant rentals for the “unlawful” occupation of their land. Concerning the necessity to foresee a plan regarding alternative land available, the authorities specified that in addition to the sustainable housing development process embarked upon by the KZN Province in terms of the KZN Housing Act, the Slums Act also provides for the upgrading of slums to render them fit for human habitation and, where necessary, the relocation of slum dwellers to alternative land, if available, or to a transit area pending the acquisition of alternative land or buildings for their permanent occupation or accommodation. As to the requirement for consultation with the persons potentially affected by such decisions, the Slums Act requires each municipality to submit to the MEC a status report setting out, inter alia, the extent of slums within its area of jurisdiction, together with its proposed programme for the elimination thereof. Such programmes will then be assessed by the MEC on an annual basis, who will, in turn, require each municipality to consult with any persons affected by its programme as one of the prerequisites for the financing of such programme in accordance with the regulations made by the MEC in terms of the Slums Act.

Communication sent

110. On 9 October 2007, the Special Rapporteur sent an allegation letter jointly with the Working Group on Arbitrary Detentions, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on the question of torture, concerning a manifestation of shack dwellers in the eThekweni Municipality. According to the information received, on 28 September 2007, a group of civil society organizations representing shack dwellers in the eThekweni Municipality organized a march to deliver a memorandum to the Mayor presenting their views on housing and land issues that was affecting the city. According to reports, although the march was legal and peaceful, it was stopped by the police, which used water cannons, rubber bullets and stun grenades to disperse the protesters. Allegedly, two participants were severely injured, one of which was allegedly struck by a rubber bullet at close range. Fourteen participants of the march would have been arrested during the manifestation, being later liberated after paying bail. Reportedly, they should have been tried on 13 November 2007 by the Durban Magistrate’s Court.

Observations

111. The Special Rapporteur has also elaborated the issue of the KwaZulu-Natal Elimination and Prevention of Re-emergence of Slums Act, in the report on his mission to South Africa.⁶ The Special Rapporteur appreciates the extensive reply made by the Government to the allegation letter transmitted on 30 July 2007 and he will continue to closely monitor this situation particularly concerning the consistency of this bill with the constitutional provisions, relevant constitutional court judgements, and international human rights obligations.

112. The Special Rapporteur regrets that at the time of finalizing this report, the government has not transmitted any reply to the joint allegation letter transmitted on 9 October 2007. The Special Rapporteur continues to follow the situation with interest.

⁶ See report A/HRC/7/16/Add.3.

The Sudan

Communication sent

113. On 25 July 2007, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders regarding Mr. Osman Ibrahim, spokesperson for an organisation called "*Committee against the Kajbar Dam*". According to the information received: Mr. Osman Ibrahim was arrested in the early morning of 20 July 2007 by police officers at his home in Farraig village, Halfa municipality, Northern Sudan. No arrest warrant was produced and no reasons were given why Mr. Ibrahim was taken to an unknown place. His arrest followed incidents on 13 June 2007, when Sudanese security forces allegedly killed and injured civilians in the Farraig village by shooting at them during a non-violent demonstration against the construction of the Kajbar Dam in the area. On that occasion, several individuals were arrested and detained in Dongola, the capital of the northern State, and in Khartoum. Concerns were expressed that the arrest and detention of Mr. Osman Ibrahim might be in reprisal for his activities in the defence of human rights of the communities which are at risk of being affected by the Kajbar Dam. In view of Mr. Ibrahim's detention at an undisclosed place further concerns are expressed regarding his physical and mental integrity.

Response received

114. On 29 August 2007, the Permanent Mission of the Republic of the Sudan replied to the above communication and informed that Mr. Osman Ibrahim, Mr. Alam Eldin Abdulgani, Mr. Abdulla Abd Alqayom, Mr. Imad Eldin Mergani, Mr. Abdul Aziz, Mr. Mojahid Abdulla, Mr. Saad had been released, while Dr Mohammed Jalal Hashim was still detained.

Communications sent

115. On 21 August 2007, the Special Rapporteur sent an allegation letter on the Merowe Dam and on the construction of another hydro-electric Dam in the Kajbar area, both located in the northern Nile valley in the Sudan. In regard to the Merowe Dam, the Special Rapporteur referred to his communications dated 5 July 2006, 25 August 2006 and 9 October 2006 for which no answer has been provided to date. The Special Rapporteur continues to receive information on forced evictions and violence as a result of the implementation of the Merowe Dam project. It is reported that this dam located at 350 km north of Khartoum, and reportedly due to be completed by the end of 2009, is principally funded, in addition to the Sudanese Government, by the China Export Import Bank, the Arab Fund for Economic and Social Development, and the Development Funds of Saudi Arabia, Kuwait, Abu Dhabi, and the Sultanate of Oman. The project is being executed by Chinese and European companies, including Harbin (China), Lahmeyer International (Germany), Alstom (France) and ABB (Switzerland). Reports indicate that some 44,000 people remain to be relocated, approximately 86 per cent of them belonging to the Manasir community, and 14 per cent to the Amri community. In responding to community protests, security forces have reportedly used live ammunition during the policing of protests, leading to killings and injuries. Construction of the dams is reportedly coordinated by the Dam Implementation Unit, a government agency which was previously part of the Ministry of Irrigation and Water Resources and became an independent agency directly answerable to the

President in September 2005. It is reported that, as a technical implementation body, the Dam Implementation Unit, has often taken key decisions without consulting with or informing affected communities. It is further alleged that the Dam Implementation Unit was responsible for the measures resulting in the sudden flooding of land inhabited by the Amri community in August 2006, without prior warning to the affected community. Concerns have been expressed that this was a deliberate move to force people out who were opposing the relocation. While the relocation of the Hamadab community was completed in 2003, reports indicate that in the Merowe area, opposition to the dam project by the local communities mounted after the relocation of the Hamadab community and revealed unresolved problems. Reportedly, the government failed to provide adequate infrastructure and services in the relocation area, and failed to pay in full the compensations agreed for lost assets. The relocation areas were not suitable for agriculture and the irrigation system was not operational, leaving the agricultural community largely without revenue or livelihoods. It is further reported that the government failed to address these concerns effectively and has generally responded with repressive measures. This situation has contributed to the fact that the other communities fear to suffer the same fate if they are to be relocated. As stated in the previous communications dated 5 July 2006 and 25 August 2006, reports have indicated violence by members of security forces and other official agencies toward members of the Amri community opposing the forced relocation, and human rights defenders and journalists working on this issue. In his communication dated 9 October 2006, the Special Rapporteur related allegations of deliberate flooding of the region in order to force people out. A recent rise in water levels has raised fears that there may be a repetition of the flooding of 2006, which left a large number of people temporarily without food, shelter and medical care, to force the remainder of the Amri community to move although community concerns regarding adequate compensation have not yet been addressed. It is further reported that after the flooding of the area in August 2006, the community was relocated to the resettlement area and flaws in the planning process became apparent, as some 800 families were reportedly not allocated housing and were forced to seek shelter with relatives. Some of them have apparently occupied unallocated houses in the relocation area. In addition, community representatives have complained about the poor soil quality and the ineffectiveness of the irrigation system. According to recent reports by community leaders, the housing allocation problems have yet to be addressed by the implementing authorities and parts of the community will not be entitled to compensation for lost land, trees and assets. Some 6,000 people belonging to the Amri community remain on their original land and reportedly refuse to be relocated although rising water levels may lead to a flooding of the area in the coming weeks. In recent days the Special Rapporteur has received reports that current flood levels are higher than those normally caused by seasonal flooding at this time of year, and that this would have been caused by parts of the hydropower dam being shut in order to raise water levels. Community members have reported that three houses have already been destroyed, and that other houses are surrounded by water, with flood levels continuing to rise. Reports indicate that no warning had been received by the community that the land they inhabit would be flooded at this particular time. In July this year, government-run schools in the Amri area had reportedly failed to open for the current school term and school buildings were dismantled in an apparent effort to force community members to move to the relocation site of New Amri where new schools are available. The closure of the six primary schools has affected some 200 students, in addition to some 75 children who were to start school this year. According to reports, medical facilities have been closed since the relocation in August 2006, forcing residents to travel some 70 km to the nearest medical facilities in Karima. The largest group among the affected communities, the

Manasir, is reportedly scheduled to be relocated at the end of 2007. However, the Special Rapporteur has received reports that, despite repeated requests, the community has not been provided with clear information as to when their relocation is scheduled to take place and whether the terms of relocation which they negotiated with local government authorities will be respected. Tension with the authorities rose during the first half of 2007 after the authorities appeared to retract an earlier agreement that the Manasir could be relocated to an area on the shore of the dam reservoir chosen by the vast majority of them, instead of the desert areas which had originally been designated by the authorities. It is reported that only few people from the community accepts to be relocated to the sites identified by the authorities. According to reports, between March and May 2007, six representatives of the Manasir community were detained for close to two months without charge or trial while negotiations about possible relocation sites were ongoing, and there were clashes between security forces and members of the community. Reports further indicate that on 12 June 2007 the authorities conducted a survey to assess how many community members prefer to relocate to the shore of the reservoir and how many would relocate to the settlements which have already been constructed by the dam authorities. The survey reportedly concluded that more than two thirds of the Manasir community prefers to relocate to the shore of the reservoir, but community representatives have expressed that they are not certain their choice will be respected. This is due, in part, to ongoing struggles between different government authorities. Although a 2006 presidential decree transferred all responsibility for relocation of the Manasir to the regional authorities of River Nile State, the Dam Implementation Unit reportedly continues to claim authority over the project, fuelling tensions with the Manasir community. In the Kajbar area, located 650 km north of Khartoum, the construction of another dam reportedly requires the displacement of an estimated 10,000 people belonging to the Mahas, a Nubian community. According to public information sources, the Kajbar dam is budgeted at 200 million US Dollars and will be funded by the Government of Sudan (25 per cent) and the Government of China (75 per cent). Local residents have reportedly opposed the construction and have mobilized large-scale protests against the start of construction work. Reportedly, community leaders dispute the economic rationale for the dam project and demand that all construction is halted until a new, transparent assessment is made. Reports indicate that this situation has generated violence, and resulted in loss of lives and injuries. For instance, it is alleged that in mid-June 2007, four civilians were killed and some 11 injured when security forces fired live rounds of ammunition into a crowd of protesters. Recent reports indicate that seven people remain detained without charge and without access to legal counsel on account of their opposing the dam project, or of their links with people opposing the project. In this context, the Special Rapporteur refers to the communication dated 25 July 2007 that he sent jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders on the arrest of a community's representative and use of violence against opponents to the project.

116. On 24 September 2007, the Special Rapporteur sent an urgent appeal jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, on the detention of Mr. Hisham Abbas, and the detention and subsequent release of Mr. Nazmi Mohamed Hamed, Mr. Nayif Mohamed Hamed, Mr. Al Khatib Mohamed Selim, Mr. Maisara Izzeldin Mohamed Munowar, Mr. Faroug Nuri, Mr. Daoud Suliman, Mr. Isam Mohamed Fagir, Mr. Osman Ibrahim, Mr. Ezzeldeen Idris, Mr. Abdel Hakim Nasor,

Mr. Mamoun Abdel Aziz, Mr. Abdel Razig, and Mr. Samil Mohamed Samil. All of the named individuals are members of the Committee against the Building of the Kajbar Dam (CABKD). Mr. Osman Ibrahim is the spokesperson for the Committee. He was the subject of an allegation letter sent by the Special Representative of the Secretary-General on the situation of human rights defenders, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on torture, or other cruel, inhuman, or degrading treatment or punishment; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living; and the Working Group on Arbitrary Detention, on 25 July 2007. A communication was also sent on 21 August 2007 by the Special Rapporteur on adequate housing on the alleged impact of the Kajbar Dam on the human rights of the population. According to information received, between 27 and 29 August 2007, Mr. Hisham Abbas was reportedly arrested in Wadi Halfa City on his way to Egypt and at the time of sending the urgent appeal he was detained in Wadi Halfa. Furthermore, Mr. Nazmi Mohamed Hamed, Mr. Nayif Mohamed Hamed, Mr. Al Khatib Mohamed Selim, Mr. Maisara Izzeldin Mohamed Munowar, and Mr. Faroug Nuri were arrested in Dongola while Mr. Daoud Suliman and Mr. Isam Mohamed Fagir were arrested in Kerma. According to reports, they were detained in Dongola, under the supervision of the National Intelligence and Security Forces. They were all released on 13 September 2007. In addition, Mr. Osman Ibrahim, Mr. Ezzeldeen Idris, Mr. Abdel Hakim Nador, Mr. Mamoun Abdel Aziz, Mr. Abdel Razig, and Mr. Samil Mohamed Samil were also arrested and later released. Concern is reiterated that the arrests and detention of Mr. Hisham Abbas, Mr. Nazmi Mohamed Hamed, Mr. Nayif Mohamed Hamed, Mr. Al Khatib Mohamed Selim, Mr. Maisara Izzeldin Mohamed Munowar, Mr. Faroug Nuri, Mr. Daoud Suliman, Mr. Isam Mohamed Fagir, Mr. Osman Ibrahim, Mr. Ezzeldeen Idris, Mr. Abdel Hakim Nador, Mr. Mamoun Abdel Aziz, Mr. Abdel Razig, and Mr. Samil Mohamed Samil may be related to their work for the defence of human rights, in particular the human rights of the communities which are at risk of being affected by the Kajbar Dam.

Observations

117. The Special Rapporteur appreciates the response from the Government to the joint urgent appeal of 25 July 2007. He will continue to monitor the situation, and remains concerned about the situation of Dr Mohammed Jalal Hashim.

118. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted any reply to his communication of 21 August 2007, or several previous communications on the impact of hydro-electric projects on the right to adequate housing of communities in the Merowe and Kajbar area. As expressed in a press statement issued on 27 August 2007, the Special Rapporteur continues to monitor and to be deeply concerned by the situation of the communities affected by the hydro-electric projects in those areas.⁷

⁷ “UN Expert urges Sudan to respect Human Rights of Communities affected by hydro-electric dam projects”, Geneva, 27 August 2007, in: <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/E8A869684389FFA0C1257344005DD01D?opendocument>.

119. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted any reply to the joint urgent appeal transmitted on 24 September 2007. The Special Rapporteur continues to monitor the situation and be concerned by the fate of the human rights defenders who were the object of this urgent appeal.

Switzerland

Communication envoyée

120. Le 24 août 2007, le Rapporteur spécial envoyé une carte de allégation concernant la situation du logement à Genève ainsi que des cas d'expulsions qui s'y sont déroulées ou qui sont prévus dans les mois à venir. D'après les informations reçues, la crise du logement à Genève est durable et profonde entraînant une spéculation immobilière intense. Les loyers représenteraient entre un quart et un tiers du budget des ménages et augmenteraient plus rapidement que les salaires. D'après les rapports reçus, le taux de logements vacants est resté à un niveau très bas (environ 0.20 %) ces cinq dernières années. De plus, l'offre de logements sociaux à Genève ne semble pas en mesure de satisfaire la demande et la liste d'attente pour la location de logements sociaux ne cesserait de s'allonger. De plus, les rapports indiquent aussi que les demandes pour des logements locatifs, dans les secteurs publics et privés, requièrent d'importantes garanties de type salarial et bancaire, ce qui représente un obstacle pour les personnes à bas revenus pour accéder à un logement convenable. D'après les rapports reçus, le Conseil fédéral aurait coupé les prêts directs prévus par la loi fédérale encourageant le logement à loyer ou à prix modéré (LOG) entrée en vigueur le 1er octobre 2003. Ces aides directes, prévues afin d'encourager la construction de logements, ont été suspendues jusqu'en 2009, augmentant les difficultés des collectivités publiques de faire face aux besoins en logement de la population. Dans ce contexte, le Rapporteur spécial a également reçu des informations concernant des expulsions à Genève. Selon les rapports reçus, la première expulsion a eu lieu le 10 juillet 2007 au bâtiment situé au 4 rue de la Tour, Genève-Plainpalais. Ce bâtiment était occupé depuis 2001 et abritait également une bibliothèque et une crèche autogérée fréquentée par une quinzaine d'enfants. Selon la source, cette expulsion se serait déroulée sans jugement d'évacuation et sans qu'aucune décision d'expulsion n'ait été annoncée par écrit aux individus concernés. Selon les informations reçues, la police serait arrivée le 10 juillet 2007 à 10h dans le bâtiment et aurait emmené les résidents au poste de police pour procéder à un contrôle d'identité sans invoquer une expulsion comme motif. Pendant ce temps, le propriétaire serait arrivé sur les lieux contrôlé par la police avec un huissier de justice qui aurait déclaré le bâtiment vide, ceci malgré la présence d'un résident. À leur retour, les habitants se seraient vus refuser l'accès au lieu et à leurs effets personnels par la police. De plus, il semble que les habitants n'aient pu récupérer qu'une partie de leurs biens après plusieurs jours, le reste ayant été endommagé ou détruit lorsque les lieux ont été vidés. Les informations indiquent qu'aucune solution alternative de relogement, ni de compensation n'ont été proposées aux personnes expulsées et que celles-ci sont actuellement sans domicile. La seconde expulsion a eu lieu le 23 juillet 2007 dans les bâtiments dit du Rhino situés au 12-14 boulevard de la Tour et au 24 boulevard des Philosophes, Genève-Plainpalais. Selon les informations reçues, ces bâtiments ont été continuellement occupés depuis 1988 par 60 à 80 personnes avec de faibles revenus et comportaient un café et des locaux accueillant diverses activités culturelles. Dans ce cas également, il semble que l'expulsion se soit effectuée sans jugement d'évacuation alors qu'une procédure civile était encore en cours, le Tribunal des baux et loyers devant encore se prononcer sur ce cas. De plus, il semblerait qu'aucune décision d'expulsion n'ait été notifiée par écrit aux individus concernés. Selon les rapports, les autorités auraient basé leur intervention,

entre autre, sur une décision administrative qui aurait été prise pour des problèmes de salubrité, de sécurité et d'habitabilité. Cette décision administrative d'évacuer semble être en contradiction avec le rejet du tribunal fédéral d'une décision d'évacuation basée sur ces motifs dans un cas similaire. D'après l'information reçue, au alentour des 14h, la police serait entrée dans les bâtiments en cassant des fenêtres et aurait ensuite retenu les résidents présents dans les bâtiments jusqu'à 18h avant de procéder à l'évacuation qui a eu lieu par mauvais temps et sous une forte pluie. Selon les rapports reçus, aucune solution alternative appropriée de relogement permanent n'a été proposée aux habitants. Des préoccupations ont été en particulier exprimées concernant le relogement des femmes enceintes et des familles avec enfants qui n'auraient actuellement toujours pas de logement permanent. D'après certaines déclarations publiques, le Gouvernement aurait annoncé que sa responsabilité s'arrêterait à loger les personnes le premier soir suivant l'expulsion. Il semblerait qu'avant l'expulsion, l'État de Genève ait proposé des alternatives à certains habitants, mais que celles-ci auraient été inadaptées. Suite à cette expulsion, certains résidents qui travaillaient dans les bâtiments n'ont actuellement plus de locaux pour travailler et ont, par conséquent, perdu leur seul revenu de subsistance, diminuant leur chance de pouvoir accéder à un logement convenable. De plus, des préoccupations ont été exprimées quant à la possibilité pour une des personnes expulsées atteinte d'un cancer de pouvoir poursuivre son traitement médical de manière suivie et convenable. De manière similaire, des informations ont été reçues concernant une prochaine évacuation du bâtiment situé au 13 rue de l'Arquebuse, Genève-Plainpalais. Ce bâtiment est un lieu d'habitation et de travail pour une trentaine de personnes à faibles revenus depuis 1994. Selon les informations reçues, les résidents auraient reçu un ultimatum de la part du représentant du propriétaire le 26 juillet 2007 qui stipule que si les habitants quittent les lieux avant le 10 août 2007, le propriétaire retirerait sa plainte pour violation de propriété. Suite à cela, le vendredi 27 juillet, le procureur général aurait envoyé un fax afin d'avertir les habitants qu'aucune procédure criminelle ne serait pris à l'encontre des résidents s'ils quittaient les lieux avant le 4 septembre 2007. Les informations indiquent l'absence de jugement d'évacuation, privant ainsi les résidents d'une possibilité de le contester. De plus, aucune solution alternative de relogement n'a été proposée, malgré les demandes des résidents pour de nouveaux lieux de travail et d'habitation. De plus, les rapports indiquent qu'un nombre important de bâtiments ont été évacués à Genève sans que cela aient créé de nouveaux logements malgré la crise actuelle. À titre d'exemple, les Villas des Nations, qui étaient anciennement occupées par une soixantaine d'étudiants à travers la coopérative de logement pour personne en formation, auraient laissé place à un terrain vague. De même, l'ancien bâtiment dit « Hôtel California », dans le quartier des Pâquis à Genève, qui logeait 120 personnes, serait toujours inoccupé trois ans après l'évacuation des résidents. En août 2004, les occupants avaient quitté le bâtiment dès que le propriétaire avait reçu l'autorisation officielle de les transformer en logements sociaux et en un hôtel quatre étoiles. Trois ans plus tard, le bâtiment est, selon les informations reçues, toujours inoccupé et les travaux se seraient arrêtés depuis plus de deux ans. En outre, les rapports indiquent que Genève posséderait de nombreux bâtiments inoccupés et inusités malgré les besoins de la population.

Communication reçue

121. Le 9 novembre 2007, le gouvernement suisse a répondu à la lettre d'allégation transmise le 24 août 2007 par le Rapporteur spécial pour le logement convenable. Le gouvernement a précisé qu'en Suisse, les compétences en matière de logement sont, selon la thématique, du ressort des autorités fédérales ou de celui des autorités cantonales. Concernant la suspension de l'octroi des prêts directs encourageant le logement à loyer ou à prix modérés, les autorités

fédérales ont répondu que suite à une décision du Parlement dans le cadre du programme d'allègement budgétaire de 2003, les articles 12 et 24 LOG, qui constituent la base légale de l'octroi des prêts directs, n'étaient plus appliqués jusqu'à fin 2008. Cependant, les autorités fédérales ont fait savoir que la Confédération encourageait la construction de logement à travers des aides indirectes et que le Conseil fédéral avait prévu de nouveaux moyens financiers pour les aides indirectes. Par contre, ce dernier aurait proposé de renoncer aux prêts directs. Les questions liées aux récentes expulsions ainsi qu'à la situation du logement à Genève ont été transmises aux autorités compétentes, soit la République et canton de Genève. Dans sa réponse, le Conseil d'État genevois note qu'il s'agissait d'expulsions d'occupants illicites d'appartements et non d'évictions forcées, puisque les expulsions en question étaient intervenues à l'issue de procédures judiciaires conformément à la législation fédérale (art. 46 Cst. Féd.) protégeant le propriétaire d'un immeuble contre la violation de domicile (art. 186 du Code civil). Le Conseil d'État a noté que dans certains cas, les autorités cantonales ont décidé de tolérer une atteinte temporaire aux droits des propriétaires de logements qui refusaient de mettre leurs biens sur le marché, les laissant délibérément vides dans un contexte de pénurie aiguë. Ainsi, le Conseil d'État et le Procureur général, l'autorité compétente en matière d'évacuations, sont convenus de ne faire évacuer par la force des logements occupés de manière illicite seulement pour permettre leur remise en location immédiate ou leur remise en état par des travaux pouvant être entrepris sans délai. Selon le Conseil d'État, c'est en fonction de ces principes que les immeubles au boulevard de la Tour 12 et 14 et au boulevard des Philosophes 24 ("squat Rhino") ont pu être occupés à partir de 1988, bien que les propriétaires aient déposé des plaintes pénales et des demandes d'évacuation. Toujours selon lui, c'est également en fonction de ces principes et, de surcroît, en application d'une décision administrative revêtue de la force exécutoire, que les squatters ont finalement été expulsés le 23 juillet 2007. Les nouveaux propriétaires, désireux de remettre les appartements en état et de les offrir à la location, avaient obtenu les autorisations à cet effet en septembre 2005. Le 19 octobre 2005, des avis de la police cantonale affichés sur les portes de l'immeuble invitaient les habitants à libérer les lieux pour le 22 novembre 2005. Suite à cette décision, les squatters ont déposé des recours afin de tenter de se maintenir dans les lieux. Ils ont finalement été expulsés en juillet 2007, moyennant l'intervention des forces de l'ordre. Selon le Conseil d'État, sur les 22 squatters, une douzaine a été relogée par la Ville de Genève. Il a noté que par ailleurs, en date du 3 septembre 2007, le Tribunal des baux et loyers a débouté les anciens squatters de Rhino qui plaidaient l'existence d'un bail tacite entre eux et les propriétaires. Le Conseil d'État a également relevé qu'une proposition de relogement collectif avait été fournie aux squatters de Rhino, dès le mois de novembre 2005. Cette proposition fut déclinée car l'immeuble proposé ne se situait pas en ville. Le Conseil d'État a ajouté que diverses autres propositions avaient été faites en vue du relogement des squatters. Concernant le cas du "squat de la Tour" (rue de la Tour 4), le Conseil d'État a noté que les autorités ont agi dans la légalité étant donné qu'une plainte pénale pour violation de domicile avait été déposée par le propriétaire et que ce dernier était au bénéfice d'une décision administrative en force pour l'exécution de travaux. Selon le Conseil d'État, seul a fait défaut un avertissement préalable clair aux squatters, bien que non obligatoire. Cependant, selon le Conseil d'État, un tel avertissement serait souhaitable à l'avenir. Concernant l'occupation de l'immeuble situé à la rue de l'Arquebuse 13, le Conseil d'État a précisé qu'il n'était pas utilisé comme habitation mais comme atelier et espace de rencontres culturelles. Une plainte pour violation de domicile avait été déposée. Les occupants ont quitté les lieux le 20 septembre 2007 sans opposer de résistance nécessitant l'intervention de la police, les autorités municipales ayant mis provisoirement un autre local à leur disposition. Concernant les mesures prises par l'État de Genève en matière de

logement, le Conseil d'État a précisé que la mise à disposition de logements est une de ses priorités et que les évacuations d'immeubles squattés participent à cette politique. Le gouvernement cantonal soutient la mise en place d'une nouvelle politique de logement. Cela s'est traduit par l'adoption, le 24 mai dernier, d'une loi pour la construction de logements d'utilité publique, soit destinés aux catégories de la population qui en ont le plus besoin. L'objectif visé est d'avoir un parc de logements d'utilité publique de 15 % du parc de logements locatifs et ce en 10 ans. Un crédit d'investissement de CHF 300 millions a notamment été alloué par le parlement pour soutenir cette ambition. Le Conseil a ajouté qu'au niveau cantonal, le budget de l'État atteint CHF 65 millions d'aides directs en faveur du logement social. Ces aides prennent la forme de subventions et d'allocations. Le Conseil d'État a donc considéré que les autorités fournissaient un effort important bien que l'ampleur de la demande ne permettait pas de résorber la sévère crise du logement qui frappe Genève.

Observations

122. Le Rapporteur spécial remercie le Gouvernement suisse pour sa réponse à la lettre d'allégation envoyée le 24 août 2007. Le 28 décembre 2007, le Rapporteur spécial a envoyé une communication de suivi afin de recevoir des informations et clarifications supplémentaires en relation avec les questions soulevées. Le Rapporteur reste en attente d'une réponse du Gouvernement au sujet de cette deuxième communication et il espère continuer le dialogue constructif entamé avec les autorités suisses.

Tajikistan

Communication sent

123. On 30 October 2007 the Special Rapporteur sent an allegation letter concerning evictions in Dushanbe. According to information received, evictions have been occurring in Dushanbe, as a result of the authorities' plans to revive a Soviet-era design for the reconstruction of the city center, which would divide Dushanbe into three concentric circles. It is reported that this design would envision an almost complete elimination of private homes from the innermost circle (the so-called 'first circle'). Reportedly, under this plan all houses, including private ones which are less than three-floors high, are to be demolished and later replaced by large condominium buildings. Historically, the centre of the city has primarily consisted of private houses and buildings that are rarely higher than two floors. It is reported that in the 1990s, at the end of the Soviet era, new legislation allowed people to buy their apartments and houses, most of which were Government property in the Soviet period. This did not entail however property over the land on which these buildings are erected. Many took this opportunity to buy their homes. While the general plan of reconstruction of the city has been officially suspended until 2009, the Special Rapporteur has been informed that in some cases, residents of small houses in the first circle have already started to receive eviction notifications, providing short periods for their relocation. Although the growing city needs seem to require new living space and poorly built houses, many of them constructed during the 1992-1997 civil war, should be demolished, city officials have not reportedly thought carefully enough about the ambitious redevelopment project, especially given the dearth of private investors that would be needed to turn this plan into reality. Despite the fact that national law provides for fair compensation to residents who are evicted for public and governmental needs, reportedly the evictees have been offered smaller apartments in the outskirts of the city whose estimated price seems lower than the current market

value of their real estate property in the city centre. There are also allegations that some of the buildings provided by city authorities for resettlement are unsafe. According to these allegations, in certain cases it seems impossible to live in the apartments that are provided without substantial repairs. In addition there does not seem to be any water supply in these apartments. It is reported that according to Article 32 of the Constitution and the Housing law code in these situations, the families should have been provided with accommodation in the same area as their previous houses were, or alternatively adequate monetary compensation. Reportedly, the value of apartments provided by the city authorities can be estimated to be less than 5 per cent of the value of the evictees' original houses. It is also reported that the situation is further complicated by the absence of provisions on land property in national legislation and absence of independent assessment of real estate value in the city centre. There are allegations that in some instances land from which people were evicted for public needs was later sold for commercial use. The Special Rapporteur has been informed that a group of affected residents wrote an open letter to the President complaining about these evictions and their proposed resettlement outside the city boundaries on land that used to be a cemetery, reportedly inadequate for housing and with no infrastructure or public services. These residents also claim that they will not be provided with any compensation to cover the difference in price for the properties. In addition they claim that they do not have sufficient financial resources to build new houses to replace their current ones and that, although many high-ranking government officials also reside in the first circle of the city centre, their houses are not due for demolition. The Special Rapporteur is pleased to note that the mayor's office on 20 March 2007 has publicly announced that redevelopment will be carried through a regular public consultation process and that realization of the General City Reconstruction Plan within the so-called "first circle" will be carried out gradually and in strict abidance with national legislation and that the housing rights of citizens would not be infringed. According to the mayor's statement, Mr. Makhmadasaid Ubaydullayev, people who were evicted from their houses in the city centre without being provided adequate compensation for their property, and were resettled in the outskirts of the city, will reportedly receive accommodation within the city centre upon completion of reconstruction of the city or will be provided with plots of land for house construction in the Khovaron area in the outskirts of Dushanbe. It is envisaged, however, that the reconstruction will be carried out by private construction companies based on independent investors' projects and therefore the newly constructed property seems unlikely to be state owned. The Special Rapporteur also brought to the attention of the Government information received on allegations of forced evictions as a result of the construction of the new Presidential Residence, the Youth House, and other buildings declared to be of public necessity. According to these allegations, 13 families living in Somoni district in Dushanbe were informed by officials of the mayor's office that their houses were to be demolished to expand the nearby residence of the President, Mr. Emomali Rahmon, without any prior notice. During a meeting with the Deputy Head of the Department of Housing of the mayor's Office, Mr. M. Muladjanov, these families were informed that they had to leave urgently their residences and resettle on the city outskirts, where they would receive apartments on the top floors of a nine-storey building. Reportedly, the city administration officials also informed them that the issue had been long settled and so no other relocation alternatives were possible. According to the reports received, a parking lot for visiting dignitaries was, for example, planned to occupy the area where the house of the Halimov family stood. It is reported that, for their relocation, officials offered them a 40-square meter apartment on the edge of the city, although the family house occupied approximately 300 square meters. The officials reportedly explained that the compensation procedure took into account the size of living

quarters, and not additional space such as kitchens, courtyards, verandas, and storage rooms. The Special Rapporteur also noted that in recent years the whole country has reportedly been facing regular electricity cuts, especially during winter seasons, which have mostly affected districts in the outskirts of Dushanbe where the affected families are allegedly supposed to be relocated. As a result of these cuts elevators in multi-storey buildings do not work most of the time, causing great inconveniences and distress to persons with physical disability or serious health conditions and elderly, when they are not offered accommodation on ground floors. There also seems to be a problem with the tap water which cannot reach upper floors. In the inner city center, where the affected families are allegedly being evicted from, the situation is reportedly better as electricity is provided constantly and the low buildings have no problems with the supply of tap water.

Observations

124. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted any reply his communication. The Special Rapporteur continues to monitor the situation with interest.

Thailand

Communication sent

125. On 10 August 2007, the Special Rapporteur sent a joint urgent appeal with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the question of torture, and Special Rapporteur on the right to health concerning 149 Lao Hmong people at Nong Khai Immigration Detention Centre (IDC), of whom 90 are children and babies. All of them have been recognized as refugees by UNHCR. According to the information received, the Hmong group was arrested by immigration police in Bangkok on 17 November 2006. On 8 December 2006, the group was transferred from Bangkok to Nong Khai IDC. On 30 January 2007, the authorities attempted to deport them to Laos, but failed due to strong resistance by the group. On 12 and 29 June 2007, seven Lao Hmong men escaped from Nong Khai IDC. Following these escapes in early July, immigration officials have applied stricter measures toward the Lao Hmong which resulted in deterioration of their conditions of detention. All of them are confined to tiny cells, without access to daylight and are not allowed to leave the cells. They have no access to clean, potable water but have to drink water from bathrooms inside the cells. These restrictions, as well as limited access to medical care, have caused the spreading of diseases, such as rashes, diarrhoea, respiratory infections and fever, especially among children. Furthermore, contact with the outside world is not permitted as any visits or phone calls are allowed. Ten video cameras, directly connected to Bangkok Immigration, have been installed to monitor detainees' activities.

Observations

126. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted any reply to his communication. The Special Rapporteur continues to monitor the situation with interest.

Uruguay

Comunicación enviada

127. El 16 de Noviembre 2007 el Relator Especial envió una carta de alegación con respecto a las amenazas de desalojo previsto para el mes de diciembre y que habría afectado a 460 familias del asentamiento “24 de Junio”, ubicado en Camino Repetto entre Domingo Mora y Toledo Chico a la altura del kilómetro 16 de Camino Maldonado, en Montevideo. Según las informaciones recibidas, este asentamiento habría empezado a establecerse el 24 de junio del año 2002 en el marco de la crisis económica. Con anterioridad a esa fecha varias familias habrían empezado a pagar a una empresa que promovía el terreno como apto para la realización de cooperativas de vivienda enmarcadas en el supuesto “Proyecto Piri”. Este proyecto de vivienda nunca se habría realizado y la empresa promotora se habría retirado con el dinero que varias familias habían pagado. Por otro lado, según las informaciones recibidas, de igual manera un grupo de habitantes del asentamiento habrían pagado y continuarían pagando a particulares fracciones de terrenos, promocionados como aptos para construir, donde habrían asentado sus viviendas. Se infiere que varias familias habrían sido objeto de manejos de especuladores que les habrían cobrados por terrenos que no se encuentran legalmente habilitados para construir. Según las alegaciones recibidas este desalojo habría sido determinado por el Juzgado de Paz Departamental de Montevideo del 16.º Turno sobre Expediente 128-587/2002 sin tomar las medidas preventivas adecuadas a la cantidad de personas afectadas y sin tomar en cuenta que se trataba del desalojo de familias que ocuparon estos terrenos en muchos casos pagando por ellos y que además vivían en el asentamiento sin acceso adecuado a los servicios básicos de agua potable, iluminación o recolección de residuos.

Comunicación recibida

128. Por carta de fecha 23 de enero de 2008, el Gobierno contestó a la carta de alegación transmitida por el Relator Especial. El Gobierno informó de que el asentamiento irregular “24 de junio” se compone de 389 lotes, de los cuales hay 351 edificados y 38 baldíos. El Gobierno subrayó que el asentamiento se ubica en una zona rural, en cuyo terreno existe una cantera, es cruzado por cables de alta tensión y se trata de una zona inundable. Se informa también que en el asentamiento viven 410 familias compuestas por 323 hogares y que según un relevamiento realizado por sus propios habitantes a la fecha habría una población de aproximadamente 5.000 personas, entre ellos 2.400 niños, mientras que según un censo realizado en 2004 por el Instituto Nacional de Estadística, en el asentamiento habitarían aproximadamente 2.800 personas. El Gobierno considera que la población que habita este asentamiento se encuentra en una compleja situación de pobreza y precariedad y señaló que los pobladores evalúan como muy escasa la cobertura de los servicios sociales de la zona y que no están conformes con la calidad del servicio que se presta. El Gobierno también señaló que el asentamiento presenta problemas en relación con su situación urbano-ambiental, principalmente en lo que se refiere a los efluentes domiciliarios, a la caminería al interior del asentamiento, a las condiciones topográficas del suelo, a la presencia de un curso de agua y de líneas de alta tensión. El gobierno precisó que la titularidad de los predios es privada y corresponde a un conjunto de padrones ubicados mayoritariamente en área rural, pertenecientes a diferentes propietarios. El Gobierno ha expresado públicamente su enorme inquietud por el asentamiento “24 de junio”, dada la cantidad de familias involucradas en un eventual desalojo y por las dificultades en alcanzar soluciones a corto plazo, como podría ser la adjudicación de viviendas a los damnificados. El Gobierno

municipal de Montevideo ha decidido mantener dicho predio como zona rural dado que los mismos quedan excluidos del proceso de urbanización, descartándose por lo tanto, la posibilidad de expropiación habida cuenta de que los padrones no son regularizables, precisamente por ser de uso rural. No obstante el Gobierno aclaró que el programa de Asentamientos Irregulares está impedido de actuar en aquellos asentamientos localizados en tierras privadas para proceder a su regularización y menos aun en zona rural. Antes las distintas notificaciones efectuadas por el Poder Judicial sobre el desalojo de los ocupantes, la Intendencia Municipal de Montevideo ha estado participando de varias instancias con otros organismos del estado para evitar el desalojo forzoso. El Gobierno informó de que ha considerado como necesaria la participación de todas las partes involucradas en este conflicto, tanto publicas como privadas y que entendió que la solución definitiva al problema habitacional de las personas ocupantes el asentamiento “24 de junio” tenía que pasar por la coordinación y articulación de distintos actores estatales y de la búsqueda de diferentes alternativas que se correspondan con las necesidades y situaciones socio-económicas de cada una de las familias habitantes del asentamiento. Por esta razón, gracias a las acciones emprendidas por la Intendencia Municipal y la labor de mediación efectuada por la Junta Departamental de Montevideo, se ha podido lograr la suspensión del desalojo. Para solucionar este problema les fueron entregadas tierras a los propietarios reclamantes, a cambio del terreno ocupado por el asentamiento “24 de junio”, evitando así el desalojo de sus ocupantes, en canje, un predio municipal u otro predio estatal de igual valor. Además se ha realizado un censo a fin de determinar en forma fehaciente la cantidad de personas que habitan en el asentamiento, analizando la viabilidad de reubicar a aquellas que viven en peores condiciones dentro del asentamiento.

Observaciones

129. El Relator Especial le agradece al Gobierno por su respuesta detallada y se felicita que gracias a un importante proceso de mediación y a la participación de todas las partes involucradas se haya encontrado una alternativa al desalojo forzoso.

Vietnam

Communications sent

130. On 12 December 2006, the Special Rapporteur sent a joint allegation letter with the Special Rapporteur on the right to food on resettlement plans for those displaced by the Son La Hydropower Project, which are inadequate thus threatening people's access to livelihoods and food. According to these allegations, on 12 November 2002, the National Assembly approved the construction of this project which is expected to submerge 24,000 hectares of land, including 8,000 hectares of agricultural land and 3,000 of rich forested areas and which requires a large resettlement of people. By 2010 the project is expected to displace 91,000 people or 18,968 households in the three provinces of Son La, Lai Chau and Dien Bien. The allegations received claim that although a resettlement master plan exists, specific guidelines have not been developed and implemented by local authorities in a timely manner. As a result it is reported that many people are resettled before necessary infrastructure is in place. It appears that the land which will be given to those displaced will be taken from host communities, potentially leading to inter-community conflicts. The information received also indicates that resettled communities are not being given adequate assistance in transitioning from their former method of farming (wet rice cultivation) to other forms of agricultural production which does not help them in

creating an environment for food self-sufficiency. In addition the allotment of 400 square meters of residential land (including garden plots) to each household in rural resettlement sites regardless of family size does not appear to be adequate to large families. It is reported also that in some resettled sites, people have poor quality drinking water and serious water shortages during the dry season. The Special Rapporteur with the Special Rapporteur on the right to food brought also to the attention of the Government the allegations they received that hydro dams on the upper Srepok River might affect the access to livelihoods and food of the Cambodian villagers who are expected to be affected by hydro operations upstream. According to these allegations, the livelihoods of an estimated 11,000 people, mostly ethnic minorities living along the Cambodian stretch of the Srepok River may be seriously disrupted by a series of dams that Electricity of Viet Nam plans to build on this river within five years. The largest dam, Buon Kuop, has been reportedly under construction since 2003 and is expected to be completed in 2008. It is reported that people residing along the downstream area of the Srepok River base their subsistence economy on available resources in the area and rely on water, cultivation land and forest. The reports claim that the communities living downstream of the Srepok River may not be able to practice riverbank gardening if there are unpredictable water level fluctuations due to the dams. Paddy production may also be impacted by the construction of the dams if early wet season water levels are low and water may not be channelled to areas away from their river. In addition it appears that the barriers imposed by the dams may result in considerable impact on fish both in terms of reduction in biomass production and species diversity. This may lead to protein deficiency especially in growing children as there appears to be no available alternative to replace fish as a major protein source, considering that wildlife hunting is regulated and domestic animals are raised mainly for selling.

Response received

131. By letter dated 7 March 2007, the Permanent Mission of Vietnam in Geneva replied to the above communication and it informed that to ensure better living conditions for the resettled persons was a consistent policy of Vietnam, when the Government commenced the construction of hydropower projects. With regard to the Son La Hydropower Project, right at the beginning of the process to work out the detailed resettlement plans, the provincial administrations organized fact finding missions for the displaced persons to the planned resettlement sites. After the fact finding missions, the displaced persons voluntarily made commitments to resettle at their chosen sites and only then the detailed resettlement plans were approved by the local administration. The infrastructures were built before the displaced persons resettled. The Government indicated that there have been no signs of potentially conflict between the displaced communities and the host ones. There were no cases that the resettled persons do not have agricultural land, even though due to complicate procedures in some localities the provision of land took time. In addition to the land compensation, the resettled households were provided with financial assistance for the purchase of food, fuel and electricity for the first two years. The Government further reported that ensuring sufficient water supplies was a must in planning resettlement sites. The Government reported that the life of most of the resettled persons is much better in comparison with their life before the resettlement. With regard to the hydro dam on the upper Srepok River, Vietnam always prioritizes sustainable development projects benefiting all parties. The report of the SWECO- Grover consulting company clearly stated that the dam could improve the living conditions of the communities living in the area and have positive influences on the environment.

Communication sent

132. On 23 May 2007, the Special Rapporteur sent a joint follow-up letter of allegation with the Special Rapporteur on the right to food on the resettlement plans for those displaced by the Son La Hydropower Project. The Special Rapporteur thanks for the Government reply on 7 March 2007 his communication dated 8 December 2007. Concerning the resettlement plans for those displaced by the Son La Hydropower Project, it is alleged that in many instances basic infrastructure was not ready and in many sites the water systems were not in place before people moved. According to these allegations the main problem with these resettlement plans remains the lack of sufficient arable land for all the displaced. According to information received people are concerned that when government's support for food, electricity and fuel ends they will have no viable means of food production and income particularly those who moved far away and who can no longer reach their fields, receive less fertile land in the resettlement area and face lower crop yields and incomes. This may reportedly lead to greater food insecurity and changes in livelihood as many will not be able to cultivate the same crops they once grew. Host communities have also reportedly been affected as many of their members have to share their farmland with those who are being resettled and may have to change their livelihoods and means to procure food. The Special Rapporteurs were also informed that the inclusion of gardens in residential land, the differences in the notion of "family" among the different ethnic minorities and the disparity between the actual land area in use and that in official records of the commune land administration, has posed serious constraints in the process of land compensation and allocation. It is also reported that construction has contaminated water sources in some resettlement areas like for example, in Pa So village, Phong Tho district, Lai Chau province. Concerning the hydro dams on the upper Srepok River, the Special Rapporteurs understand that this cooperation strategy, launched at a Summit held between the Prime Ministers of Cambodia, Laos and Vietnam in October 1999, aims at building a "triangle of development" in the shared 3S river basin. They also understand that at the most recent Fourth Summit on the economic triangle, which was held in Da Lat town, Lam Dong province, Vietnam on 5 December 2006, it was agreed to establish a ministerial-level Joint Coordination Committee. However according to the allegations received there has not yet been any civil society participation within this process. It is reported that Srepok River is a critical resource for at least 11,000 people in communities along the river in the Cambodian provinces of Ratanakiri, Stung Treng and Mondulakiri and that hydro development as currently planned may have serious negative impacts on people's livelihoods and food security. In addition the first major flood on the Sesan River caused by the Yali Falls Dam, caused loss of lives and swept away property, livestock and crops in dozens of communities downstream in Viet Nam and Cambodia. It is also reported that in this case SWECO underestimated the downstream effects of Yali and subsequent dams on the Sesan River and that compensation has yet to be provided to the affected villagers. Concerning the SWECO Groner's Environmental Impact Assessment (EIA) it is reported that this is not a complete EIA and it fails to comply with international as well as Vietnamese and Swedish standards related to dam projects.

Response received

133. By letter dated 22 August 2007, the Government replied to the above communication outlining that it always aims at "better living conditions in the resettlement sites" to encourage and compensate for the resettlement of the displaced persons and support them to quickly integrate with their new communities. The Government indicated that the resettlement sites meet

the requirements on production and residential land, electricity, water and other indispensable structure. Concerning land there are no cases that resettled persons are not provided with agricultural land and left with no means of livelihood and procuring food after resettlement. Apart from the compensation for land, the resettled households are provided with financial and technical support for building their houses, education, procurement of food and production. All the resettled persons are provided with enough water supply. Drinking water quality at some sites may not meet the required standards due to the fact that the water supply system is still under the finalization process. Concerning PASO village (Phong Thao district, Lai Chau province this is a new town and still under construction, so that it is difficult to avoid temporary dust pollution. A provisional drinking water supplies has been built to provide water to the villagers. With regard to the hydro dams on the upper Srepok River the contract with the Swedish company SWECO for an environmental impact assessment EIA aims at ensuring the objectiveness of the EIA report. During the last three years, the National Mekong Committee of Vietnam (MRC) regularly monitored the water quality of this area. At the beginning of 2007 the MRC reported that there was no toxin in the water. This result was sent to the Cambodian side for reference. Currently, the construction of the hydropower projects on the Vietnamese side have begun, the water flow has not been intervened; no reservoirs and dams have been built. Therefore, there cannot be any impact to the water quality that can influence the health of the people and domestic animals.

Observations

134. The Special Rapporteur appreciates the response from the Government to his communications. He hopes that continued dialogue will result in the resolution of the human rights issues faced by people affected by the construction of the hydroelectric projects. The Special Rapporteur continues to monitor the situation with interest.

II. OTHER ACTORS

United Nations Interim Administration Mission in Kosovo

Communication sent

135. As a follow-up to previous communications, on 10 January 2007, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the right to health, the Special Rapporteur on toxic wastes and the Independent Expert on Minority Issues, concerning the issue of the camps for internally displaced persons affected by lead contamination in northern Mitrovica/Mitrovicë. The Special Rapporteurs thanked for the reply dated 11 April 2006 concerning a previous communication (dated 27 March 2006) and which indicated certain positive measures and developments. However, requests for information in the letter of 27 March 2006 on the provision of emergency medical treatment to affected persons were only briefly addressed in the Government's response. In the meantime according to the information received the Žitkovac/Zhikovc and Kablare/Kablars camps have been closed after their inhabitants voluntarily moved to the Osterode camp (mainly between March and July 2006), but that up to 150 individuals still remain in the Česmin Lug/Çesmin Llugë camp. Furthermore it is reported specialized medical treatment for some of the residents of the Osterode camp commenced at the end of August. The medical evidence revealing widespread lead poisoning among persons belonging to Roma, Ashkali and Egyptian minority groups who lived in or still

live in the Žitkovac/Zhikovc, Česmin Lug/Çesmin Llugë and Kablare/Kablar camps, appears to be both unanimous and overwhelming. The Special Rapporteurs appreciate the work of UNMIK with respect to closing down these three contaminated camps, and relocating the majority of IDPs to the Osterode camp. However, it is alleged that Osterode camp is also located on contaminated soil. Furthermore, it is alleged that with the exception of members of the Mustafa family who have received treatment in Germany with the assistance of several NGOs, children affected by lead poisoning did not start to receive medical treatment until late August and that many remain to be treated.

Response received

136. By letter dated 16 April 2007, the UNMIK replied to the urgent appeal transmitted on 10 January 2007 by the Special Rapporteur jointly with the Special Rapporteur on the right to health, the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights and the Independent Expert on Minority Issues concerning the camps for internally displaced persons affected by lead contamination in northern Mitrovica/Mitrovicë. The UNMIK informed the Special Rapporteurs that the construction of two apartment blocks at Roma Mahala able to accommodate 24 families had been completed and that two similar apartments' blocks would have been completed by 31 July 2007 for a total of 48 families. 12 of these apartments are earmarked for Cesmin Lug/Llugë residents. At the time of sending this communication 170 Roma, Ashkalis or Egyptians persons had moved to Roma Mahala from camp Osterode and Cesmin Lug/Llugë, as well as 130 Roma, Ashkalis or Egyptians from Montenegro and the Republic of Serbia. This left 395 Roma, Ashkalis or Egyptians individuals living at Camps Osterode and 100 living at Cesmin Lug/Llugë. Camp Osterode remains a Mitrovicë/Mitrovica Municipality. Cesmin Lig/Llugë is managed by UNMIK Administration Mitrovica (UAM) which provides the services of a full time nurse who operates a clinic that provides primary health care services to the remaining RAE community. UNMIK also informed that due to the prevailing political situation in the northern part of Mitrovicë/Mitrovica, Serbian politicians have clearly reiterated that they will not accept forced relocation under any circumstances. The UNMIK stated that the force closure of Cesmin Lug/Llugë is impractical at this time but every effort is made by UNMIK to convince the remaining occupants to move voluntarily to Roma Mahala. 37 private houses have been constructed/reconstructed under the patronage of Danish Refugee Council with funds provided by the Swedish Government and the European Agency for Reconstruction. 20 more houses would have been occupied on 30 June 2007 as more Roma, Ashkalis and Egyptians households will occupy their former houses. Out of the 130 mentioned above, 49 individuals have moved into private housing and 81 into completed two apartment blocks; all from Montenegro and the Republic of Serbia. UNMIK also informed that the United Nations Development program would have taken over the Roma Mahala project from the UNMIK Department of Civil Administration, effective 1 June 2007. The UNDP will be responsible for the planning, execution and canvassing of potential donors in the second phase of the Roma Mahala project. On health issues, the UNMIK affirmed that the Camp Osterode is monitored periodically for lead contamination by the World Health Organization and UAM technical experts. Camp Osterode is a former Serbian Logistic Base occupying premises that are covered in concrete or asphalts. The WHO Chelation Therapy Clinic has been in operation since March 2006 and out of a population of 100 children, has treated 37 children with 12 children needing second phase therapy. The other children were able to recover through additional food supplements. The clinic will be removed to Roma Mahala on completion of the ambulanta presently completing construction. Public health

services are being offered to the Roma, Ashkalis and Egyptian communities at health clinics and public hospitals located in the southern and northern parts of Mitrovicë/Mitrovica Municipality. The aim is to provide integrated health services and improved living conditions at Roma Mahala. UNMIK plans to hand over Camps Osterode to a successor organization by the end of 2007.

Observations

137. The Special Rapporteur thanks the UNMIK for its reply to the joint allegation letter transmitted on 10 January 2007. He will continue to monitor the situation, and particularly the condition of Roma, Ashkalis and Egyptians families and individuals that are still living at Camps Osterode and at Cesmin Lug/Llugë.
