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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 the right to food, Olivier De Schutter*

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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I. INTRODUCTION

1. In the context of his mandate, the Special Rapporteur on the right to food receives a large number of communications alleging violations of the right to food 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. This addendum to the report of the Special Rapporteur contains, on a country-by-country basis, summaries of communications, including urgent appeals, allegation letters and follow-up relating to the Special Rapporteur's mandate for the period 5 December 2007 to 5 December 2008 and the responses received until 6 February 2009. The Special Rapporteur urges all Governments and other actors who have not yet done so to respond promptly to his communications and, in appropriate cases, to investigate allegations of the violation of the right to food and related rights and to take all steps necessary to redress the situation.

2. The Special Rapporteur has sought to condense details of communications sent and received. To the extent that his resources permit, the Special Rapporteur continues to follow up on communications sent and monitors the situation where no reply has been received or where questions remain unanswered.

3. During the period under review, the Special Rapporteur sent a total of 21 communications concerning the right to food to 17 Member States as well as 2 communications to other actors including transnational corporations (the Syngenta Company and to ITM-Mining Angola). 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 relate to the right to food as well as to rights addressed under other mandates.

4. Since the establishment of his mandate in 2000, the Special Rapporteur has worked continuously, together with the United Nations Office of the High Commissioner for Human Rights, to better publicize his mandate and raise awareness among civil society. It should be emphasized that the communications presented in this document in no way reflect the full extent of the serious obstacles that still remain in the realization of the right to food of all around the world.

5. Out of the 21 communications sent to Member States, 3 replies were received and out of the 2 communications sent to other actors, no replies were received. During the period covered by this report the Special Rapporteur also received replies concerning 4 communications which had been included in Report A/HRC/7/5/Add.1 (29 February 2008). The Special Rapporteur welcomes the replies received as he considers them a useful way to engage in constructive dialogues in relation to specific cases, issues or situations. The Special Rapporteur, however, regrets that a number of the Governments he corresponded with have failed to respond at all. The Special Rapporteur considers these communications as still outstanding, and encourages Governments to respond to them and to address all concerns raised.

6. The Special Rapporteur included a heading called follow-up for cases in which either he or Governments provided further substantive comments in relation to the correspondence on a specific case and/or issue.

II. GOVERNMENTS

Angola

Communication sent

7. On 17 October 2008, the Special Rapporteur sent an allegation letter regarding information received about the reported confiscation of farmland by Sociedade Mineira do Cuango (SMC) in order to carry out diamond mining activities in Cafunfo village in Cuango municipality of Lunda Norte province. According to the information received, SMC is a joint mining venture co-owned by ITM-Mining, a British-based mining enterprise (50%), Endiama, the state-owned diamond mining company (35%), and Lumanhe, a private company owned by current and former members of the Angolan Armed Forces (15%). The special Rapporteur added that he had also written to ITM-Mining in order to raise his concerns about its alleged activities and remind the company of its responsibilities under international law. The abovementioned communication is included in this report in the “Other Actors” section. Reportedly, a pattern has been established whereby SMC has been confiscating land from peasants and subsequently destroying the farmland in order to undertake diamond mining activities in the Cuango basin. Subsistence farming is one of the few options for survival of the local population aside from diamond mining. With their farm land confiscated, the peasants in the Cuango basin are unable to carry out their subsistence activities and were reportedly facing widespread hunger. The information provided also alleges that SMC ordered Angolan private security company Teleservice to enforce the land seizures under contract. It was alleged that demonstrations by the affected peasants in respect of the seizures of their land was met with threats of violence by Teleservice. Reportedly, on 22 April 2007, a demonstration by about 60 peasants was fired upon by a Teleservice guard. It was also alleged that much of the farmyard confiscations have taken place without warning, at night and without any consultation of the affected parties. Reportedly, the peasants were not adequately informed about the terms of the transaction and thus agreed unknowingly to extremely unfavourable terms to give up their land. The farmland itself has been allegedly seized without any adequate compensation for loss of land, sustenance and livelihood. According to the information provided, at least 192 peasants who first had their crops in Cafunfo village destroyed received no compensation at all from SMC. The information also states that afterwards 209 other peasants in the area allegedly received US\$0.25 (Kzr 17.5) per square meter of land seized. On the basis of the information provided, SMC allegedly seized a total of 178,758 square meters of land for which it disbursed a total compensation of US\$41,793. It would appear that this amount of compensation is based on an arbitrary measurement by SMC of the seized area and has no actual relation to the actual value of the farmland or the crops. It was alleged that that more undocumented land seizures have taken place. The land has been allegedly seized without any consideration of the rights of the affected peasants in law. Reportedly, there was no agreement provided between SMC and the peasants as required by law. The receipts that have been allegedly provided by SMC likewise do not provide any sound basis in law for the exchange of land. It was reported that in the case of the 209 peasants who received compensation from SMC, receipts proving this exchange were only issued to the peasants after the destruction of their crops. Additionally, the majority of the peasants concerned were allegedly illiterate (80.2%) and only were able to provide their thumbprint as acknowledgment of the compensation provided. It was also alleged that 192 peasants received no compensation and no receipts at all for their land.

8. Reportedly, there has been no attempt to inform the peasants affected by the seizures by SMC of their rights and obligations under the relevant legislation and policies, namely the Diamond Law, specifically Law 16/94 and Law 17/94. In addition, there would appear to have been no attempt to inform the peasants of their legal rights under Angolan law or any attempt to enforce these provisions by your Excellency's Government. This is particularly relevant in respect to Article 9 of the Law n o 9/04 (the Land Tenure Law) of Angola, which states that the confiscation of land belonging to the rural communities can only take place for public use, if a request is made and agreed to and if fair compensation is provided. Additionally, Article 30 of the General Regulation for Land Concession establishes that affected communities can either opt for fair compensation or participate as shareholders in joint ventures in respect of exploitation of their land for diamonds. Clause no 4 of Article 30 states that the compensation must correspond to the real and current value of land according to market trends. The information provided also states that a representation of affected peasants - led by Caxita Fernando - wrote a letter to the Attorney General of the Republic on 25 July 2006. This letter detailed the destruction of the crops and the seizure of land by SMC without the peasant's consents, as required by law. The letter also demanded peasant involvement in a joint commission established to oversee these activities. There seems to have been no response to the letter by the Attorney General at this stage. It was reported that women have been the majority group affected by these land confiscations owing to the fact that 80.4% of the farms seized belonged to women. It was alleged that the loss of their farmlands has forced more women into less secure employment, such as selling goods or produce in the informal markets or by their doorsteps, leaving women vulnerable to informal taxes and increased harassment by the local authorities. It was also reported that the Lunda-Tchokwe people, the major social group in the Cuango basin, have been disproportionately affected by the farm seizures. This is alleged to be possibly related to the fact that the Lunda-Tchokwe people are under-represented in the municipal administration as well as in the national police and public/private security forces in the region.

9. Apart from international standards, the Special Rapporteur referred to Article 21 of the Constitution of the Republic of Angola, which reiterates the commitment of Angola to apply and interpret domestic legislation in a way that complies with the applicable rules of international human rights law to which Angola has adhered.

Communication received

10. On 4 November 2008, the Government sent a reply regarding the above-mentioned letter informing that it took good note of the content of the allegation letter and, giving its nature and the seriousness of the allegations, he had decided to forward to the Attorney General's Office for investigation and clarification. He added that more detailed information would be provided on the findings of this case as soon as they become available.

Observations

11. 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.

Argentina

Seguimiento

12. El 31 del enero del 2008, el Relator Especial, junto con el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas y el Relator Especial sobre una vivienda adecuada como elemento integrante del derecho a un nivel de vida adecuado y sobre el derecho de no discriminación a este respecto, enviaron una carta para acusar recibo de la información transmitida por el Gobierno el 4 de julio de 2007 en respuesta a una previa comunicación conjunta de 27 de marzo de 2007, precisando que un resumen de dichas comunicaciones había sido incluido en el anexo del informe del Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas ante la sexta sesión del Consejo de Derechos Humanos (A/HRC/6/15/Add.1, párrs. 11-24). Los Relatores Especiales agradecieron la información detallada suministrada por el Gobierno, así como las acciones emprendidas, en el marco de la legislación argentina y de los estándares internacionales en la materia, para proteger los derechos de las personas afectadas por los desalojos de familias diaguitas en marzo de 2007. En este sentido, solicitaron al Gobierno cualquier información que estime conveniente sobre el resultado del proceso judicial relativo a la propiedad de las familias desalojadas de la comunidad de Los Cuartos, así como información concerniente a los otros casos que fueron objeto de su comunicación conjunta de 27 de marzo de 2007.

Observaciones

13. El Relator Especial señala que en el momento de realizarse este informe no ha recibido ninguna ulterior comunicación del Gobierno con respecto a su comunicación de fecha 31 de enero de 2008.

Bangladesh

Communication sent

14. On 27 December 2007, the Special Rapporteur together with 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 and Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people sent a joint allegation letter to the Government of Bangladesh to inquire about reports alleging forced evictions and illegal land seizures in the Sadhana Tila area and other Jumma indigenous communities in Chittagong Hill Tracts. In August 2007, Bangladesh army personnel, led by the Dighinala Army Zone Commander, Major Kamrul Hassan, reportedly ordered the eviction of the Sadhana Tila area, in Dighinala Upazilla, Khagrachari Hill District, an area comprising approximately 300 acres of land that houses a Buddhist Meditation Center and Jumma indigenous village, with the objective of allowing for the settlement of 800 non-indigenous settler families. The settlement plan of Sadhana Tila allegedly involves high-ranking officials of the Bangladeshi Army, which have reportedly put pressure on the Baghaichari Mouza No 50, on the Union Council Chairman, and other local elders to agree to the settlement plan. As the local Jumma community refused to comply with the eviction order, the military have reportedly forced the gradual removal of the Jumma community from their traditional lands. In the meantime, military trucks and jeeps have reportedly transported settler families into Sadhana Tila. These settlers had reportedly started to

clear the jungle around the Buddhist temple and to build their houses under the protection and command of the Army and of the police personnel. The Army personnel had reportedly been actively involved in the clearing of jungle areas around the Kamala Bagan School, near Sadhana Tila Buddhist temple. The army personnel had reportedly announced an incentive grant of Taka 50,000 for each settler family who will be willing to settle in the area, in addition to Taka 1,000 as monthly allowance. The army personnel had also reportedly threatened to cut free food rations to those settlers who did not want to settle in Sadhana Tila area. In the meantime, the local administrator of Dighinala had been allegedly asked to provide forged land documents to the settlers. It was reported that the case of the Sadhana Tila area is part of a wider trend of illegal occupation of the Jumma's traditional lands in the Chittagong Hill Tracts in Bangladesh since the Caretaker Government declared the State of Emergency in January 1997. These cases have reportedly led in many instances to the forced eviction of Jumma families, with the active support of members of the security forces. Among the cases that have been brought to the attention of the Special Rapporteurs, there were the following:

15. In March 2007, more than 400 Mro indigenous families were ordered to their ancestral lands in the vicinities of the forcefully evicted from their traditional lands in the vicinities of the Ruma military cantonment, in Ruma Upazila Parishad, Bandarban district. This eviction followed the reported irregular purchase of 7,570 acres of land belonging to the Mro community from the military, in which neither the Mro leaders nor the affected communities were reportedly consulted. - In May 2007, about one hundred settlers reportedly took possession of a total of 37 acres of hilly land belonging to nine Jumma families in the village of Betchari, Rengkarjya Mouza, Merung District. It was reported that Chongrachari army camp commander Subedar Siraj provided protection to the settlers, who have already built their houses on the occupied land.- In June 2007, 12 Jumma families were reportedly evicted by the Military from their traditional lands in Dhankupya village, in Khagrachari district, in order to give ground to the settlement of at least 200 non-indigenous families.- In early July 2007, a total of 200 allegedly illegal settler families occupied the lands belonging to the local Jumma villagers in East Gamaridhala, Dadkuppya Mouza (No. 259), Khagrachari District. The settlers were allegedly brought from different parts of the district including Bhuachari, Mahalchari, Chongrachari, Manikchari, Joysen Para, Kala Pahar, Maischari and Shalbon cluster village. According to the reports, the army personnel directly planned and implemented the settlement.- On 19 July 2007, Betchari Sub-zone Commander Major Kamrul Hassan reported called for an unsolicited arbitration between Jumma communities and irregular settlers in his military camp in Bara Merung, Dighinala Upazila, Khagrachari District. As a result of his verbal judgment, 5.2 acres of land traditionally belonging to three Jumma villagers, but which were not officially recorded, were given away to other three settler families.

16. In an operation lasting from 1 to 15 August 2007, a large number of settlers reportedly occupied 300 acres of hilly land belonging to 17 Jumma families in Kobakhali Mouza (No. 51), Dighinala Thana, Khagrachari District, under the alleged protection of the Military. Approximately 85 non-indigenous families have reportedly settled in the area, and have now cleared the jungle of the occupied lands and are in process of constructing houses. According to the reports, the Military intends to settle a total of 200 families.

17. According to the information received, in another recent case of land-grabbing, illegal settlers have reportedly taken over 59 acres of land belonging to 17 Jumma indigenous people in Kobakhali mouza, under Dighinala police station, in Khagrachari district. Moreover, in an

operation lasting from 1st to 15th August 2007, large groups of settlers led by former Union Parishad (UP) member Mohammed Abu Taleb of Hashinchonpur village and former UP member Mohammed Kader of Kobakhali bazar took control of the hilly lands belonging to Chakma people with the direct assistance of the army, the para-military forces and the local Village Defence Party (VDP) members. Due to the presence of the Bangladesh security forces, which provided protection to the illegal settlers, the Jummas could not offer any resistance. Presently, works for construction of houses in the lands seized from the indigenous peoples were reportedly underway. The army has reportedly planned to settle 200 plain settlers' families in Kobakhali Mouza.

18. In September 2007, an estimated 250 acres of titled lands belonging to Jumma people in North and South Shantipur, Sutokorma and Manikkya villages, Choto Panchari Mouza (No. 246), under Latiban Union of Panchari Thana, Khagrachari district, have been illegally occupied by non-indigenous settlers.

19. It was reported that all these actions may be in violation of article 26 (1) of the 1997 Chittagong Hill Tracts Accord provides that “[n]otwithstanding anything contained in any law for the time-being in force, no land within the boundaries of Hill District shall be given in settlement, purchased, sold and transferred including giving lease without prior approval of the [Chittagong Hill Tracts] Council.” In addition, it was reported that in those cases in which the Jumma villages lack a title deed over their traditional lands, the authorities consider them to be State land, freely disposing of it to facilitate the settlement of non-indigenous settlers.

20. Concern was expressed that these cases may be part of a systematic campaign to support the settlement of non-indigenous families in the Chittagong Hill Tracts, with the active support of the security forces, with an ultimate view to outnumber the local Jumma indigenous community in the region. In this connection, the mandate-holders reminded the government of Bangladesh of the UN Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on 13 September 2007.

21. On 3 April 2008, the Special Rapporteur together with 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 and Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people sent a joint allegation letter to the Government to inquire about reports concerning the alleged illegal seizure of the traditional lands of Jumma indigenous communities in Barbadan, Khagrachari and Merung districts, in the Chittagong Hill Tracts. Between March 2007 and the date of this communication, an estimated 4,500 acres of land had been reportedly taken away from Jumma individual and communities in at least 16 villages or commons belonging to five Unions (Dighinala, Kiang-ghat, Kamalchari, Khagrachari No.1, and Maischari,) in Kagrachari district. The names of the villages in which these episodes reportedly took place were the following:

1. Sadhana Tila Budhist Temple, Dighinala Union
2. East Gamaridhala, Kamalchari Union
3. Tholipara, Non chari, Khagrachari Union (No.1)
4. Headman Para, Noon chari, Khagrachari Union (No.1)

5. Rangapanichara, Kiang-ghat Union
6. Hazachara Village, Kiang-ghat Union
7. Kiang-ghat village, Kiang-ghat Union
8. Ratna Sen Karbari Para, Maischari Unbion
9. Rabi Chandra Para, Maischari Union
10. Pakujjyachari Inner Village, Maischari Union
11. Posai Karbari Para. Maischari Union
12. South Joysen Para, Maischari Union
13. Middle Lemuchari, Maischari Union
14. Lemuchari Boradam, Maischari Union
15. Bodanala, Maischari Union
16. South Joysen Para Community Primary School, Maischari Union

22. The mandate-holders indicated that similar patterns seem to have taken in other districts. By way of illustration, in May 2007, about one hundred settlers reportedly took possession of a total of 37 acres of hilly land belonging to nine Jumma families in the village of Betchari, Rengkarjya Mouza, Merung District. In the Barbadan district, more than 400 Mro indigenous families were reportedly forcefully evicted from their traditional lands in the vicinities of the Ruma military cantonment, in Ruma Upazila Parishad, in March 2007, following the alleged irregular purchase of 7,570 acres of land. It was reported that the Government is currently in the process of acquiring 9,560 acres of land for further expansion of the Garrison. According to the allegations, these lands have been illegally and forcibly grabbed by Bengali settlers from different cluster villages gathered around army camps. It was reported that army personnel were directly involved in all these cases, creating a climate of fear among the local Jumma villagers and instigating the settlers to seize their lands. In other cases, army personnel have reportedly given grants to settler family willing to build their houses in the area. In other cases, army personnel have been allegedly been directly involved in the planning and implementation of the settlement. It was also reported that army personnel have actively assisted the settlers in the construction of houses in the allegedly seized lands. Finally, in other instances, local administrators have been reportedly asked to provide forged land documents to the settlers. In many of the reported cases of eviction, the indigenous families have been forced to leave their homesteads, as well as their domestic fruit gardens, bamboo and teak orchards, on which they traditionally rely for their subsistence economies. It was reported that the cases reported above may be in violation of article 26 (1) of the 1997 Chittagong Hill Tracks Accord provides that “[n]otwithstanding anything contained in any law for the time-being in force, no land within the boundaries of Hill District shall be given in settlement, purchased, sold and transferred including giving lease without prior approval of the [Chittagong Hill Tracks] Council.” In addition, it was reported that in those cases in which the Jumma villages lack a title deed over their traditional

lands, the authorities consider them to be State land, freely disposing of it to facilitate the settlement of non-indigenous settlers. Concern was expressed that these cases may be part of a systematic campaign to support the settlement of non-indigenous families in the Chittagong Hill Tracts, with the active support of the security forces, with an ultimate view to outnumber the local Jumma indigenous community in the region. Concern was further expressed that this process may be deliberately taking place to coincide with the state of emergency imposed on 11 January 2007 by the Caretaker Government

Communication received

23. On 11 April 2008, the Government sent a reply to acknowledge receipt of the joint communication dated 3 April 2008 and assured the Special Rapporteurs that the contents of the communication were duly noted and forwarded to the concerned authorities in Bangladesh for necessary inquiry and actions.

Observations

24. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted any reply to his communication dated 27 December 2007 and had not transmitted any further reply to his communication dated 3 April 2008.

Brazil

Communication sent

25. On 21 April 2007, the Special Rapporteur and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and non discrimination in this context, sent a joint allegation letter with regards to information received concerning the forcible eviction of 300 families belonging to the rural communities known as Riacho Grande, Salina da Brinca, Jurema and Melancia, in the municipality of Casa Nova, state of Bahia. These families claim to be established in and cultivating, the lands they were evicted from for decades. According to the information received, in the early morning of 6 January 2008, agents of the civil, military and federal police, under the supervision of a judicial officer, proceeded to implement a judicial order to evict the families belonging to the communities of Riacho Grande, Salina da Brinca, Jurema and Melancia from the lands they claimed to be established in for decades under the regime of Fundo de Pasto, a traditional and legally recognized form of living in which the use and cultivation of the land is performed on a communal basis. Reportedly, the police acted violently, destroying houses, plantations, fences and stables, besides demanding the immediate withdrawal of all beehives maintained by the families to produce and sell honey. In addition, it was reported that private security guards hired by two entrepreneurs who claimed title over the lands participated in the destruction of the small farmers' facilities. Also, it was alleged that even after the incident the private security guards continued to go to the area and to systematically destroy any trace of occupation of the land by these families. Faced with this situation, on 16 March 2008, the affected families made an attempt to reoccupy their alleged traditional lands in order to avoid the continuous destruction of their indispensable means of living. It was reported that on 17 March 2008 they were violently repressed by the private security guards, who were heavily armed. The guards started shooting indistinctly and harassing the people. Women and children were beaten up and four children were used as human shields.

A woman that was photographing some of the abuses perpetrated was aggressed and had her camera destroyed by the guards. Later on the same day the police arrived to contain the violence and to re-establish public order. According to the information received, for over a century the traditional communities were settled in the same area. The dispute over those lands started in 1980, when they were supposedly acquired by a private company despite the fact that the aforesaid communities occupied and cultivated the lands long before that date. The company was established and became operational in a great part of the lands, which caused the families to lose part of the lands where they raised animals and cultivated. Notwithstanding the presence of the company, the families continued to occupy and earn their livelihoods from the lands that were not seized by the company. A few years later, the company went bankrupt and the communities reoccupied the totality of the lands. Even though the former Land Institute of Bahia (INTERBA – Instituto de Terras da Bahia) measured and delimited part of the land at that time, its work was never completed. Additionally, numerous requests were made by the families to the National Institute for Land Settlement and Agrarian Reform (INCRA – Instituto Nacional de Colonização e Reforma Agrária) to come up with a reasonable solution, which, unfortunately, did not occur. It appeared that after the company went bankrupt, the Bank of Brazil became its main creditor, having financed many of the company's projects. The bank ended up ceding its credit to two entrepreneurs. As the lands were given as a guarantee for the bank loans, the two entrepreneurs initiated a judicial procedure claiming title of ownership over the disputed lands. The judge of first instance confirmed their title and, as a consequence, rendered the order to evict the families that occupied the lands. The families claim the judgment to be null and void, particularly because due process was not observed in the proceedings. A representative of the Office of the Prosecutor was not notified to intervene, which should be mandatory in cases where collective rights are at stake. The Special Rapporteurs added that although they were aware of the recently adopted judicial decision to reintegrate the families into the disputed lands, concern is still expressed for the living conditions of these families, in particular, their right to adequate housing and food. Allegedly, many houses and facilities needed for the families' livelihoods were destroyed. In addition, they expressed concern for the security of the evicted families during and after the reintegration procedure, especially for the possible presence of private security guards in the area.

Observations

26. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted any reply to his communication.

Cambodia

Communications sent

27. On 3 April 2008 the Special Rapporteur, together with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and non discrimination in this context and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, sent a joint allegation letter regarding information received regarding the alleged illegal seizure of the lands traditionally belonging to the indigenous Jarai people in Kong Yu and Kong Thom villages, Pate commune, O'Yadao district, in Ratanakiri province. The reported situation concerns over 500 hectares of traditional lands

belonging to approximately 65 Jarai villagers, which have been reportedly seized by irregular means by an entrepreneur, Ms. Keat Kolney.

A. Alleged land-grabbing and illegal sale of indigenous Jarai land

28. According to the information received, in March 2004, four Pate commune officials and the Kong Yu village chief made several attempts to persuade villagers from Kong Yu to sell their communal land to a buyer from Phnom Penh. The villagers refused to sell the land, stating that it was required for farming and the future needs of the community. On the last occasion, local officials reportedly claimed the land was State land and did not belong to the villagers, and said it was required to provide land to disabled soldiers from Prime Minister Hun Sen's army. The villagers understood that they did not have a choice, and agreed to donate an area of 50 hectares for this purpose. According to the reports, in August 2004, Ms. Keat Kolney, an entrepreneur, visited Kong Yu with the O'Yadao district governor, Pate commune chief and the village chief, and distributed envelopes with money and gifts of sarongs to each family. Before receiving the money and gifts, the villagers were asked to thumbprint documents which they could not read, as the majority of villagers in Kong Yu and Kong Thom do not speak, read or write Khmer. Following the ceremony, the commune and village chiefs took the envelopes from the villagers. The next day, the village chief reportedly delivered an amount of money to each family, widow and single person in Kong Yu. The villagers reportedly understood that the money and the gifts had been given as sign of gratitude for the donation of 50 hectares to disabled soldiers, agreed in March 2004. However, they were subsequently informed that they were the payment for the sale of 500 hectares of land to Ms. Keat Kolney. These 500 hectares included 180 hectares of land that was managed and used by Kong Thom villagers, pursuant to a longstanding agreement between the two villages. It was reported that, shortly afterwards, personnel working for Ms. Keat Kolney started clearing the land to create a rubber plantation, destroying villagers' crops. Since then, the company has denied villagers access to the land, preventing its use as a grazing area for cattle and for planting further crops.

29. It was reported that all these actions are in violation of articles 23 to 28 of the Land Law, which recognize the rights of indigenous communities to collective ownership of their lands. According to Article 265 of the Land Law, it is a penal offence for an authority to commit an infringement against the land rights of an indigenous community. Further, it was reported that the alleged sale of the land to Ms. Keat Kolney is invalid under the Contract Law due to fraud.

B. Legal action against Ms. Keat Kolney and alleged intimidation on indigenous villagers and their lawyers

30. According to the information received, since October 2004, representatives of Kong Yu village have sought assistance from non-governmental organizations (NGO) in order to obtain the return of the land irregularly seized from them. Since 2005, Kong Yu villagers have been represented by lawyers from the Community Legal Education Center (CLEC) and Legal Aid of Cambodia (LAC). In October 2004, Kong Yu representatives reportedly filed a complaint with the local administrative office in Ratanakiri, requesting the dissolution of the Pate commune council due to its role in facilitating the fraudulent deal. In January 2007, six representatives from Kong Yu and six representatives from Kong Thom, whose names are on file with the Special Rapporteur, filed a civil complaint with the Ratanakiri provincial court, seeking the cancellation of the contract of sale on the basis of fraud, and the return of the land. The villagers

sought the return of 450 hectares of land, as they had agreed to give 50 hectares to disabled soldiers. Also in January 2007, the 12 village representatives filed a criminal complaint with the Ratanakiri provincial prosecutor, requesting that Ms. Keat Kolney, the former Kong Yu village chief, five Pate commune officials, the O'Yadao district governor and two others be charged with fraud, forgery of private documents, corruption, bribery and infringement of the land rights of indigenous communities. Reportedly, the Provincial Prosecutor has investigated the complaint, questioning Ms. Keat Kolney and others, but has not yet decided whether to pursue criminal charges against the above-mentioned individuals. In June 2007, Ms. Keat Kolney filed a criminal complaint against the 12 village representatives, their lawyers from CLEC and LAC, and two representatives of Ratanakiri-based NGOs. She requested the Ratanakiri provincial prosecutor to investigate the case and pursue charges of fraud, defamation, incitement leading to the commission of a crime, incitement not leading to the commission of a crime and complicity in an offence. The Provincial Prosecutor is reportedly investigating this complaint. In July 2007, the former Kong Yu village chief, named in the villagers' criminal complaint, and a representative of Ms. Keat Kolney's company, the Progressive Farmers Association, brought the village representatives to the provincial court for questioning by the Prosecutor's clerk, in connection with the criminal complaint filed by Ms. Keat Kolney. They remained during the questioning, and the former village chief translated when the villagers did not understand questions in Khmer. He reportedly asked them to speak in favor of the company, threatening them that they would otherwise not be able to return home. The villagers' lawyers subsequently requested the formal annulment of the statements made to the Prosecutor's clerk. However, it was reported that these statements have been submitted as evidence in the civil case by Ms. Keat Kolney's lawyer. In November 2007 and January 2008, the prosecutor himself questioned the village representatives with their lawyers present. The lawyers and NGO representatives have not yet been called for questioning. Concern has been expressed about the prospect of the villagers facing criminal charges as a result of their efforts to seek an effective remedy in relation to this case, and the proper and equitable application of the law and legal process.

C. Alleged restrictions on communities, lawyers and civil society organizations
defending human rights

31. It was furthermore reported that since the villagers filed their action against Ms. Keat Kolney, freedoms of assembly and movement have been restricted in and around Kong Yu on a number of occasions. In February 2006, approximately 200 Kong Yu villagers gathered at the Pate commune office in order to voice their concerns and seek information on the company clearing their land. Commune officials reportedly accused the villagers of holding a demonstration and causing unrest, and threatened village leaders with arrest if any further demonstrations were held. In September and November 2007, local police reportedly prevented representatives from the NGOs Cambodian Center for Human Rights and the Voice of Democracy from holding public forums in the village, citing security concerns. On 23 October 2007, after spending the day with their clients in Kong Yu village, lawyers from CLEC and LAC were reportedly denied re-entry to the village that night by district police, citing security concerns. The lawyers were admitted to the village after an intervention by a Secretary of State in the Ministry of Interior, but were only permitted to sleep in the pagoda. In December 2007, the Special Representative of the Secretary-General for human rights in Cambodia visited Kong Yu during an official mission to Cambodia. The O'Yadao district chief came to the village accompanied by armed gendarmes, and asked the Special Representative and staff from the Office of the High Commissioner for Human Rights whether they had been granted authorization

by provincial authorities to visit the village. According to the reports, there have also been increasing numbers of accusations by authorities and the media that NGOs are 'inciting' communities to protest or complain about the violation of their rights. In this case, Cambodian media outlets have accused CLEC, LAC and other NGOs of inciting the villagers of Kong Yu and Kong Thom to take legal action against Ms. Keat Kolney, for politically-motivated reasons. It was reported that these restrictions on freedoms of assembly, movement and expression have no basis under Cambodian law, and it was noted that the Constitution guarantees the enjoyment of these freedoms. In June 2007, Ms. Keat Kolney lodged a complaint with the Bar Association of the Kingdom of Cambodia against 7 lawyers from CLEC and 3 lawyers from LAC. Ms Keat alleged that the lawyers incited the villagers to file complaints against her, encouraged them to defame her, and gave false information to the media. Reportedly, the Bar Association has initiated inquiries concerning the 10 lawyers, but has not yet taken a decision in relation to this complaint.

32. On 28 April 2008 the Special Rapporteur together with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and non discrimination in this context, sent a joint allegation letter regarding information received on the forced eviction and blockade of food and medicine to families living in Kro-Year commune, Santuk district, Kompong Thom province. According to information received, hundreds of poor landless families came to settle in Banteay Rogneang village in Kro-Year commune from 2005. In November 2006, 357 families, including disabled war veterans and widows, submitted a request to Kampong Thom provincial authorities for a social land concession of 800 hectares. In June 2007, provincial authorities advised the families to complete a form requesting a social land concession at the commune office. At the beginning of January 2008, the number of families living in Banteay Rogneang had grown to over 1,000 families. The Kampong Thom provincial governor allegedly stated that the families were required to leave the area as an economic land concession had been granted to the Tan Bien company, and that they would be relocated to land in Trapeang Russey village. However, the families have reportedly refused to move to this land as it is a very small area not suitable for cultivation and containing leeches. Reportedly, on 10 January 2008, armed police, military police and military personnel, led by Forestry Administration officials, started controlling the only road access to the village, allegedly allowing the settlers to leave the area but preventing their re-entry, and stopping anyone attempting to bring food or medical supplies into the area. It was alleged that this blockade was intended to force the communities out of their homes. As a result of the blockade, it was reported that a large majority of the families were forced to leave the area, and 160 to 170 families remained in the restricted area. Moreover, it was alleged that the security officers have threatened to burn down some houses if families do not leave their homes and lands. According to the information received, three people of the communities were arrested on 13, 15 and 20 January 2008 and released after being forced to sign an agreement to accept alternate land or other forms of compensation in exchange of the land they had. It was reported that other people have been forced to sign similar agreements. According to information received, the blockade was discontinued in mid February, and hundreds of families who had left the area returned to Banteay Rogneang village. On 6 or 7 March 2008, the blockade was reinstated for a week. This decision was allegedly taken by the Santuk district police chief upon the orders of the Kompong Thom provincial governor. Reportedly, the blockade of food and medicine had grave consequences for the health and well-being of the community. It was reported that families suffered food shortages leading to malnutrition, and that a number of individuals fell gravely ill from malaria and were unable to access medication.

Observations

33. 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.

China

Communication sent

34. On 20 October 2008, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, sent a urgent appeal concerning information received regarding threats against voluntary lawyers involved in a campaign initiated by Mr. Li Fangping, a human rights lawyer in Beijing. The campaign aimed to bring about justice for the children victim of milk contamination following more than 50,000 cases of kidney infections reportedly caused by drinking milk mixed with melanin. At least 22 Chinese companies were allegedly responsible for the contamination. Communications regarding Mr. Li Fangping were sent by various mandate holders on 7 April 2006, 21 December 2006, 5 January 2007, 22 January 2008, and 15 July 2008. Responses from your Government were received on 14 June 2006, 14 February 2007, 3 September 2008 and 10 September 2008. As of 24 September more than 100 lawyers from 22 provinces have signed up to offer voluntary legal aid to the victims of contaminated milk powder products. On 28 September 2008, many of those lawyers had dropped out of the group because of pressure from officials. The lawyers were reportedly told that “they would face serious repercussions if they stayed involved” in the campaign. Concern is expressed that the threats against the voluntary lawyers involved in the campaign organized by Mr. Li Fangping may be related to their legitimate activities to seek justice for the victims of contaminated milk. Serious concern is expressed for the physical and psychological integrity of the lawyers involved in this campaign. It was feared that, because of the pressure faced by the lawyers in question, they may no longer feel able to continue with their campaign. In addition, it was alleged that some of the companies’ infant formula milk had been certified as an “inspection-exempt product” for three years by the General Administration for Quality Supervision, Inspection and Quarantine. It appeared that such certification means that the products are exempt from quality monitoring and inspection by public authorities. The Special Rapporteurs referred to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and to some particular provisions of the Declaration

35. The Special Rapporteurs also referred to the Basic Principles on the Role of Lawyers, adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Havana, Cuba, from 27 August to 7 September 1990. The Special Rapporteurs asked the Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights, and to take all necessary steps to ensure the right to freedom of association, as recognized in article 20 of the Universal Declaration of Human Rights. Requesting for information on the steps taken by the competent authorities with a view to

ensuring the right to the highest attainable standard of health of the persons mentioned above, Special Rapporteurs mentioned the Article 25 of the Universal Declaration of Human Rights and Article 11 of the International Covenant on Economic, Social and Cultural Rights, and the General comment No. 12, adopted by the Committee on Economic, Social and Cultural Rights. In view of the urgency of the matter, the special Rapporteurs requested a response on the initial steps taken the Government to safeguard the rights of Mr. Li Fangping and the voluntary lawyers involved in the campaign organized by him in compliance with the above international instruments.

Observations

36. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted any reply to his communication.

Colombia

Comunicación enviada

37. El 28 de diciembre de 2007, el Relator Especial junto con el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, el Relator Especial sobre una vivienda adecuada como elemento integrante del derecho a un nivel de vida adecuado y sobre el derecho de no discriminación y el Relator Especial sobre los Defensores de los Derechos Humanos enviaron una carta de alegación en relación con las consecuencias del conflicto armado sobre el pueblo indígena Awá en los Municipios de Tumaco y Ricaurte, Departamento de Nariño. Según las alegaciones, a pesar de la reiterada voluntad las comunidades Awá de los Municipios de Tumaco y Ricaurte de permanecer al margen de la actuación de los actores armados, se encontrarían entre los más afectados por el conflicto armado, extendido en sus tierras tradicionales. Así, desde comienzos de 2007, habrían tenido lugar 18 casos de desplazamiento masivo de comunidades indígenas al interior del Departamento de Nariño, que habrían generado más de 10,000 desplazados internos. El último desplazamiento forzado de gran magnitud habría sido el de la población indígena Awá del Resguardo de Inda Sabaleta, Corregimiento de Llorente, Municipio de Tumaco (1). Además, como otra consecuencia del conflicto, se habrían reportado numerosas muertes entre los integrante de las comunidades Awá, tanto como resultado de accidentes causados por minas antipersonas (2), como por asesinatos selectivos cometidos por actores armados ilegales (3).

1) Desplazamiento en el Resguardo Inda Sabaleta

38. La semana del 17 de septiembre de 2007 se habría producido un desplazamiento masivo de los pobladores del Resguardo Inda Sabaleta, en particular de las veredas de Sabaleta, Pilvicito, Inda Bajo, Nortal y La Victoria, como resultado del enfrentamiento entre efectivos del Ejército colombiano y las Fuerzas Armadas Revolucionarias de Colombia–Ejército Popular (FARC-EP). Según la información recibida, el día 17 de septiembre, aproximadamente a las 6.00 a.m., habrían comenzado los enfrentamientos entre las tropas pertenecientes a la Brigada 29 del Ejército Nacional y el Frente 29 de las FARC-EP, en inmediaciones de la comunidad de Pilvicito, en el Resguardo Inda Sabaleta. En la carretera de acceso al resguardo Inda Sabaleta se habrían estacionado una tanqueta y dos camiones. Alrededor de las 6.40 a.m., ante la escalada del combate (en el que se habrían producido muertos), la fuerza pública habría obligado a tres

familias Awá de la vereda Sabaleta a abandonar sus casas. Otras familias Awá habrían abandonado voluntariamente sus casas ante el temor de verse afectados por los enfrentamientos. El día 19 de septiembre, alrededor de las 4.30 a.m., 1.018 Awá de las veredas de Sabaleta, Pilvicio, Inda Bajo, Nortal y La Victoria (incluyendo 488 menores de edad, 261 mujeres y 20 mujeres en estado de embarazo) habrían llegado al centro educativo de la comunidad Inda Sabaleta, donde se habrían instalado con sus escasas posesiones. Se alegó que ulteriormente el número de refugiados habría alcanzado aproximadamente las 1.380 personas. Según las alegaciones, a partir del 23 de octubre de 2007, la población habría comenzado a retornar a sus hogares. Al momento de enviar la carta de alegación la población en el centro educativo habría ascendido a algo más de 200 personas de las cuales el mayor porcentaje habría continuado a ser niños y niñas. Según las alegaciones, la respuesta del Comité Municipal de Atención a la Población Desplazada de Tumaco, autoridad responsable del sector salud, habría sido hasta el momento de enviar la carta de alegación muy insuficiente. De acuerdo con un estudio realizado en noviembre de 2007 por una misión conjunta del Instituto Departamental de Salud de Nariño, el Instituto Colombiano de Bienestar Familiar, el Programa Mundial de Alimentos, la Oficina de las Naciones Unidas de Coordinación de los Asuntos Humanitarios (OCHA) y la Organización Mundial de la Salud (OMS), las personas que aún se encontraban refugiadas en el centro educativo del Resguardo Inda Sabaleta se encontraban en condiciones de extremo hacinamiento. La situación de salud de la población indígena de Inda Sabaleta se vería todavía amenazada por unas condiciones de higiene deficientes, tanto en los lugares de preparación de alimentos, como en aquellos destinados para la disposición final de basuras. Las condiciones de saneamiento básico y agua potable serían igualmente deficientes. Se alegó además un grave problema de desnutrición crónica especialmente en el grupo de niños y niñas. La alimentación que se estaba ofreciendo en los albergues al momento de enviar la carta de alegación habría carecido de alimentos lácteos, de verduras y frutas. A raíz de estas condiciones, el día 10 de octubre de 2007 habría fallecido la niña Carol Narváez, de 6 meses de edad. Los Relatores Especiales le recordaron al gobierno que el derecho a una alimentación adecuada está reconocido, entre otros, en la Declaración Universal sobre los Derechos Humanos y en el artículo 11 del Pacto Internacional de Derechos Económicos, Sociales y Culturales que reconoce el derecho de toda persona a un nivel de vida adecuado. Cuando un individuo o un grupo sean incapaces, por razones que escapen a su control, de disfrutar el derecho a una alimentación adecuada por los medios a su alcance, los Estados tienen la obligación de realizar ese derecho directamente.

2) Muertes de miembros de comunidades indígenas causadas por minas antipersona

39. Entre las consecuencias del conflicto armado que habrían justificado el desplazamiento masivo de las comunidades Awá, se encontraría el alto número de víctimas civiles, resultado a la vez de las minas antipersonas que, según las alegaciones, estarían siendo sembradas tanto por parte de los grupos armados irregulares como por el propio Ejército colombiano. Desde el comienzo del año 2007, se habrían compatibilizado 13 víctimas de las comunidades indígenas del Municipio de Ricaurte, Departamento de Nariño, por la acción de los campos minados. Los últimos fallecimientos relatados de miembros del pueblo Awá, causados por minas antipersonas son los siguientes:

- El 22 de septiembre, a las 2:30 p.m., habrían fallecido los niños Nuri Fabiola Maín Moreano, Ferney Rolando Marín Moreano y Yo María Canticus, de 14, 11 y 12 años de edad respectivamente, todos ellos pertenecientes a la comunidad de Chicandina, Resguardo Nulpe

Medio Alto Río San Juan, Municipio de Ricaurte. Los niños habrían perdido la vida instantáneamente al pisar una mina cuando transitaban por los caminos de la comunidad.

- El sábado 18 de agosto, los Sres. Robert Guanga y Alonso Guanga, de 20 y 25 años de edad respectivamente, quienes se trasladaban de la población de Maldonado, Ecuador, hacia la Comunidad de Quembi, en el Resguardo de Nulpe Alto, habrían muerto de manera instantánea cuando cayeron en un campo minado.

- El día 15 de julio a las 10:30 a.m., en el mismo municipio, habría igualmente perdido la vida el Sr. Arcenio Canticus al pisar una mina antipersonal cuando se dirigía a trabajar en su parcela. Se alegó que sus hijos, Andres Canticus, de 8 años de edad, y German Canticus, de 12 años, también habrían perdido la vida al pisar una mina antipersonal cuando, al conocer la situación de su padre, se habrían dirigido al lugar de los hechos.

- El día 14 de julio a las 8:30 a.m., los Sres. Juan Dionicio Ortiz Vasquez, ex gobernador del Resguardo Vegas Chagui Chimbuza y Ademelio Pai Taicus, de la comunidad del Guadual, habrían igualmente perdido la vida al pisar una mina antipersonal cuando se habrían desplazado a sus labores de campo.

3) Asesinatos selectivos de líderes de las comunidades indígenas

40. Asimismo, la extensión del conflicto armado en las tierras tradicionales del pueblo Awá habría dado lugar al asesinato sistemático de líderes de las comunidades a manos de los grupos armados ilegales. Así, según las alegaciones, desde principios de 2007 hasta el momento de enviar la carta de alegación se habrían producido 23 asesinatos de miembros de las comunidades Awá en el Departamento de Nariño. En particular, se alegó que en el año 2007, habrían sido asesinados ocho miembros de las comunidades indígenas pertenecientes al Cabildo Mayor Awá de Ricaurte (CAMAWARI), una organización con presencia en 11 resguardos que tiene como objetivos la difusión de la cultura del pueblo awa y la defensa de sus derechos. Los últimos asesinatos de miembros de dicha organización habrían sido los del Sr. Vicente Nastacuas, el pasado 24 de octubre de 2007, dentro del resguardo de Magui, a manos de miembros de la Columna Mariscal Antonio José de Sucre de las FARC, y el de la Sra. Esther Nastacuas, el pasado 3 de agosto de 2007, en la comunidad de Quembi, del Resguardo de Nulpe Alto Río San Juan, en condiciones aún no clarificadas.

Seguimiento

41. El 5 de febrero de 2008, el Relator Especial junto con el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, envió una carta de seguimiento al gobierno con respecto a una comunicación conjunta enviada el 29 de mayo de 2007 en relación con la situación nutricional y de salud del pueblo Yukpa, incluyendo la muerte de 20 menores, a las repuesta enviada por el gobierno de Colombia por carta de fecha 28 de junio de 2007 y a la información adicional transmitida por el gobierno por carta de fecha 9 de octubre de 2007.

42. Los Relatores Especiales agradecieron al gobierno por la información brindada, lo cual evidencia las distintas entidades gubernamentales existentes para brindar solución a la situación de las comunidades yupkas, antes y después del incendio que tuvo lugar en su territorio

tradicional en marzo de 2007. Entre estas medidas se incluye la elaboración del Plan de Acción a las comunidades indígenas del Cesar, aprobado por la Agencia Presidencial para la Acción Social y la Cooperación Internacional, la Vicepresidencia de la República y el Ministerio del Interior y de Justicia en el marco del Plan Integral para el apoyo a comunidades indígenas en extremo grado de vulnerabilidad y riesgo de desaparición; así como la realización de Mesas de Trabajo en los días 27 y 28 de junio de 2007, con el objetivo de poner en marcha dicho plan de acción a través de una serie de medidas en apoyo de los indígenas yupka de los municipios de Becerril, La Paz y Codazzi. Entre los elementos que forman parte del Plan de acción a las comunidades indígenas del Cesar, asumidos por las mesas de trabajo de junio de 2007, se encuentran la puesta en marcha de proyectos productivos para asegurar la seguridad alimentaria y la capacitación de las comunidades yupkas en las zonas de resguardo; la mejora de infraestructura vial; la implementación de trabajos de saneamiento básico y potabilización de agua; la mejora de los servicios de educación y salud; y la dotación territorial. Sin embargo, los Relatores Especiales notaron que, según las alegaciones, los principales compromisos asumidos por las instituciones que formaron parte de la reunión interinstitucional de junio de 2007 no han sido efectuados hasta la fecha. En este sentido, se indicó que la reunión entre la Mesa Humanitaria del Departamento del Cesar y representantes del pueblo yupka, llevada a cabo el pasado 18 de septiembre de 2007 en la ciudad de Valledupar, habría identificado que únicamente uno de los 19 compromisos contemplados en el Plan de acción a las comunidades indígenas del César habría sido plenamente implementado. Como consecuencia de la falta de implementación de dichas medidas, los Relatores Especiales expresaron preocupación a que el pueblo yukpa continúa en una situación crítica en cuanto a su alto grado de necesidades básicas insatisfechas, los límites en cuanto a su atención por el difícil acceso a algunos de los resguardos mencionados y la invisibilización de su situación a nivel local y nacional. Los Relatores Especiales señalaron especial preocupación con respecto a la situación territorial del pueblo yupka. Según las informaciones, uno de los compromisos asumidos en el Plan de Acción de junio de 2007 sería la regularización de la tenencia de la tierra de las comunidades yupkas, afectadas por el asentamiento de colonos no indígenas. En este sentido, una de las medidas previstas dentro del Plan de acción fue la adquisición y adjudicación de predios para los colonos asentados en el resguardo por parte de la Comisión Nacional de Territorios Indígenas (CNTI), con miras al saneamiento y ampliación del área de resguardo. Se alegó que el Estado no habría dispuesto hasta la fecha de recursos para llevar a cabo el saneamiento del resguardo. Asimismo, se alegó que la Comisión Nacional de Territorios Indígenas habría sido desactivada el 31 de mayo de 2007 como resultado de la retirada de los representantes indígenas. Dicha salida se habría producido en señal de protesta ante la falta de presupuesto para la constitución, ampliación y saneamiento de los resguardos indígenas, como resultado de lo cual existirían todavía 420 expedientes pendientes de resolución desde que la Comisión fue creada en 1996.

Comunicaciones recibidas

43. Mediante comunicación de fecha 8 de mayo de 2008, el Gobierno contestó a la comunicación de los Relatores datada 5 de febrero de 2008 respecto a la situación de Comunidad Yupka, en el Departamento del Cesar. El Gobierno informó que la Agencia Presidencial para la Acción Social y la Cooperación Internacional (Acción Social) estaba llevando adelante como uno de los compromisos adquiridos en el marco del Plan de Acción para las Comunidades indígenas del Cesar y del Programa de Seguridad Alimentaria –RESA–, el proyecto denominado “Fortalecimiento sociocultural para la autonomía alimentaria a los pueblos indígenas de los resguardos Arhuaco, Wiwas, y Yupka en la Sierra Nevada de Santa Marta y la

Serranía del Perijá”. El gobierno informó que el monto del proyecto ascendía a 520 millones de pesos, cerca de US\$200 000, destinados a 2610 familias, compuestas por 13,050 indígenas pobladores de la Sierra Nevada y la Serranía del Perijá y que además el proyecto incluía los cuatro resguardos de la comunidad, ubicados en El Cozo, Menkue, Iroka y Socorpa, municipios de la Paz, Codazzi y Becerril, Departamento de Cesar.

44. El 20 de febrero de 2008, el Gobierno contestó a la comunicación conjunta enviada el 28 de diciembre de 2007 en relación con las consecuencias del conflicto armado sobre el pueblo indígena Awá en los Municipios de Tumaco y Ricaurte, Departamento de Nariño. El Gobierno informó acerca del estado de procesamiento de las quejas formuladas por la Organización Nacional Indígena de Colombia y la Defensoría del Pueblo relacionadas con presuntos homicidios, muertes por minas, desplazamientos forzados, ocupaciones ilegales, estigmatizaciones y otros abusos que afectan al pueblo indígena Awá. El Gobierno también dio a conocer que con el ánimo de disminuir las víctimas por acción de campos minados el día 17 de julio de 2007 se realizó un Consejo de Seguridad y en coordinación con las diferentes autoridades se promovieron diferentes campañas de sensibilización y prevención de desplazamientos por esta causa. El Gobierno también informó que el Grupo de Caballería Mecanizado No. 3 “CABAL” se dispuso a la destrucción de todo tipo de artefactos explosivos de uso indiscriminado con el fin de garantizar a la población civil que de parte de su fuerza pública no se verían afectados por este tipo de artefactos. El Gobierno además informó que las misiones tácticas y operaciones militares realizadas por el Grupo “CABAL” habrían sido coordinadas para tener una mayor seguridad en el área y poder brindar la misma a todos los seres humanos que se encuentren en el medio del conflicto armado. Se informó finalmente de las medidas propuestas a la comunidad Awa para que los albergues y los apoyos logísticos, médicos y alimentarios sean aprovechados por la comunidad afectada y no por las organizaciones al margen de la ley. (La respuesta completa se encuentra disposición para consulta y se puede acceder mediante pedido a la Oficina del Alto Comisionado para Derechos Humanos en Ginebra).

45. El 27 de mayo de 2008 el Gobierno envió una comunicación ampliando la información con respecto a la comunicación enviada por los Relatores Especiales el 28 de diciembre de 2007. En dicha carta se informó que la Agencia Presidencial para la Acción Social y la Cooperación Internacional tomó conocimiento en septiembre de 2007 sobre el desplazamiento de 1.018 indígenas Awá como consecuencia de combates entre tropas del Ejército Nacional y las FARC. En la comunicación se detalla las acciones realizadas por el Ministerio Público, tales como proceder a recabar datos sobre la condición de las personas desplazadas a modo de censo para proceder a entregar ayuda de Asistencia de Emergencia y monitorear el retorno a sus hogares de ciertas familias donde la situación lo permitió. Asimismo se detallan acciones realizadas por la comunidad internacional, como por ejemplo el trabajo de Médicos sin Fronteras para garantizar condiciones mínimas sanitarias de la situación desplazada, etc. La carta informa que a la fecha de la misma aún no era posible garantizar las condiciones de retorno de las comunidades debido a falta de condiciones de seguridad. Se informó asimismo, que el Instituto Colombiano de Bienestar Familiar ha atendido a la población Awá desplazada de manera conjunta con Acción Social y el Programa Mundial de Alimentos. En lo que concierne a la muerte de civiles a causa de minas antipersonales, se informa que el ejército ha realizado operaciones para desminar el área; sin embargo, esto no impidió la muerte de miembros de la comunidad Awá, crímenes que se están siendo investigados por la Fiscalía II Especializada de la ciudad de Pasto. (La respuesta completa se encuentra disposición para consulta y se puede acceder mediante pedido a la Oficina del Alto Comisionado para Derechos Humanos en Ginebra).

Democratic People's Republic of Korea

Communication sent

46. On 3 March 2008, the Special Rapporteur, together with the Special Rapporteur on torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent a joint allegation letter regarding information received on the alleged public execution of 13 women and 2 men on a bridge located in Joowon-gu, Onsung County in North Hamgyung Province on 20 February 2008. According to information received, the authorities of the Democratic People's Republic of Korea had previously advised members of all public institutions, public enterprises, and neighborhood units to attend the execution. The people who were executed were reportedly accused of planning to cross over to a neighbouring country to receive economic assistance with the help of their relatives living abroad. Others were accused of helping people to cross or of providing coyote services to those who wanted to cross over. It was alleged that this execution was designed to dissuade people from crossing illegally. There have furthermore been reports that the sentences for illegally crossing to the neighbouring country have increased since 1 March 2007, from a prison term of maximum 3 years to 5-7 years.

Observations

47. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted any reply to his communication.

Ethiopia

Communication sent

48. On 11 December 2007, the Special Rapporteur together with 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 and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, sent a joint allegation letter regarding the human rights situation of the Mursi and the Suri, Dizi, Me'en, Nyangatom, Guji, Core, Chai, Tirma, Bodi, Kwegu, Hamar, Banna, Aari communities, in and around the Omo, Mago and Nech Sar National Parks, located in South Ethiopia. The alleged human rights violations occurred in these indigenous and minorities communities and allegedly caused by the Omo, Mago and Nech Sar National Parks, were the subject of a joint communication sent to the Government on 15 August 2006 by the Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and the Special Representative of the Secretary-General on the Human Rights of Internally Displaced Persons. The special Rapporteurs referred to the information they continued to receive, particularly regarding the adoption on 21st August 2007 of the Development Conservation and Utilization of Wildlife Proclamation No 541/2007, concerning all National Parks in Ethiopia. Reportedly, the Mursi and the Suri, Dizi, Me'en, Nyangatom, Guji, Core, Chai, Tirma, Bodi, Kwegu, Hamar, Banna, Aari communities, consisting of approximately 130 000 persons, are semi-nomadic people. Their traditional lands and territories are, today, in and around the Omo, Mago and Nech Sar National Parks. Although the bordering process began only last year, the Omo National Park (4,068 sq. km.) was designated in 1966 and the Mago National Park (2,162 sq. km.) in 1978. According to the

information received, the affected communities traditionally practice rain-fed cultivation, cattle herding, as well as hunting and fishing. For climatic reasons and for the necessity of the traditional agriculture and cattle breeding, these communities move in and out the boundaries of these National Parks. For example, as the weather in the region is very dry, these communities gather, cultivate and shepherd their cattle within the boundaries of the parks due to their fertility and the proximity of water sources. It was also alleged that 75 percent of the total Mursi's food supplies used to come from land now included in these parks. The Mursi depend on three main subsistence activities: flood retreat cultivation, rain-fed cultivation and cattle herding. Their diet depends mostly on the products they grow on this land while cattle, apart from being an important source of milk (especially for children) and meat, are a vital standby at times of crop failure, when they can be exchanged for grain in the highlands. Because of their relatively small number of cattle, the low and unpredictable local rainfall and the wide annual fluctuation in the level of the Omo flood, the Mursi must integrate all three of these sources of subsistence by means of a complex cycle of seasonal movements. This mix of subsistence activities, and the seasonal movement of people and cattle, has reportedly been the main condition both of Mursi survival and of the sustainable use of renewable resources in this area. Moreover, according to the information received, there are two harvests each year, one along the banks of the two permanent rivers, Omo and Mago, where fertile silt is deposited by the annual flood, and one in forested areas further away from the rivers which are cleared for rain-fed, shifting cultivation. Planting takes place on the banks of the Omo and Mago in October and November, after the flood has receded and the banks have been cleared of vegetation that had grown up since the previous season. The harvest comes in January and February. River-bank land is the most valuable agricultural resource the Mursi possess. The unpredictability, caused by the weather and floods, coupled with the limited area available for flood retreat cultivation makes cattle a vital resource for the Mursi and they attribute overwhelming cultural importance to cattle. Every significant social relationship – most notably marriage - is marked and validated by the exchange of cattle. The Development Conservation and Utilization of Wildlife Proclamation No 541/2007 adopted on 21st August 2007 reportedly aims at strengthening some of the provisions already included in the Agreement signed on 4th November 2005 between the Government and the Southern Nations, Nationalities and Peoples Regional State, and African Parks (Ethiopia) PLC concerning the management of the Omo National Parks. The Government reportedly transferred the management of all National Parks to African Parks (Ethiopia) PLC, a private company and a subsidiary of Stichting African Parks Foundation ("African Parks"), a Netherlands-based organization that manages conservation of parks throughout Africa. The African Parks (Ethiopia) PLC management for the Omo National Park has been effective since January 2006 after the signing of the 4th November 2005 Agreement, whereas in February 2004, African Parks Foundation signed an agreement with the Government allowing it to manage the Nech Sar National Park on a 25 year lease. The 2005 Agreement reportedly provided employees of the African Parks powers of law enforcement similar to those of public officials. It was also alleged that, through Proclamation No. 541/2007, restrictions and regulations have been imposed on the Mursi, Suri, Dizi, Me'en, Nyangatom, Guji, Core, Chai, Tirma, Bodi, Kwegu, Hamar, Banna, Aari communities regarding the use and enjoyment of their ancestral lands. These restrictions and regulations reportedly prevent them from fishing and hunting without a permit. This Proclamation also established an "anti-poaching" fund, a no tree-felling policy, and entrance fees. It also provided for the control of visitor use and included the construction of a fence in and around the Park. It appeared that the same restrictions have been applied to the Nech Sar National Park, also managed by the African Parks (Ethiopia) PLC. It was alleged that the December 2006 report of the African Parks Foundation identified as one of the "illegal

activities” in the Omo National Park the Mursi traditional livelihood practices like clearing of land for cultivation or hunting. According to the information received, the Development Conservation and Utilization of Wildlife Proclamation No 541/2007 adopted the 21st August 2007 was signed and managed without the free, prior and informed consent of the Mursi and others affected communities. According to these allegations, a “demarcation ceremony” was held in the Omo National Park in March 2005, at which members of various local groups were asked to sign (with their thumbprints) documents describing the park boundaries. In July 2005, game guards, that are employees of the Mago National Park, visited the Mursi settlement of Maganto (known to the government as Hailu Wuha) and allegedly persuaded three men to put their thumbprints on a document defining the Mago Park boundaries. As a result, the Mursi and the other affected communities living in the Omo and Mago Parks reportedly became illegal squatters on their own land. The lacks of sufficient information in the languages of the affected communities and sufficient time for prior and informed consent according to tribal customs have also reportedly affected the process. It also appears that the Development Conservation and Utilization of Wildlife Proclamation No 541/2007 is in contradiction with the Constitution whose Article 40 proclaims that “Ethiopian pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their own lands”. In addition Article 32 stipulates that “Any Ethiopian or foreign national lawfully in Ethiopia has, within the national territory, the right to liberty of movement and freedom to choose his residence (...)”.

A. Interdictions of hunting and others traditional subsistence practices in all national parks

49. According to the information received, the Development Conservation and Utilization of Wildlife Proclamation No 541/2007 created different categories of “wildlife conservation area”. One category is “wildlife reserves” “designated to conserve wildlife where indigenous local communities are allowed “to live together with and conserve wildlife”. Another category created by this Proclamation is called “national parks” where local communities are not allowed to “live together with and conserve wildlife”. According to the information received, hunting, fishing, clearing of land, tree-felling in the Omo, Mago and Nech Sar National Parks without specific authorizations are proscribed. Article 8 of the Proclamation No 541/2007 states that, “No person, other than the Ministry or the concerned regional organ in the discharge of their duties, may hunt any game animal unless he is in possession of a hunting permit.” Further, according to Article 15 of the Proclamation states that “a wildlife ant-poaching officer shall have the following powers: 1. to require any person who is in possession of wildlife or wildlife products to show the permit authorizing such possession; 2. to enter and search any private landholding, building, tent, (...) as well as search bags or sealed items, without court order, where there are sufficient grounds to believe that wildlife or wildlife products are kept illegally; 4. where a person is found committing an offence in violation of Article 16 of this Proclamation, to detain, without any court order, and handover him to the appropriate law enforcing body.” In addition, and concerning the penalties in case of violations of the provisions of this Proclamation, Article 16 states that “1) Unless it entails higher penalty under the criminal law: a) any person who i) commits an act of illegal wildlife hunting or trade; ii) carries out unauthorized activities within wildlife conservation areas or causes, in whatever way damage therefore, or; iii) is found in possession of wildlife or wildlife products without having a permit, shall be punished with fine not less than Birr 5 000 and not exceeding Birr 30 000 or with imprisonment not less than one year and not exceeding five years or with both such fine and imprisonment”; b) any person who commits other offences in violation of the provisions of the Proclamation or regulations or directives issued hereunder shall be punished with fine not less than Birr 500 and not exceeding

Birr 3 000 or with imprisonment not less than one month and not exceeding six months or with both such fine and imprisonment.” According to the provisions of the Proclamation, occupation and use of land for flood retreat or rain fed cultivation by the Mursi, Suri, Dizi, Me’en, Nyangatom, Guji, Core, Chai, Tirma, Bodi, Kwegu, Hamar, Banna, Aari peoples, in and around the boundaries of the Omo, Mago, and Nech Sar National Parks, may constitute an “unauthorized activity which could lead to imprisonment or imposition of a fine. Such interdictions may have a negative impact on the ability of the Mursi and others affected communities to maintain their usual access to sufficient and adequate food and threaten their physical and food security. In addition the “no tree-felling” policy may especially affect those groups that practice shifting cultivation such as the Suri, Dizi, and Me’en as it may be more difficult for these groups to clear new river bank sites for cultivation. Hunting is a very significant part of the economies of these communities, and as a result, the restrictions on hunting may also contribute to reduce their usual access to food.

B. Limitation imposed on the communities’ freedom of movement

50. Freedom of movement of Mursi, Suri, Dizi, Me’en, Nyangatom, Guji, Core, Chai, Tirma, Bodi, Kwegu, Hamar, Banna, Aari communities living in and out the Omo, Mago, Nech Sar National Parks, is allegedly threatened by the provisions of this Proclamation which allow African Parks to charge entrance fees, without making any exception for indigenous people, and grant the company authority to construct a fence in and around the parks. Reports indicated that there are plans to build a fence around Nech Sar National Park and employ other measures to strictly limit the communities’ ability to move, hunt and cultivate land freely in and out of the area. The restrictions of movement may have a negative impact on these communities because their subsistence food and their social organization depend on their ability to move on their ancestral lands. These groups combine cattle herding with both flood-retreat and rain-fed cultivation. Because of the spatial distribution of agricultural and grazing land, and because of the unreliability of rainfall in this semi-arid environment, the successful utilization of these resources requires regular seasonal movements, over relatively short distances, by most members of these groups.

Observations

51. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted any reply to his communication.

French Guyana

Communication reçue

52. Le 21 février 2008, le gouvernement français a répondu à la lettre d’allégation transmise le 30 novembre 2006 par le Rapporteur spécial, conjointement avec le Rapporteur spécial sur la situation des droits de l’homme et des libertés fondamentales des populations autochtones et la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l’homme, concernant la situation des autochtones Wayanas et Emerillons des villages Kayodé (Cayodé) et Elahé (Elae), sur les rives de la rivière Waki-Tampok, dans la commune de Maripasoula en Guyane (pour un résumé de cette communication, se référer au document : A/HRC/7/5/Add.1, 29 Février 2008, pp.36-37). Le Gouvernement a indiqué que depuis la fin du

XIXème siècle, les activités d'orpaillage menées en Guyane sont à l'origine de rejets de mercure dans l'environnement et principalement dans certains cours d'eau et fleuves et que les populations amérindiennes du Haut Maroni, les Wayanas et les Tekos, très consommatrices de poissons, demeurent les plus exposées au risque mercuriel. Le Gouvernement a détaillé les mesures entreprises depuis la découverte en 1994 de poissons contaminés par le mercure, et notamment une série d'études et d'enquêtes menées pour améliorer la connaissance sur ce phénomène, la création d'un pôle interministériel-mercure placé sous l'autorité du préfet, l'organisation de séminaires rassemblant des experts, des autorités étatiques et les communautés affectées, des actions de sensibilisation et un programme d'actions globales visant à réduire l'imprégnation mercurielle à l'horizon 2008. En ce qui concerne la lutte contre l'orpaillage clandestin, le gouvernement a indiqué qu'il a renforcé les dispositifs législatifs et réglementaires répressifs. A titre d'exemple, le gouvernement a indiqué que les autorités judiciaires peuvent autoriser la destruction *in situ* des matériels utilisés dans les sites d'orpaillage clandestins, ce qui a permis de porter atteinte à la rentabilité de ces activités. La lutte contre l'orpaillage aurait aussi bénéficié de l'augmentation de moyens humains et matériels mis en place à ce propos, ce qui se serait traduit en un plus grand nombre d'opérations sur le terrain. Le Gouvernement a précisé que malgré les mesures entreprises, les orpailleurs clandestins continuent de se procurer le mercure dans d'autres pays d'Amérique Latine. Par ailleurs, les services enquêteurs ont mis en lumière un système organisé par certains membres des populations amérindiennes locales, qui exigeraient des orpailleurs clandestins, le paiement en or par mois et par pirogue d'une « taxe de droit de passage ». En relation avec le tracé du cœur du Parc amazonien de Guyane, le Gouvernement a informé que ce tracé résulte d'un compromis trouvé localement le 12 juin 2006 lors d'une réunion organisée par la municipalité de Maripasoula, à Elahé en pays Wayana, à la suite de discussions approfondies, associant étroitement les autorités coutumières amérindiennes et les représentants des populations traditionnelles alukus du bourg. De plus, le Gouvernement a indiqué qu'il n'a pas jugé possible de répondre aux conclusions et recommandations de la Commission d'enquête sur l'extension du cœur du parc, car cela aurait impliqué d'agrandir le cœur du parc national de plus de 20%, ce qui nécessitait un délai supplémentaire imposé avant la création du parc, compte tenu des consultations qu'il y aurait eu à mener et ce qu'il aurait fait courir le risque de compromettre le projet. Le Gouvernement a indiqué son souhait de prendre en considération les demandes d'agrandissement lors d'une étape ultérieure et qu'à ce propos des démarches seront engagées dans le cadre du calendrier d'élaboration de la Charte du Parc qui devrait avoir lieu au plus tard en 2012. Finalement, le gouvernement a précisé que sur les territoires mentionnés par les Rapporteurs et sur le tiers Sud de la Guyane, un arrêté préfectoral du 14 septembre 1970 interdit à toute personne de pénétrer en l'absence d'autorisation préalable du Préfet et que cet arrêté exclu de fait l'octroi de toute autorisation d'exploitation minière. La préfecture a décidé de surcroît d'interdire progressivement mais définitivement le mercure dans les activités d'orpaillage à compter du 1^{er} janvier 2006.

India

Communications sent

53. On 13 December 2007, the Special Rapporteur, together with the Special Representative of the Secretary-General on the situation of human rights defenders, sent a joint allegation letter regarding Dr Lenin Raghuvanshi and Mr Manoj Kumar. Dr Lenin Raghuvanshi and Mr Manoj Kumar are convener and staff member of the People's Vigilance Committee on Human Rights (PVCHR) in Varanasi, Uttar Pradesh state, respectively. Dr. Lenin Raghuvanshi was the subject

of a joint urgent appeal 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 and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on 16 August 2005. On 4 December 2007, from approximately 4.45pm (Indian Standard Time), Dr. Lenin Raghuvanshi reportedly received anonymous threatening phone calls on his mobile phone from callers warning him that he will be shot and killed if the PVCHR continues to report cases of deaths from starvation and malnutrition in the Uttar Pradesh state. The callers have also informed him that if the PVCHR continues its activities, staff members are to be charged with fabricated charges and the PVCHR itself forced to close down. There has been national media coverage of the death of a three-year-old boy from starvation on 25 November 2007 that was reported by the PVCHR. Its staff member, Mr. Manoj Kumar, working in the Ambedkarnagar district where the boy lived, has reportedly also been receiving threats. Concern was expressed for the physical and psychological integrity of Dr. Lenin Raghuvanshi and Mr. Manoj Kumar. Further concern is expressed that the aforementioned threats against Dr. Lenin Raghuvanshi and Mr. Manoj Kumar may be directly related to the human rights activities of the PVCHR, in particular its work to defend the right to food in India. In view of the urgency of the matter, the Special Rapporteur and the Special representative requested a response on the initial steps taken by the Government to safeguard the rights of the above-mentioned persons in compliance with the above international instruments. They also asked for clarifications and observations on the following matters:

- Whether a complaint has been lodged by or on behalf of the alleged victims,
- Details, and where available results, of any investigation and judicial or other inquiries carried out in relation to the aforementioned threats against Dr. Lenin Raghuvanshi and Mr. Manoj Kumar and how they conform with international standards. If no inquiries have taken place, or if they have been inconclusive, please explain why.

54. On 2 December 2008, the Special Rapporteur sent an allegation letter regarding the challenges and obstacles that the internally displaced communities from Dantewada and Bijapur districts in Southern Chattisgarh have faced in the exercise of their right to food. According to these allegations, as of February this year around 49,000 displaced persons were residing in 24 officially recognized Salwa Judum camps in the abovementioned districts with limited access to basic facilities and livelihood opportunities. The State Government claimed that it has provided free food or subsidized rations and employment opportunities in the camps under the existing social policies schemes. However, the allegations received indicate that in many camps, despite the existence of a clear food distribution plan, the public authorities have not issued to camp residents the documents necessary for them to benefit from the public distribution systems, particularly ration cards. In particular it appeared that authorities have not taken any measure to reissue ration cards to those who lost them whilst being caught up in violent confrontations. Information also mentioned that camp residents have not been provided with adequate livelihood opportunities following their displacement. It appeared that before moving to camps, most displaced people used to earn their livelihood through agricultural labour and sale of forest produce. After moving to camps, they claim that they have limited access to forest produce and limited livelihood options under the NREGA due to the fact that this scheme is not properly implemented. Furthermore, it was reported that security concerns have hindered the State Government's efforts to distribute food in the camps and that so far authorities have not

developed plans to assist displaced communities to reclaim the land they were forced to leave due to violent confrontations nor to compensate them for loss of this land and livelihood opportunities associated with it. The reports received indicate that the food security situation of the displaced communities is exacerbated when these reside in sites that are not officially recognized by the State Government. In connection with the abovementioned case, the Special Rapporteur brought to the attention of the Government the allegations he received on the obstacles faced by those displaced who found refuge in the forestlands of Khammam and Warangal districts of Andhra Pradesh in the exercise of their right to food. According to these allegations, the children are severely malnourished in these communities; 68 percent of settlements depend on unsafe stream water and women have to walk for more than 2 kilometers to fetch it. In addition it was reported that the settlements established by the displaced communities have not yet been recognized by the district administration and therefore they are not entitled to benefit from food schemes and water facilities. Although the districts are covered by the NREGA the displaced persons find it difficult to avail themselves of this facility as they do not have job cards. In some cases public authorities issued job cards to the displaced but these were allegedly later withdrawn by the authorities on the ground that they are not “local residents”, a criterion which does not appear to be required by legislation. It also appears that the implementation of NREGA has been hindered by the limited opening times of the offices collecting applications for this scheme and their backlogs in processing them. As the displaced communities depend on agriculture, cattle rearing and collection of minor forest produce for their sustenance, they attempted to cultivate small patches of land in the reserved forest land where they settled following their displacement. This has allegedly led to confrontations with the Forest Department, whose agents were reported to have used excessive force to evict these communities from the forestland without prior notice, consultation and consideration of adequate alternative relocation.

Communication received

55. On 11 July 2008, the Government sent a reply to a joint communication dated 11 July 2007 regarding allegations of non-implementation of the National Rural employment Guarantee Act (NREGA) in 22 districts of Uttar Pradesh. The Government of India informed that the NREGA, in its first phase, with effect from 2.2.2006, was implemented in 22 districts of Uttar Pradesh. In the second phase, 17 additional districts were covered taking the total to 39 districts. At present, after implementation of the third phase, all 70 districts of Uttar Pradesh are being covered, and the NREGA program has provided employment to over 4 millions households in Uttar Pradesh. A total of 147,867 works were taken up to which 102,154 have been completed. As a result, employment has been generated to the extent of over 136 million person-days. An amount of Rs. 22.27 billion (over 550 million USD) has been allocated to the program of which Rs. 18.98 billion (over 470 million USD) have already been spent.

56. In response to the details specifically demanded by the special Rapporteur, the Government explained that:

- a) The NREGA seek to provide for the enhancement of livelihood security of the households in rural areas of the country by providing at least 100 days of guaranteed wage employment in every financial year to every household whose adult members volunteer to unskilled manual work.

- b) As such, employment under NREGA is completely demand driven. The only constraint that could have hindered those supposedly eligible for the NREGA program to access its benefits could be the lack of the implementation of the program itself at the time of submission of complaint.
- c) As laid down in the Act itself, there exists an elaborate procedure for the issue of job cards. The adult members of every household who reside in any rural area and are willing to do unskilled manual work may submit their names, age and address to the Gram Panchayat (local village-level elected government body) at the village level. It is the duty of the Gram Panchayat to register the household, make an enquiry as it deems fit and issue a job card. As such there is no conceivable constraint that may hinder those potentially eligible to receive job cards.
- d) The Ministry of Rural Development, Government of India has put in place a comprehensive multi-level and multi-tool system of monitoring the implementation and evaluation of the impact of NREGA through Periodical Progress Report, Review Committee meetings, Area Officer's Scheme, Vigilance and Monitoring Committee at the State/District level with greater involvement of Members of Parliament, National Level Monitors to monitor quality of work, adherence to implementation of schemes as per the program guidelines. Besides, the State Governments have also been advised to adopt a four pronged strategy consisting of creation of awareness about the schemes, transparency, people's partnership and accountability (social audit through Gram Sabha).

Follow-up

57. On 4 December 2008, the Special Rapporteur sent a letter to ask the Government to elaborate on the reply he received on 11 July 2008. According to the Ministry, employment under NREGA is completely demand driven and there exists an elaborate procedure for the issuance of job cards. In this regard, the Special Rapporteur requested, first, further clarifications related to the extent to which information has provided to the beneficiary population about the specific modalities of this procedure; and, second, the extent to which the responsibilities and obligations of each institution involved in the procedure to issue job cards were clearly defined and communicated to the said population. In addition he expressed his wish to follow up his predecessor's communication dated 23 April 2007 (on the Singur case which was already the subject of a previous communication sent on 22 August 2006). The Special Rapporteur mentioned that he welcomed the information according to which on 3 October 2008 Tata Motors decided to withdraw its facilities from Singur, West Bengal. In this regard, he expressed his gratitude for having received information on the plans the State Government has made or intends to make in order to restore the land to the communities from which it was acquired for the construction of the Tata Motors/FIAT joint venture plant. It was reported that this fertile multi-cropping farmland is central to ensure these communities' access to sufficient and adequate food. The Special Rapporteur requested the Government's comments on this issue.

Observations

58. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted any reply to his communications dated 13 December 2007 and 2 December 2008 and any further reply to his letter of 4 December 2008.

Iraq

Communication sent

59. On 6 March 2008 the Special Rapporteur sent an urgent appeal to request a response to his letter dated 17 October 2006, regarding new allegations with regard to new allegations with regard to the water situation in Ashraf City/Camp Ashraf. Information received indicated the deteriorating situation in Ashraf City/Camp Ashraf and its surrounding area, following an explosion on 8 February 2008 that destroyed the water pumps in Zorganieh. Reportedly, this pumping station provided drinking water and irrigation for Ashraf City/Camp Ashraf and its surrounding area, inhabited by more than 20,000 persons. The explosion has allegedly caused water and food shortages for the local population, which relies on local food supplies already severely affected by water scarcity. The situation is made more critical by increasingly hot weather. It was alleged that the explosion may have been intended to increase pressure on over 3,000 members of the People's Mojahedin Organization of Iran (PMOI) confined in Ashraf City/Camp Ashraf. The camp remained under the control of the multi-national force under the demobilization agreement the Iraqi authorities signed with the PMOI in May 2003. In July 2004, the United States Government recognized PMOI members as Protected Persons under the Fourth Geneva Convention, meaning that they should not be deported, expelled or repatriated, or displaced inside Iraq. The alleged facts mentioned above could amount to a violation of the obligation to protect the right to food and water of the residents of Ashraf City/Camp Ashraf and its surrounding area. The Special Rapporteur requested clarifications concerning the situation described above and the steps taken by the competent authorities to restore the water supply and to protect the rights to food and water of the area's residents against interference by other actors. He also mentioned that he was intending to issue a press statement on the above-mentioned situation shortly.

Observations

60. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted any reply to his communication.

Italy

Communication received

61. On 26 March 2008, the Government of Italy sent a letter and a note referring to a communication transmitted by the Special Rapporteur on 22 October 2007 and concerning the mother-child health-care. The note reiterated Italy's full commitment towards the implementation of the fundamental principles enshrined in the provisions which had been mentioned by the Special Rapporteur, and which are in line with the Italian Constitution. This is the background within which Italian Authorities have been supportive of the relevant Global Strategy for Infant and young Child Feeding. The note informed that Italy had adopted the MDGs in 2000 as well as other international relevant instruments and indicated that Italy remained firmly committed towards the promotion and protection of children's rights at large. At the EU level, two relevant Directives have been adopted in order to promote and protect the practice of breast-feeding, namely EU directive 2006/141/CE, introducing stricter criteria on relevant publicities (without entirely implementing the international Code of marketing of

Breast-milk substitutes) and EU Directive 2006/125/CE on the food for infants and children, respectively. Despite the lack of translation of these two directives within the Italian legislative system, the main purposes and objectives of relevant instruments have been duly taken into account. At the domestic level, while in line with the EU approach, Italian Authorities have been always attempted to be far-reaching. The promotion of breast-feeding has been included in the last National Plan on Health which is currently in force. Accordingly, at the national level and at the regional level, specific actions/programs have been taken. The minister of health has also circulated a document summing up all relevant activities launched or carried out so far. When this note was sent, National elections were scheduled for 13 April 2008. It was expected that once the new Government would be in charge, a new momentum would be provided also for this specific area, in which there has been always and still continues the Italian engagement.

Lao People's Democratic Republic

Communications received

62. On 22 January 2009 the Government of Laos PDR provided the Special Rapporteurs on the right to food and on the situation of human rights and fundamental freedoms of indigenous people its response to their letter of October 2007 which brought to the Government's attention continuing allegations related to the food security situation and access to land and natural resources of various communities including the Vietic indigenous communities that will likely be affected by the construction of the Nam Theun 2 (NT2) (this communication was reported in A/HRC/7/5/Add.1). In its response the Government highlighted that NT2 continues to be developed in a manner that takes into account the social and environmental issues associated with this project. The Governments acknowledged that some of the challenges relate to the resettlement of local people, damages to water flow and the possible threat to aquatic and wildlife and the effect on forest. The Government further reiterated that NT2 has been designed in a way that ensures a continuous process of consultation with and feedback from all people involved in the project throughout its development. This response also describes that, as part of a consistent policy of openness, the NT2 project has continued to provide interested parties the opportunity to visit the site and a number of visits by independent monitors, NGOs, academics, local and international journalists as well as representatives of diplomatic missions and international organizations have already taken place. In addition the Government informed that on 29 and 30 October 2008 it held a NT2 Stakeholders Forum which was opened to international delegations and which the Special Rapporteurs could not attend. The Government's reply ends by stating that in the very same spirit they have welcomed many other delegations they would welcome a visit to the project by the Special Rapporteurs or their representatives. The Government would therefore be pleased to extend an invitation to the Special Rapporteurs.

Observation

63. The Special Rapporteur wishes to express his sincere thanks to the Government for its reply and invitation. At the time of the finalization of this report, the follow-up answer from the Special Rapporteur was still being elaborated.

Myanmar

Communication sent

64. On 28 February 2008, the Special Rapporteur together with the Special Rapporteur on the situation of human rights in Myanmar sent an allegation letter on the precarious food security situations in Northern Arakan State, particularly among the Rohingya communities. This issue was the subject of previous communication dated 17 July 2006. The Special Rapporteur continued to receive allegations that the right to food of people in Northern Arakan State is again jeopardized by a number of factors. According to these allegations, forced labour continues to be widely practiced particularly during the dry season, a period when farmers are busy with their own cultivation. Forced labour is allegedly used for works such as rubber plantation, paddy cultivation in the military and NaSaKa (the security forces along the border with Bangladesh) fields, brick baking, construction of roads, bridges, model villages and military facilities, the transportation of compulsory crop procurement beside sentry duty, daily camp maintenance and portering. This combined with the high price of rice has reportedly continued to contribute to increase food insecurity of villagers and could have the potential to trigger refugee outflows. As already remarked in our previous letter, during the 2005 monsoon season, increased forced labour, arbitrary taxation and high rice prices reportedly prompted a food crisis which was alleviated thanks to international emergency food relief. Regarding the national project exhorting people to grow physic nuts on a wide scale to produce an alternative to diesel fuel, the Special Rapporteurs received reports indicating that many physic nut cuttings and plants died and the experiment proved unsuccessful. As a result it was alleged that the authorities decided to establish larger nurseries where different types of seeds could be tested. In order to establish such nurseries, it appeared that, for example, between March and April 2007, many villagers from Maungdaw and Buthidaung Townships were forced to burn and clear large areas of land and prepare the soil for physic nut planting. Villagers had also reportedly to labour extensively to plant and nurture the seedlings brought to them by public officials. It was reported that in many instances, villagers lost the grazing land for their cattle. Furthermore, we received information claiming that during the same period, money was collected from each family throughout Northern Arakan in order to purchase seedlings from the physic nut nurseries. Information also states that in some areas, the Village Tract Peace and Development Council office collected large sums of money from villagers to buy rubber saplings which villagers are then forced to plant on the cleared land. Additionally, reports indicate that villagers continued to be forced to cultivate paddy for the authorities. It was reported that double cropping of paddy has been widely promoted to enhance agriculture production in Northern Arakan. According to the information, several Army and NaSaKa camps have adopted summer paddy cultivation to boost food production in order to achieve self-reliance. However, it appeared that this method has turned out to be a new source of forced labour during the dry season. The information received also alleges that other factors affect the right to food and sources of its procurement of the Rohingya population. The Rohingya group is a stateless Muslim ethnic group which represents the majority of the population in the Northern Arakan State. According to this information, the Rohingya are victim of systematic discrimination and abuse, including the denial of citizenship, restriction of movement, arbitrary taxation, forced labour, land confiscation and arbitrary arrests. It was reported that they need authorizations from the authorities in order to travel within and outside Northern Arakan State. It seemed that the only way to obtain these authorizations is by paying fees. This has reportedly affected their possibilities of seeking jobs in other villages and improving their economic conditions. This in turn has considerably affected their capacity to

procure food for themselves and their families. The Rohingya population is said to be charged with several taxes such as taxes on marriages, child registration, births and deaths of cattle, cultivation, fishing, etc. These taxes reportedly represent an important economic burden on the meager budget of these people who encounter difficulties in securing adequate and sufficient access to food. In addition, because of the reported practice of forced labour imposed on the Rohingya, they allegedly cannot work on their own land for the provision of food for their households. Furthermore, the reports received concerning instances of land confiscation continued to indicate that this practice continues to be carried out without prior notice or compensation and has a significant impact on the loss of income of the Rohingya population, as well on their capacity to provide for their own food.

Observations

65. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted any reply to his communication.

Niger

Réponse reçue

66. Le 5 février 2008, le gouvernement a envoyé une première « note » de réponse à la lettre d'allégation transmise le par le Rapporteur spécial le 10 octobre 2007, conjointement avec le Rapporteur spécial sur la situation des droits de l'homme et des libertés fondamentales des populations autochtones, le Rapporteur spécial sur les conséquences néfastes des mouvements et déversements illicites de produits et déchets toxiques et nocifs pour la jouissance des droits de l'homme et le Rapporteur spécial sur le droit qu'a toute personne de jouir du meilleur état de santé physique et mentale possible. Cette communication attirait l'attention du Gouvernement sur les informations reçues concernant les activités minières réalisées sur des territoires habités ancestralement par les populations nomades Touarègues du nord Niger ainsi que sur l'impact de ces activités sur l'environnement de ces populations (pour un résumé de cette communication, se référer au document : A/HRC/7/5/Add.1, 29 Février 2008, p.69). Le Gouvernement a indiqué que cette première note aurait été complétée incessamment par des informations complémentaires sur la situation sociopolitique et économique des régions minières du Niger. Par rapport au régime juridique applicable aux terres utilisées traditionnellement par les communautés Touarègues, le Gouvernement a indiqué que selon l'Ordonnance n° 93-015 du 2 mars 1993, « les ressources naturelles rurales font partie du patrimoine Commun de la Nation. Tous les nigériens ont une égale vocation à y accéder sans discrimination de sexe ou d'origine sociale. Les droits qui s'y exercent bénéficient d'une égale protection, qu'ils résultent de la coutume ou du droit écrit ». Selon le Décret n°97-007/PRN/MAG/EL du 10 janvier 1997 « les pasteurs jouissent du droit d'usage prioritaire de leur terroir d'attache et des ressources qui s'y trouvent sans préjudice des droits des tiers » et que de plus le droit d'usage prioritaire « ne constitue en aucun cas un droit de propriété ». Le Gouvernement a indiqué que de ce cadre normatif il ressort qu'aucune communauté nigérienne ne peut s'arroger, sur le territoire national, d'un supra droit par rapport aux autres communautés nationales, sur les ressources naturelles qui en principe font partie du patrimoine commun de la Nation. Le Gouvernement a aussi précisé qu'en vertu de l'Ordonnance n° 93-016 du 2 mars 1993, par rapport aux concessions de recherche ou d'exploitation minières accordées aux différentes sociétés, le titulaire de permis de recherche ou d'exploitation sera autorisé par Arrêté conjoint du Ministre chargé des Domaines et

du Ministre chargé des Mines à occuper les terrains qui seraient nécessaires à son activité de recherches ou d'exploitation et aux industries qui s'y rattachent tant à l'intérieur qu'à l'extérieur du périmètre du permis dans les conditions fixées par réglementation. En ce qui concerne les carrières, l'arrêté d'ouverture et d'exploitation des carrières autorise aussi l'occupation des terrains nécessaires. Par rapport aux activités grandes consommatrices d'eau, le Gouvernement a précisé que tout prélèvement d'eau, exécution d'ouvrages ou utilisation d'eau qui atteint le seuil de 40m³ par jour, doit être obligatoirement autorisé par l'autorité compétente. Le Gouvernement a finalement indiqué qu'il existe un cadre légale par rapport aux pollutions et à la dégradation de l'environnement, dont notamment une Ordonnance qui prévoit la protection des eaux par rapport notamment aux déchets industriels, un Code d'Hygiène Publique et une Loi cadre relative à la Gestion de l'Environnement

Communication envoyée

67. Le 28 Août 2008, le Rapporteur Spécial a adressé une lettre d'allégation au sujet de l'impact du conflit armé sur la situation alimentaire que connaîtrait la population civile et plus particulièrement la communauté Touarègue dans la région d'Agadez. Le Rapporteur Spécial a d'abord remercié le gouvernement pour sa réponse du 5 février 2008 à la lettre de son prédécesseur qui, avec le Rapporteur spécial sur la situation des droits de l'homme et des libertés fondamentales des populations autochtones et le Rapporteur spécial sur les conséquences néfastes des mouvements et déversements illicites de produits et déchets toxiques et nocifs pour la jouissance des droits de l'homme, souhaitait attirer l'attention du Gouvernement sur cette question. À ce propos, le Rapporteur Spécial a ajouté qu'après avoir pris connaissance avec intérêt des informations contenues dans cette réponse par rapport au régime juridique applicable aux terres habitées par les communautés Touarègues et aux activités minières, il restait dans l'attente de recevoir des informations complémentaires sur la situation sociopolitique et économique des régions minières du nord du pays. Le Rapporteur Spécial a aussi attiré l'attention du Gouvernement sur les informations que reçues concernant l'impact préoccupant du conflit armé sur la situation alimentaire que connaîtrait la population civile et plus particulièrement la communauté Touarègue dans la même région d'Agadez. Selon les informations reçues, le conflit se déroulant dans la région d'Agadez, opposant les forces armées nigériennes (FAN) au Mouvement nigérien pour la Justice (MNJ) depuis février 2007, aurait de sérieuses conséquences sur la situation alimentaire de la population civile et plus particulièrement sur la communauté touarègue. Bien que des facteurs climatiques tels qu'inondations et sécheresse, ou économiques tel que la hausse des prix des céréales soient à prendre en compte, il semble que le conflit en cours amplifie et aggrave la situation d'insécurité alimentaire de manière significative. En effet, les allégations reçues font état de violations des droits de l'homme et de violations du droit international humanitaire à l'encontre des populations civiles, menaçant sérieusement leurs moyens de subsistance. D'après ces allégations, la population civile de la région d'Agadez serait victime d'attaques de la part de membres des FAN. De nombreux cas de destruction de bétail ont été rapportés. Ces attaques cibleraient plus particulièrement les Touaregs pour qui l'élevage représente la principale source d'alimentation et de revenus. Selon plusieurs rapports, un grand nombre de chameaux, de chèvres, de moutons et de vaches ont été retrouvés morts en différents lieux de la région d'Agadez. Des blessures par balle auraient été identifiées sur la plupart de ces animaux. Il a été rapporté que ces actes constitueraient une forme de punition collective de la part des FAN à l'encontre de la population civile touarègue, à laquelle il serait reproché de soutenir le MNJ. Selon les informations reçues, la population a été contrainte de fuir certaines zones de la région d'Agadez en raison des combats. Les conditions dans lesquels ces

déplacements se déroulent semblent être particulièrement difficiles pour la population. L'un des cas rapportés est celui de la ville d'Iférouane. Selon les allégations reçues, la ville a d'abord connu des difficultés de desserte, les axes y menant ayant été minés. En effet, d'après les informations obtenues, le MNJ utiliserait des mines terrestres anti-véhicules sur les principaux axes du nord du pays, ne permettant ainsi aucune distinction entre les civils et les cibles militaires. L'accessibilité de la ville aurait aussi été fortement réduite en raison de barrages routiers. La circulation étant limitée voire bloquée, les habitants se seraient ainsi retrouvés isolés, ne bénéficiant pas d'un approvisionnement de nourriture régulier. Toujours selon les allégations, des combats opposant les FAN au MNJ s'y sont produits, empêchant la population d'accéder à ses champs ainsi qu'à son bétail. Ne faisant qu'aggraver la situation, de fortes inondations auraient touché la région en juillet 2007, détruisant une grande partie des cultures. Les habitants d'Iférouane se seraient ainsi retrouvés dans l'incapacité de se nourrir. Cette pénurie alimentaire les aurait conduits à se déplacer. Selon les informations, la plupart des 5000 habitants d'Iférouane se seraient réfugiés à Arlit et Agadez, ainsi que dans d'autres petites localités. La population de certaines autres villes aurait aussi été contrainte de fuir pour les mêmes motifs. Selon les rapports, les FAN empêcheraient les personnes déplacées de se regrouper dans des camps et les obligeraient à se disperser. De plus, il semblerait que les autorités n'apportent aucune aide et n'autorisent pas les organisations humanitaires à porter assistance aux personnes déplacées. Selon les informations reçues, l'insécurité due au conflit empêche un approvisionnement de nourriture régulier dans le nord du pays. En temps normal déjà, cette région connaît une capacité de production alimentaire limitée. Elle serait à présent devenue presque inaccessible pour les marchands du sud du pays. Selon les allégations, le ravitaillement des villes d'Agadez et d'Arlit est fortement ralenti alors qu'il serait presque inexistant dans le reste de la région. Cette situation aurait conduit à une hausse incontrôlable des prix des aliments dans le nord du pays. Le manque de sécurité a aussi un impact négatif sur les activités générant des profits tels que l'élevage, l'agriculture et le tourisme. Ainsi, le pouvoir d'achat des habitants de la région d'Agadez a fortement chuté, obligeant certaines personnes à vendre leurs biens afin de se procurer de la nourriture. Selon les rapports, les organisations non-gouvernementales (ONG) auraient quant à elles beaucoup de mal à travailler. Certaines ONG se seraient vu notifier une interdiction de poursuivre ou de mener des activités dans la région d'Agadez. La population civile serait ainsi privée d'une aide humanitaire dont elle aurait besoin. Cette situation serait liée, d'une part, à l'insécurité due au conflit et, d'autre part, à l'imposition d'un « régime d'exception » restreignant la liberté de déplacement dans la région d'Agadez. Cette mesure prise par le Gouvernement de votre Excellence en août 2007 rend la circulation des biens, des personnes et l'approvisionnement en nourriture très difficiles. Les informations reçues font état d'un manque d'aide de la part des autorités aux populations du nord du pays. Selon les rapports, la quasi-totalité des besoins alimentaires des habitants de la région d'Agadez sont à ce jour couverts par le Programme Alimentaire Mondial (PAM).

Observations

68. Le Rapporteur spécial regrette qu'au moment de la finalisation du rapport, le Gouvernement n'ait pas encore répondu à sa communication en date du 28 août 2008 et qu'il n'ait pas transmis d'information additionnelle à sa communication en date du 10 octobre 2007.

Panama

Comunicación enviada

69. El 8 de abril de 2008, el Relator Especial, junto con el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas y el Relator Especial sobre una vivienda adecuada como elemento integrante del derecho a un nivel de vida adecuado y sobre el derecho de no discriminación enviaron una Acción Urgente al Gobierno de Panamá con relación a los supuestos desalojos forzosos y otros abusos sufridos por los miembros de la comunidad Charco La Pava, del pueblo ngöbe, en el Distrito de Changuinola (Provincia Bocas del Toro). Hicieron referencia a las diversas alegaciones recibidas por los Relatores Especiales durante los últimos meses en relación con el impacto de la construcción de represas en el área del Bosque Protector Palo Seco sobre la vida de las comunidades ngöbe y naso. Explicaron que dichas alegaciones estaban siendo analizadas actualmente por los Relatores Especiales y serán transmitidas próximamente al Gobierno de Panamá para su consideración. Con relación a dichas alegaciones, solicitaron al gobierno la atención urgente las informaciones que hayan recibido con relación a los supuestos desalojos forzosos y otros abusos sufridos por los miembros de la comunidad Charco La Pava, del pueblo ngöbe, en el Distrito de Changuinola, en relación con los trabajos de construcción del Proyecto Hidroeléctrico CHAN 75. A finales de 2007, la empresa EAS-Changuinola dio inicio a las obras de construcción del Proyecto Hidroeléctrico CHAN 75, las cuales implicarán las inundaciones completas de la Comunidad Charco La Pava y otras comunidades ngöbe aledañas, sin contar con el consentimiento de dichas comunidades. El 3 de enero de 2008, comenzaron las primeras detonaciones para el desmonte de los terrenos, así como la entrada del personal de la empresa en las tierras de la comunidad Charco La Pava. Dichos trabajos generaron las protestas de los miembros de la Comunidad, que habrían sido reprimidas por efectivos de la Policía Nacional. Se denuncia el uso excesivo de la fuerza en contra de la población civil desarmada, incluyendo en contra de mujeres y niños, así como la detención de un alto número de personas. Desde mediados de febrero de 2008, la Policía Nacional habría establecido dos retenes a la entrada de la Comunidad Charco la Pava, impidiendo la libre circulación de los miembros de la Comunidad, así como la entrada de personas ajenas a la misma, incluyendo periodistas y observadores de organizaciones no gubernamentales. En uno de los retenes, la Policía habría asimismo instalado un faro de luz, encendido las 24 horas del día, para controlar en todo momento las actividades de los miembros de la Comunidad. El día 28 de marzo de 2008, la Gobernadora de la Provincia Bocas del Toro, Sra. Ester Mena Chiu, acompañada del Representante Regional de la Autoridad Nacional del Ambiente (ANAN), Sr. Valentín Pineda, de la Ing. Thais Mejía, empleada de AES, y de dos miembros de la Policía Nacional, se habría personado en Charco La Pava y convocado a una reunión con los miembros de la Comunidad. En dicha reunión, la Gobernadora habría supuestamente conminado a dichos miembros a que abandonaran voluntariamente sus hogares para permitir la continuidad de los trabajos de construcción de la represa, y que de lo contrario se emplearía la fuerza policial para desalojarlos. En este contexto, los Relatores Especiales han recibido una serie de alegaciones específicas relativas a los supuestos desalojos y otros abusos sufridos por miembros de la Comunidad Charco La Pava que se han opuesto a la construcción del proyecto. Se denuncian el uso excesivo de la fuerza en contra de estas personas; amenazas e insultos; irregularidades administrativas en la tramitación de los desalojos, así como la destrucción de vivienda y de cultivos. En algunos de los casos reportados, se denuncia asimismo que las personas en cuestión se han encontrado en situación de indefensión debido a su limitada comprensión del idioma castellano. En ninguno de los casos reportados las supuestas víctimas

habrían recibido compensación o indemnización alguna. El caso de la Sra. Ana Castillo: El 3 de enero de 2008, los cultivos existentes en la finca de la Sra. Ana Castillo habrían sido destruidos por excavadoras manejadas por personal de la empresa AES-Changuinola, bajo las órdenes de los Ingenieros Rodolfo Ayarza y Lidami Morales, custodiadas por efectivos de la Policía Nacional. Al acercarse al personal de la empresa para solicitarles que detuvieran la destrucción de los cultivos, la Policía, sin mediar aviso, habría comenzado a golpearla. Según las alegaciones, la Sra. Castillo habría sido desnudada y arrastrada en dicho estado hasta el vehículo que la condujo al Cuartel de la Policía de Changuinola. En dicho cuartel, a cargo del Jefe de Policía José Manuel Ríos, la Sra. Castillo habría sido objeto de insultos y amenazas para que firmara un acuerdo con la empresa constructora y abandonara su vivienda. Los hijos de la Sra. Castillo, Anselmo Santos, Didier Santos, e Irene Santos, todos ellos menores de edad, habrían sido también supuestamente trasladados al cuartel, insultados y golpeados. El 28 de marzo de 2008, la Sra. Ana Castillo habría participado en la reunión con la Gobernadora de Bocas del Toro, donde se le demandó expresamente que abandonara su casa y aceptara negociar con la empresa. Durante dicha reunión, agentes de la Policía Nacional pistola en mano habrían conminando a la Sra. Castillo a que firmara un documento de acuerdo y a que abandonara su hogar. El 30 de marzo de 2008, se habrían reanudado los trabajos en los terrenos propiedad de la Sra. Castillo, comunicándosele verbalmente que iba a ser desalojada de su casa. El caso del Sr. Francisco Santos: El 3 de enero de 2008, empleados de la empresa AES, acompañados de efectivos de la Policía Nacional, habrían comenzado a detonar explosivos en la finca privada del Sr. Francisco Santos. Al descubrirlo, el Sr. Santos se habría dirigido a los empleados de la empresa para solicitarles que no destruyeran sus cultivos. En dicho momento, y sin mediar palabra, el Sr. Santos habría comenzado a ser golpeado e insultado por la Policía. El Sr. Santos habría caído al suelo, donde habría continuado a recibir golpes, y posteriormente trasladado al cuartel de Policía de Changuinola. Los hijos del Sr. Santos, Venero Santos y Abel Santos, que también habrían conminado a los empleados de la empresa a detener los trabajos, habrían sido también golpeados y detenidos por la Policía. El 13 febrero de 2008, empleados de la empresa AES Changuinola, acompañados de efectivos de la Policía Nacional se habrían vuelto a personar en la finca del Sr. Santos para dar comienzo a los trabajos de remoción y excavación de tierras, destruyendo todos los cultivos de su propiedad y presentando una orden de desalojo. El Sr. Santos habría sido forzado por la Policía a firmar un documento del que desconocía el contenido, debido a que no sabe leer ni escribir. El 28 de marzo de 2008, la Gobernadora de la Provincia de Bocas del Toro, acompañada de personal de la empresa AES y de dos miembros de la Policía Nacional, se habría personado en la residencia del Sr. Santos, ordenándole que desalojara su vivienda. Al día siguiente, los cultivos de la propiedad del Sr. Santos habrían sido completamente destruidos por efectivos de la empresa. El caso de la Sra. Amalia Abrego: el 3 de enero de 2008, la Sra. Abrego se encontraba observando los trabajos de detonación junto con otros miembros de la comunidad cuando fue insultada y golpeada por la Policía, desnudada y arrastrada en ese estado. La Sra. Abrego habría sido posteriormente detenida y trasladada, junto con sus tres hijos menores, al Cuartel de Policía, donde habría sido objeto de insultos. El 29 de marzo de 2008, en el curso de la reunión con la Gobernadora de la Provincia de Bocas del Toro, la Sra. Amalia Abrego habría sido informada que debía abandonar su residencia. El caso del menor Iván Miranda: El menor Iván Miranda, de 10 años de edad, habría sido golpeado en la nariz el 3 de enero de 2008, cuando trataba de levantar a su madre y a su hermana de 8 años del suelo. El menor habría sido trasladado, junto con el resto de su familia, a un cuartel de la Policía Nacional, donde habría sido objeto de golpes, insultos y amenazas, sin haber recibido atención médica. El menor Iván Miranda sufriría todavía las secuelas del golpe recibido y, en la medida en que la Policía impediría su salida de la Comunidad, no habría recibido todavía una atención

médica adecuada. El caso del Sr. Ernesto López: El Sr. Ernesto López habría recibido en enero de 2008 la orden verbal de desalojo de su vivienda por parte de la Policía. Los cultivos de la finca del Sr. López habrían sido destruidos, careciendo de medios de subsistencia y temiendo por su desalojo inminente. El caso del Sr. Manuel López: El 3 de enero de 2008, cuando intentaba levantar a un niño que había caído al suelo en el curso de los enfrentamientos con las fuerzas del orden, el Sr. Manuel López habría sido arrastrado por efectivos de la Policía Nacional, quienes habrían comenzado a golpearlo mientras se encontraba en el suelo. El Sr. López habría sido trasladado al Cuartel de Changuinola y de ahí al centro médico más cercano, donde le habrían hecho firmar un documento sin haber recibido atención alguna. En la estación policial, el Sr. López habría sido objeto de insultos y golpes. El viernes 28 de marzo, el Sr. López habría sido notificado verbalmente por la Policía de la necesidad de que desalojara su residencia. El caso de la Sra. Isabel Becker: En octubre de 2007, la Sra. Becker habría sido supuestamente presionada para firmar un contrato redactado en español tras haber pasado más de 10 horas contra su voluntad en la oficina de la empresa, por el que cedía la propiedad de sus tierras en la Comunidad Charco La Pava. En octubre de 2007, funcionarios de la alcaldía de Changuinola y de la Provincia de Bocas del Toro se habrían personado en la residencia de la Sra. Isabel Becker, acompañados de efectivos de la Policía Nacional. Tras meses de supuestas presiones, en 19 de octubre de 2007 la empresa habría logrado que la Sra. Becker firmara un segundo acuerdo por su finca. En enero de 2008, personal perteneciente a la empresa habría procedido a derrumbar su casa con el auxilio de unos 15 miembros armados de la Policía. Según las alegaciones, los miembros de la Comunidad desconocían dónde fue trasladada y se quejaron de que no la dejaron recoger sus pertenencias.

Comunicación recibida

70. El 9 de Abril de 2008, el Gobierno envió una respuesta a los Relatores Especiales refiriéndose a la carta de alegación con fecha 8 de Abril de 2008. La Misión Permanente de Panamá comunicó que había tomado urgente nota de la misma y que se había trasladado las preocupaciones de los Relatores Especiales a las Autoridades del Gobierno de la Republica de Panamá.

Observaciones

71. El Relator Especial lamenta que en el momento de realizarse este informe no haya recibido ninguna ulterior comunicación del Gobierno con respecto a su comunicación de fecha 8 de abril de 2008.

Peru

Comunicación enviada

72. El 31 de diciembre de 2007, el Relator Especial, junto con el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas enviaron una carta de alegación conjunta al Gobierno de Perú con respecto a información que recibieron relacionada con la concesión de lotes petroleros en reservas habitadas por pueblos indígenas en situación de asilamiento en la Amazonía Peruana. Según las informaciones recibidas, en los departamentos de Cusco, Madre de Dios, Ucayali y Loreto existen cinco reservas territoriales para pueblos indígenas en aislamiento o en contacto inicial, las reservas Kugapakori-Nahua,

Madre de Dios, Mashco Piro, Murunahua e Isconahua, así como cuatro propuestas de reservas, en Napo-Tigre, Yavari-Mirim, Yavari-tapiche, y Kapanawa. Según las alegaciones, el Estado practicaría, desde hace más de una década, una política de promoción de la inversión privada para la exploración y explotación de hidrocarburos en la Amazonía peruana, lo que habría producido una constante parcelación de las tierras indígenas para ofrecerlas como lotes a las empresas petroleras. Hasta julio de 2007 se habrían concedido en todo el país 60 lotes para este tipo de actividades. La situación de los pueblos Kugapakori-Nahua y Nanti, que habitan en la Reserva Territorial Kugapakori Nahua y Nanti (Departamentos de Cusco y Ucayali), y de los pueblos Waorani (Tagaeri Taromenae), Pananajuri (Arabela) y Aushiris o Abijiras, asentados en la propuesta de Reserva Territorial Napo Tigre (Departamento de Loreto), afectados por las actividades de explotación hidrocarburíferas en sus territorios ancestrales, fue objeto de las medidas cautelares otorgadas por la Comisión de Derechos Humanos los pasados 7 y 15 de agosto de 2007, respectivamente. El 12 de julio de 2007 la empresa estatal peruana Perupetro habría organizado una subasta para ofrecer 19 lotes petroleros adicionales. Se alegó que de los 19 lotes ofertados, 12 se encontrarían en la Amazonía peruana, de los cuales 9 estarían superpuestos a reservas territoriales (creadas y propuestas) para pueblos en aislamiento voluntario. Los siguientes pueblos aislados habrían sido afectados por dicha subasta:

- el pueblo Murunahua, quien se encontraría asentado en la Reserva Territorial Murunahua, ubicada en el Departamento Ucayali en las cabeceras de Yurúa y Mapuya, con una extensión de 481.560 hectáreas. El Lote 35, superpuesto a la Reserva, contaría con una licencia vigente de explotación por la Empresa Repsol. El Lote 110, igualmente superpuesto a la Reserva, se habría ofrecido y finalmente atribuido en la reciente subasta de julio de 2007.

- los pueblos Mashco-Piro, Matsigenkas y Chitonahuas quienes estarían localizados en la Reserva Territorial Madre de Dios, en las cabeceras de Acre y Shambuyacu, Departamento de Madre de Dios, con una superficie de 829.941 hectáreas. La Reserva se encuentra en su totalidad comprendida en el Lote 113, que habría sido ofrecido en la subasta de julio de 2007.

- el pueblo Isconahua, integrado por aproximadamente 30 personas, asentado en la Reserva Territorial Isconahua, en el Departamento Ucayali, en las cabeceras de Abujao, Utuquinia y Callería. La Reserva contaría con 275.665 hectáreas, en un área protegida, y habría sido también ofrecido para un contrato.

- los pueblos localizados en la propuesta para la Reserva Territorial Yavari-Tapiche, en el departamento de Loreto, cuya superficie está conformada parcialmente por un área natural protegida. Los Lotes 135 y 137, que se sobreponen parcialmente a los límites de la propuesta de reserva, habrían sido atribuidos en la subasta.

- los pueblos localizados en la propuesta para Reserva Territorial Kapanawa, en los Departamentos de Loreto y Ucayali, cuya mitad oriental se encontraría protegida como área natural, habría sido también dividida entre dos lotes ofrecidos y atribuidos en contrato en julio de 2007.

- los pueblos Matsés y Mayoruna supuestamente asentados en la propuesta para Reserva Territorial Yavarí Mirim, Departamento de Loreto, quien estarían divididos entre dos lotes, el Lote 142, actualmente en negociación, y el Lote 128, que habría sido atribuido a una empresa.

73. Se alegó que la Reserva Territorial Mashco-Piro, donde estarían asentados los pueblos Mashco-piro, en las cabeceras del río Purús, Departamento de Ucayali, con una extensión de 768,848 hectáreas, sería la única Reserva no afectada por la última subasta del 12 de julio ni por otras actividades de explotación petrolífera. Se alegó que la expansión de la industria de hidrocarburos en territorios de la Amazonía peruana tendría como consecuencia la puesta en peligro de la subsistencia y la vida de los pueblos indígenas aislados de estas zonas. Las operaciones de explotación petrolera ocasionarían la migración de la fauna y la disminución de las plantas del bosque, que constituirían importantes recursos alimenticios para las familias indígenas, cuyo estilo de vida dependería en buena parte de la caza y recolección nómadas. Además de la pérdida de medios de subsistencia, se alegaron impactos en la salud de estos pueblos, generados por la deforestación y los vertidos sobre los suelos y ríos, que contaminarían las aguas subterráneas y superficiales, mermando la calidad del agua ingerida por las personas y los animales. Asimismo, se alegó que los indígenas en aislamiento, careciendo de anticuerpos, estarían expuestos a enfermedades nuevas y epidemias mortales traídas por las empresas. En este sentido, el Informe Extraordinario de la Defensoría del Pueblo de 16 de abril de 2007, sobre “los conflictos socio ambientales por actividades extractivas en el Perú” afirma que “la exploración y explotación de recursos naturales no renovables implican un riesgo para los pueblos indígenas, en particular para los que se encuentran en situación de aislamiento voluntario y en contacto inicial. Los impactos que sufren estos pueblos traen consigo mayor repercusión, al ser extremadamente vulnerables a las enfermedades comunes en nuestro medio, para las cuales no han desarrollado sistemas inmunológicos, con lo que incluso se pone en riesgo su vida” (p. 42). La continuación de la práctica de concesión de lotes para la exploración y explotación de hidrocarburos sería contraria a las recomendaciones de la Defensoría del Pueblo en su informe No. 101 sobre “Pueblos indígenas en situación de aislamiento voluntario y contacto inicial”. En dicho informe, la Defensoría del Pueblo habría recomendado al Congreso de la República “aprobar una iniciativa legislativa estableciendo una categoría especial para la intangibilidad de las Reservas Territoriales, declaradas a favor de los pueblos indígenas en situación de aislamiento, debido a que la demarcación del territorio no sólo persigue asegurar la tenencia de la tierra, sino la subsistencia y supervivencia de los miembros de estos pueblos, mientras perdure su condición de aislados”. Asimismo, dicho informe habría sugerido al Ministro de Energías y minas “solicitar a las empresas petroleras que operan en áreas donde existen pueblos indígenas en situación de aislamiento y contacto inicial, que limiten su intrusión en dichas áreas lo máximo posible, con sumo rigor técnico y respeto al hábitat de estos pueblos, estableciendo una zona de amortiguamiento entre su área de actividad y el territorio ocupado por dichos pueblos”. Sin embargo, según el Informe de la Defensoría del Pueblo N° 101, en enero de 2001, el Ministerio de Energía y Minas habría publicado una Guía de Relaciones Comunitarias con un Plan de Manejo en caso de contacto con indígenas en aislamiento, contemplando una serie de recomendaciones a seguir de acuerdo a cada caso específico (escenario de contacto y procedimientos, contacto pacífico, avistamiento de indígenas en aislamiento, aproximación violenta, etc.). Esta guía debería ser tomada en consideración por las empresas operadoras, lo que según alegaciones, no se habría hecho. Los Relatores Especiales expresaron preocupación por el impacto especialmente grave que podría tener las actividades hidrocarburíferas sobre los pueblos indígenas cuyas formas de vida están estrechamente vinculadas a su relación tradicional con sus tierras y recursos naturales.

Comunicación recibida

74. El 6 de octubre de 2008 el Gobierno acusó recibo de la comunicación conjunta de fecha 31 de diciembre de 2007 y remitió a los Relatores Especiales el “Informe sobre concesión de lotes petroleros en reservas por pueblos indígenas en situación de aislamiento voluntario o contacto inicial en la Amazonía peruana.” Este documento se encuentra a disposición para consulta y se puede acceder mediante pedido a la Oficina del Alto Comisionado para los Derechos Humanos en Ginebra. En este informe, el Relator Especial se ha limitado a resumir las informaciones y conclusiones contenidas en dicho informe. El Gobierno informó que una de las medidas concretas adoptadas por el Estado peruano para afrontar el tema de poblaciones indígenas en aislamiento voluntario y contacto inicial es la creación de un adecuado marco normativo que establece un tratamiento especial a favor de las poblaciones indígenas en aislamiento voluntario y contacto inicial frente a las actividades de hidrocarburos. Además, las entidades estatales involucradas, vienen dando cumplimiento e implementando las recomendaciones contenidas en el informe de la Defensoría del Pueblo N°101. El gobierno informó también que la actividad de hidrocarburos en el Perú es actualmente una de las actividades que promueven en mayor medida el desarrollo económico del país, y que el Estado peruano promueve las inversiones privadas en este sector dentro de un marco de cumplimiento de la normatividad ambiental y social, protegiendo a una población especialmente vulnerable como son los pueblos indígenas en aislamiento voluntario y contacto inicial a través de un Régimen Legal de protección Especial que garantiza sus derechos a la vida, la salud y a su existencia e integridad. El régimen de Protección Especial no prohíbe el desarrollo de las actividades económicas calificadas de necesidad pública, como es la de hidrocarburos, ya que estas son un medio que recurre al estado para satisfacer la atención de los requerimientos básicos de la población. El gobierno señaló que los hechos alegados por los Relatores Especiales no serían exactos ya que en el Perú existe una política estatal que tutela los derechos fundamentales de los Pueblos Indígenas en aislamiento voluntario y contacto inicial, siendo el único País de Latinoamérica, junto con Brasil, que cuenta con un Régimen Legal especial de protección que garantiza los derechos de estos pueblos. En particular, y en relación con las alegaciones relativas al derecho a la alimentación, el Gobierno señaló que la actividad de hidrocarburos no genera migración de fauna ni disminución de plantas del bosque. El impacto es controlado y no genera afectación ni al suelo, ni a los ríos ni a las aguas subterráneas y superficiales, pues las mismas no son utilizadas en la actividad de hidrocarburos. El gobierno indicó además que el Estado peruano ha venido implementando procedimientos de consulta a fin de promover la participación de los pueblos indígenas en todas las etapas del desarrollo de las actividades de exploración y explotación de hidrocarburos. Dichos procedimientos establecen que todas las recomendaciones y compromisos que se adopten con los pueblos indígenas deben ser recogidos en los estudios ambientales, los mismos que deben ser respetados por las empresas operadoras. El Estado peruano cuenta con una entidad (OSINERGMIN), encargada de la supervisión y fiscalización de las actividades de hidrocarburos, así como de la aplicación de sanciones administrativas pertinentes a fin que las empresas operadoras en esta actividad cumplan con la normatividad vigente. Respecto a la situación actual de cada uno de los contratos de licencia a los que hace referencia la comunicación de los Relatores Especiales, el Gobierno señaló que los mismos fueron suscritos el 21 de Noviembre de 2007 y todos ellos se encontraban en ejecución del primer periodo contractual y en proceso de elaboración de sus estudios ambientales para el desarrollo de las actividades. En sus conclusiones, el gobierno apreció que el Estado Peruano ha tomado una serie de medidas a fin de garantizar la vida, la integridad personal, la salud, el

territorio, el medio ambiente y la cultura de los pueblos indígenas en situación de aislamiento voluntario.

Philippines

Communication sent

75. On 9 June 2008, the Special Rapporteur, together with the Special Rapporteur on the right to education and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, sent a joint allegation letter concerning allegations received on the impact of the military operations taking place in the regions of Caraga and Davao in Mindanao, on the right to food, adequate housing, education and other human rights of members of the Lumad indigenous communities. These operations have taken place from November 2007 up to December 2007 in Caraga and from January 2008 up to the present in Davao. According to the information received, in the context of the military activities against the New People's Army (NPA) in the province of Surigao del Sur, Caraga Region, around 500 military personnel from the 58th Infantry Battalion have been stationed since 4 November 2007 in the area where the Lumad indigenous communities live. It was alleged that the Lumad indigenous peoples have been accused of being NPA supporters by the army. It appeared that in April and May 2005, counter-insurgency activities conducted by the Philippine Army had resulted in the forced displacement of 11 Lumad communities, comprising some 1200 individuals, while five other communities were held under food and economic blockades. Civilians were also allegedly physically assaulted and interrogated as to the whereabouts of members of the NPA, and forest areas and crops were strafed and bombarded. It was reported that the Philippine Army stationed in civilian areas has used civilians as human shields against attacks. Moreover, they have allegedly transformed schools and other buildings into military barracks, thus disrupting schooling. It was also reported that children have been interrogated on their family members' possible involvement in the NPA, community members were denied access to their fields, and families were forced to seek shelter in temporary evacuation centres, and that individuals were forcibly enrolled as military guides. According to the information received, on 5 and 10 November 2007, groups of soldiers arrived at Simowao community where they requested to use the Simowao Tribal School as sleeping accommodation. On 11 November 2007, a group of around 100 soldiers reportedly set up a camp close to the homes of the residents of the Emerald community where they converted a sari-sari store into a military hub. It was alleged that some of the soldiers also used the houses of local residents to sleep, while at Manluy-a, some 100 soldiers stayed in the local school and in the homes of local residents, with as many as four to ten military personnel stationed in each house. On 15 November 2007, a number of soldiers transformed both the cottage and the adjoining Lumad Community School into a military camp in the Lumad community of Kabulahan, San Agustin. As a consequence, classes have been disrupted. It was reported that on 13 November 2007, the military stationed at Emerald community warned local residents, school children and teachers at the nearby Simowao Tribal School, that in the event that the army was attacked, they would harm civilians whom they accused of supporting the NPA. On 4 November 2007, soldiers allegedly questioned two teachers at the Manluy-a Tribal Filipino Community School and members residing close to the school. On 5 November 2007, children aged between seven and ten arriving at the Simowao Tribal School were reportedly interrogated. The soldiers allegedly questioned the teachers at the same school on several occasions. It was also reported that military personnel stationed in the community members' houses have frequently asked children about their involvement in NPA activities and

if they had elder brothers or sisters who are members of the NPA. The reports received also claimed that in areas under military occupation community members have only been able to eat one meal a day due to restrictions imposed by the army on community members' access to their crops. It appeared that checkpoints have been established at several locations, including around Simowao and Emerald. It was reported that on 17 November 2007 the military called a community assembly in Kubuluhan, San Agustin, where community members were ordered not to go to their farmlands and refused their requests to leave their area of residence. On 17 November 2007, 62 families from communities living in the remote areas of Barangay Buhisan reportedly escaped the military operations and left behind livestock and belongings in an attempt to seek refuge in makeshift evacuation centres. In addition, on 17 November 2007 more than 40 households from Magkahunao, municipality of San Agustin, reportedly fled to Janipaan Elementary School fearing military attacks. Also, on 21 November more than one thousand Lumad indigenous people from nine other communities and settlers were allegedly allowed to leave, in order to try and reach the evacuation centre of Diatagon, Lianga, where they joined some 48 families who had fled the hinterland communities of San Agustin on 17 November 2007. Information received states that on 25 November 2007, food stocks in the evacuation centre of Diatagon were increasingly reduced and that, at that time, there remained two sacks of rice for some 2000 evacuees. It appeared that at that time in the centre there were also 12 pregnant women needing special care and 30 babies under the age of one. There was also allegedly shortage of sleeping mats, blankets, milk and medicines. According to the information received, on 12 November 2007, a 19 year old boy from San Isidro, municipality of Lianga, was arrested by the military while harvesting. He was then forced to serve as a guide for four days until he was freed after his family petitioned the battalion's commander. It was reported that youths who were not attending school may have also been recruited to support military activities. Furthermore it was alleged that classes in seven primary Lumad literacy schools and in the Lumad High School in barangay Diatagon, municipality of Lianga, and in the municipality of San Agustin became irregular in attendance and ran a risk of being suspended because of ongoing military operations.

76. Following established practice, the government declared the unilateral ceasefire from 16 December until 5 January 2008 during the Christmas period. Reports claimed that the 2,883 evacuees from Surigao del Sur deemed it safe to return back to their respective communities on 20 December 2007. It was reported that the evacuees found their houses, the classrooms, the teachers' cottages, cooperative and private stores ransacked. They also found their personal belongings damaged. The affected communities also faced food shortages upon their return since they were not able to harvest anything because of their farmlands being left unattended during evacuation. The Special Rapporteur expressed his concern about the indigenous people's areas being turned into conflict zones as we continue to receive information according to which at least 410 Lumad families or 2,500 people from several towns in the province of Davao Oriental, Davao Region, were allegedly forced to leave their homes by the beginning of February 2008 following intensified government operations against the New People's Army, which involved aerial bombings and shellings. Further forced evacuations of Lumad families in at least 17 villages in Talaingod, Davao del Norte, are reported due to the massive military operations being conducted by the 73rd Infantry Battalion since January 2008. The reports received further assert that on 6 April 2008 combined forces from the 28th, 30th, 72nd, 67th Infantry Battalions, Scout Ranger Regiment and Special Forces conducted military operations in the Lumad-populated barangays of Manurigao, municipality of New Bataan, and barangay Ngan, municipality of Compostela, in the province of Compostela Valley. Some soldiers allegedly started encamping in

one primary school in barangay Ngan on 6 April 2008. This subsequently led to the disruption of the educational activities of the children. On 8 April 2008, 40 families – 240 individuals, comprising 158 women and children – from Barangay Manurigao reportedly evacuated from their homes after the military conducted a meeting during which the families were prohibited to go to their farms and were told the road from Barangay Manurigao going to New Bataan would be only open from 7 a.m. to 3 p.m. On 6 and 13 April 2008, another 64 families – 332 individuals, comprising 266 women and children – left their homes following the ongoing massive military operations.

77. Additionally, it was alleged that on 12 April 2008 some soldiers encamped in the Living Word of God chapel in Barangay Ngan until 18 April 2008, thus disrupting the religious activities of the community. The Davao and Caraga regions have been reportedly declared as the country's primary source of timber by the Government. The Davao region is reportedly the region's mining hub because of its abundance in mineral deposits such as nickel, chromite, gold, silver and copper as well as silica, magnesite and dimension stones. It was reported that within the militarized areas, the mining and logging ventures are threatened by the growing opposition from the local indigenous and farming communities who want to protect their lands from the large-scale mining and other development projects. Reports claimed that aside from counter-insurgency operations, military troop deployment in these regions is aimed at securing the foreign-funded large-scale mining operations and logging investments.

Communication received

78. On 3 July 2008, the Governments sent a reply to the Special Rapporteur, referring to the joint allegation letter dated 9 June 2008. The Government informed the Special Rapporteur that the same allegation was referred to the Government by the World Organization Against Torture (OMCT) in December 2007. In February 2008, the Case Monitoring Division (CMD) of the Directorate for Investigation Management Division (DIMD) of the Philippine National Police reported that there were no formal complaints lodged by the so-called victims before the local police during the period mentioned in the report. As a standing policy, every Police Regional Office (PRO) is mandated to immediately submit an investigation report of every incident or crime transpiring within its area of responsibility to CMD, DIMD. The Government added that concerned authorities had been requested for an update on said issue and that any information received in this regard would be forwarded to the OHCHR.

Observations

79. 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.

III. OTHER ACTORS

SYNGENTA LIMITED

Communication sent

80. On 2 February 2008, the Special Rapporteur wrote to Mr. Ridley, the Head of Public and Government Affairs of Syngenta International, apologizing for the delay in replying to M. Ridley's letter of 23 February 2007. In the same letter the Rapporteur followed up his communication dated 15 November 2007 where he brought to the company's attention the reported situation of insecurity at the farmers' encampment at its experimental field trial at Santa Teresa do Oeste, Para State, Brazil.

Observations

81. The Special Rapporteur regrets that at the time of the finalization of this report, Syngenta Limited had not transmitted any further reply concerning the situation at Santa Teresa do Oeste.

82. The Special Rapporteur notes that on 14 October 2008 Syngenta Limited announced that it would devolve an area of 123 hectares in its experimental farm at Santa Teresa do Oeste to the Agronomic Institute of Paraná State (IAPAR) with a view to contributing to the creation of a new research centre on agriculture and forestry.

ITM Angola

Communication sent

83. On 17 October 2008, the Special Rapporteur sent an allegation letter to ITM Angola, regarding allegations received about the activities of ITM-Mining in the Republic of Angola. These allegations concern the reported confiscation of farmland by Sociedade Mineira do Cuango in order to carry out diamond mining activities in Cafunfo village in Cuango municipality of Lunda Norte province. Based on the information received, the Special Rapporteur said that he understood that the ITM-Mining company owns half the shares in Sociedade Mineira do Cuango (SMC) (50%), which is a joint venture with Endiama, an Angolan-owned diamond mining company (35%) and Lumanhe, a private Angolan company (15%). SMC is reported to have ordered the confiscation and subsequent destruction of farmland in order to undertake diamond mining activities in the Cuango basin. Subsistence farming, however, is one of the few options for survival of the local population in the region. With their farm land confiscated, the peasants in the Cuango basin were reportedly unable to carry out subsistence activities and are facing widespread hunger. It was alleged that in many cases the farmyard confiscations carried out by SNC have taken place without warning, at night and without any consultation of the affected parties. Furthermore, there has allegedly not been any adequate compensation for loss of land, sustenance and livelihood. It has been submitted to the Special Rapporteur that, in the first instance, at least 192 peasants received no compensation at all from SMC after their farmland was destroyed. According to information 209 other peasants later allegedly received US\$0.25 (Kzr 17.5) per square meter of land seized. Further, it was alleged that more undocumented and uncompensated land seizures have taken place. The information also suggests that the amount of compensation is allegedly based on an arbitrary

measurement of the seized area by your company and bears no relation to the actual value of the farmland or the crops. It was reported that the land has been seized without any consideration of the rights of the affected peasants in law. Reportedly, there was no heads of agreement provided between SMC and the peasants as required by law. The receipts allegedly provided by SMC likewise do not provide any sound basis in law for the exchange of land. It was reported that in the case of the 209 peasants who received compensation from SMC, receipts proving this exchange were only issued to the peasants after the destruction of their farmland without any input from the affected peasants. In addition, the majority of the peasants concerned were alleged to be illiterate (80.2%) and were only able to provide their thumbprint as acknowledgment of the compensation provided. It was also alleged that the 192 peasants received no compensation and no receipts at all for their land. Finally, information received stated that SMC contracted Teleservice, an Angolan private security company, to enforce the seizures of farmland. The Special Rapporteur is concerned about reports alleging that Teleservice has committed human rights abuses in the context of the land seizures. A report received indicates that, on 22 April 2007, a demonstration by about 60 peasants against the land seizures was fired upon by a Teleservice guard. After mentioning the international Human rights law with regard to the right to food, the Special Rapporteur referred to the involvement of a private company in forcible seizures of farmland plots, stating that the Voluntary Principles on Security and Human Rights, to which the United Kingdom is a participant, provide a useful summary of the principles applicable. The Principles state that where companies such as SMC engage private security forces such as Teleservice, the company contracting the private security forces should monitor their behaviour according to the appropriate conduct policies. Furthermore, the monitoring should encompass detailed investigations into allegations of abusive or unlawful acts, the use of disciplinary measures and the involvement of local law enforcement authorities when appropriate. The Special Rapporteur urged the company to ensure that it respects international human rights norms in carrying out business. In support of his call, he referred to the report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises to the General Assembly for the eighth session of the Human Rights Council on the 7 April 2008 (A/HRC/8/5), which identifies the distinctive responsibilities of companies to respect human rights. According to this report companies, in addition to complying with national law, have a responsibility to respect international human rights norms. This requires that companies act proactively and undertake measures to become aware of, prevent and address adverse human rights impacts of their activities. Finally, the company should be vigilant in avoiding complicity or indirect involvement in human rights abuses. In addition, the countries of the Organization of Economic Co-operation and Development (OECD), including the United Kingdom, have formalized their commitment to the implementation of human rights norms in trans-national business activities in two documents. In the OECD Declaration and Decisions on International Investment and Multinational Enterprises and the OECD Guidelines for Multinational Enterprises, it is held that enterprises should “respect the human rights of those affected by their activities consistent with the local government’s international obligations and commitments”. In the commentary on the OECD Guidelines for Multinational Enterprises, it is held that “while promoting and upholding human rights is primarily the responsibility of governments, where corporate conduct and human rights intersect, enterprises do play a role, and thus MNEs [Multinational Enterprises] are encouraged to respect human rights, not only in their dealings with employees, but also with respect to others affected by their activities, in a manner that is consistent with host governments’ international obligations and commitments”. The Special Rapporteur requested additional information to clarify all the circumstances of this case, specifically the following points:

- measures, including disciplinary action, that are available to review the activities of SMC, including contractors such as Teleservice, and whether these measures have been used in relation to the seizure of farmland in Cuango as mentioned,
- measures that have been taken to ensure that the peasants affected by the land seizures were adequately consulted in respect of the land transfer,
- measures that have been taken to ensure that the livelihood of the affected peasants has not been threatened in relation to the mass seizures of farmland,
- steps that were taken to ensure that the peasants were made aware of their legal rights and obligations in relation to the land seizures,
- measures that have been taken to ensure that the requirement of due diligence is met in regards to respecting international human rights, including the right to food, whilst carrying out your business activities in the Cuango Basin in the Republic of Angola.

Observations

84. The Special Rapporteur regrets that at the time of the finalization of this report, ITM Angola had not transmitted any reply to his communication.
