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

**Report by the Special Rapporteur on the situation of human rights
and fundamental freedoms of indigenous people, James Anaya***

Addendum

**SUMMARY OF COMMUNICATIONS TRANSMITTED
AND REPLIES RECEIVED****

* Late submission.

** The present report is circulated as received, in the languages of submission only, as it greatly exceeds the word limitations currently imposed by the relevant General Assembly resolutions.

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I. INTRODUCTION

1. Throughout this year, as in years past, the Special Rapporteur has received information on an ongoing basis from indigenous peoples, non-governmental organizations, intergovernmental organizations, and United Nations mechanisms concerned with the protection of human rights of indigenous peoples about alleged violations of the human rights of indigenous peoples.

Responding to the communications received from indigenous peoples and other sources constitutes a fundamental focus of the work of the Special Rapporteur, and brings together key aspects of the mandate as established by Human Rights Council resolution 6/12. The Special Rapporteur, through the communication procedure, monitors and evaluates situations, and seeks to identify underlying causes of immediate problems, and develop recommendations that are practical and in accordance with relevant human rights standards.

2. The summaries of communications sent and replies received in the present report do not necessarily represent the full extent of the engagement of the Special Rapporteur about each particular situation. Rather, they represent the usual first step in taking action on a particular allegation. In some cases, the Special Rapporteur has issued public statements calling attention to, or expressing concern over, the human rights violations alleged. If circumstances warrant it and the Government concerned consents, the Special Rapporteur may conduct a country visit to examine a specific situation. In addition, he may issue detailed observations with analyses and recommendations, in the hope that they will be of use to the Governments and indigenous peoples concerned in their efforts to address the problems raised. In this sense, the Special Rapporteur is aiming to avoid the “revolving door” approach of simply sending a communication and receiving a response from the Government concerned, but rather aims to engage actively with States, indigenous peoples and other actors in response to the allegations received, in order to engage governments in constructive dialogue to prevent violations and develop good practices, in accordance with the terms of his mandate.

3. The communications received reveal systemic and ongoing patterns of human rights violations against indigenous peoples across the globe. Many of these violations infringe on indigenous peoples’ rights to lands, territories and resources. Also implicated are human rights violations due to the failure to consult adequately with indigenous peoples or secure their consent to legislation and activities, especially development projects, likely to affect them. As in previous years, another common cross-cutting problem is the abuse of human rights defenders who work with and advocate for indigenous communities, and inadequate or failed judicial or investigative processes to deal with human rights abuses against indigenous individuals and groups.

4. This report contains summaries of the communications on alleged human rights violations sent and responses received between 10 June 2008 and 26 August 2009, which are listed alphabetically by country, and within each country, by date (Part II). Part II also contains summaries of Government responses received during the past year to communications that were included in past communications reports. Summaries of the original communications are also included for ease of reference. Also included are observations of the Special Rapporteur on the status of the case and any intention to continue monitoring the case or other follow-up. The Special Rapporteur also sent a number of communications to seek to promote dialogue, cooperation and/or build on advances for the protection of the human rights of indigenous peoples and promote good practices (Part III).

II. SUMMARY OF COMMUNICATIONS ON ALLEGED HUMAN RIGHTS VIOLATIONS SENT AND RESPONSES RECEIVED

Bangladesh

Situation concerning the alleged seizure of traditional lands of Jumma indigenous communities

Communication of the Special Rapporteur of 3 April 2008

5. 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 the Special Rapporteur on the right to food sent an allegation letter to the Government of Bangladesh, to call its attention to information received concerning an alleged illegal seizure of the traditional lands of Jumma indigenous communities in Barbadan, Khagrachari and Merung districts, in the Chittagong Hill Tracts. The letter was originally reproduced in the Special Rapporteur's Communication Report of 2008 (A/HRC/9/9/Add.1), and it is reprinted here for ease of reference.

6. According to the information received, since March 2007, an estimate of 4,500 acres of land have been reportedly taken away from Jumma individuals 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. Similar patterns seem to have been followed in other districts in the past.

7. According to the information, the lands had 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 families willing to build their houses in the area. In other cases, army personnel have 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 evictions, the indigenous families were forced to leave their homesteads, as well as their domestic fruit gardens, bamboo and teak orchards, upon which they traditionally rely for their subsistence.

8. It was reported that the cases may have been in violation of article 26 (1) of the 1997 Chittagong Hill Tracks Accord which 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.

9. 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 Tracks, 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.

Response of the Government of 12 March 2009

10. In a letter dated 12 March 2009, the Government of Bangladesh provided its response to the communication sent on 3 April 2008. The letter reiterated the full support and cooperation of the Government of Bangladesh to the mandate and work of the Special Rapporteur and to other human rights special procedures and complaints mechanisms, and the Government assured that the contents of the communication were duly noted and forwarded to the concerned authorities in Bangladesh for necessary inquiry and actions. In its response, the Government of Bangladesh also refers the Special Rapporteur to its communication of 11 April 2008 where the Government acknowledged receipt of the Special Rapporteur's letter and stated that it had been sent to the relevant authorities.

Observations

11. The Special Rapporteur thanks the Government of Bangladesh for its initial response and looks forward to receiving more detailed information.

Cambodia

Situation concerning the Draft Sub-Decree of May 2008

Communication of the Special Rapporteur of 19 May 2009

12. On 19 May 2009, the Special Rapporteur sent a letter to the Government of Cambodia concerning a draft Sub-Decree regarding the principles, procedures, and mechanisms for the registration of land of indigenous communities as collective title in Cambodia. This letter followed-up on a previous letter of 22 July 2008 on the same issues, which had been sent, but had not been received by the Permanent Mission of Cambodia to the United Nations in Geneva. The Special Rapporteur included with the 19 May 2009 communication the original letter for consideration.

13. The Special Rapporteur learnt that subsequent to the concerns raised in the 22 July 2008 letter, the Sub-Decree on registration of indigenous communal land, and a related policy on registration and rights to the use of indigenous land, was approved by a cabinet meeting of the Government of Cambodia on 24 April 2009. The Special Rapporteur expressed concern that many of the issues raised in the 22 July 2008 letter regarding the protection of indigenous peoples' right to land are not resolved, and would appreciate that the Government provide information regarding how it has or intends to address those concerns.

14. In particular, the Special Rapporteur expressed concern that the Sub-Decree may permit the selling of individual land plots by an individual member of a community to outsiders (art. 14), which could be potentially problematic for maintaining the integrity of communal land, and go against the traditional decision making structures of a community. According to reports received, it seems that while there is often individual use of specific plots within indigenous communities in Cambodia, this does not necessarily imply an individual right of ownership

independent of the collective right. The information indicates that this might be inconsistent with the 2001 Land Law, which affirms the collective ownership of indigenous land (art. 26), and affirms that no authority outside the community may acquire any rights to immovable properties belonging to an indigenous community (art. 28).

15. Additionally, reports indicate that the clearing of traditionally owned lands, territories and resources, as well as coerced or involuntary displacement of indigenous communities for economic development are serious and ongoing threats to the survival, and well-being of indigenous peoples in Cambodia, and pose serious threats to their management and rights over natural resources. Reports have been received that economic land concessions on indigenous peoples' lands are an ongoing concern and a number of community groups have requested a cessation of land concessions on indigenous people's territories. Allegedly, some well-connected powerful individuals or private companies outside of indigenous communities have been using bribery or trickery to acquire the land of some members of indigenous communities, coercing them to sell their land, which is later used for private purposes not aligned with the interests of the indigenous community.

16. Indeed, successive United Nations Special Representatives of the Secretary-General for human rights in Cambodia, the former Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and the Special Rapporteur on the right to non-discrimination have all expressed their concern over the granting of 'economic land concessions,' often in full disregard of national law (such as the Sub-Decree on Economic Land Concession), and large scale illegal land acquisition by both private actors and the State, and their impacts on the human rights of indigenous communities in rural areas (A/HRC/7/42; E/CN.4/2006/41/Add.3).

17. These practices undermine the integrity of communal land and leave indigenous land open to privatization. These types of acquisitions also appear to be incompatible with the concept of communal land and contrary to the rights for indigenous peoples in this regard set out in the 2001 Land Law and in relevant international standards, including those in the United Nations Declaration on the Rights of Indigenous People.

18. As noted, in his 19 May 2009 communication to the Government of Cambodia, the Special Rapporteur also included the 22 July 2008 letter and reiterated the contents of that letter. In his letter of 22 July 2008, the Special Rapporteur congratulated the Government on the publication of the draft Sub-Decree of May 2008 to determine the principles, procedures, and mechanisms for the registration of land of indigenous communities as collective title. The Special Rapporteur noted that the initiative is potentially an important step toward securing the land rights of indigenous peoples.

19. However, the Special Rapporteur also drew to the attention of the Government concerns communicated to him that the draft Sub-Decree in its current state falls short, in a number of respects, of the protections provided for indigenous communal land title by the Cambodian Land Law and by relevant international standards. He noted that similar concerns were raised on 2 April 2007 by the previous Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, Professor Rodolfo Stavenhagen, with regard to the Draft Policy on Registration and the Rights to Use of Indigenous Communal Land in Cambodia, which at the time the letter was sent had yet to be adopted.

20. It was alleged that the draft Sub-Decree does not include a provision to protect indigenous lands prior to the registration of collective title. The Special Rapporteur expressed concern that the failure to protect indigenous lands before title registration leaves lands vulnerable to alienation or other threats in the interim. He noted that this may especially be true since the Sub-Decree includes several provisions that may have the effect of making for a prolonged titling process, such as the requirement that all indigenous communities be registered as legal entities prior to applying for collective title (art. 3) and the requirement that all land disputes be resolved before the collective title is issued (art. 3 in conjunction with art. 7). Additionally, according to the information provided, the first of these requirements diverges from the Cambodian Land Law, which only requires that a community be registered as a legal entity prior to holding its title, rather than prior to applying for its title.

21. It was also of concern that several provisions of the draft Sub-Decree were viewed as limiting the authority of the indigenous communities over management of their lands and resources. The current draft of the Sub-Decree requires indigenous individuals wanting to form part of an indigenous community to surrender their individual land and integrate it into community land (art. 10) and also states that members who leave the community have the right to receive individual plots of land (art. 11). Both articles affront the rights of the indigenous community to develop plans and priorities regarding the management of village lands and resources and may interfere with the authority of the traditional leaders in that regard. It has further been pointed out to me that these articles may very well have the undesired effect of discouraging individuals from forming or remaining part of indigenous communities.

22. The Special Rapporteur expressed fear that the adoption of the draft Sub-Decree in its current state would weaken the important advancements of Cambodia in the promotion of the rights of indigenous peoples. Accordingly, he reiterated the recommendations made by his predecessor with regard to the Policy on Registration and Rights to Use of Indigenous Communal Land in Cambodia, which are equally applicable to the draft Sub-Decree. These recommendations encouraged Cambodia to provide full legal protection to indigenous collective ownership rights, on an equal standing with other forms of property. It also recommended that the Government respect the rights of indigenous peoples to determine their own priorities and strategies for the development or use of their traditional lands and to develop procedural safeguards to respect the rights of indigenous communities over their lands.

23. The Special Rapporteur also added to his predecessor's recommendations, the following recommendations that the Sub-Decree:

- Protect indigenous lands until they are registered. In this regard, he recommended that article 3 of the Sub-Decree be amended to allow indigenous communities to register to become legal entities at the same time as they apply for title. Further, he suggested that the Sub-Decree be amended to include a provision to safeguard possession by an indigenous community of its traditional land from the time that the community applies for a title to the time that the title is registered.
- Respect the right of indigenous peoples to determine their own priorities and strategies with regard to the management of their lands. In this respect he recommended that articles, 10 and 11 of the Sub-Decree be amended to allow the indigenous communities to decide how lands are held within the community.

Observations

24. The Special Rapporteur regrets that there is no record of any reply from the Government of Cambodia to the letter of 19 May 2009 at the time of finalization of this report. While acknowledging that the Sub-Decree has now been approved, the Special Rapporteur continues to monitor its implementation and hopes that the concerns raised regarding specific provisions of the Sub-Decree will inform the interpretation and implementation of the Sub-Decree in a manner that comports with international standards governing indigenous land rights.

Canada

Situation concerning the TransCanada oil pipeline operation carried out in the traditional lands of the Lubicon Lake Nation

Communication of the Special Rapporteur of 26 January 2009

25. In a letter dated 26 January 2009, the Special Rapporteur called the attention of the Government of Canada to information received concerning the commencement of construction of the TransCanada oil pipeline operation carried out in the traditional lands of the Lubicon Lake Nation.

26. In summary, according to the information received: The Lubicon Lake Indian Nation or Lubicon Cree is an indigenous group of approximately 500 people located in northern central Alberta, Canada. The Lubicon Lake Nation was overlooked when Treaty 8 was negotiated with indigenous nations in the surrounding areas in the late 1800s, and accordingly there are unsettled aboriginal land rights over the traditional territory of the Lubicon Lake. Over several decades, the government of the province of Alberta has approved 2,000 oil and gas well sites, 32,000 kilometers of seismic lines, and more than 2,000 kilometers of roads through formerly forested areas within the Lubicon Territory. Most recently, the Government has approved a \$1 billion project, to be carried out by the TransCanada Company, the largest gas shipping company in North America, for the construction of a pipeline and construction site within the Lubicon Territory.

27. TransCanada applied for permission to build its pipeline across Lubicon Territory from a provincial regulatory agency called the Alberta Utilities Commission (AUC). In April 2008, the AUC held a prehearing on the application for the pipeline construction. The Lubicon Lake Nation submitted its objections in writing to the AUC as part of that hearing. Its primary arguments were (1) the Lubicon never ceded the lands on which the proposed pipeline is to be built; (2) the Government and TransCanada failed to obtain the consent of the Lubicon for the construction of the pipeline; and (3) Alberta, as a province, does not have jurisdiction over the application given that the federal government has jurisdiction over Indian matters. Thus, the Lubicon take the position that the existence, nature and extent of Lubicon land rights is not for the AUC to decide.

28. Nevertheless, on 10 October 2008, the AUC approved TransCanada's North Central Corridor Pipeline Project, which involves the construction of a 300-kilometer, 42-inch diameter pipeline running from Manning to Wabasca, an area that intersects traditional Lubicon Territory. Despite the concerns raised by the Lubicon about the project, the TransCanada operation

continues apace. During the week of 3 November 2008, after being informed that the Lubicon would object to the location, TransCanada began clearing land for a 600-person contractor camp within Lubicon traditional territory. Reportedly, the contractor camp would house more construction workers than the entire Lubicon population, the Lubicon asked that the camp be moved out of their traditional territory, but were told by representatives of the TransCanada that such action was impossible because it would cause interference with the pipeline construction schedule. Construction of the contractor camp is reportedly now complete.

29. The Lubicon ask that all companies wishing to carry out activities in Lubicon Territory, including TransCanada, address Lubicon concerns before applying to the Alberta provincial government for authority to proceed with the proposed activities. In the case of TransCanada, the Lubicon are prepared to consider an agreement not to oppose an application to the Alberta government once the company recognizes that jurisdiction over Lubicon Territory is in dispute. The Lubicon have also asked to receive a response to concerns regarding (1) the health and safety implications of the proposed activities; and (2) the social, cultural, environmental and wildlife implications of the proposed activities. In addition, they have asked for an agreement with TransCanada to provide the Lubicon people with economic opportunities resulting from the proposed activities. However, the Lubicon have expressed that they are not prepared to enter into discussions on these points with TransCanada until pipeline construction activities cease and the contractor camp is moved from its present location.

Response of the Government of 3 June 2009

30. In a communication dated 3 June 2009 the Government of Canada provided a detailed response to the allegations conveyed in the Special Rapporteur's letter. As the information raised matters within the competence of both the Government of Canada and the government of the province of Alberta, the response contained information and observations from both levels of government.

31. In summary, according to the Government's response: The Government of Canada and the government of Alberta, contrary to the position adopted by the Lubicon Lake Nation, notes that the disputed area is governed by the provisions of Treaty 8. Moreover, the Lubicon Lake Nation in fact ceded its aboriginal title and related rights in the disputed area in exchange for the rights guaranteed in Treaty 8. Specifically, the Lubicon Lake Nation members enjoy the hunting, fishing, and trapping rights guaranteed by Treaty 8 and the Canadian Constitution. Under Treaty 8, the Lubicon Lake Nation is entitled to Reserve lands, the extent of which is determined based on population size.

32. With regards to the location of the pipeline construction, while the pipeline does cross the land that the Lubicon Lake Nation is claiming, it does not cross the Reserve land that is guaranteed under Treaty 8 nor is it nearby Lubicon settlements. In addition, the pipeline, for a large portion of its length, will run parallel to an already existing pipeline, thus mitigating the effects of its construction.

33. The Lubicon Lake Nation had an obligation to ensure that it raised all of its specific concerns in respect of the pipeline project domestically, and had an obligation to ensure that the appropriate domestic body had an adequate opportunity to address these specific concerns, before it raised these concerns before the Special Rapporteur.

34. In respect of the Special Rapporteur's reference to the United Nations Declaration on the Rights of Indigenous Peoples, Canada notes that the Declaration is not a legally-binding instrument, that its provisions do not reflect customary international law and that the instrument has no legal effect in Canada.

35. Canada voted against the adoption of the Declaration at the United Nations General Assembly because the text lacks clear, practical guidance for States and because it fails to address Canada's key concerns. In particular, Canada has repeatedly stated that some of the provisions with which it has key concerns include Articles 19, 26 and 28. Nevertheless, the Government of Canada maintained that it continues to take effective action, at home and abroad, to protect and promote the rights of indigenous peoples based on its existing human rights obligations and commitments.

36. The Governments of Canada and Alberta also maintain that the Lubicon Lake Nation was consulted prior to the approval of the pipeline project, and that it was afforded an opportunity to express its concerns to the appropriate government entities prior to approval. In this regard, the Government pointed to policies and regulatory procedures that ensure that those whose rights may be adversely affected have an opportunity to have their concerns heard.

37. One such policy of the government of Alberta delegates the procedural aspects of consultation to companies, who then consult with First Nations whenever resource development activity on provincial Crown land has the potential to adversely impact First Nation's rights and traditional uses. It was under this requirement that a negotiation and consultation process was undertaken between TransCanada/NOVA Gas Transmission Ltd. and the Lubicon Lake Nation. As a result of this consultation process, it became apparent that the primary concerns of the Lubicon Lake Nation are much broader than the potential impacts of the NCC pipeline project, and involve concerns that cannot be addressed by TransCanada, NGTL, the Alberta Utilities Commission, the Government of Canada, or the government of Alberta alone. Instead, the concerns are related to the differing and longstanding positions of the Governments of Canada and Alberta, and the Lubicon Lake Nation, with respect to the Lubicon Lake Nation's asserted Aboriginal title claim, and would be best addressed through the Treaty Land Entitlement negotiations. Thus, Alberta found the consultation to be adequate and on 31 July 2008 sent the Lubicon Lake Nation a notice of the consultation assessment decision and the land approvals.

38. In addition to the consultation requirement described above, the project was also subject to the Alberta Utilities Commission regulatory process, which includes a formal consultation component to ensure that Alberta residents whose rights may be adversely affected by a proposed utility application are informed of the application and have the opportunity to have their concerns heard, understood, and considered within the context of an application for review.

39. In this case, the Alberta Utilities Commission invited any concerned party to submit its concerns, which the Lubicon Lake Nation did in a letter dated 24 January 2008. The Lubicon Lake Nation also expressed its intent to participate in proceedings on the application. As part of these proceedings the Lubicon Lake Nation again expressed its position that it had not ceded its Aboriginal title and thus its must consent to the project. On 24 April 2008, the Alberta Utilities Commission issued its decision, finding that the Lubicon Lake Nation had not demonstrated that

it had a right to standing in the proceedings, and subsequently approved the project on 10 October 2008. Following these decisions, the Lubicon Lake Nation did not submit any additional concerns to the Alberta Utilities Commission, nor did it appeal the decision to Alberta Courts.

40. On 17 June 2008, TransCanada applied to the National Energy Board (NEB) seeking a declaratory judgment that the whole of the TransCanada Alberta system is within Canadian federal jurisdiction, subject to NEB regulation. The application was granted on 26 February 2009, following various environmental impact assessments. As a result of shifting regulation from the Alberta Utilities Commission to the NEB, TransCanada intends to implement another public consultation and communications program to explain the NEB decision and its ramifications.

41. There are measures in place to ensure compliance with the recommendations of the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, and the United Nations Special Rapporteur on Adequate Housing. Notably, the Governments continue to make serious efforts to carry on negotiations with the Lubicon Lake Nation in respect of its claims. Canada continues to recognize a legal duty to consult Aboriginal communities where Crown conduct may adversely impact their rights. Alberta continues to prohibit new resource development, including oil and gas extraction activities, within the proposed reserve land of the Lubicon Lake Nation. In addition, Canada continues to take positive measures in order to improve the housing and living conditions of the Lubicon Lake Nation. The Government of Canada provided detailed information with regards to each category of action.

42. With respect to negotiations with the Lubicon Lake Nation, since the 1930s, when the Lubicon Lake Nation first made its request for reserve land, the Government of Canada took very seriously the Treaty Land Entitlement negotiations with the Lubicon Lake Nation. Progress with these negotiations halted with the onset of World War II and resumed more recently in the 1980s when the Lubicon Lake Nation initiated a variety of lawsuits claiming Aboriginal title.

43. Over the last few decades, the negotiations have led to various proposed settlement agreements. Canada made its most recent offer of settlement to the Lubicon Lake Nation in 2006, which the Lubicon Lake Nation promptly rejected. According to the Government, negotiation efforts have repeatedly been frustrated by the apparent unwillingness of the Lubicon Lake Nation to reach an agreement and their recent refusal to return to the negotiating table unless the Government of Canada acknowledges a constitutionally protected right to self-government at the outset, with an agreement to negotiate the details concerning the content and scope of that right at some later date.

44. The Government's approach to the negotiation of self-government is not a process for the recognition of Aboriginal rights of self-government for any specific group. Instead, the Canadian government focuses its efforts on arriving at the legal agreements necessary to making governance authority work within the larger structure of the Canadian constitution.

45. The Government of Canada and the Alberta provincial government are committed to working with the Lubicon Lake Nation towards a resolution of its outstanding claims which would deliver the proposed remedy found appropriate by the Human Rights Committee and the

United Nations Committee on Economic, Social and Cultural Rights. The Government of Canada and the Alberta provincial government are ready and willing to resume negotiations at any time should the Lubicon Lake Nation be willing to return to the negotiating table.

46. With respect to consultation issues, the Government of Canada consults with Canadians on matters of interest and concern to them. Similarly, the government of Alberta consults with Albertans on matters of interest and concern. Consulting is seen as an important part of good governance, sound policy development and decision-making. In addition to good-governance objectives, Canada and Alberta have statutory, contractual and common law obligations to consult. As set out above, the Government of Canada, the government of Alberta and TransCanada through its wholly owned subsidiary NGTL, have all been seeking to consult with the Lubicon Lake Nation and will continue to do so as appropriate.

47. With respect to the prohibition of resource development, the government of Alberta prohibits new resource development, including oil and gas extraction activities, on those lands falling within the proposed reserve land of the Lubicon Lake Nation, unless the Lubicon Lake Nation consents to development. In turn, no logging or oil and gas extraction can occur within the proposed reserve land of the Lubicon Lake Nation without the Lubicon Lake Nation's consent. This prohibition does not apply to the area of disputed territory beyond the proposed reserve boundaries, since the Governments of Canada and Alberta take the position that all of the Lubicon Lake Nation's Aboriginal title and right to that area of land were ceded and surrendered under Treaty 8 in exchange for various treaty rights and benefits.

48. With respect to measures taken to improve housing and living conditions, the Government of Canada provides annual funding to the Lubicon Lake Nation for community development and infrastructure (including housing), economic development, social development, registration, First Nation Government (including operating of the Band Council), health care and promotion, old age security, and employment insurance.

49. In addition, the various housing and infrastructure programs available to First Nations in Canada are also available to the Lubicon Lake Nation. For instance, the Government of Canada Minor Capital Housing Allocation provides a subsidy to encourage and assist with reserve housing and renovations. However, the Lubicon Lake Nation recently missed opportunities for this funding as a result of the failure to provide project descriptions and the associated proof of expenditures.

50. Since 2005, the Government of Canada has been seeking to make progress in providing water and sewer services to Lubicon Lake members. Some proposed projects in this area have been rejected by the Lubicon Lake Nation. The Government of Canada plans to make the Lubicon Lake Nation a priority in an upcoming independent national engineering assessment which will evaluate water and wastewater needs and services in all First Nation communities, and will recommend the best options for future services to meet the requirements of each community.

Observations

51. The Special Rapporteur thanks the Government of Canada for the detailed response to the questions and concerns raised. In light of the extensive information provided, the Special

Rapporteur continues to monitor and investigate the claims of the Lubicon Lake Nation and the controversy surrounding the pipeline construction. In particular, the Special Rapporteur continues to seek information on the apparently disputed issue of the applicability of Treaty 8, and the ongoing consultation and negotiation processes related to this dispute and Lubicon Lake Nation land rights more generally. Furthermore, the Special Rapporteur wishes to provide further observations on the Government of Canada's position on the applicability of the United Nations Declaration on the Rights of Indigenous Peoples. The Special Rapporteur intends to continue his engagement with both the Lubicon Lake Nation and the Government of Canada, as well as other interested parties, in order to assist with advancing toward a resolution of the situation in a mutually satisfactory fashion that addresses the concerns of the respective parties and that comports within international norms.

Chile

Situación sobre la supuesta detención arbitraria de los Sres. Juan y Jorge Huenchullán Cayul

Comunicación del Relator Especial de 5 de marzo de 2008

52. El 5 de marzo de 2008, el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, el Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos y el Relator Especial sobre la tortura señalaron a la atención urgente del Gobierno la información recibida en relación con la supuesta detención arbitraria y los supuestos tratos denigrantes sufridos por los Sres. Juan y Jorge Huenchullán Cayul, de la comunidad de Temuicui, y por otros miembros de comunidades mapuches del sur del país. La situación del Sr. Jorge Huenchullán y, en general, de la comunidad de Temuicui, fue objeto de la comunicación conjunta enviada al Gobierno por el Relator Especial y por la Representante Especial del Secretario General sobre la situación de los defensores de derechos humanos el 10 de julio de 2007 [Ref. AL G/SO 214(107-6), Indigenous (2001-5), CHL 4/2007)]. La carta fue reproducida en el informe de comunicaciones del Relator Especial de 2008 (A/HRC/9/9/Add.1) (15 de agosto de 2008) y esta reproducida a continuación para referencia.

53. De acuerdo con la información recibida, el 2 de febrero de 2008, el Sr. Juan Huenchullán Cayul habría sido supuestamente interceptado por carabineros pertenecientes a las Fuerzas Especiales de la Prefectura de Malleco, quienes lo habrían identificado como miembro de la comunidad de Temuicui. Sin mediar ningún acto de provocación por su parte, dichos carabineros habrían supuestamente comenzado a golpear e insultar al Sr. Huenchullán. Al percatarse de la situación, distintos miembros de comunidades mapuches presentes en la plaza de Ercilla, incluyendo algunos miembros de la comunidad de Temuicui, intentaron intervenir para impedir que el Sr. Huenchullán fuera golpeado por los carabineros, produciéndose un forcejeo. Como resultado de dicho altercado, fueron detenidos.

54. Además, según se informa, durante su traslado a la comisaría de Collipulli, los detenidos habrían sido supuestamente víctimas de golpes propinados por los carabineros que los acompañaban e insultados con epítetos racistas. Según las alegaciones, el Sr. Jorge Huenchullán habría sido supuestamente rociado en la cara con gas lacrimógeno, siendo objeto de burlas por parte del personal de carabineros. Los detenidos habrían permanecido supuestamente más de

13 horas en dependencias policiales. Durante su interrogatorio, los detenidos habrían sido objeto supuestamente de golpes por parte de los carabineros. El día 3 de febrero de 2007, los detenidos habrían sido trasladados para la realización del control de detención. Se habría abierto en contra de los detenidos un proceso ante la justicia militar, imputándoles un delito de atentado en contra de los carabineros y poniéndoles en libertad con medidas cautelares.

55. Se alega que los sucesos descritos son parte de un patrón más amplio de discriminación y malos tratos contra miembros de las comunidades mapuches por parte de las fuerzas de seguridad. Asimismo, se expresa preocupación por el hecho de que la detención y los supuestos malos tratos sufridos por las personas mencionadas puedan estar relacionada con la situación de conflictividad que atraviesan las comunidades de Temucuicui y de Ankapi Ñancuhew a raíz del contencioso por la propiedad de sus tierras tradicionales.

Respuesta del Gobierno de 1 de octubre de 2008

56. El Gobierno de Chile respondió a la comunicación mediante una carta fechada el 1 de octubre de 2008.

57. En resumen, el Gobierno comunicó que: El día 3 de febrero de 2008, en el marco de la celebración del aniversario de la comuna de Ercilla, Provincia de Malleco, un grupo de individuos en manifiesto estado de ebriedad, se encontraban efectuando desórdenes en la vía pública, alterando el normal desarrollo de las actividades conmemorativas, razón por la cual, el personal de carabineros de dotación de la tenencia Ercilla, de la Segunda Comisaría de Collipulli, dependiente de la prefectura de Malleco No. 21, procedió a su fiscalización con la finalidad de conducir a los infractores hasta la unidad policial, oportunidad en que alrededor de 30 personas, entre hombres y mujeres, todos adultos, trataron de impedir el procedimiento policial, agrediendo al personal mediante golpes de puños, pies y lanzamiento de elementos contundentes (piedras), a raíz de lo cual resultaron 4 carabineros lesionados con diferentes heridas.

58. Con ocasión de tal agresión, fueron detenidos por el delito de maltrato de obra a carabineros de servicio Luis Hernán Arzola Acaluan, Víctor Ignacio Colihuinca Huenuman, Miguel Ángel Villanueva Nahuel, Juan Ignacio Huenchullan Cayul y Henry Elisao Queipul Morales, registrando éste último una orden de detención pendiente por ocultamiento de identidad, en la causa No. 388, RUC 600326306-K, seguida ante el Juzgado de Garantía de Collipulli. Dichas personas quedaron a disposición de la fiscalía militar Malleco/Angol, mediante al parte policial No. 01 del 03.02.2008, de la Segunda Comisaría Collipulli.

59. Posteriormente, siendo las 02:45 horas, de la madrugada del día 03.02.2008, en los instantes que se trasladaba por medida de seguridad a los aludidos detenidos, desde la tenencia Ercilla hasta la Segunda Comisaría Collipulli, aproximadamente unas 50 personas se apostaron en el perímetro de la citada tenencia. Desde allí arrojaron piedras contra el cuartel policial, resultando cuatro vidrios de su frontis quebrados, así como, un vidrio lateral delantero derecho, también quebrado del automóvil particular patente UK-1642, que se encontraba a disposición del Juzgado de Garantía de Lautaro.

60. Como consecuencia del atentado al cuartel policial, personal de carabineros, ante la flagrancia ilícita, se detuvo a Jorge Alvaro Huenchullan Cayul, Víctor Hugo Caihueque Railao,

Marcelo Alejandro Villanueva Nahuel y Mijael Incola Carvones Queipul, registrando éste último antecedentes por el delito de desórdenes públicos graves, sancionado en el Art. 269 del Código Penal, en causa RIT No. 337-2007 y por el delito de robo en lugar no habitado, en causa No. 772 del 27.02.2007, ambos procesos seguidos ante al Juzgado de Garantía de Collipulli. De los hechos se dio cuenta a la fiscalía local de Collipulli, a través del parte policial No. 124 del 03.02.2008, de la Segunda Comisaría Collipulli, por el delito de amenazas, contemplado en el Artículo 417 del Código de Justicia Militar y atentado contra la autoridad, Artículo 261 del Código Penal.

61. Por su parte, en los respecta a las lesiones sufridas por Mijael Incola Carvones Quipul, esto es hematoma occipital herida cortante occipital, de carácter leve, según diagnóstico del médico de turno del hospital regional de Collipulli, “ésta tiene su origen y consecuencia en la necesidad del personal de carabineros de emplear la fuerza racional y necesaria para repeler la agresión ilegítimas de que era objeto y lograr la aprehensión de los autores de los ilícitos en cuestión”.

62. En lo referente a las afirmación de que los imputados fueron golpeados, amenazados e insultados con epítetos racistas, ello carece de veracidad y no se ajustan en caso alguno a la realidad de lo sucedido, al igual que acontece con el hecho de que el comunero Juan Huenchullan haya sido rociado en la cara con un gas lacrimógeno, toda vez que el personal institucional carece de este elemento disuasivo individual.

63. Respecto a que los detenidos Jorge Huenchullan Cayul, Victor Calhueque Milanao, Henry Queipul Morales y Marcelo Villanueva Nahuel que habrían sido amarrados a un poste en el pasillo de la comisaria, permaneciendo toda la noche en ese estado, conforme lo señala la comunicación de los Relatores, ello no fue así, por la circunstancia de que los detenidos fueron ingresados al interior de la sala de imputados de la unidad, manteniéndose en su interior hasta el momento de ser trasladados a la audiencia del control de detención, sin existir durante la permanencia interrogatorio ni menos golpes de parte de personal de carabineros.

64. Finalmente, cabe hacer presente, que los procedimientos policiales a que dieron lugar los sucesos antes descritos, conforme a lo resuelto por el juzgado de garantía de Collipulli, en la audiencia de control de detención de rigor, se ajustaron a derecho, siendo formalizados los detenidos por el delito de desórdenes públicos graves, imponiéndoseles medidas cautelares.

Observaciones

65. El Relator Especial agradece la respuesta del Gobierno Chileno así como la oportunidad que tuvo para discutir la situación de los pueblos indígenas de Chile durante la visita que llevó a cabo a Chile, a invitación del Gobierno del 5 al 9 de abril de 2009. El Relator Especial continúa monitorizando la situación de la comunidad Temucucui.

Colombia

Situación sobre las supuestas amenazas de muerte en contra de organizaciones indígenas en la región Cauca

Comunicación del Relator Especial de 29 de agosto de 2008

66. En una carta de 29 de agosto de 2008, el Relator Especial, junto con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión, señalaron a la atención urgente del Gobierno de Colombia información recibida en relación con las presuntas amenazas de muerte del 11 de agosto de 2008 en contra del Consejo Regional Indígena del Cauca (CRIC), la Asociación de Cabildos Indígenas del Norte del Cauca (ACIN), sus asesores, el pueblo indígena Nasa o Paéz en general, y líderes indígenas de Cali y Bogotá por una organización denominada “Campesinos Embejucaos de Cauca”.

67. En resumen, según la información recibida: El 11 de agosto de 2008 a las 16:14 horas, llegó un correo electrónico titulado “masacres cauca” a las direcciones de la CRIC y la ACIN. El texto contenía una amenaza de muerte dirigida a estas dos organizaciones, sus asesores, miembros del pueblo Nasa en general y líderes indígenas de Cali y Bogotá. Específicamente, la carta tenía el siguiente tenor.

68. “Siendo aproximadamente las 00:00 de esta Noche, recibirán información sobre la muerte de paHECES y cabecillas ex guerrilleros del CRIC por campesinos, lo que les será conforme Telefónicamente a causa de su irrespeto... no se quejen cuando el CRIC y paHECES, serán encontrados muertos y un significativo número de miembros de ustedes desaparecidos, Sabemos que en Colombia ustedes no sobrepasan el millón de personas en Colombia. Queremos de Popayán, Cali y Bogotá libre de indios porque allí están la guarida y concentración de los cabecillas.”

69. El correo expresa claras señales de discriminación hacia los pueblos indígenas con la referencia a los pueblos indígenas Nasa o Paéz como excremento (“paHECES”) y con la declaración de la organización de Campesinos Embejucaos de Cauca como “anti-indios”. Asimismo, la información recibida señala que el mensaje acusa a los líderes indígenas Nasa de ser terroristas, delincuentes y criminales con “aliados significativos” de la FARC. Se alegó que la carta es la culminación de un incremento drástico de amenazas en contra de los líderes indígenas del Norte de Cuaca.

70. Los Relatores Especiales, instaron al Gobierno que adopte todas las medidas necesarias para proteger los derechos y las libertades de los pueblos indígenas del departamento de Cauca, e investigar, procesar e imponer las sanciones adecuadas a cualquier persona responsable de las violaciones alegadas.

Observaciones

71. El Relator Especial lamenta que no consta en el expediente ninguna respuesta de Colombia a la carta de alegación a la fecha de finalización del presente informe.

Situación sobre “La Minga de Resistencia Indígena Popular”

Comunicación del Relator Especial de 29 de octubre de 2008

72. En una carta de 29 de octubre de 2008, el Relator Especial, junto con el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, llamó la atención del Gobierno de Colombia sobre la información recibida en relación con la muerte de los Señores Mariano Morano Dizú, Presidente de la Junta de Acción Comunal de La Palma, en Pitayó, Jesús Antonio Neme y Elver Idito, así como sobre alegaciones de amenazas y violencia en contra de los pueblos indígenas durante las manifestaciones en el marco de la llamada “minga de resistencia”.

73. En resumen, según la información recibida: El 12 de octubre de 2008, con ocasión de la conmemoración de los 516 años del desembarco español en el continente americano, la Organización Nacional Indígena de Colombia (ONIC) organizó “la Minga de Resistencia Indígena y Popular”, que tenía como actividad central la movilización pacífica de los pueblos indígenas en los Departamentos del Cauca, Huila, Valle, Chocó, Caldas, Risaralda, Atlántico, Guajira, Cesar, Córdoba, Sucre, Arauca, Meta y Norte de Santander. Indígenas Nasa, Kokonukos, Yanacona, Guambianos, Embera, Eperara Siapidara, Wounaan, Barí, Kankuamos, Mekaná, Wiwa, Arhuacos, Senú, Sikuanis, Piapocos, Salibas y U’wa participaron en las movilizaciones.

74. Las movilizaciones tenían como fin protestar contra el Tratado de Libre Comercio (TLC) firmado con los Estados Unidos y la aprobación del Estatuto de Desarrollo Rural (ley 1152 de 2007), exigir al Gobierno la adopción de la Declaración de las Naciones Unidas sobre los Pueblos Indígenas y el cumplimiento con los acuerdos suscritos por el Gobierno Nacional en materia de los derechos de los indígenas a sus territorios, y a protestar por los asesinatos de indígenas en los 15 días que precedieron la movilización.

75. En los Departamentos del Cauca y del Valle, el Escuadrón Móvil Antidisturbios (ESMAD), el Ejército Nacional y civiles armados con fusiles, gases lacrimógenos, tanquetas y helicópteros se enfrentaron a las personas que participaban en las movilizaciones. El 14 de octubre de 2008, miembros de la Fuerza Pública habrían abierto fuego en contra de los aproximadamente 15.000 a 20.000 indígenas reunidos en el Resguardo de la María Piendamó, Departamento del Cauca, y contra los indígenas reunidos en el Departamento del Valle. Mariano Morano Dizú fue herido con arma de fuego en el cráneo y falleció luego de ser trasladado a Popayán. Además, más de cien indígenas fueron heridos, al menos 16 con arma de fuego, y docenas más se encuentran desaparecidos. El 21 de octubre de 2008, miembros de la Fuerza Pública habrían abierto fuego en contra de las aproximadamente 500 personas reunidas sobre la vía Panamericana en Villarica. Jesús Antonio Neme y Elver Idito resultaron muertos y cinco otros manifestantes fueron heridos.

76. En el departamento de Huila, se limitó el derecho a la libre circulación de 750 indígenas que se dirigían a Neiva. Se ordenó a estas personas que bajaran de los camiones en los que eran transportadas por efectivos del Ejército Nacional y la Policía Nacional, quienes con el pretexto de verificar la identidad de los manifestantes, les pidieron su identificación y retuvieron tanto los vehículos como las provisiones y alimentos que llevaban.

77. Durante la movilización, varios indígenas fueron amenazados de muerte por grupos paramilitares. Se alega que un Fiscal impidió el ingreso de autoridades indígenas para identificar a otras víctimas en el municipio del Corinto (Cauca) y examinar los cadáveres y posibles causas de su muerte. Para justificar la violencia, se usa el falso pretexto de que las comunidades indígenas son controladas e infiltradas por miembros de las FARC, ignorando así sus reclamos legítimos.

Respuesta del Gobierno de 5 de enero de 2009

78. Mediante una carta de fechada 5 de enero de 2009, el Gobierno de Colombia, dió descripciones detalladas sobre las manifestaciones en Cauca y Villarica. Sobre las alegaciones de uso excesivo de la fuerza por las fuerzas de seguridad, de las muertes de los Sres. Mariano Morano Dizú y Jesús Antonio Neme y Elver Idito.

79. En resumen, según la información proporcionada por el Gobierno: En el marco de la referida movilización, organizada por el Consejo Regional Indígena del Cauca (CRC), la que contó con la participación de cerca de 5000 indígenas de la región, se presentaron acciones tendientes a bloquear la Carretera Panamericana en diferentes puntos, mediante el uso de árboles, piedras y vehículos, ocasionándoles a éstos daños en las llantas, y en otros casos procediendo a su incineración. El Bloqueo de la carretera también originó daños a la vía, al medio ambiente y a las redes de servicios públicos. Ante la situación descrita, la Policía Nacional, a través del Escuadrón Móvil Antidisturbios (ESMAD), acudió a los sitios bloqueados por los manifestantes, con el fin de garantizar el restablecimiento de la normalidad.

80. En relación con el presunto uso desproporcionado de la fuerza del ESMAD de la Fuerza Pública contra los manifestantes indígenas al intentar reabrir el paso en la carretera Panamericana, el 14 de octubre de 2008, el Gobierno informó que la Policía Nacional dispuso de 750 hombres del ESMAD para dispersar a los manifestantes, sin acudir a acciones violentas, atendiendo los protocolos establecidos para estos casos y teniendo siempre presentes los Principios Básicos sobre el Empleo de la Fuerza y de Armas de Fuego por los Funcionarios Encargados de hacer cumplir la Ley. En ese sentido, cabe señalar que la intervención policial inicialmente desplegó el personal del ESMAD, en atención a su función de asegurar el normal y pacífico desarrollo de las protestas autorizadas; pero en vista del grado de violencia ejercido por los manifestantes, se procedió con el empleo de bastones de mando, agua y gases lacrimógenos para dispersar la manifestación tornada violenta.

81. En desarrollo de la movilización los manifestantes utilizaron explosivos de fabricación casera, tales como “papas explosivas,” bombas molotov, así como piedras, palos y machetes; electos que ocasionaron heridas a 45 uniformados, entre ellos, al intendente Aldívar Giraldo Galeano, quien presentó mutilaciones en los miembros superiores al manipular un paquete explosivo dejado presuntamente por los manifestantes durante el desbloqueo de la vía Panamericana.

82. Con referencia a la afirmación que “miembros de la Fuerza Pública habría abierto fuego en contra de aproximadamente 15000 y 20000 indígenas.” Al respecto, es de indicar, que tal como fue reconocido por el Gobierno Nacional a la opinión pública, el hecho se presentó tan solo por un (1) miembro de la Policía Nacional, quien no hace parte del ESMAD. Ante la gravedad del

hecho, la Oficina de Control Interno Disciplinario del Departamento de Policía del Cauca abrió indagaciones preliminares y la apertura de investigación disciplinaria contra dicho miembro de la Policía Nacional y sus dos superiores.

83. En relación con la presunta muerte de indígenas mientras se procedía con el desbloqueo de la vía Panamericana, Taurino Ramos Valencia y Jesús Antonio Neme, el Gobierno informó que ha tenido conocimiento de la muerte de un (1) indígena con ocasión del desbloqueo de la Vía Panamericana durante los días 10 al 14 de octubre, que responde al nombre de Taurino Ramos Valencia, hecho por el que se adelanta investigación penal en la Fiscalía Seccional de Piendamó. No obstante, En relación con la muerte del indígena *Jesús Antonio Neme*, actualmente se adelanta investigación penal, la cual cursa en la Fiscalía 001 Especializada de Santander de Quilichao, y que se encuentra en etapa de indagación preliminar. Asimismo, la Procuraduría general de la Nación, en uso del poder preferente avocó conocimiento de la Indagación Preliminar Disciplinaria que se adelantaba en la Oficina de Control Interno Disciplinario del Departamento de Policía de Cauca. Respecto de la muerte de Elver Ipia Ibito, a la fecha se adelanta investigación penal en la Fiscalía 001 Especializada de Santander de Quilichao, que se encuentra en etapa de indagación preliminar.

84. En relación con la existencia de 100 indígenas heridos y docenas de indígenas desaparecidos, respecto de los indígenas que resultaron heridos en desarrollo del desbloqueo de la vía Panamericana, la Gobernación del Cauca informó con base en el listado reportado por el servicio de urgencias de Piendamó Cauca, diecinueve (19) Indígenas resultaron heridos. Por estos hechos, actualmente se adelanta investigación penal con fundamento en las cincuenta y un (51) denuncias presentadas por lesiones personales formuladas por parte de miembros de comunidades indígenas. La referida investigación se adelanta en la Fiscalía Local de Piendamó, Cauca.

85. En relación con las presuntas situaciones de violencia y uso desproporcionado de la fuerza por parte de las autoridades contra los indígenas en el departamento de Huila, la Policía Nacional resaltó que el único incidente presentado en desarrollo de esta movilización indígena fue un accidente de tránsito a la altura del municipio de Campolagre, donde debido al exceso de velocidad e imprudencia de los conductores, chocaron varios vehículos con un saldo de dos indígenas heridos.

86. En relación con las acciones emprendidas para proteger los derechos y las libertades de las personas afectadas y para evitar que se repitan hechos similares, el Gobierno informó que la Policía Nacional, a través del Departamento de Policía del Cauca, profirió la Orden de servicios denominada “Movilización Indígena y campesina conmemoración día de la raza en el departamento del Cauca,” estableciendo las medidas a adoptar por parte de los miembros de esa Institución antes, durante y después de la movilización indígena, las cuales se enmarcan bajo el respeto a las disposiciones constitucionales y legales. De igual manera, se adelantaron una serie de reuniones con los fines de: abordar la problemática de los hechos registrados en la Vía Panamericana; abordar la problemática que ha generado la movilización y permanentes bloqueos sobre la Vía Panamericana; y entablar un diálogo con los marchantes de la Minga de Resistencia Indígena.

87. Asimismo, el 2 de noviembre de 2008, el Presidente de la República sostuvo una reunión de más de seis (6) horas con los voceros de las comunidades indígenas para encontrar caminos en

aras de ir resolviendo los problemas. Los resultados de la reunión fueron la proposición de instalar una mesa permanente de diálogo para seguir discutiendo los temas planteados por las comunidades indígenas al Gobierno Nacional así como la proposición de una investigación de las denuncias sobre presuntos desbordamientos de la Fuerza Pública. El último se complementó con la solicitud oficial al defensor del Pueblo para que en su calidad de autoridad independiente, dé el respectivo trámite a las denuncias sobre presuntas violaciones de derechos humanos.

88. El 22 de noviembre de 2008, varios Ministros del Gobierno sostuvieron un diálogo con las comunidades indígenas que resultó en la confirmación de una comisión mixta por diez Viceministros y diez representantes de la Minga con el objetivo de atender las preocupaciones de los indígenas.

89. En relación con el supuesto homicidio del Sr. Mariano Morano Dizú por parte de agentes de la fuerza policiales y las investigaciones que han sido o serán conducidas sobre el supuesto homicidio arriba mencionado, el Estado de Colombia reiteró que la fuerza utilizada por parte del ESMAD en desarrollo de las manifestaciones de la Miga Indígena atendido a las circunstancias y al grado de violencia ejercido por los manifestantes. El Estado colombiano aclaró que la persona que resultó muerta en el marco de las manifestaciones de la Minga Indígena, fue identificada como Taurino Ramos Valencia, y no Mariano Dizú.

90. Al respecto, la Fiscalía General de la Nación indicó que el indígena Taurino Ramos Valencia resultó herido en el sitio de los hechos y fue trasladado a la ciudad de Popayán, con muerte cerebral. Es pertinente precisar que el informe emitido por el Instituto Nacional de Medicina Legal y Ciencias Forenses determinó que la muerte se produjo por heridas con esquirlas de explosivos y no arma de fuego. Por este hecho se adelanta una investigación en la Fiscalía seccional de Piendamó.

91. El Gobierno señaló que, si bien las comunidades indígenas manifestaron que la necropsia realizada al cuerpo del indígena Taurino Ramón Valencia habría sido cambiada, la Fiscalía General de la Nación informó a esta Dirección que la Directora Seccional de Fiscalía de Popayán, una vez tuvo conocimiento de los hechos, se desplazó hasta Medicina Legal para verificar que los funcionarios atendieran este caso con la mejor disposición y con todo el compromiso.

92. En cuanto a acciones disciplinarias, el Procurador General de la Nación dispuso una comisión especial integrada por asesores en derechos humanos adscritos a su Despacho, para que asumieran las investigaciones a que hubiera lugar respecto de los hechos ocurridos en desarrollo de las movilizaciones indígenas, que presuntamente pueden constituirse como faltas disciplinarias. Asimismo, el Procurador General de la Nación avocó el conocimiento de las indagaciones preliminares disciplinarias que estaban siendo adelantadas por la oficina de Control Interno Disciplinario del Departamento de Policía del Cauca, en contra miembros del ESMAD por los hechos relacionados con la muerte del indígena Taurino Ramos Valencia. Asimismo, por auto del 13 de noviembre del 2008 se decretó la apertura formal de investigación disciplinaria en contra de cinco (5) miembros de la Policía Nacional, en su mayoría integrantes del ESMAD.

Observaciones

93. El Relator Especial agradece la respuesta del Gobierno Colombiano así como la oportunidad que tuvo de discutir este caso con autoridades del Gobierno durante la visita que llevó a cabo a Colombia, a invitación del Gobierno del 22 al 27 de julio de 2009. El Relator Especial presentará observaciones sobre la situación de los pueblos indígenas en Colombia en el contexto del informe sobre la situación de los pueblos indígenas en el país.

Situación sobre el asesinato del Sr. Edwin Legarda

Comunicación del Relator Especial de 29 de diciembre de 2008

94. El 29 de diciembre de 2008, el Relator Especial, junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos, el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión, y el Relator Especial sobre la violencia contra la mujer, envió un llamamiento urgente sobre información recibida en relación con el asesinato del Sr. Edwin Legarda, esposo de la Sra. Aida Quilqué Vivas, Consejera Mayor del *Consejo Regional Indígena del Cauca* (CRIC).

95. En resumen, según la información recibida: La Sra. Aida Quilqué Vivas ha tenido un papel importante en la Minga Nacional de Resistencia Indígena y Popular, una jornada de unidad comunitaria, social y popular convocada por la *Organización Nacional Indígena de Colombia* (ONIC) para defender la vida y los derechos territoriales, políticos, ambientales y alimentarios de las poblaciones indígenas. En octubre de 2008, las autoridades colombianas, incluyendo al Presidente, supuestamente justificaron la represión de esta Minga por parte de las Fuerzas Armadas de Colombia.

96. El 16 de diciembre de 2008, a primeras horas de la mañana, entre las localidades de Inzá y Totoró, Departamento de Cauca, soldados del Batallón “José Hilario López” de la tercera división del Ejército habrían llevado a cabo un ataque armado contra el Sr. Edwin Legarda. La víctima conducía una camioneta de la Consejería del CRIC con vidrios semipolarizados que se había asignado a su esposa, la Sra. Aida Quilqué Vivas. En total 17 balas, disparadas desde varios ángulos, habrían llegado al vehículo. El Sr. Edwin Legarda se habría muerto unas horas después en un hospital.

97. Al momento del ataque el Sr. Edwin Legarda se dirigía a recoger a la Sra. Aida Quilqué Vivas, quien regresaba de Ginebra, Suiza, donde había asistido como representante del CRIC y delegada de la ONIC al Examen Periódico Universal (EPU) de Colombia en las Naciones Unidas. Ante el EPU la Sra. Aida Quilqué Vivas habría denunciado las violaciones de derechos humanos de las cuales los pueblos indígenas son víctima, incluyendo supuestas ejecuciones extrajudiciales por parte de las fuerzas de seguridad.

98. El asesinato del Sr. Edwin Legarda podría estar vinculado con las actividades de la Sra. Aida Quilqué Vivas en la defensa de los derechos humanos, en particular los derechos indígenas. Considerando que el vehículo conducido por el Sr. Edwin Legarda tenía vidrios semipolarizados y no se podía comprobar quién lo conducía, se teme que el ataque podría haber sido dirigido contra la Sra. Aida Quilqué Vivas. Así se expresa gran preocupación por la integridad física y psicológica de la Sra. Aida Quilqué Vivas.

99. Los Relatores Especiales llamaron la atención del Gobierno de Colombia sobre las normas fundamentales enunciadas en varios instrumentos. Asimismo, instaron al Gobierno a que adopte todas las medidas necesarias para proteger los derechos y las libertades de la Sra. Aida Quilqué Vivas e investigar, procesar e imponer las sanciones adecuadas a cualquier persona responsable de las violaciones alegadas. Asimismo, se instó a que tome las medidas eficaces para evitar que se repitan tales hechos.

Respuesta del Gobierno de 17 de marzo de 2009

100. Mediante una carta fechada 17 de marzo de 2009, el Gobierno respondió a la carta de los Relatores Especiales y destacó que el Estado de Colombia repudia el homicidio del señor Edwin Legarda, ex esposo de la líder indígena del Consejo Regional indígena del Cauca (CRIC) Alda Quilqué, en hechos ocurridos el 16 de diciembre de 2008.

101. En resumen, según la información proporcionada por el Gobierno: Desde el primer momento en que se tuvo conocimiento de la noticia, el Estado, desde su más alto nivel, condenó los presuntos hechos y conminó a las autoridades competentes adelantar las investigaciones a que hubiere lugar. El 17 de diciembre, el señor Presidente de la República de Colombia, Dr. Álvaro Uribe, expresó su condolencias y se comprometió pedir una investigación a la Procuraduría, a la Fiscalía y también al delegado de la Alta Comisionada para Derechos Humanos, que preside la Delegación en Colombia, y que el Gobierno se sujete totalmente a las conclusiones de esa investigación.

102. El Presidente añadió que a pesar de que el CRIC ha tenido mucha discrepancia con el Gobierno, expresa toda su voluntad de poder adelantar un análisis con calidez de toda la problemática, y buscar dar soluciones. El gobierno organizó una reunión pública en ‘La Marla’, en lo cual, con la coordinación del señor Ministro del Interior y de Justicia, se reunió durante más de doce horas con la minga organizada por estas comunidades indígenas para hablar francamente y democráticamente.

103. De otro lado, mediante un comunicado del 17 de diciembre de 2006, el Ministerio de Defensa lamentó la muerte del señor Legarda, e informó a la opinión pública que es prioridad para el Ministerio de Defensa establecer a la mayor brevedad las circunstancias en que ocurrieron los hechos en donde murió el Señor Legarda y para ellos ya se tomaron medidas. El Ministerio de Defensa también se le solicitó a la Fiscalía General de Nación y la Procuraduría enviar una comisión especial al área para que adelante las investigaciones necesarias en materia penal y disciplinaria, y se les ofreció todo el apoyo que pueden necesitar.

104. El Ministerio se puso en contacto con la Oficina de la Alta Comisionada de las Naciones Unidas para los Derechos Humanos con el fin de garantizar el acceso necesario para que realice una investigación. Asimismo, el Ministerio de Defensa mantendrá informada a la opinión pública en la medida en que las investigaciones arrojen resultados y claridad sobre lo ocurrido, y reiteró su política de transparencia con relación a las acciones de todos los integrantes de la Fuerza Pública.

105. El Gobierno de Colombia está plenamente convencido que el respeto y la garantía de los Derechos Humanos son la única herramienta para lograr los fines del Estado y cualquier violación a estas normas y principios debe ser sancionada a la luz de la legislación nacional y los

Tratados y Convenios internacionales debidamente ratificados por el país. El Estado destaca que su objetivo primordial, esclarecer los hechos y sancionar a los responsables; brindar protección efectiva a la familia del señor Legarda y revisar procedimientos internos al interior de las Fuerzas Armadas para evitar que hechos similares se repitan.

106. El 17 de diciembre de 2008, una investigación fue adelantada por la Fiscalía General de la Nación. La Fiscalía General de la Nación informó que una vez conocidos los hechos, una Comisión del Cuerpo Técnico de investigación (CTI) de la ciudad de Popayán, capital del departamento del Cauca, se desplazó al sitio donde ocurrieron los mismos con el propósito de recolectar la evidencia física correspondiente. Una vez allí, se observó que el sitio no se encontraba protegido, motivo por el cual se procedió a acordonar el sitio.

107. Por su lado, la Procuraduría Provincial de Popayán, una vez tuvo conocimiento de los presuntos hechos relacionados con la muerte del señor Legarda, abrió indagación preliminar. El 17 de diciembre de 2008, la Procuraduría Provincial de Popayán adelantó una visita especial a las instalaciones del Batallón “José Hilario López” de esta ciudad. Asimismo, se envió comunicación dirigida al Comandante del mencionado Batallón con el objeto de solicitar copia de la orden de operaciones. Adicionalmente, los días 18 y 19 de diciembre de 2008, se recibieron las versiones libres de los treinta y cuatro soldados que al parecer, habrían participado en los hechos que presuntamente ocasionaron la muerte al señor Legarda.

108. Posteriormente, en enero de 2009 la Procuraduría Provincial de Popayán solicitó al Comando de Policía del departamento de Cauca, copia del acta de Inspección al cadáver del señor Legarda. El día 2 de febrero de 2009, la Procuraduría Provincial de Popayán recibió la declaración bajo la gravedad de juramento de la persona que se encontraba con la presunta víctima el día de los hechos, y de la señora Aida Quilqué.

109. El Despacho de la Procuraduría Provincial de Popayán informa que, a la fecha, se encuentra a la espera de la información solicitada al Batallón de Infantería “José Hilario López”, así como de recibir otros testimonios que serían necesarios para adelantar la investigación disciplinaria. La Dirección de Derechos Humanos del Ministerio del Interior y de Justicia también informó que había adoptado e implementado medidas de protección a favor de la señora Aida Quilqué y su hija.

110. El Ministerio de Defensa informó que el 19 de enero de 2009, en las instalaciones de la Presidencia de la República, en una reunión que contó con la asistencia del señor Ministro de Defensa Nacional, el Comandante de la Fuerzas Militares y representantes de las Naciones Unidas en Colombia, se expuso el caso de la lamentable muerte de Edwin Legarda. Con base en las conclusiones adoptadas en dicha reunión, se determinó fortalecer y reafirmar las siguientes acciones: (1) Revisar la doctrina respecto a la disciplina del fuego; (2) Continuar con la difusión a todos los niveles de la institución castrense el cumplimiento de la obligación legal de “primer respondiente y “preservación de la escena de los hechos”; (3) Fortalecer el proceso de transmisión a todos los niveles de los criterios y procedimientos establecidos para la instalación de retenes y dispositivos militares sobre vías principales y alternas; e (4) Impartir instrucciones para que, a través de los Centros de Instrucción y Entrenamiento, se refuercen las respectivas capacitaciones en aras de cumplir con el anterior compromiso institucional.

111. Existe la plena disposición para proceder a iniciar los trámites pertinentes para la indemnización de la familia del señor Legarda, dentro de los límites legales y constitucionales, y siempre que se cuente con la voluntad manifiesta de los familiares de la presunta víctima. Además, el 23 de Marzo de 2009, el Gobierno Colombiano remitió el informe de la Fiscalía General de la Nación que se refiere al estado actual de la investigación sobre el Sr. Legarda.

Observaciones

112. El Relator Especial agradece la información detallada proporcionada por el Gobierno de Colombia sobre las cuestiones y preocupaciones mencionadas. El Relator Especial enfatiza la necesidad de investigar seriamente las alegaciones de violaciones a los derechos humanos de individuos indígenas, incluido el Sr. Legarda, y de llevar a la justicia a los responsables de cualquiera violación y hacer todo lo posible para asegurar la no repetición de hechos similares.

Ethiopia

Situation concerning the construction of the Gibe 3 Dam

Communication of the Special Rapporteur of 10 June 2009

113. In a letter dated 10 June 2009 the Special Rapporteur drew the attention of the Government of Ethiopia to concerns regarding the construction of the Gibe 3 dam along the Omo River. According to the information received, the dam will have alleged negative effects on a variety of indigenous ethnic groups living in the Omo River Valley, including the Dassanech, Turkana, Hamar, Karo, Mugudji, Murle, Northern Kwegu, Nyangatom, Mursi, Bodi, and Dizi, among others.

114. In summary, according to the information received: The lower Omo River Valley is populated by nearly 500,000 people belonging to a variety of indigenous groups. The majority of these groups rely significantly on the Omo River and its seasonal flooding cycles for their subsistence. This flooding, which typically occurs in August and September, enables the indigenous inhabitants of the region to practice flood retreat cultivation-when flood waters recede, the nutrients left behind after the flood allow for cultivation to occur on a dependable basis without the need of additional fertilizers. Such practices enable the population of the lower Omo River Valley to provide for their own subsistence without having to rely heavily of Government food aid.

115. Aside from the subsistence activities, the Omo River is reportedly of special spiritual and cultural significance to many of the communities that inhabit the region, and the river is also used for transportation, raising livestock, and bathing, among other activities. There is concern that the construction of the dam will impede the subsistence and cultural activities for which the communities of the lower Omo River Valley rely on the river.

116. There are also serious environmental concerns related to the construction of the dam, as well as the adverse effect it will have on the flooding cycles of the Omo River, which may threaten nearby forest and wildlife resources whose existence is intricately tied to the river. It has been reported that planning for the dam and its construction have progressed despite the fact that some of these resources are found in the Omo National Park, which is designated as a protected

area in order to safeguard the area's flora and fauna. While the interruption of the natural flooding cycle appears to threaten the cultivation practices of those communities, the potential environmental harm will further diminish food and other subsistence resources upon which the region's inhabitants are almost entirely dependant.

117. Reportedly, the project preparation and construction has proceeded without necessary and adequate technical reviews and environmental assessments. Most notably under Ethiopia's Environmental Impact Assessment Proclamation, projects such as Gibe 3 require an Environmental and Social Impact Analysis (ESIA) and must receive clearance from the Environmental Protection Agency. However, construction of Gibe 3 began two full years before approval of an ESIA. The studies that were undertaken and included in the ESIA were allegedly inadequate for the following reasons: misrepresentation of project benefits; poor and inaccurate baseline information; failure to consider project alternatives; poor analysis of project impacts; and unsuitable mitigation measures.

118. Further, the Gibe 3 project was initiated and has proceeded without the necessary consultation with the affected communities, which is required under the Ethiopian Constitution, which states that "people have the right to full consultation and to the expression of their views in the planning and implementation of environmental policies and projects that affect them directly" (art. 92(2)), yet allegedly only 93 community members from four (Mursi, Nyangatom, Dassanech and Karo) of the eight or more downstream indigenous peoples were consulted. Other affected indigenous groups, namely the Hamar, Bodi, Kwagu, Muguji, and Bashada, were never consulted.

119. Most importantly, the only consultations occurred in 2007, well after construction had already commenced. Most affected individuals reportedly do not understand how the project might affect them, in part because of geographic isolation, linguistic barriers, and political marginalization. Project developers have not attempted to overcome these obstacles and have made virtually no project information publicly available, not even through media coverage. What little consultation that did occur is reported to have been fraudulent. In at least the Bodi area, a government official is reported to have filled in questionnaire forms saying that the tribes all wanted irrigation, when in fact no tribes in the area ever saw those forms.

120. Aside from a formal process of consultation, the Ethiopian Government has reportedly taken actions to restrain public debate on development activities. Individuals and organizations who have attempted to voice opposition to the Gibe 3 project or to document its adverse impacts reportedly fear retaliation from the Government. In addition, in some instances the Government has criminalized opposition to and debate on development projects such as Gibe 3.

121. There is no indication to date that the Government has offered any form of compensation to the affected indigenous peoples. Nor is there any indication that the Government has fully considered the potential displacement of indigenous peoples or the need to develop a comprehensive resettlement plan.

Observations

122. The Special Rapporteur notes that there is no record of any reply from the Government of Ethiopia to the letter of 10 June 2009 by the time of the finalization of this report.

Guatemala

Situación sobre supuestas amenazas en contra del Sr. Amílcar Pop

Comunicación del Relator Especial de 19 de agosto de 2008

123. En una carta fechada 19 de agosto de 2008, el Relator Especial, junto con el Relator Especial sobre la independencia de magistrados y abogados y la Relatora Especial sobre la situación de los defensores de los derechos humanos señalaron a la atención urgente del Gobierno la información recibida en relación con el Sr. Amílcar Pop y la Asociación de Abogados y Notarios Mayas de Guatemala (AANMG).

124. En resumen, según la información recibida: El Sr. Amílcar Pop es abogado y presidente de la AANMG, organización que proporciona asistencia legal a comunidades indígenas de Guatemala, en particular en asuntos relacionados con los recursos naturales de las comunidades. Desde el año 2006, el Sr. Amílcar Pop ha apoyado a 60 líderes comunitarios de San Juan Sacatepéquez en la defensa de sus recursos naturales y en contra la empresa Cementos Progresos SA, la cual supuestamente tiene planes para construir una planta de cemento en su localidad.

125. El 2 de agosto de 2008, poco después de medianoche, el Sr. Amílcar Pop fue perseguido y amenazado con un arma de fuego, por los pasajeros de una pick-up blanca doble cabina con vidrios polarizados y sin placas, quienes llevaban máscaras que hacían imposible su identificación. Los individuos lo habrían amenazado de muerte. El Sr. Amílcar Pop, quien logró escapar, habría resultado lesionado en la lengua, motivo por el cual se dirigió a un hospital. Una vez en el hospital, descubrió que la pick-up se encontraba estacionada detrás de su coche. Sin embargo, cuando salió, aproximadamente a las 6 a.m., ya no estaba allí.

126. A lo largo de los años 2007 y 2008, los integrantes de AANMG habrían recibido varias amenazas de muerte, tanto por teléfono, como por correo, para que dejaran de proporcionar asistencia legal a las comunidades de San Juan Sacatepéquez.

127. Además, la AANMG ha sido el objeto de varias denuncias ante el Ministerio Público por parte del Consejo Municipal por intimidación, amenazas y coacción. Dichas denuncias no están sustentadas en ninguna evidencia. Asimismo, la AANMG habría sido falsamente acusada de ser responsable del asesinato del Sr. Francisco Tepeu Piri, un habitante del Municipio de San Juan Sacatepéquez, quien murió después de una protesta contra Cementos Progresos SA, la cual tuvo lugar el 21 de junio de 2008.

128. Los Relatores Especiales expresaron su preocupación por el hecho de que las amenazas y acusaciones en contra del Sr. Amílcar Pop y de otros miembros de la AANMG, así como la persecución de este último, podrían estar directamente relacionadas con sus actividades legítimas de defensa de los derechos de las comunidades indígenas de San Juan Sacatepéquez. También expresaron preocupación por la integridad física y psicológica del Sr. Amílcar Pop y de los demás miembros de la AANMG. Estos hechos, de ser confirmados, se enmarcan en un contexto de gran vulnerabilidad de los defensores de los derechos humanos en Guatemala.

Respuesta del Gobierno de 20 de marzo de 2009

129. Mediante una carta fechada 20 de marzo de 2009, el Gobierno remitió un informe con su respuesta a la carta de alegación.

130. En resumen, según el informe: Los hechos relatados en la carta de alegación son los mismos que la Comisión Presidencial actualmente conoce. En cuanto a la presentación de alguna queja, el 7 de agosto de 2008 el Licenciado Amílcar Pop interpuso la respectiva denuncia ante el Ministerio Público en virtud de haber sufrido amenazas e intimidaciones por personas desconocidas. La Comisión Presidencial, el 20 de agosto de 2008 solicitó información al Ministerio Público sobre si el Sr. Amílcar Pop presentó la denuncia respectiva.

131. El 8 de septiembre COPREDEH, otra organización de derechos humanos guatemalteco, dio respuesta a la comunicación enviada por el Ministerio Público en donde solicitó se informara si el Sr. Amílcar Pop goza actualmente de medidas cautelares. El Ministerio Público, aún se encuentra investigando los hechos denunciados por el Sr. Amílcar Pop, que tuvieron lugar el 2 de agosto de 2008. Finalmente, elaborando en las medidas de protección que habían sido adoptadas para garantizar la seguridad de señor Amílcar Pop, el Estado de Guatemala no ha recibido notificación sobre la adopción de medidas cautelares a favor del señor Amílcar Pop, encontrándose por lo tanto a la espera de la respuesta del Sistema Interamericano.

Observaciones

132. El Relator Especial agradece la información proporcionada por el Gobierno de Guatemala sobre el asunto y preocupaciones mencionadas, y observa la necesidad de dar solución a los asuntos subyacentes a esta situación, en particular la relación de la situación con las actividades de la empresa Cementos Progresos SA, en San Juan Sacatepéquez. El Relator Especial seguirá monitoreando la situación.

India

Situation concerning the Adivasi communities of the state of Chhattisgarh

Communication of the Special Rapporteur of 19 July 2007

133. On 19 July 2007, the Special Rapporteur, jointly with the Special Rapporteur on the right to food and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, sent an allegation letter to the Government of India concerning the alleged threat of eviction of Adivasi families in the state of Chhattisgarh. A copy of that letter is reproduced in the 2007 Communications Report of the Special Rapporteur (A/HRC/6/15/Add.1) (20 November 2007) and is reprinted here for ease of reference.

134. In summary, according to the information received: Numerous Adivasi families faced eviction from their traditional land due to the plan to construct a Tata steel plant in the Lohadiguda Block, Bastar District, Chhattisgarh. The Bastar District is home of the Gonds, Abhuj Maria, Darda Maria, Bison Horn Maria, Munia Doria, Dhruva, Bhatra, Halba and other Adivasi peoples, constituting 70 per cent of the population. These groups are protected by special legal safeguards following the declaration of the Bastar district as a Schedule Area (V) under the Indian Constitution.

135. The construction of the Tata steel plant was allegedly the result of a memorandum of understanding (MoU) signed on 4 June 2005 between Tata Iron and Steel Company Ltd. (TISCO), a part of the transnational company Tata Group, and the Industrial and Mineral Resources Department of Chhattisgarh State Government. The MoU would not reportedly become a public document until the Tata company has entered into a formal agreement with the state Government and all clearances have been granted as provided for in the memorandum.

136. According to the allegations, the MoU provides that the Chhattisgarh State Industrial Development Corporation (CSIDC) would acquire an extension of 53,000 acres of private lands in the Lohadiguda Block, in Bastar district, close to Jagdalpur town. CSIDC would subsequently hand the land over to TISCO within a period of six to nine months after having received the formal application from the company, on a long-term lease of 99 years.

137. The operation of the proposed steel plant would further involve the extraction of large quantities of iron ore, coal, dolomite, limestone and other minerals; the pumping of an estimate of 35 million gallons of water per day from adjacent rivers; the construction of rail and road links, plants, pipelines, residential colonies and other infrastructure.

138. The reports claimed that the area affected by the construction of the Tata steel plant belonged to the ancestral lands of more than 10 Adivasi villages of Lohadiguda Block, including Dabapal, Dhuragaon, Bade, Paroda, Beliapal, Belar, Badanji, Takarguda, Sirisguda, Kumhali, and Chindgaon, that had traditionally relied on this land for their livelihoods and access to food. The proposed plant would result in the eviction of an estimated 1,500 families from these villages. Reportedly, neither the village council meetings nor the families directly affected by the plan had been consulted by the state Government before it took the decision of allocating their lands to this project.

139. According to the reports, the compensation package offered by the authorities to the affected families was perceived to be insufficient to fully compensate for the loss of livelihood that the displacement would cause. In this connection, it was reported that compensation would be restricted to those families that can prove land ownership. This would allegedly exclude a large number of potentially affected small sharecroppers and have not been found to be eligible to land titles. For those families that could provide such a title, the monetary compensation would be limited to 50,000 rupees (Rs) per acre for non-irrigated land, including grazing land; Rs 76,000 per acre for non-irrigated single-crop land; and Rs 100,000 per acre for irrigated double-crop land. Payment for planted trees and other properties had not allegedly been included in the compensation packages.

140. The Special Rapporteur had further been informed that on 23 February 2007 a notification of land acquisition was published without giving the mandatory 30 days required by the law for filing objections, thus officially initiating the compulsory land acquisition process. On 4 March 2007, the process was suspended for unknown reasons. The potential displacement that the proposed plant construction would cause could also exacerbate the climate of insecurity that the members of tribal communities in the Bastar district have been living with and could contribute to fuel violent incidents.

Response of the Government of 26 June 2009

141. In a letter dated 26 June 2009, the Government of India provided its belated response to the concerns raised by the Special Rapporteur.

142. In summary, the Government stated that: The Government of India regards the communication as outside the purview of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people since, consistent with India's position on the definition of the word "indigenous", as used in ILO Convention C169 of 1989, the Government of India regards the entire population of India at the time of its Independence (in 1947), and their successors, as indigenous. It may be noted that, as mentioned by the Government of India in its Explanation of Vote on the adoption of the Draft Declaration on the Rights of Indigenous Peoples by the Human Rights Council on 26 June 2007, the Draft Declaration does not define who constitutes "indigenous peoples".

143. Therefore, the Government of India joined the consensus on the adoption of the Draft Declaration on the understanding that, as defined in ILO Convention C269 of 1989, the issue of indigenous rights pertains to peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

144. Nevertheless, since the communication was jointly signed by two other Special Rapporteurs, the Government of India has examined the communication and found it to be inaccurate.

145. Under the MoU signed between the Government of Chhattisgarh and Tata Steel for setting up a steel plant in Chhattisgarh, the Chhattisgarh State Industrial Development Corporation (CSIDC) was to acquire only 3,588 acres of private land in Lohandiguda block, as against the claim of 53,000 acres stated in the communication. Less than 26 per cent of private land was to be acquired, causing minimal displacement of only 101 houses. Further, before initiating land acquisition proceedings, the state authorities held several rounds of consultations with the ten affected villages, as required under the law. The minutes of these meetings were duly recorded and signed by the villagers present. In fact, during these consultations, some villagers suggested few changes to improve the compensation package following which some suggestions were accepted and a fresh compensation package announced.

146. The compensation package stipulated Indian Rupees of 1,00,000 per acre of barren land; Rupees 1,50,000 per acre for single crop land; and Rupees 2,00,000 per acre for double crop land, besides the cost of assets attached to the lands. Since there were no share-croppers in the area where the steel plant was supposed to be set up, it was not necessary to make any provision for compensation to share-croppers. Lastly, contrary to what has been mentioned in the OHCHR communication, the land acquisition notification of 23 February 2007 was in accordance with the Land Acquisition Act 1894 that does not have any provision for giving 30 days prior notice.

Observations

147. The Special Rapporteur thanks the Government of India for its response and notes that he continues to monitor the situation, particularly in light of other communications expressing similar issues present in other regions of India.

Situation concerning Shindu Chattar, Rabindra Majhi, Madhusudum Munda, Kanderam Hemrom, Duskar Barik, Mamata Barik, Jyanti Sethy and Ranjan Patnaik

Communication of the Special Rapporteur of 24 July 2008

148. In a letter of 24 July 2008, the Special Rapporteur, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders, called to the attention of the Government of India information received regarding Shindu Chattar, Rabindra Majhi, Madhusudum Munda, Kanderam Hemrom, Duskar Barik, Mamata Barik, Jyanti Sethy and Ranjan Patnaik, all members of the Keonjhar Integrated Rural Development and Training Institute (KIRDTI), an organization which peacefully defends the land rights of adivasis (indigenous people) in Harichandanpur, Keonjhar District, Orissa State.

149. In summary, according to information received: Between 1 and 11 July 2008, four members of the KIRDTI were arrested on suspicion of having links with armed Maoist groups. On 1 July, Shindu Chattar was arrested. On 10 July, Rabindra Majhi and Madhusudum were arrested. On 11 July 2008, Kanderam Hemrom was arrested. While in police custody Rabindra Majhi was badly beaten.

150. Following the arrests of the above members of the KIRDTI, on 11 July 2008, Mr Duskar Barik, Ms Mamata Barik, Ms Jyanti Sethy and Mr Ranjan Patnaik fled Keonjhar District, fearing torture and ill-treatment, after reports that police planned to question them too for having links with armed Maoist groups. On 12 July 2008, local newspapers published that Keonjhar Police believed that the KIRDTI had links with armed Maoist groups. The KIRDTI and other human rights organizations that work with them strongly deny these links, maintaining that their defense of indigenous land rights is entirely peaceful.

151. District Collectors in Orissa have now pledged to guarantee that any questioning of four members of the KIRDTI who fled from Keonjhar District will be carried out in a safe environment. However, the four members of the KIRDTI who were arrested remain in judicial custody and Rabindra Majhi has been denied access to a doctor.

152. The Special Rapporteurs welcomed the pledge of the District Collectors to protect the members of the KIRDTI during questioning, as well as the transfer of the detained members of the KIRDTI from police custody to judicial custody. However, concern was expressed that the police's plans to question members of the KIRDTI may be related to their legitimate and peaceful activities in the defense of land rights of indigenous people in Keonjhar District. Concern was also expressed for the physical and psychological integrity of Mr. Rabindra Majhi while in custody.

Response of the Government of 12 February 2009

153. In a letter dated 12 February 2009 the Government of India responded to the letter of the Special Rapporteur noting that the matter was investigated but that the alleged harassment and torture of KIRDTI activists is baseless.

154. In summary, according to the investigation report: About 40 armed persons, including five ladies, entered the house of Mr. Tulasi Mahanta, (village Rebana Palaspal; police station Daitari; Keonjhar district), and assaulted the inmates, looted the house, damaged household articles and set fire to tractor and four motor cycles while threatening Mr. Tulasi Mahanta to leave the village. In connection with this incident, Mr. Sindhu Chattar, Mr. Rabindra Kumar Majhi, Mr. Madhusudan Bodra and Mr. Kanderam Hembram were subsequently arrested on the basis of evidence collected during investigation. The abovementioned arrested persons have confessed their involvement in the incident and also disclosed that Mr. Duskar Barik, Secretary (KIRDTI), was also present at the time of attack on the house of Mr. Tulasi Mahanta on the night of 30 June 2008 and is in possession of illegal firearms. Further investigation has also revealed that Mr. Rabindra Kumar Majhi, Mr. Madhusudan Bodra, Mr. Kanderam Hembram and Mr. Duskar Barik, all working for KIRDTI, are involved in violent Maoist activities. In fact, Mr. Barik has been spreading reports of harassment of members of KIRDTI in order to mislead the investigation and evade arrest.

Observations

155. The Special Rapporteur thanks the Government of India for its response to the letter of 24 July 2008, and invites the submission of further information that may be pertinent to the human rights situations of Shindu Chattar, Rabindra Majhi, Madhusudum Munda, Kanderam Hemrom, Duskar Barik, Mamata Barik, Jyanti Sethy and Ranjan Patnaik. The Special Rapporteur continues to monitor the situation of those that defend land rights in India.

Situation concerning Ms. Korra Chilakamma and Ms. Pangi Sittayi

Communication of the Special Rapporteur of 20 October 2008

156. In a letter of 20 October 2008, the Special Rapporteur, together with the Special Rapporteur on violence against women, its causes and consequences drew the attention of the Government of India to information regarding Ms. Korra Chilakamma and Ms. Pangi Sittayi, two indigenous women of Paderu.

157. In summary, according to information received: On 20 August 2007, 11 indigenous women were allegedly gang raped by Greyhound policemen during anti-Naxalite operations at Vakapalli village under Nurmati panchayat in Visakhapatnam district of Andhra Pradesh. 21 Greyhound policemen entered the village at around 6 am and raided their houses on the charges that their family members were associated with the Naxalites. Some of the women were raped in their house, others in the fields. On 30 March 2007 the National Human Rights Commission took suo moto cognizance of the incident and sent notice to the Senior Superintendent of Police, Visakhapatnam district, and the Director General of the Police, Andhra Pradesh, to submit a factual report within four weeks. To date, no action has been taken by the police to identify and prosecute the rapists.

158. On 17 October 2008, two of the 11 victims, Ms Korra Chilakamma and Ms. Pangi Sittayi, were to travel to Delhi in order to attend a consultation meeting with women's non-governmental organizations from the Asia-Pacific region. However, on 14 October, the representative of the local NGO that was to accompany Ms Korra Chilakamma and Ms. Pangi Sittayi was threatened by the Paderu police and was told that he would face dire consequences if he extended any support to the two women. As a result of the threats, the two women were not able to attend the consultation.

Response of the Government of 6 April 2009

159. In a letter dated 6 April 2009 the Government of India responded to the letter of the Special Rapporteur, noting that although the allegations were investigated by a senior police officer at the directive of the High Court of Andhra Pradesh, the investigation concluded that the complaint was false. The conclusion, according to the Government, is based on medical reports which do not support any evidence of rape/sexual intercourse and considerable variations between the earliest versions of the complaint and the subsequent versions by the alleged victims.

Observations

160. The Special Rapporteur thanks the Government of India for its response, and invites the submission of further information that may be pertinent to the human rights situations of Ms. Chilakamma and Ms. Sittayi.

Situation concerning the construction of Mapithel dam (Thoubal Multi-Purpose Project)

Communication of the Special Rapporteur of 6 April 2009

161. In a letter dated 6 April 2009, the Special Rapporteur drew the attention of the Government to concerns regarding the construction of the Mapithel dam in the State of Manipur, India.

162. In summary, according to the information received: The dam, which was approved by the Planning Commission in May 1980, will affect several indigenous communities, some of which were not consulted prior to the project's approval.

163. In 1990, M/S Ansal Engineering Co. Ltd and M/S Progressive Construction Ltd, New Delhi began construction of the dam. Official estimates state that the area to be submerged will be approximately 1215 hectares and includes six villages, specifically Phayang, Louphong, Chadong, Lamlai Khullen, Lamlai Khunou, and Mongbung. Eleven other villages will also be negatively affected by the project, totaling approximately 8000 people. Eighty percent of the affected communities directly depend on paddy fields and the surrounding forests for their subsistence. Villagers have complained that between 1000-1500 security personnel have been stationed in and around the dam site and have imposed a curfew on the villagers, which negatively affect their farming practices.

164. On 19 June 1993, the Government of Manipur and representatives of some of the affected villages signed a Memorandum of Agreed Terms and Conditions (MOATC) related to the construction of the Mapithel dam. The MOATC set out the terms for the transfer of land from the upstream villages, including compensation for land, conditions for the reconstruction of

houses of displaced families, and joint identification of land of displaced families. However, not all affected villages were included in the agreement, and not all of the included villages were provided with full information regarding the effects of the project.

165. Additionally, the agreements contained in the MOATC have not been fully carried out by the Government, in particular, the provisions related to compensation. Payment of compensation was supposed to have taken place between 1993 and 1995 so that the affected villages could purchase alternate land. Compensation did not begin until 1996, and was paid in seven installments of small amounts, which prevented the farmers from being able to arrange alternative farming sites or other sources of livelihood. In 1998, the Government unilaterally changed the terms of compensation by creating the Rehabilitation and Resettlement Programme.

166. On 3 November 2008, about 500 people marched toward the dam site to set out their grievances to the Irrigation and Flood Department and demand review of the Rehabilitation and Resettlement Program. The police and security forces stopped the marchers and used force against them. Forty-four people were injured and one person was left in a coma. In addition, tear gas was used against the protesters. The Government has not taken any steps to investigate this situation or sanction those responsible.

Response of the Government of 24 June 2009

167. In a letter of 24 June 2009, the Government of India provided its response to the Special Rapporteur.

168. In summary, according to the Government's response: It is the Government's position that the communication is outside the purview of the Special Rapporteur since, consistent with India's position on the definition of the word "indigenous", as used in ILO convention 169 of 1989, the Government of India regards the entire population of India at the time of its Independence (in 1947), and their successors, as indigenous.

169. In its explanation of its vote on the adoption of the Draft Declaration on the Rights of Indigenous Peoples by the Human Rights Council on 26 June 2006, the Government of India noted that the Draft Declaration does not define who constitutes "indigenous peoples". Therefore, the Government of India joined the consensus on the adoption of the Draft Declaration on the understanding that, as defined in ILO convention 169 of 1989, the issue of indigenous rights pertains to peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

170. Nevertheless, the Government of India has examined the communication and found it to be an incomplete and misleading picture of the actual situation. The Mapithel-Thoubal Multipurpose Project was approved by the Planning Commission in 1980 and was slated for completion in 1987. However, its construction was deferred on the advice of the Planning Commission. Subsequently, as a part of the democratic consultative process, a Memorandum of Agreed Terms and Conditions relating to rehabilitation and resettlement programme of affected villages and rates of compensation for the lands affected by the dam construction was signed on

19 June 1993 between the Government of Manipur and the Chiefs/Headmen of affected villages. Further, a joint detailed survey of the lands which would be submerged due to the reservoir was conducted during February-July 1994 by a team of state authorities and affected villagers. An Environment Impact Assessment was also conducted and an Environment Management Plan prepared. As for the deployment of security forces, they were deployed at the dam site to protect life and property from various unlawful armed organizations that had earlier indulged in violence at the site.

171. On the issue of action against protestors on November 3, 2008, the police were left with no alternative but to resort to a mild baton charge after the protestors tried to enter the project area forcibly, and started pelting stones and pushing women constables at the site. In the process, one protestor was injured and was provided Indian Rupees 30,000/- for treatment on humanitarian grounds by the state authorities. While it is incorrect to state that the terms of compensation were forced upon the villagers, the Government has, nevertheless, constituted an Expert Review Committee comprising state authorities, experts and village representatives to review the Rehabilitation and Resettlement Plan 1998. This Committee had, until end-May 2009, held five rounds of meetings. The state authorities remain sensitive to the concerns expressed by various civil society organizations on this matter and have been taking appropriate measures to address genuine grievances.

Observations

172. The Special Rapporteur thanks the Government of India for the response to the questions and concerns raised. The Special Rapporteur continues to monitor the situation and remains concerned about the situation of the indigenous peoples affected by construction of the Mapithel dam and the resulting resettlement. The Special Rapporteur intends to continue his engagement with the Government of India concerning its position regarding the recognition of indigenous peoples generally, and specifically on the issues raised in the context of the Mapithel dam construction, including land, consultation, and compensation rights. The Special Rapporteur hopes that through his involvement, he can provide assistance to the Government of India as it seeks, in consultation with the affected indigenous communities, to resolve the issues related to the Mapithel dam construction project.

Indonesia

Situation concerning the outbreak of cholera amongst indigenous tribes in West Papua

Communication of the Special Rapporteur of 28 August 2008

173. In a letter of 28 August 2008, the Special Rapporteur together with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, drew the attention of the Government of Indonesia to information received regarding an outbreak of cholera amongst indigenous tribes in West Papua, Indonesia in April to June 2008, and in the adjacent Nabire and Paniai regencies of West Papua.

174. In summary, according to the information received: Eighty-five people died from the highly infectious disease from April to June 2008. The cholera epidemic was first reported in

Paniai in early April 2008 at Ekemanida village. It subsequently spread to nearby villages at Kamuu and North Kamuu Districts. The affected villages include Ekemanida, Idakotu, Dogimani/Idadagi, Makidimi/Egebutu, Ekimani/Nuwa, Denemani/Apagogi, Kimupugi, Dikiyouwo, Duntek, Boduda, Deiyai, Goodide, Idakebo, Mogou and Dogimani.

175. The response by the authorities has been inadequate and has failed to contain the spread of the highly infectious disease cholera. The only people who were treated in the community health centers were those who were able to travel to the centers. This meant that there was no medical treatment given to many people, particularly those who were living in geographically isolated areas. It is important to note that cholera victims should be treated with immediate medical treatment and re-hydration within eighteen hours.

176. The authorities have failed to respond adequately to past fatal outbreaks of cholera in West Papua, including an outbreak in April and May 2006. The ongoing military conflict with West Papua has meant that basic services such as medical care have also not been accessible in the past. This increases the likelihood of medical emergencies, including the spread of infectious diseases such as cholera.

Response of the Government of 17 November 2008

177. In a letter dated 17 November 2008, the Government provided its response.

178. In summary, according to the Government's response: There have been reports of incidents of cholera outbreak in certain parts of Papua, namely Paniai and Nabire from April 2008. The Government was swift to respond to these reports and sent health experts to those areas. Those who were affected were treated in the community health centers when people were able to be physically carried there, but the response in those affected villages was very limited. The total number of people died because of the Cholera outbreak from April to June 2008 in those areas was 51.

179. Initially, the alleged cholera epidemic was first reported in Paniai in early April 2008, in Ekemanida village. The disease apparently spread to nearby villages in Kamuu and North Kamuu Districts. The villages where the disease have also be reported include Ekemanida Idakotu, Dogimani/Idadagi, Makidimi/Egebutu, Ekimani/Nuwa, Denemani/Apagogi, Kimupugi, Dikiyouwo, Duntek, Boduda, Deiyai, Goodide, Idakebo, Mogou and Dogimani.

180. Since then, there have been a series of tests carried out in those regions to discover the cause of the seemingly rapid propagation of this epidemic. It should be remembered that cholera is a disease which is spread by eating or drinking contaminated food or water. It is therefore often perceived as an infectious disease which is cause by a bacterium that affects the absorption of water in the small intestine. It is a bacterial disease which attacks the gut lining of infected persons and quickly leads to symptoms such as severe diarrhea and massive fluid loss. The disease can be fatal within 18 hours if the person does not get dehydrated and does not receive medical therapy.

181. With the consideration of the gravity of this disease, the Government sent various experts from the Indonesian Health Department there to start to treat and eliminate this problem. Following a series of vigorous tests in Jayapura and other areas, several things have been

discovered. On the medical side, it has since been suggested by the medical experts that the cholera strain is an Ogawa-type vibrio cholera viral infection. However, several issues have hindered the effectiveness of the Government's medical team in dealing with this health issue and in eradicating the spread of the disease. Some of these include many infrastructural and logistics problems.

182. The Government of Indonesia notes that the first thing that should be understood is that the conception of the local people living in the affected villages is that their understanding of the meaning of health is different to the generally accepted norms. In general, their conception of health means that they are prone to think that if someone can still do their normal activities then the person is not ill. In geographical terms, given that the area was mountainous, most of the roads have not nationally tarred roads. Also, not all of these areas can be reached by helicopters and even small aircrafts.

183. With regard to the treatment aspect, help was slowed by the fact that in order for a person needing an infusion to receive treatment, it is their tradition to first seek the permission of the whole family even when the condition of the individual is getting worse. On the medical side, there was initially also the problem that there was limited paramedic resources in those areas which meant further complications for the medical team as regards effectively curbing any eventual future spread of the disease without their intervention.

184. It has been considered that the initial cause of the spread in the disease was not helped by certain questionable personal hygiene and health habits. For instance, they are known to have the habit of almost never cleaning their hands before or after eating or going to the toilet. And for most of the waste that they had, the people often just leave it behind the house or sometimes burn it.

185. It was also found that they culturally had the habit of serving their guests who visited their house during special occasions such as funerals with food which had been cooked on the stones but were not fully or thoroughly cooked, thus, this failed to ensure that the germs died. These same guests also happened to be present at the funeral of those who had died from cholera, who also later took home food from the funeral. Even more alarmingly, it was also found that it was also their tradition to hug and kiss the defunct. Furthermore, they live in houses made from wood which have bad ventilation system, and have earth flooring. These houses, often one room structures, have in the same room the parents, children, and livestock inhabiting the same area. All these facts served to perpetuate the spread of the disease easily and quickly.

186. Moreover, the underground pipes which provided clean water is generally very limited in these areas and is often located in the center of the district. Even in such a public area, the tap which allows access to the water is sometimes missing. However, from the samples taken, it was found that the water contained chloroform. Further investigation was undertaken to ascertain if the water contained vibrio cholera.

187. Since the outbreak the Government has adopted various short and long term strategies to deal with this situation with the cooperation and assistance from all stakeholders including civil society/NGOs and international community. As part of the short term plan, there have been efforts to assure the availability of clean water production. Efforts have also been made to optimize the use of prominent members of the community in order that they may educate people

in their communities about this disease and in order to lessen the number of people who visit the funerals, and so that they would avoid bringing uncooked food to the funerals. In the long term, the Government intends to build mobile clinics to function in these areas (Nabire and Painai) and also to build local hospital and clinics and train paramedics in order to manage medical problems, capacity to give intravenous transfusions, and in order to be able to provide first aid treatment for diarrhea.

188. It should be recalled at this point that within the precepts of the 1945 Constitution as well as its amendments, it is clearly stated that the health of its citizens is the responsibility of the State and that all citizens have the right to protection of their health. In particular, Article 28 H sub paragraph 1 clearly stipulates that “Every person shall have the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment, and shall have the right to obtain medical care.” As regards the exact number of individuals who have been affected by this disease and how many have died as a result, it is difficult to quantify the numbers with exactitude.

189. The Government of the Republic of Indonesia reiterated its commitment to the protection of all fundamental rights and freedoms, including health, and noted that allegations to the contrary do not reflect the reality of the situation in Indonesia.

Observations

190. The Special Rapporteur thanks the Government of Indonesia for the detailed response to the questions and concerns raised. He urges the Government to implement the measures indicated, and continue to protect the health of all its citizens, particularly those indigenous communities who live in isolated areas with particular needs.

Lao People’s Democratic Republic

Situation concerning the Nam Theun 2 dam

191. The situation concerning construction of the Nam Theun 2 dam was the subject of a series of communications between the Special Rapporteur and the Lao People’s Democratic Republic beginning in 2006. These communications were reproduced in the Special Rapporteur’s 2007 communications reports (A/HRC/4/32/Add.1 and A/HRC/6/15/Add.1).

Communication of the Special Rapporteur of 3 October 2007

192. In a letter of 3 October 2007, the Special Rapporteur, together with the Special Rapporteur on the right to food, thanked the Government for its willingness to continue dialogue with the Special Rapporteurs on the potential impact of the construction of Nam Theun 2 dam on the human rights of the affected communities. They noted that they were encouraged by the exhaustive information provided by the Government concerning the measures taken to monitor the social and environmental impact of the project. Additionally, the Special Rapporteurs called the attention of the Government to several allegations received concerning the situation of various villages, including the Vietic indigenous communities that will likely be affected by the construction of the dam, particularly as regards their food security and access to land and natural resources.

193. In summary, according to the information received: In the Nakai Plateau area, with regard to food security, including access to water and other natural resources, it was reported that there continue to be problems with the livelihood restoration plans for the affected communities in three principal project areas: the Nakai Plateau resettlement, the Project (construction) Lands Compensation, and the Xe Bang Fai Downstream Program.

194. Concerning the Nakai Plateau resettlement area, it was alleged that there was widespread confusion among local villagers concerning the exact scope of their compensation entitlements. In this regard, according to the reports, people who have lost approximately 10% of their land as a result of the dam construction have not been compensated and have not been informed of their right to be compensated according to existing plans. Moreover, the reports received, including the recent report of the International Panel of Experts, claimed that the project income targets for the resettlers are unlikely to be met, and that the area currently selected for their resettlement is not appropriate for continuing their traditional livelihoods. In particular, the reports indicate that the resettlement areas do not provide for enough lands for buffalo and other cattle, which the villages have substantively depended upon for their subsistence economies, and that no clear fisheries development programs have been put in place for the reservoir. In addition, the reports document the various problems faced by resettled families as a result of constant water shortages and of the rapid deterioration of temporary shelters, in the absence of a more definitive solution to their housing.

195. The Special Rapporteurs took further note with special concern of the reports regarding the situation of the Vietic indigenous communities, which have inhabited the Nakai Plateau since time immemorial. It was alleged that the proposed resettlement area (Area 7) does not respond to the community's expressed views, including their request to be resettled within their spirit territory and to be clustered in a village of their own. Lastly, different reports, including the Panel of Expert's reports and the Lender Engineer reports, indicate serious malfunctioning of the Village Forestry Association (VFA) in Nakai. According to the information received, the VFA is still not fully functioning, and it is reportedly thwarted by widespread corruption and illegal logging. This situation seems to be at least partly connected to the attribution of the VFA's management to an official of the Ministry of Agriculture and Forestry, which has reportedly led to a number of irregularities in the functioning of the association and deprived it from its original community-based spirit.

196. With respect to project (construction) lands compensation, the reports received also point at the existence of problems in the implementation of resettlement plans and livelihood restoration options for communities displaced from the project lands. Similar to the situation described in relation to the Nakai Plateau, problems reportedly exist as a result of inadequate access to water and delayed construction of replacement houses. In addition, there also seems to be an overall lack of understanding of existing entitlements. The lack of compensation for the loss of fish raises special concern. This situation seems to be linked to the fact that the Resettlement Action Plans for Project Lands were disclosed nearly two years after the affected villages lost their lands and assets as a result of the project.

197. In addition, the reports indicate the existence of problems in the process of identification of suitable alternative lands for resettlement, which lead in turn to a pattern of inequalities in the distribution of available land. In this regard, it has been suggested that the Independent Monitoring Agency for the Resettlement Management Unit (RMU) should review project land

compensation and publicly disclose its findings. With respect to the Xe Bang Fai Downstream Program, according to information received, the implementation of the Downstream Livelihood Restoration Program is currently experiencing serious delay, to the effect that it would so far apply only to 21 villages - 10% of the 226 villages that are expected to be affected. It was alleged that, under its current rate of implementation, the livelihood restoration program will not be completed when the project enters into full operation in November/December 2008. Furthermore, it was alleged that the resources assigned to that program are clearly inadequate to face the needs of all affected villages that emerged following the implementation of the project.

198. In relation to the actual operation pilot projects under the Livelihood Restoration Program, concern was expressed that the communities are unfairly bearing the risk involved in those projects. This has seemingly been the case of the pig raising scheme, whose failure has left many villagers in a situation of insolvency due to their obligation to pay back the cost of the animals to the Village Saving Funds.

199. Concerning the biomass clearance and water quality, concern was expressed about the lack of plans for the removal of biomass at least in the reservoir area, an issue that was already raised in our letter of 3 November 2006. It was alleged that failure to clear biomass from the reservoir area will result in water quality problems and would decimate fish in both the reservoir area and downstream.

200. Concerning the disclosure of information, the Special Rapporteurs noted many of the above allegations appear to be connected to the lack of access by local villagers and other stakeholders to official information on the Naum Theun 2 project, which would seem to have contributed to generating a climate of concern and uncertainty concerning several environmental and social components of the project. Accordingly, the Special Rapporteurs requested that certain documents related to the dam construction be included on relevant public websites. They also noted that they intended to share the concerns expressed in the communication with the relevant international financial institutions and development agencies involved in this project, including the French Development Agency, the Asian Development Bank, and the World Bank.

Response of the Government of 22 January 2009

201. In a letter of 22 January 2009, the Government of the Lao People's Democratic Republic submitted a response to the concerns raised by the Special Rapporteurs.

202. In summary, the Government's responded: It should be said that the information provided in previous correspondence still applies. In particular, the foreign Vice-Minister's letter dated 4 January 2007 (Reference No. 0064/AETD3) being a response to the letter dated 3 November 2006 from the Special Rapporteur addresses some of the issues raised and the Government respectfully notes that the response provided then remains relevant to the current dialogue.

203. NT2 continues to be developed in a very professional matter, with considerable effort being directed towards the social and environmental issues associated with the project. Substantial progress has been made on this front and the Government anticipates that the level of success already achieved will continue into the future. Certainly there have been challenges: the resettlement of local people, questions over water flow and the possible threat to aquatic and

wildlife, and the effect on the forest. The Government remains acutely aware of the need to ensure for the sake of all people involved that the social and environmental impacts of such projects are properly managed. Precaution, preventive and addressing measures have been and will continue to be taken as to address standing issues as well as to avoid any unfavorable impact that may arise in the course of the development of the project.

204. In fact, the NT2 project 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 allows for real-time understanding of people's preferences and concerns. As part of a consistent policy of openness, the NT2 project has, with the encouragement and support of the Government, continued to provide interested parties with the opportunity to visit the site, to see first hand what is happening, to discuss issues with people on the ground and to get further information on the prevailing circumstances. This information program has been an outstanding success, with a large number of visits having already been organized on the basis of technical visits by independent monitors such as the Environmental and Social Panel of Experts (POE), the Dam Safety Review Panel (DSRP), the International Advocacy Group (IAG) and GOL Engineers every 2 months.

205. In addition to these visits there is an average of 5 visits per month by GOL members, NGOs, academics and local and international journalists. Visitors have included numerous representatives of diplomatic missions and international organizations in Lao PDR, as well as IFI delegations. More recently, the Ambassadors of the US, Australia, the EU, Germany and Finland, and the French Ambassador for Human Rights have visited the site. NTPC will welcome ADB Board members in February 2009. On 29-30 October 2008, the Government held a NT2 Stakeholders forum in Thakek near the NT2 Project Site. The Forum was open to international delegations. Both the Special Rapporteur on the right to food and the Special Rapporteur on indigenous peoples were invited to the Forum. It is unfortunate that no one from either office was able to attend this comprehensive forum as we would have appreciated the opportunity to directly address your concerns regarding the Nam Theun 2 Project. In the very same spirit that we have welcomed so many others and we would also welcome a visit to the project by the Special Rapporteurs or their representatives.

Observations

206. The Special Rapporteur thanks the Government of the Lao People's Democratic Republic for providing its response to the concerns raised and also appreciates the Government's openness to a continued dialogue and examination of the situation. The Special Rapporteur continues to monitor the situation of indigenous communities affected by the NT2 Project.

Situation concerning the alleged forcible return of over 1,200 Hmong individuals to the Lao People's Democratic Republic

Communication of the Special Rapporteur of 18 July 2008

207. In a letter of 18 July 2008, the Special Rapporteur drew the attention of the Government to concerns over the alleged recent forcible return of over 1,200 Hmong individuals to the Lao People's Democratic Republic.

208. In summary, according to the information received: On 22 June 2008, 837 Lao Hmong and on 11 July 2008, a further 391 Lao Hmong were returned to the Lao People's Democratic Republic from a camp in northern Thailand by the Thai Government. After weeks of protests, on 20 June 2008 about 4,500 to 5,000 Hmong individuals left the Ban Huay Nam Khao camp in the Phetchabun Province and marched towards Bangkok. However, according to the information, when the group reached a few miles from the camp, they were confronted by Thai troops and were told that they must either return to the camp or be returned to the Lao People's Democratic Republic. Some 3,500 individuals returned to the camp. However, about 1,300 Lao Hmong are now unaccounted for and the details surrounding their whereabouts are vague. On 22 June, following the march, some 837 Hmong individuals were repatriated to the Lao People's Democratic Republic from the Ban Huay Nam Khao camp and an additional 400 were repatriated on 11 July.

209. The Lao Hmong may be facing persecution in the Lao People's Democratic Republic due to their involvement in the region's conflicts some 30 years ago. The Special Rapporteur urged the Government to take all necessary measures to ensure that the rights and freedoms of the Hmong individuals returned to the Lao People's Democratic Republic are guaranteed.

Response of the Government of 24 October 2008

210. In a letter of 24 October 2008, the Government of the Lao People's Democratic Republic responded to the concerns of the Special Rapporteur.

211. In summary, the Government responded that: The issue relating to the thousands of Hmong who have illegally immigrated into Thailand and have been retained in the temporary camp in HuayNamKao Village, KaiKor District, Phetsaboun Province is now being addressed as a result of the Meeting of the Joint Committee for Cooperation in General Security Border co-chaired by the Defense Ministers of the Lao PDR and Thailand in September 2006, which had carefully considered the situation and seriously discussed the issue.

212. The meeting agreed that those Lao Hmongs who had illegally immigrated into Thailand were migrated for economic reasons and to be repatriated to their original home country in accordance with the Thai law. The sub-committee of the Joint Committee has been entrusted to implement the agreement, starting from collecting their personal identities and basic information for the purpose of such repatriation.

213. At the sub-committee's last meeting held in September 2007 in Vangvieng District, Vientiane Province, the two sides reached an agreement on arrangements for the repatriation of the Lao Hmongs to their hometowns by their respective competent authorities. This repatriation process had to be completed by the end of 2008. As of 22 September 2008, the two sides had handed over eight groups of Hmongs in a total number of 1,673 persons, including the three remaining groups consisting of the group of 837 persons returned on 22 June, the group of 391 persons returned on 10 July and the group of 119 persons returned on 29 August.

214. Upon the arrival of each illegal-immigrant Lao Hmongs group, the Lao sent them to the temporary welcoming center in Paksane District, Borikhamxay Province for interviews, registration of their identities and records of related information. In order to prevent the repeated illegal migration in the neighbouring country, whether intentionally or being lured to do so, they

were retained in the camp for one or two weeks for re-education to ensure that they were aware of and understood the ill and deceiving intention of bad elements and trans-boundary human traffickers. They were then sent by plane or by bus, as the case may be, to their hometowns, where their relatives welcomed them and local authorities were readily awaited to provide them with initial assistance until they can lead their normal lives as other villagers.

215. For those people who had sold all their properties or for those whose livelihoods were previously relied on shifting slash-and-burn cultivation and had not permanent domicile, the Lao Government agencies have provided them with new shelters, farmlands as well as initial assistance until they can lead their normal lives. One of the most relevant cases is the establishment of Phalak Village in Kasy District, Vientiane Province in early 2006. The Government has provided these villagers with land areas for farming and permanent houses. This model village for development was established for the purpose of providing essential assistance to those Hmongs in need of returning from Thailand with no home or dependable relatives.

216. Furthermore, international aid agencies and organizations concerned have witnessed the hand-over of the Lao Hmongs between the Thai and Lao PDR Government authorities. Both sides signed a handover memorandum containing all related information on the returning Lao Hmongs such as the number of returnees or families, names and surnames, sex, age and others. Subsequently, those records possessed by the Lao authorities were signed when returning the Hmongs to local authorities and their families. Besides, the hand-over events opened to the public, including Lao and foreign journalists, ensure absolute transparency.

217. Since those returning Lao Hmongs arrived in their home towns or settled in the PhaLak Village, they have obtained Lao citizen ID cards and are able to travel wherever in the Lao PDR. In addition, they are entitled to obtain passports for traveling outside the country. They have also regained their full status in the Lao society, exercising all rights and obligations of a Lao citizen.

Observations

218. The Special Rapporteur thanks the Government of the Lao People's Democratic Republic for its response of 24 October 2008 and continues to monitor the situation of the Hmong people in the Lao People's Democratic Republic.

Libyan Arab Jamahiriya

**Situation concerning human rights defenders Mr. Salem Madi,
Mr. M'hamed Hamrani, Ms. Aissa Sijouk, Mr. Fethi Benkhelifa,
and Mr. Mohamed Akchir**

Communication of the Special Rapporteur of 22 January 2009

219. In a letter of 22 January 2009, the Special Rapporteur, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and Special Rapporteur on the situation of human rights defenders alerted the

Government of Libyan Arab Jamahiriya of allegations concerning the human rights defenders Mr. Aslem Madi, Mr. M'hamed Hamrani, Ms. Aissa Sijouk, Mr. Fethi Benkhelifa, and Mr. Mohamed Akchir.

220. In summary, according to the information received: The affected individuals are members of the Federal Council of the World Congress of the Amazigh (CMA). The CMA is an international NGO for the defence of the rights of the Amazigh (Berber) people, created in 1995. On 24 December 2008, at approximately 11 am., around 300 members of the organization the "Youth of Tomorrow's Libya" and the "Revolutionary Committees" gathered for a meeting in the town of Yfren, in Nefussi Province, west of Tripoli. The meeting took the form of an informal popular tribunal to try and convict defenders working on the human rights of the Amazigh people without formal judicial process. The gathering specifically targeted those human rights defenders who participated at the last Geneml Assembly of the World Congress of the Amazigh held from 31 October - 2 November 2008 in Meknes, Morocco. At the meeting Mr. Salem Madi, Mr. M'hamed Hamarani and Ms. Aissa Sijouk were publicly accused of being separatists and working for foreign interests. Mr. Fethi Benkhelifa and Mr. Mohamed Akchir were also part of the list of defendants mentioned during the meeting.

221. After approximately one hour, the leaders of the meeting, whose identity is known to the Special Rapporteurs, called on the individuals present to attack the homes of the CMA members. A crowd of some 500 people, which included plain-clothes police officers and was surrounded by soldiers, gathered outside the residence of Mr. Salem Madi. The assembled group threw stones at the home, breaking several windows. The home of an elderly woman, Ms. Aicha Elkeblaoui, was also damaged. Unidentified individuals also painted "Death to traitors" and other threats on the front of the residence. The police and military officers present did not intervene.

222. Prior to departing from the scene, organizers of the meeting threatened to kill anyone who participated in any meeting concerning the "Amazigh issue." They also announced that punitive measures would be conducted in the coming days against Amazigh activists, especially in the localities of Zuwara, Jadu, Cabao and Ubari. To date these death threats have not been implemented. Following the attack on his home, Mr. Salem Madi filed a complaint with the Yfren Court. As yet, no response has been received.

223. The Special Rapporteurs expressed concern regarding the physical and psychological integrity of Mr. Salem Madi, Mr. M'hamed Hamaradi, Ms. Aissa Sijouk, Mr. Fethi Benkhelifa and Mr. Mohamed Akchir. Further concern is expressed that the harassment of, and attacks on, the above-mentioned persons may be related to their activities defending human rights, in particular the rights of the Amazigh people.

Observations

224. The Special Rapporteur regrets that there is no record of any reply from the Government of Libyan Arab Jamahiriya to the letter by the time of the finalization of this report.

Malaysia

Situation concerning the death of aboriginal leader in Sarawak, Borneo

Communication of the Special Rapporteur of 14 January 2008

225. On 14 January 2008, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Special Rapporteur on the situation of human rights defenders brought to the Government's attention information received in relation to the death of Mr. Kelesau Naan. Mr Naan was an aboriginal leader of the Penan people in Sarawak, Borneo and a leader of the blockade campaign against logging in the Upper Baram region. The letter was originally reproduced in the 2008 Communications Report of the Special Rapporteur (A/HRC/9/9/Add.1) (15 August 2008), and is reprinted here for ease of reference.

226. According to information received, on 17 December 2007, Mr. Kelesau Naan's body was found at Sungai Segita. The condition of the corpse suggested possible assault before his death. According to the allegations, Mr. Kelesau Naan, who had been last seen on 23 October 2007, was one of the main leaders of the anti-logging campaign in the Upper Baram region, where tensions between the indigenous peoples and logging companies have reportedly escalated in recent months. He was also one of four plaintiffs and a key witness in a court case on the claim of customary land by Penan in Sarawak awaiting judgment since 1998. Concern was expressed that the death of Mr. Kelesau Naan may be directly linked to his non-violent activities in defense of human rights, and particularly of the rights of indigenous peoples in the Upper Baram region.

Response of the Government of 13 March 2008

227. In a response of 13 March 2008, the Government of Malaysia acknowledged receipt of the allegation letter from the Special Rapporteurs, and informed that it would respond to the questions and concerns raised therein, and that it would require additional time, beyond the 60-day timeline, to provide a response. In a letter dated 23 July 2008, the Government of Malaysia provided a more detailed response to the allegations raised by the Special Rapporteur in the letter of 14 January 2008.

228. In summary, the Government responded that: Based on the investigations carried out by the relevant authorities, the official information relating to the death of Mr. Kelesau Naan are as follows.

229. On 23 October 2007, the deceased, around 70 years old, and his wife were staying in their jungle hut along the Segita River, which was located approximately two hours journey on foot from their home in Long Kerong Village. The deceased told his wife that he wanted to check on the animal traps nearby their jungle hut. He also told her that they would go home together in the afternoon. The wife waited for the deceased that afternoon but when the deceased did not appear after a long wait, the wife assumed that the deceased had gone home first, and therefore she went home alone.

230. However, when the deceased did not return home by 25 October 2007, his wife then informed the villagers of his disappearance and they mounted a search for the deceased but to no

avail. On 17 December 2007, the villagers found human skeletal remains on the banks of the Segita River, not far from the hut of the deceased. The wife of the deceased confirmed that the skeletal remains belong to the deceased based on the deceased's beads and the sword sheath which were found with the remains. The skeletal remains found were nevertheless incomplete and it was believed that some might have been washed away by water. On 26 December 2007, the skeletal remains of the deceased were buried in Long Kerong Village by his family.

231. Based on the official information above, there is no confirmation whether the deceased had been assaulted before his death. On 3 January 2008, the son of the deceased, Nick Kelesau, lodged a police report on the death of the deceased (Marudi Report 05/2008). In his police report, the Complainant stated that there were signs of broken arm bones of the deceased as a result of beating. The death of Kelesau Naan is still under police investigation. At present, the case is classified as a sudden death report. In addition, the information on the disappearance and the death of the deceased was only known to the authorities after the police report was lodged by the complainant on 3 January 2008, which is approximately three months after the disappearance of the deceased in October 2008 and more than two weeks after the recovery of the deceased's skeletal remains.

232. On 18 February 2008, the Chief of Police of Sarawak announced that the police would obtain a court order to exhume the body. As of 8 March 2008, police investigation on the matter is still on-going and the official post-mortem report from the Miri General Hospital where the exhumed skeletal remains were taken has yet to be released. Initial reports state that the pathologist report was inconclusive as only the partial skeletal remains of the deceased were examined. At this juncture, and until and unless investigations by the police and forensic examinations by the hospital authorities are completed, the Government of Malaysia is not in the position to provide any official observation as to whether the death of the deceased may be directly linked to his non-violent activities in defense of human rights, and particularly of the rights of indigenous peoples in the Upper Baram region. Initial post-mortem report indicates that the deceased died of natural cause.

233. The relatives of the deceased have lodged a complaint with the Human Rights Commission of Malaysia (SUHAKAM) with regard to his death. In this connection, the Government of Malaysia is not in the position to provide any official observation with regard to the details or results of the independent procedures conducted by SUHAKAM which is carried out without any interference or influence by the Government as provided under the Human Rights Commission of Malaysia Act 1999.

234. Also at this juncture, the Government of Malaysia wishes to highlight that some local Penans and other tribesmen in the surrounding areas believe that Kelesau might have slipped and fallen on the rocky riverbank while other said he might have been injured in a hunting misadventure. According to one of them, there has been at least three such hunting misadventures where hunters were accidentally shot and killed in the last few years, and such cases were never reported to the police. He also said that if the shooter owns up, the matter would be settled within the community and some form of compensation would be paid. Another elderly tribesman said that the Long Segita area was too far into the jungle for outsiders to venture into.

235. The Government of Malaysia wishes to confirm the statement in the Communication that the deceased is a principal plaintiff and a key witness in a court case on the claim of customary land by Penan in Sarawak awaiting judgment since 1998 (“the civil suit”). In the civil suit filed in the High Court of Miri, Sarawak, civil suit no. 22-46 1998 (MR), the plaintiffs (the Penans) are claiming for Aboriginal Customary Rights on concession license in two areas, namely No. T/0411 and 1/0412 in Baram, Miri, which were issued to the second and third defendants, respectively. The deceased is the first plaintiff, while the three other Penans are the second to fourth plaintiffs. Seven parties were named as defendants, namely the Government of the State of Sarawak (first defendant), Samling Plywood (Baramas) Sdn. Bhd. (second defendant), Syarikat Samling Timber Sdn. Bhd. (third defendant), Mathew Uchat Kajan (fourth defendant), Jalon Balan (fifth defendant), Gabriel A Ajok (sixth defendant), Anthony Belarek (seventh defendant).

236. In the civil suit, the fourth, fifth, sixth and seventh defendants (the Kenyah tribe) also claimed for Aboriginal Native Rights on the same areas, which had been referred to the Chief’s Native Court in Marudi and registered as no. MUR/CC/06/2004 (the Native Court). The Penans were absent during the proceedings in which the Native Court and the Kenyah had obtained default judgment which was made in favour of the Kenya tribe. The Penan tribe had filed an appeal with the Chief’s Superior Native Court against the default judgment of the Native Court.

237. In the meantime, the Kenyah tribe has obtained an order for a stay of proceeding of the civil suit from the High Court of Miri pending the outcome of the appeal before the Chief’s Superior Native Court. Consequently, the Penan tribe filed an appeal at the Court of Appeal against the order of the stay of proceeding of the civil suit and to date no date has been fixed by the Court of Appeal. In this regard, the Government of Malaysia would like to state that the trial of the civil suit involving the deceased has not yet commenced. The civil suit is now being stayed pursuant to a court order pending the decision and disposal of the appeal case in the Chief’s Superior Native Court.

238. The Government of Malaysia reaffirms its commitments to the principles contained in various international human rights treaties to which Malaysia is a party, and the United Nations Declaration on the Rights of Indigenous Peoples. Malaysia understands that the Declaration is a non-binding text that sets out the individual and collective rights of indigenous peoples, as well as their rights to culture, identity, language, employment, health, education and other issues.

239. The Government of Malaysia has always maintained its adherence and commitments to its primary responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms.

240. The Government of Malaysia wishes to conclude that the summary of the facts contained in the joint Communication does not reflect the accurate facts and information. The Government of Malaysia reiterates that until and unless investigations by the police and forensic examinations by the hospital authorities are completed, the Government of Malaysia is not in the position at this juncture to provide any conclusive observation as to whether or not the death of the deceased may be directly linked to his non-violent activities in defense of human rights, and particularly of

the rights of indigenous peoples in the Upper Baram region. However, initial post-mortem report indicates that the deceased died of natural cause. In this regard, the Government of Malaysia gives its assurance that the investigation on the death of the deceased will continue to be conducted in accordance with the prevailing domestic laws of Malaysia, which are in full compliance with the norms and standards of international law.

Observations

241. The Special Rapporteur thanks the Government of Malaysia for the detailed information provided in response to the communication of 14 January 2008.

Situation concerning the alleged sexual abuses against girls from the Penan Community in the Baram area, Sarawak

Communication of the Special Rapporteur of 20 November 2008

242. In a letter of 20 November 2008, the Special Rapporteur, together with the Special Rapporteur on violence against women, its causes and consequences, brought to the Malaysian Government's attention information received in relation to sexual abuses against girls from the Penan Community in the Baram area, Sarawak.

243. In summary, according to the information received: Before logging started in Penan settlements, Penan children went to school on foot or by boat. Today, due to logging activities, many streams and rivers are no longer navigable as they are dried up or filled in to create loading roads for logging companies. On foot it can now take children up to a week to walk from their settlements to their school in Long Lama; while travelling with the vehicles of logging companies, the journey only takes three to six hours. As private transport is not affordable to Penan families, the Penans have thus become dependent on company vehicles for accessing areas outside their settlements, including schools.

244. Penan girls hitching rides to school and back are susceptible to abuses during their journeys by logging companies' workers. In some cases, they may have to take more than one vehicle before they can reach home, or in other cases they may have to wait at the side of logging roads or walk for hours to another village to get a ride with another company vehicle, thereby increasing their vulnerability. There have also been cases of female students being driven to logging camps and raped. In other cases, the transport operated by company vehicles was arranged in such a way that the girls had to stay overnight at a logging camp, where they were subject to abuses by workers.

245. In recent years, at least a dozen cases of sexual abuses have been reported to the police, although it is alleged that most of them have not resulted in convictions, thereby undermining trust in the police. In addition, it is said that the majority of cases remain unreported.

Observations

246. The Special Rapporteur regrets that there is no record of a reply from the Government of Malaysia to the letter of 20 November 2008 by the time of finalization of this report. The Special Rapporteur notes his grave concern regarding the alleged ongoing abuse of indigenous women and girls, and will continue to monitor the situation in Malaysia.

México

Situación sobre el supuesto desalojo forzado de 86 habitantes de los Bienes Comunales de Chalcatongo y La Paz, Oaxaca, México

Comunicación del Relator Especial de 18 de julio de 2008

247. En una carta de 18 de julio de 2008, el Relator Especial, junto con la Relatora 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, hizo referencia a las alegaciones recibidas en relación al desalojo forzado de 86 habitantes de los Bienes Comunales de Chalcatongo y La Paz, Oaxaca, México.

248. En resumen, según las alegaciones recibidas: Los días 25, 26 y 27 de diciembre de 2007, un grupo de personas entró a la comunidad y desalojó a la totalidad de los habitantes. Con dos tractores un grupo de personas derribó y quemó 44 casas de la comunidad, y procedió a robar a los habitantes. Adicionalmente, el 9, 10 y 11 de mayo de 2008 un grupo de personas quemó otras 15 casas en la comunidad de la Paz y dichos actos han afectado a 86 personas. Hay temor de que estos actos pueden repetirse en las otras comunidades ubicadas dentro del territorio en cuestión, específicamente las comunidades de Allende y Reforma.

249. Esta situación se recrudeció a partir de que el Tribunal Unitario Agrario No. 46 de la Ciudad de Huajuapán de León, Oaxaca, emitiera un fallo favorable a Santo Domingo Ixcatlán del 3 de agosto de 1998. El fallo establece que las 1.356 hectáreas que se encontraban en litigio correspondían al Municipio de Santo Domingo Ixcatlán. Sin embargo, los pobladores de Chalcatongo habrían estado en posesión de las tierras desde tiempos inmemoriales y están actualmente en posesión de las tierras. Además, la Resolución del Tribunal Unitario Agrario No. 46 no especifica la manera de su ejecución y no establece ninguna medida para desalojar a los habitantes de otras tres comunidades que están asentadas dentro de las tierras en disputa (La Paz, Allende y Reforma). Las autoridades del Estado de Oaxaca no habrían querido ejecutar la sentencia debido a esta problemática y es por ello que algunos de los habitantes de Santo Domingo Ixcatlán actuaron por su propia mano.

250. Las autoridades municipales y el Estado de Oaxaca no habrían intervenido en la investigación de los hechos y la sanción de los responsables. Por el contrario, las autoridades municipales de Santo Domingo Ixcatlán conocían del operativo y permitieron que las actividades se llevaran a cabo. Además, las autoridades de Procuración de Justicia del Estado de Oaxaca no habrían actuado frente a las denuncias penales presentadas por los pobladores de Chalcatongo por el desalojo, el robo, y la quema de sus viviendas. Las víctimas habrían acudido a la Comisión de Derechos Humanos de Oaxaca a levantar quejas por los hechos, pero no han tenido ninguna respuesta de la Comisión hasta el momento.

Respuesta del Gobierno de 5 de noviembre de 2008

251. En una carta de 5 de noviembre de 2008, el Gobierno de México respondió al Relator Especial.

252. En resumen, según la respuesta del Gobierno: Las comunidades de Chalcatongo de Hidalgo y de Santo Domingo Ixcatlán, perteneciente al distrito de Tlaxiaco, Oaxaca, confrontan antiguos problemas por la posesión y reconocimiento de una superficie de 1,356-93-70 hectáreas, conflicto que jurídicamente ya fue resuelto a favor de la comunidad de Santo Domingo Ixcatlán por una sentencia del Tribunal Unitario Agrario del Distrito 46, dictada el 8 de agosto de 1998, dentro del expediente de conflicto por límites número 03/95. Sin embargo, la sentencia se encuentra pendiente de ejecutar debido a la oposición que presentan los habitantes de la comunidad de Chalcatongo de Hidalgo, quienes nunca han estado de acuerdo con el fallo. Pese a que dicho conflicto ya ha sido objeto de una solución jurídica, el intento de ejecución de la sentencia ha contribuido al resurgimiento de confrontaciones entre pobladores de ambas comunidades.

253. Con respecto a la pregunta de si son exactas las alegaciones, en relación a los hechos suscitados los días 9, 10 y 11 de mayo de 2008, si hubo una quema de 14 casas en la comunidad de Chalcatongo, Oaxaca, afectando con ello a 86 personas. Estos hechos fueron ocasionados con motivo de las mismas disputas entre las comunidades por la superficie de 1,356-93-70 hectáreas.

254. En cuanto a información sobre investigaciones iniciadas, con motivo de estos hechos, la Procuraduría de Justicia del estado de Oaxaca (PGJ Oax) inició el 15 de mayo de 2008 la averiguación previa 161(I)2008, por los delitos de daños en la propiedad y los que resulten, en contra de quien resulte responsable, con motivo de una denuncia presentada por los señores Alejandro Ramírez Quiroz, Avelino Ruiz López, Leonardo Casillas García, Efraín Quiroz heras, Anacleto Soria Cortés, Gabriel Ramírez Nicolás y Zenón Montesinos Heras, integrantes del comisariato de bienes comunales de Chalcatongo de Hidalgo.

255. Después de 4 requerimientos por parte de la autoridad ministerial para solicitar a los ofendidos se presentaran para tomar su declaración sobre esos hechos, el 16 de septiembre de 2008, comparecieron los señores Hipólito Mendoza Cortes, Arcadio Santiago Mendoza, Avelino Mendoza, Tolentino Mendoza Ruiz y Evaristo Sánchez Cortes, quienes fueron coincidentes en declarar que el 9 de mayo de 2008, un grupo de personas pertenecientes a la comunidad de Santo Domingo Ixcatlán, liderados por el señor Artemio Jiménez Martínez, síndico municipal y Pedro Castro Hernández, integrante del Ayuntamiento, se introdujeron en los domicilios y después de robar sus pertenencias, prendieron fuego a sus casas. Debido al temor que las agresiones continuaran, los señores Mendoza Cortes, Santiago Mendoza, Mendoza Ruiz y Sánchez Cortés, ese mismo día con sus familias decidieron trasladarse al paraje Las Tinajas de la Paz, Chalcatongo, Oaxaca, improvisando casas para su refugio.

256. También, los días 10 y 11 de mayo de 2008, nuevamente el grupo de personas pertenecientes a la comunidad de Santo Domingo Ixcatlán acudieron al paraje Las Tinajas de la Paz, Chalcatongo, Oaxaca, para saquear y posteriormente quemar las viviendas de Florentina Ruiz Nicolás, Maura Ramírez Santiago, Fructuoso Román Mendoza Cortés, Refugio Sánchez Ruiz, Jorge Sánchez Ruiz y Oscar Ruiz Jiménez. Los ofendidos agregaron que no podían intervenir para evitar la quema de casas debido a que el grupo de personas iba armado.

257. El Ministerio Público practicó la inspección ocular con la intervención de peritos técnicos especialistas y giró oficio a la agencia estatal de investigación a fin de avocarse a la investigación de los hechos. La averiguación previa aún se encuentra en la etapa de análisis para

emitir la determinación que conforme a derecho proceda. Con respecto a si las víctimas han obtenido algún tipo de compensación a modo de indemnización, hasta el momento no se ha determinado responsabilidad penal de ninguna persona, debido a que las investigaciones continúan su curso.

258. Sobre las medidas tomadas para evitar que se repitan los hechos, con la finalidad de atender y resolver el conflicto agrario que confrontan las comunidades, representantes de la Secretaría General de Gobierno, la Junta de Conciliación Agraria y la Comisión Interinstitucional del Sector Agrario del estado de Oaxaca, se reunieron después de sucedidos los hechos, a efecto de implementar un proceso conciliatorio dentro del cual se han realizado reuniones, asambleas y pláticas de sensibilización tanto en las oficinas de las dependencias como en las comunidades.

259. El proceso conciliatorio consiste en llevar a cabo trabajos técnicos por personal de la Junta de Conciliación Agraria en base a las diferentes propuestas que se han formulado en las reuniones para resolver el conflicto, en donde se ha propuesto compartir o dividir la superficie, así como reubicar algunos asentamientos humanos que en ella existen o reconocer sus derechos agrarios como comuneros de la comunidad en donde estén ubicados y otras propuestas más que se encuentren considerando.

260. También las autoridades han intervenido en las ocasiones en las cuales se han suscitado enfrentamientos por problemas agrarios, en donde se ha logrado que ambas comunidades acuerden un pacto de civilidad y se comprometan a mantener un clima de respeto, paz y tranquilidad en la zona, así como de continuar con las negociaciones hasta resolver pacíficamente este conflicto agrario, situación que en la actualidad se encuentra dentro de este proceso conciliatorio.

261. Con respecto a la situación actual, después del cambio de los órganos de representación de la comunidad de Chalcatongo de Hidalgo, ocurrido el 25 de mayo de 2008, las mesas de negociaciones se han intensificado obteniéndose resultados muy significativos y positivos para solucionar en forma concertada y definitiva este problema, pues se está en espera de que sea resuelto el juicio de amparo número 233/2008, promovido a nombre de la comunidad de Chalcatongo de Hidalgo, ante el Juez Segundo de Distrito en el Estado de Oaxaca. La resolución del recurso de amparo permitirá continuar con el cumplimiento de los acuerdos obtenidos entre las comunidades para solucionar la controversia agraria.

Observaciones

262. El Relator Especial agradece la detallada información proporcionada por el Gobierno de México sobre las cuestiones y preocupaciones mencionadas, y seguirá monitoreando la situación.

Situación sobre la situación de los miembros de la Organización del Pueblo Indígena Me Phaa (OPIM)

Comunicación del Relator Especial de 22 de julio de 2008

263. El 22 de julio de 2008, el Relator Especial, conjuntamente con el Relator Especial sobre la independencia de magistrados y abogados, el Relator Especial sobre la promoción del derecho a

la libertad de opinión y de expresión, y la Relatora Especial sobre la situación de los defensores de los derechos humanos señalaron a la atención urgente del Gobierno de Mexico, información sobre los Srs. Manuel Cruz Victoriano, Orlando Manzanarez Lorenzo, Natalio Ortega Cruz, Raúl Hernández Abundio y Romualdo Santiago Enedina, todos integrantes de la Organización del Pueblo Indígena Me'phaa (OPIM) quienes están detenidos desde el 17 de abril de 2008. Estos integrantes de la OPIM fueron objeto de un llamamiento urgente emitido el 21 de mayo de 2008 (véase el informe de comunicaciones del Relator Especial de 2008, A/HRC/9/9/Add.1, 15 de agosto de 2008), que hasta la fecha de elaboración de este informe no ha recibido una respuesta del Gobierno.

264. En resumen, según las informaciones recibidas: El 7 de julio de 2008, los cinco detenidos habrían presentado el amparo Número 982/2008 ante la Justicia Federal como reclamación en contra del auto de formal prisión que el Juez Mixto de Primera Instancia les habría dado el 23 de abril de 2008 por el supuesto homicidio del Sr Alejandro Feliciano García. Aunque no habría recibido suficiente evidencia el Juez Mixto de Primera Instancia de Ayutla, supuestamente bajo presiones políticas, habría sometido a los integrantes de la OPIM a un procedimiento de diez meses durante los que permanecerían en detención. Sin embargo, el 9 de julio de 2008 tres testigos habrían presentado nueva evidencia que habría probado que el expediente en contra de los detenidos habría sido fabricado. El 24 de julio de 2008 la Juez Octavo de Distrito de Acapulco dará su decisión sobre el amparo presentado por dichos integrantes de la OPIM.

265. Además, nos informaron que la Comisión Interamericana de Derechos Humanos (CIDH) habría solicitado al Estado Mexicano que amplíe a favor de los cinco indígenas de El Camalote presos en Ayutla, las medidas cautelares que otorgó a líderes e integrantes de la OPIM desde el año 2005. En su resolución del pasado viernes 27 de junio, la CIDH también habría pedido extender las medidas de seguridad necesarias para líderes en comunidades y miembros de la OPIM que tienen orden de aprehensión por el mismo delito, así como para aquellos otros integrantes que tienen el carácter de líderes comunitarios y un trabajo importante en la organización.

266. Se teme que la detención de los cinco integrantes de la OPIM y los cargos contra ellos podrían estar relacionados con sus actividades, en particular su trabajo en defensa de los derechos de las comunidades indígenas Me'phaa. También se teme que la acción judicial contra ellos podría formar parte de un hostigamiento sistemático en contra de las organizaciones indígenas y campesinas del Estado de Guerrero.

Observaciones

267. El Relator Especial lamenta que no consta en el expediente ninguna respuesta del Gobierno de México a la carta de alegación a la fecha de finalización del presente informe. El Relator Especial toma nota de la complejidad de la situación y le agradecería cualquier información disponible sobre la materia.

Situación sobre la situación de Sr. Dante Valdez

Comunicación del Relator Especial de 21 de agosto de 2008

268. En una carta de 21 de agosto de 2008, el Relator Especial, junto con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión, el Relator Especial sobre los efectos nocivos para el goce de los derechos humanos del traslado y vertimiento ilícitos de productos y desechos tóxicos y peligrosos, y la Relatora Especial sobre la situación de los defensores de los derechos humanos señalaron a la atención urgente del Gobierno de México la información recibida en relación con el Sr. Dante Valdez, maestro de enseñanza primaria.

269. En resumen, según la información recibida: El Sr. Dante Valdez es uno de los líderes en la organización de protestas pacíficas para defender los derechos medioambientales y a la tierra de la comunidad indígena de Huizopa contra las actividades de una empresa minera. Según se alega, dicha empresa ocupa más tierras que las que tiene derecho a ocupar y causa daño al medioambiente local y al suministro de agua.

270. El 13 de agosto de 2008, el Sr. Dante Valdez habría sido atacado por un grupo de aproximadamente 30 personas en una escuela donde participaba en un curso de formación para maestros. La mayoría de los miembros de dicho grupo trabajaría para una minera local. El grupo habría ingresado a la escuela de Madera, Estado de Chihuahua, y le habría propinado golpes de pie y empujones al Sr. Dante Valdez, diciéndole que no se metiera en sus asuntos.

271. El Sr. Dante Valdez denunció el ataque a la Procuraduría del Estado. Todavía no se habrían iniciado investigaciones policiales sobre el caso. Hay preocupaciones de que el ataque contra el Sr. Dante Valdez podría estar relacionado con sus actividades pacíficas en la defensa de los derechos medioambientales y a la tierra de la comunidad indígena de Huizopa. También hay preocupaciones por la integridad física y psicológica del Sr. Dante Valdez, así como los demás manifestantes que defienden la tierra de la comunidad de Huizopa.

Observaciones

272. El Relator Especial lamenta que no consta en el expediente ninguna respuesta del Gobierno de México a la carta de alegación a la fecha de finalización del presente informe y seguirá monitoreando la situación en la comunidad de Huizopa, en particular en relación con las actividades mineras.

Situación sobre las presuntas amenazas y fraudes cometidos en contra de miembros del ejido de San Sebastián Bachajón

Comunicación del Relator Especial de 1 de septiembre de 2008

273. En una carta de 1 de septiembre de 2008, el Relator Especial, junto con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión, llamaron la atención urgente del Gobierno de México respecto a la información recibida en relación con las presuntas amenazas y fraudes cometidos en contra de miembros del ejido de San Sebastián Bachajón, municipio de Chilón, Chiapas, quienes pertenecen al pueblo indígena tseltal, por miembros de la

Organización para la Defensa de los Derechos Indígenas y Campesinos (OPDDIC), con el presunto propósito de tomar control sobre el ingreso de recursos naturales tradicionalmente administrados por el ejido y establecer una presencia política en el municipio.

274. En resumen, según la información recibida: A finales de los años 1990, la OPDDIC era denominada el Movimiento Indígena Revolucionario Antizapatista, con filiaciones con el Partido Revolucionario Institucional (PRI). Esta organización ha sido responsable de una serie de agresiones y fraudes electorales en contra de comunidades zapatistas y opositoras al PRI, las cuales presuntamente comenzaron en 2007 cuando la OPDDIC ganó la presidencia municipal de Chilón.

275. Con respecto al ejido de San Sebastián Bachajón, el 9 de marzo de 2007, la OPDDIC movilizó a miembros de su organización provenientes de otros ejidos para que votaran en la Asamblea ejidal de San Sebastián Bachajón y así obtener la mayoría de los votos, con la finalidad de nombrar nuevas autoridades ejidales y así tomar control del ejido. A su vez, el 18 de mayo de 2007, el señor Felipe Hernández, delegado en la región del Gobierno del Estado de Chiapas avaló la elección fraudulenta. El 4 de julio de 2007, las autoridades elegidas en las elecciones del 9 de marzo de 2007, junto con miembros de la OPDDIC, tomaron por medio del uso de la fuerza la caseta de entrada de las Cascadas de Agua Azul, dejando gravemente heridos a los ejidatarios que la custodiaban.

276. Tradicionalmente, los ingresos recibidos en la caseta de entrada a las Cascadas de Agua Azul han sido utilizados para el pago del impuesto del ejido San Sebastián Bachajón y han estado administrados por las autoridades tradicionales indígenas del ejido. Con la toma de la caseta, la OPDDIC pretendía despojar al ejido de este ingreso económico y controlar la región de Agua Azul y gozar de los presuntos beneficios turísticos, como el establecimiento de un corredor eco-arqueo-turístico denominado “Centro Integralmente Planificado Palenque-Agua Azul”, en donde diversas autoridades federales participan.

277. El 18 de junio de 2008, los ejidatarios de San Sebastián Bachajón retomaron la caseta, desalojando a los miembros de la OPDDIC que la custodiaban. El 16 de julio de 2008 a las 15:00 horas, miembros de la OPDDIC intentaron ocupar la caseta de acceso de Agua Azul, con fuerza, disparando al aire con pistolas calibre 22. El grupo estaba acompañado por el Sexto Regidor del Municipio de Chilón, Sr. Antonio Jiménez García. Posteriormente, los miembros del OPDDIC repartieron un documento anónimo donde se acusa a los ejidatarios de “secuestradores, maleantes, pandilleros, asaltantes que tienen retenida la caseta de cobro de las Cascadas de Agua Azul, personas mismas que son miembros de la organización Yomblej (partido político opositor de la OPDDIC) pero se hacen pasar por supuestos zapatistas”. En realidad, los ejidatarios no pertenecen a ninguna de estas organizaciones, sino a “la Otra Campaña”.

278. El 6 de agosto de 2008, la OPDDIC, con la participación de autoridades estatales y municipales, publicó una nota en el periódico “Cuarto Poder”, señalando que: Luego de más de 30 días de la toma de la caseta de cobro en las cascadas de Agua Azul por presuntos simpatizantes del EZLN, este lunes por la noche autoridades estatales, municipales y ejidatarios alcanzaron acuerdo para resolver el conflicto. En asamblea, los afectados aceptaron la propuesta del Gobierno del Estado para que sea éste el que administre los recursos que se recaben por la entrada de esa zona turística, los cuales serán empleados en mejoras de la región, no permitiendo de esta forma la injerencia ajena o de algunos grupos”.

279. Sin embargo, 1,876 de los 2,322 ejidatarios de San Sebastián Bachajón en actualidad rechazaron el acuerdo, dado que los ingresos de la caseta tradicionalmente son administradas por las autoridades indígenas a beneficio del ejido. Además, se teme que, con tal acuerdo, el gobierno del estado de Chiapas avalará a las falsas autoridades ejidales, y fortalecerá el control político de la OPDDIC en el municipio de Chilón, en particular en la región de las Cascadas de Agua Azul.

Observaciones

280. El Relator Especial lamenta que no consta en el expediente ninguna respuesta del Gobierno de México a la carta de alegación a la fecha de finalización del presente informe.

Situación sobre la presunta desaparición forzosa de los Sres. Manuel Ponce Rosas y Raúl Lucas Lucía supuestamente relacionada con su labor en la defensa de los derechos de los pueblos indígenas

Comunicación del Relator Especial de 10 de marzo de 2009

281. El 10 de marzo de 2009, el Relator Especial, junto con el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, el Vice-Presidente del Grupo de Trabajo sobre las desapariciones forzadas o involuntarias, y la Relatora Especial sobre la situación de los defensores de los derechos humanos, señalaron a la atención urgente del Gobierno de México información sobre la desaparición forzada y asesinato de los Srs. Manuel Ponce Rosas y Raúl Lucas Lucía y las amenazas recibidas por parte de las familias de los difuntos, por la Sra. Guadalupe Castro Morales, esposa de Raúl Lucas Lucía, y sus hijos y su hermana la Sra. Carmen Lucas Lucía.

282. En resumen, según la información recibida: Manuel Ponce Rosas y Raúl Lucas Lucía ocupaban los cargos de Secretario y Presidente, respectivamente, de la Organización para el Futuro del Pueblo Mixteco (OFPM). Esta organización se creó a partir de la Organización del Pueblo Indígena Me Phaa (OPIM), otra organización indígena en la zona de la Costa Chica. Ambas organizaciones, las cuales están constituidas por comunidades indígenas de la zona (Tlapanecos y Mixtecos), se dedican a la defensa del territorio y recursos naturales y han denunciado presuntas violaciones de derechos humanos por parte del Ejército Mexicano en la zona.

283. La OFPM tiene su base en la capital municipal de Ayutla de los Libres y defiende los derechos de los pueblos indígenas de la región a través de la denuncia de violaciones de derechos humanos, así como creando y gestionando proyectos para mejorar la calidad de vida de los grupos indígenas. La OPIM fue fundada en 2002 para defender y promover los derechos de las personas indígenas Me'phaa en México. Entre otros proyectos, la OPIM aboga por la justicia y la reparación de las violaciones de derechos humanos cometidas por parte del Ejército Mexicano contra la comunidad.

284. El 13 de febrero de 2009, aproximadamente a la 13h35, los Sres. Manuel Ponce Rosas y Raúl Lucas Lucía habrían sido detenidos por tres hombres armados que se identificaron como policías. En el momento del incidente, Manuel Ponce Rosas y Raúl Lucas Lucía se hallarían en la inauguración de unas oficinas en Plan de Ayutla, una escuela secundaria federal ubicada en el

Boulevard, carretera Ayutla-Tecoanapa, Ayutla de los Libres, Estado de Guerrero. Los señores habrían sido invitados por la esposa de Raúl, Guadalupe, quien es regidora del Municipio en asuntos indígenas.

285. Entre las 35 personas que asistieron al acto, se encontraban algunos representantes de las autoridades municipales. El Director de Seguridad Pública de Ayutla y aproximadamente 25 agentes de la Policía Preventiva Federal, vigilaban la zona. Sin embargo, aproximadamente a la 13h00, el Capitán de la policía habría recibido una llamada a su teléfono móvil y él y sus hombres habrían abandonado el lugar en dirección al centro de Ayutla. Aproximadamente a la 13h15 habrían llegado tres individuos que, según algunos testigos, se habrían presentado como miembros de la policía ministerial del Estado de Guerrero. Las tres personas habrían estado vestidas de civiles, llevarían un corte de cabello al estilo militar y habrían portado armas de corto alcance. Un hombre habría amenazado a Manuel Ponce Rosas con un arma de fuego y al intervenir Raúl Lucas Lucía, le habría golpeado en la cabeza con el arma. Otros dos hombres armados habrían obligado a Manuel Ponce Rosas y Raúl Lucas Lucía a salir del lugar de los hechos. Un cuarto hombre les habría esperado a la salida donde se habría obligado a Manuel Ponce Rosas y Raúl Lucas Lucía a subir a un vehículo Domsan negro con vidrios polarizados y sin placas de matriculación.

286. Aproximadamente a las 14h30, la Sra. Guadalupe Castro Morales, la esposa de Raúl Lucas Lucía, habría recibido una llamada telefónica desde el número de teléfono móvil de Manuel Ponce Rosas. Al contestar, una voz masculina le habría amenazado diciendo: “[...] esto les pasa por defender indios”. El interlocutor habría colgado cuando la Sra. Castro Morales le hubiese pedido que pusiera a los hombres en libertad y que no les hiciese daño.

287. El mismo día Guadalupe Castro Morales habría acudido a la Oficina del Fiscal del Departamento de Justicia del Estado de Guerrero en Ayutla para denunciar las desapariciones. Según la información recibida, el personal presente se habría negado a abrir investigaciones y sólo habría establecido un antecedente legal a través del acto ministerial número ALLE/SC/03/A/W015/2009. Junto con Margarita Martín de las Nieves, la esposa de Manuel Ponce Rosas, Guadalupe Castro Morales también habría registrado una denuncia por arrestos incomunicados en la Séptima Corte del Distrito en Chilpancingo, Guerrero y habría pedido que se buscara a los desaparecidos en las instalaciones de la policía y de las fuerzas armadas.

288. Entre la tarde del 13 de febrero y el 14 de febrero de 2009, la Sra. Castro Morales habría visto a varios hombres desconocidos pararse en la esquina frente a su casa en dos ocasiones. Debido al temor a que sus movimientos fuesen vigilados, habría tenido que abandonar su casa temporalmente.

289. En la madrugada del jueves 19 de febrero de 2009, Margarita Martín de las Nieves y Guadalupe Castro Morales habrían recibido una llamada donde al parecer se escuchaba la voz de Raúl Lucas Lucía siendo torturado. Las personas que habrían llamado habrían informado que estaban vigilando a la familia y les habrían amenazado con llevarse también a la hija de Raúl de 15 años, si continuaban activos en la búsqueda de los Sres. Manuel Ponce Rosas y Raúl Lucas Lucía.

290. El viernes, 20 de febrero se habría realizado un operativo de búsqueda de las personas. Se habrían encontrado los cuerpos enterrados a un metro de profundidad y en bolsas de plástico. Se habrían podido identificar los cuerpos en los que se habrían encontrado huellas de tortura a pesar de su estado de descomposición. En el caso del Sr. Raúl Lucas, el cadáver habría presentado un orificio de bala en la cabeza, mientras que en el caso del Sr. Manuel Ponce, su muerte podría haber sido por traumatismo craneoencefálico. El Procurador General de Justicia del Estado de Guerrero, el Sr. Eduardo Murueta Urrutia, habría declarado que los Sres. Raúl Lucas Lucía y Manuel Ponce Rosas habían sido “levantados”, lo que podría distraer la investigación.

291. Anteriormente, Raúl Lucas Lucía habría sido víctima de diversas formas de acoso a causa de su trabajo de denuncia de violaciones de los derechos humanos por parte de miembros del Ejército Mexicano, incluyendo allanamientos, detenciones ilegales, e interrogatorios ilegales. El 18 de octubre de 2006, habría sido detenido ilegalmente por miembros del Ejército Mexicano. El 15 de febrero de 2007, habría sido víctima de una emboscada efectuada por individuos sin identificar que le causaron una herida casi mortal por arma de fuego en el cuello.

292. Se temería que la presunta desaparición forzosa de los Sres. Manuel Ponce Rosas y Raúl Lucas Lucía estuviese relacionada con sus actividades legítimas en la defensa de los derechos humanos, específicamente por su labor en la defensa de los derechos de los pueblos indígenas. Se temería también por la seguridad de los familiares de los difuntos y de los defensores de derechos humanos en la región de Ayutla.

293. El 19 de febrero de 2009, el Grupo de Trabajo sobre desapariciones forzadas o involuntarias, envió un llamamiento urgente al Gobierno de México en torno a la desaparición de los Sres. Manuel Ponce Rosas y Raúl Lucas Lucía. Aunque el Gobierno respondió a la comunicación del Grupo el 26 de febrero de 2009, dicha comunicación no se recibió hasta el 5 de marzo de 2009. En su respuesta, el Gobierno informó de la causa de la muerte de ambos señores y de las circunstancias en que los cadáveres fueron encontrados. También se les informó sobre las investigaciones judiciales llevadas a cabo sobre la desaparición de los Sres. Manuel Ponce Rosas y Raúl Lucas Lucía.

294. La OPIM ya fue objeto de varias comunicaciones de la Relatora Especial sobre la situación de los defensores de derechos humanos que envió una carta el 22 de julio de 2008 y de su predecesora, que envió una carta el 28 de febrero de 2008. La Relatora Especial lamenta no haber recibido respuesta a estas comunicaciones en el momento de finalización de la presente comunicación.

Observaciones

295. El Relator Especial lamenta que no consta en el expediente ninguna respuesta del Gobierno de México al llamado de urgencia a la fecha de finalización del presente informe y seguirá monitoreando la situación.

Niger (Republic of)

La situation actuelle concernant le Mouvement nigérien pour la justice (MNJ), composé de Touaregs, et les forces armées nigériennes (FAN)

296. Le 23 février 2009, le Rapporteur Spécial sur la situation des droits de l'homme et des libertés fondamentales des populations autochtones a envoyé une lettre d'allégations au le Gouvernement de la République du Niger concernant des informations reçues sur la situation actuelle entre le nigérien pour la justice (MNJ), composé de Touaregs, et les forces armées nigériennes (FAN).

297. Selon les informations reçues: La population civile touarègue subirait de nombreux abus, y compris les abus décrits par le Rapporteur Spécial sur les exécutions sommaires, extrajudiciaires et arbitraires dans sa lettre du 13 août 2008. Depuis juin 2007, au moins 78 personnes, la majeure partie d'entre elles appartenant à la communauté Touareg, auraient été abattues de manière extrajudiciaire dans les régions du nord du pays. La plupart des victimes auraient été retrouvées enterrées, quelques-unes auraient aussi été torturées. Les rapports indiquent la responsabilité directe des Forces Armées Nigériennes (FAN) dans ces actes.

298. Ces exécutions extrajudiciaires pourraient avoir eu lieu en représailles aux attaques lancées par le mouvement d'opposition armé Touareg Mouvement de Nigériens pour la Justice (MNJ), dans le contexte de la reprise des activités armées en février 2007. Plus précisément, la plupart des attaques contre les civils auraient eu lieu à la suite d'explosions de mines contre des militaires des FAN et leurs véhicules. Le conflit actuel aurait également mis en danger la vie et le bien-être des Touaregs dont bon nombre ont dû fuir leurs gîtes ruraux pour s'installer dans des centres urbains où l'accès aux moyens de subsistance traditionnels leur est difficile.

299. La crise financière qui aurait touché les Touaregs nomades, déjà dépossédés de nombreuses terres leur appartenant, serait aggravée par un code d'aménagement du territoire qui favoriserait clairement une population sédentaire au détriment des peuples nomades. Sans lien à la terre, et empêchées d'exercer leurs traditions, des peuples nomades risquent de voir disparaître leur culture et leur identité culturelle et leurs terres et territoires d'être usurpés en vue d'une exploitation agricole étrangère par des individus qui voient ce type d'exploitation comme la seule façon de valoriser une terre. En conséquence, les systèmes de production traditionnels des peuples nomades (dont l'élevage) sont dévalorisés et réduits au simple statut de folklore lors de fêtes foraines annuelles.

300. Également, que le présent conflit suive un autre conflit débuté en 1990 et pris fin avec la signature d'un accord de paix en 1995. L'accord en question inclut une clause offrant aux populations touarègues et autres populations ethniques un plus grand bénéfice des ressources naturelles de la région ainsi qu'une autonomie accrue grâce à des programmes de décentralisation. Depuis, et alors même que des progrès ont été faits, le Gouvernement de Niger n'aurait pas appliqué de manière satisfaisant certaines clauses cruciales du traité de 1995, en partie en raison d'un financement inadéquat de l'organe en charge de la mise en œuvre du traité. Selon les informations reçues, le présent conflit serait avant tout la conséquence de l'absence de prise en compte des revendications des populations touarègues, qui visent à jouir d'une

participation accrue dans l'administration et à promouvoir un meilleur développement de la région et de ses ressources tout en respectant leurs modes de vie traditionnels ainsi que leurs structures institutionnelles et administratives.

301. Le Rapporteur a attiré l'attention de le Gouvernement sur la Déclaration des Nations Unies sur les droits des peuples autochtones adoptée par l'Assemblée générale le 13 Septembre 2007, et en particulier les articles 10 et 26, qui établissent le droit de les peuples autochtones ne peuvent pas être enlevés de force a leurs terres ou territoires, et ont le droit aux terres qu'ils possèdent et occupent traditionnellement ou qu'ils utilisent ou qu'ils ont acquis. Le Rapporteur a mentionné aussi article 37 de la Déclaration, qui prévoit que les peuples autochtones ont droit à ce que les traités, accords et autres arrangements constructifs conclus avec des États ou leurs successeurs soient reconnus et effectivement appliqués, et à ce que les États honorent et respectent lesdits traités, accords et autres arrangements constructifs.

Réponse du Gouvernement du 9 avril 2009

302. Dans sa lettre du 9 avril 2009, le Gouvernement de la République du Niger a répondu a les allégations et a fourni des informations suivent en ce qui concerne la situation dans la région d'Agadez, dans le Nord Niger.

303. Pour résumer, selon les informations reçues par le Gouvernement, Niger est un pays en voie de développement, qui en plus de problèmes inhérents a la faiblesse de son économie, fait face depuis plus de deux décennies et de façon récurrente à des conflits armés dans sa patrie septentrionale. Les accords de paix signés entre les rébellions touarègues et l'État du Niger ont mis fin a les conflits et ont permis d'amorcer un développement économique et social de la zone. A la grande surprise du peuple nigérien, depuis février 2007, une bande armée dénommée Mouvement des Nigériens pour la Justice (MNJ), sévit dans la région d'Agadez, portant ainsi un coup supplémentaire à une situation économique et sociale déjà précaire.

304. Aujourd'hui l'ensemble du peuple nigérien et les partenaires au développement constatent avec amertume les agissements terroristes jamais démentis d'un mouvement armé, et dont les actions sont en port à faux avec les principes de la démocratie et de l'État de droit. La région d'Agadez a une population cosmopolite estimée à 437 210 habitantes en 2007. Trois (3) départements la composent: il s'agit d'Arlit, de Tchirozerine et de Bilma. Notons que cette région est limitée au Nord par l'Algérie, à l'Est par la Libye, au Sud la région de Zinder et l'Ouest par la région de Tahoua.

305. La population d'Agadez est composée principalement de nigériens d'ethnies Touareg, Hacussa, Diema, Sonrai, Peulh, Toubou et Arabe. Aride, la région n'offre qu'une très faible perspective d'activité pastorale. Toutefois, l'économie traditionnelle des communautés touarègues s'appuie sur l'élevage, la culture des dattes et le commerce caravanier. Autre trait caractéristique des populations touarègues, peulh, toubou et arabe, c'est le nomadisme.

306. Les deux grandes famines des années 1968-1972 et 1984-1986 (que d'aucuns considèrent comme éléments précurseurs de la rébellion) et la rébellion des années 90, ont conduit a une restructuration de cette ' organisation traditionnelle, caractérisée désormais par une population tournée vers des cultures maraîchères de rente, du tourisme, du tourisme et de l'artisanat. Niger a

signé et ratifié tous les textes relatifs de droits humains, et que l'environnement institutionnel dans Niger favorise le strict respect du caractère sacré de la personne humaine et la mise en œuvre des droits humains d'une manière générale.

Réponse a les allégations des abus par les forces de défense et de sécurité

307. Avec détermination à élucider cette affaire, le gouvernement a instruit la gendarmerie pour sillonner la région d'Agadez, aller à la rencontre de la population pour investiguer et recueillir des plaintes éventuelles. A l'issue de cette mission, aucune plainte relative aux actes d'abus de tortures, de traitements dégradants ou d'exécutions extrajudiciaires par les forces de défenses et de sécurité n'a été enregistrée. Depuis février 2007, début de l'affaire en objet, une seule plainte émanant d'une famille de sept individus et une déclaration de disparition ont été déposées à la Gendarmerie nationale. Pour le gouvernement, tout le reste n'est que rumeur et spéculation véhiculées par des individus cupides qui veulent transformer les questions de droit de l'homme en fonds de commerce. Les allégations contenues dans le report qui incriminent les forces de défenses et de sécurité sont d'une légèreté notoire. Le gouvernement reporte, aussi qu'aucune enquête objective et approfondie n'a été diligentée pour étayer les gravissimes allégations faisant état d'actes d'abus, traitements dégradants, d'exécutions extrajudiciaires qui seraient perpétrés par les Forces Armées Nigériennes.

308. Selon l'information reçu par les services de Gendarmerie, les faits essentiels son les suivantes: Le 10 juin 2007 il y eu trois véhicules de l'armée qui ont sauté sur des mines. Premièrement, très tôt le matin, le véhicule militaire a sauté sur une mine faisant des morts et des blessés. Un second véhicule de l'armée portant secours aux blessés a également sauté sur une autre mine. Juste après ce dernier fait, les militaires ont aperçu des hommes courir, sortant de la valle. Ils les rattrapent et les fouillent. Ils trouvaient sur eux des allumeurs et détonateurs, ainsi qu'une lettre provenant d'un Chef de bandits. Au vu de ces indices graves, le Chef de mission les a embarqués dans un véhicule avec les blessés pour être conduits à féroouane ou ils seront remis à la Gendarmerie pour enquête. A peine le véhicule a-t-il démarré qu'il sauta sur une mine faisant cinq morts dont les trois vieillards qui y ont pris place et dont les noms ont été cites dans le rapport. Le Docteur DANGANA, peu avant son départ pour le MNJ, a confirmé à la Gendarmerie que les trois vieillards ont pris place dans un véhicule de l'armée lequel a pris la direction d'lferouane. Aucune plainte n'a été déposée à la Gendarmerie.

309. La Gendarmerie n'a reçu aucune information sur les prétendues exécutions du 26 août 2007, des nomades voyageant entre lferouane et Gourgaram et aucune plainte n'a été déposée. Il s'agit donc d'allégations sans fondements. Concernant les douze civils qui seraient exécutés le 27 septembre 2007 par une patrouille de l'armée venant d'Assamaka, aucun renseignement n'est parvenu à la Gendarmerie et aucune plainte n'a été enregistrée. Les Forces Armées Nigériennes ne reconnaissent pas avoir posé de tels actes. Il ne s'agit que de rumeurs dénuées de tout fondement.

310. Le Gendarmerie n'a pas eu connaissance de ces événements qui se seraient déroules le 10 octobre 2007 a la frontière avec l'Algérie où douze touaregs auraient été massacres par l'armée. Le Gendarmerie Nationale n'a jamais été saisie desdits faits. Après le 19 novembre 2007, les familles d'Adam Abarch et de Ghoumou Asslek n'ont ni porté l'affaire à la connaissance de la Gendarmerie ni porté plainte. Pourtant Atri, où ils habitent, est très proche d'Agadez. Le 22 novembre 2007, la Gendarmerie n'était pas en patrouille à Tchinta bizguine et

il n'y pas eu de patrouille mixte FAN-Gendarmerie dans la dite zone, à la date précitée. Mais le 21 novembre, un véhicule avec à son bord, huit bandits armés a été signalé. Ces malfrats étaient à la recherche de l'informateur de l'armée détenant un téléphone Thuraya. Le 24 novembre le même véhicule a été signalé de nouveau dans la même zone et les bandits étaient accompagnés d'un journaliste muni d'une caméra.

311. L'affaire du 9 décembre 2007 est en cours de traitement. Toutes les parties concernées ont été entendues. Le procès-verbal a été transmis au Procureur de la République. Aucune autopsie n'a pas pu être effectuée sur les corps, parce que la saisine avait été effectuée un mois plus tard à un moment où les corps étaient déjà en état de décomposition avancée. Toutes les remarques rapportées sur les corps ne reposent sur aucune preuve. Et la procédure suit son cours, conformément aux lois de la République en vigueur, en vue de situer les responsabilités. Le prétendu décès de Moussa Balla Hadaba et de ses trois fils, le 12 décembre 2007, n'a pas fait l'objet de déclaration et de plainte à la Gendarmerie. Il s'agit des faits qui ne reposent sur aucune preuve. Le 1 mars 2008, trois chameliers auraient été exécutés à l'entrée de Gougram par l'armée. Cette information n'est jamais parvenue aux unités d'enquête, compétentes et aucune plainte n'a été déposée à ce jour.

312. La prétendue exécution, le 20 mars 2008, de Monsieur Abdoulsalam Aamadou Zamanka, Imam de la Mosquée de Bougoul par les FAN, repose sur une information aussi fautive que toutes les autres. Dès le 21 mars, la Gendarmerie a reçu une déclaration de disparition de personne. Une enquête a été ouverte et des recherches ont été engagées. Un mois plus tard, Abdoulsalam a été retrouvé et présenté aux autorités civiles et militaires. Abdoulsalam a été arrêté le 19 mars, veille du mouloud 2007 par un peloton en patrouille. Il a été libéré après avoir été entendu.

313. Le 21 et 25 mars 2008, des violents combats ont opposé les forces régulières aux bandits armés à Tamzalak et à Tidène. Monsieur Amoumane Kalakoua, Chef d'État Major des bandits armés, surpris à Tidène, a subitement ouvert le feu sur les FAN pour se dégager et se couvrir. Il était lourdement armé. Les étincelles de ses balles ont pu atteindre des cases et provoqué la mort des populations civiles. Le 26 mars 2008, les bandits armés ont occasionné le décès de plusieurs civils et brûlé une case. La Gendarmerie n'a été saisie d'aucune plainte à ce sujet. Toutefois, le gouvernement comme à l'accoutumée, a pris des dispositions pour garantir la sécurité des populations et de leurs biens.

314. Le 10 avril 2008, Moussa Gousmane Bilal a été exécuté. Son corps a été retrouvé criblé de balles derrière le village. Il n'est pas le Chef du village de Dabaga mais d'Elmeki où il a trouvé la mort. Le 10 avril, l'armée n'était pas encore arrivée à Elmeki. Il a été notamment enlevé par deux individus en présence de sa femme qui les a formellement identifiés. Il s'agit de Issa et Hamou Dodo. Le premier a perdu la vie au cours d'un accrochage entre l'Armée et les bandits à Tidène. Le deuxième qui est un cadre du MNJ, activement recherché pour atrocités commises sur les populations civiles, court toujours. La femme du défunt a bien suivi leurs conversations. Les discussions ont commencé dans la case, lorsque Hamou demandait au Chef du village la lettre qu'il avait l'intention d'adresser au Gouverneur, sollicitant une vase militaire à Elmeki. Devant son entêtement à ne pas reconnaître ladite lettre, ils l'ont conduit derrière le village où son corps a été retrouvé criblé de balles. La femme a été intimidée et menacée par ceux la même qui ont tué son époux, en vue de la dissuader à porter plainte.

315. Le 22 mai 2008, a vu de la destruction d'une des plus grandes bases des bandits armés, cella là même qui leur servait de lieu de campement. Ce jour là, Agaly et ses lieutenants étaient à Tchintoulouss où ils étaient partis rencontrer le Vice-président de la Commission Nationale des Droits de l'Homme et des Libertés Fondamentales qu'ils ont enlevé et séquestré à partir de Tanout. A l'issue de l'opération engagée, il n'a été enregistré aucune perte en vie humaine les bandits s'étant repliés sur le mont Tamgak. La prétendue morte du jeune Inana Krime qui serait survenue le 09 juin 2008 à Tidène n'est jamais parvenue à la Gendarmerie. En tout cas, son grand frère, l'imam dudit village, n'a pas porté plainte.

Réponse aux allégations de que le Gouvernement de la République du Niger a dépossédé les populations touarègues de leurs terres au profit d'autres couches sociales

316. La propriété est un droit sacré et selon l'Article 21 de la constitution, nul ne peut être privé de sa propriété que pour cause d'utilité publique sous réserve d'une juste et préalable indemnisation. Et l'article 29 précise que «Tout nigérien, civil ou militaire, a le devoir sacré de respecter en toutes circonstances, la Constitution et l'ordre juridique de la République.»

317. Il y a un plan spécifique de la propriété en tout le territoire en vue d'assurer la mise en œuvre effective des dispositions de l'arsenal juridique relatif aux droits de la propriété. Pour eux, les cours et tribunaux sont saisis est ouverte à tout citoyen s'estimant lésé. Donc, il est difficile de concevoir qu'il puisse exister au Niger des pratiques aussi rétrogrades que celles liées à l'expropriation des terres d'une couche sociale au profit d'une autre. L'état du Niger est un état de droit et reste soucieux de rétablir la paix et d'œuvrer pour le développement socio-économique de ces zones de conflit.

318. Il y a nombreuses accords conclus avec les différents Fronts de la Rébellions, entre eux trois accords de la paix, structures autour de quatre axes et selon des mesures susceptibles de créer les conditions propices à l'installation de la confiance mutuelle. Conformément aux accords conclus, à ce jour, les actions réalisées dans le cadre du processus de restauration et de consolidation de la paix, au regard des engagements souscrits de part et d'autre, sont les suivantes.

La Décentralisation

319. Le gouvernement a établi une Commission chargée de réfléchir, sur le redécoupage administratif, à laquelle participent des représentants de l'ex-résistance armée. Les réflexions ont abouti à l'adoption de quelques lois, et l'ensemble du dispositif relatif à la décentralisation est actuellement mis au pied et les élections locales ont été organisées le 24 juillet 2004. Dans deux mois de nouvelles élections permettront de renouveler les structures locales existantes.

La gestion de la sécurité dans les zones touchées par le conflit

320. L'Accord de Paix du 24 avril 1995 a prévu la création des forces spéciales, appelées Unités Sahariennes de Sécurité (USS) composées des ex-combattants de la résistance et des ressortissants des régions concernées.

Du Développement des régions touchées par le conflit armé

321. Le développement des régions touchées par le conflit constitue une des principales revendications de l'ex-résistance. Pour respecter l'engagement auquel il a souscrit, le Gouvernement de la République du Niger, en relation avec ses partenaires au développement et avec le concours du PNUD, a organisé une Table Ronde sur la zone pastorale du Niger, du 30 au 31 octobre 1995.

322. En effet, les partenaires au développement ont réitéré leur volonté d'appuyer le Gouvernement de la République du Niger, à travers l'élaboration d'un programme de développement à moyen et long terme de la zone pastorale, qui prendrait en compte tous les besoins et aspirations de l'ensemble des communautés dans cette zone. Le programme de développement de la zone pastorale élaboré et valide a été transmis aux Partenaires au Développement qui exigent que tous les programmes sectoriels élaborés par l'État soient pris en compte dans le Document Stratégique de Réduction de la Pauvreté (DSRP).

De l'intégration et de la réinsertion de l'ex combattants

323. Les Accords de Paix ont prévu l'intégration dans les différentes structures de l'État, de certains ex-combattants après démobilisation. Aussi, en termes de la réinsertion socio-économique, au mois de septembre 2000, trois cent (300) ex- combattants qui devraient bénéficier d'un recrutement dans les sociétés ont accepté d'être orientés vers la réinsertion socio-économique. Ainsi, quatre mille cinquante (4050) ex-combattants sont concernés par la réinsertion socio-économique pour les quatre régions touchées par le conflit (Aïr, Azawak, Kavar et Manga).

Des Actions Entreprises Par L'ex-Resistance

324. Les opérations de désarmement ont été effectives dans toutes les zones jadis touchées par la rébellion armée depuis le 05 juin 2000.

Conclusion du Gouvernement de la République du Niger

325. Les progrès réalisés par le Gouvernement de la République du Niger dans le domaine de la démocratie et de l'édification de l'État de droit sont indéniables et reconnus à l'échelle régionale et internationale. Les efforts sont déployés par le Gouvernement pour la mise en œuvre effectivement de tous les instruments juridiques nationaux et internationaux en vigueur. Le Niger fait aujourd'hui office de pays dont la stabilité et l'attachement au respect des droits humains sont universellement reconnus.

326. Les crises récurrentes que connaît le nord du pays constituent des événements malheureux imposés au peuple du Niger. Le Gouvernement de la République, fidele à sa position vis-à-vis des instigateurs de ces remous entend continuer à gérer ces événements avec toute la fermeté requise, mais dans le respect scrupuleux des lois et règlements de la République ainsi que des textes internationaux ratifiés par Niger, incluant le droit international humanitaire, dont la hiérarchie militaire applique strictement. En cas de manquements, un tribunal militaire qui est fonctionnelle existe en vue de juger les auteurs de toutes violations des lois et règlements de la République.

327. De plus, les Forces Armées Nigériennes sont composées d'éléments appartenant aux divers groupes ethniques que compte le pays, donc ce n'est pas possible de parler de haine à l'égard d'une communauté donnée. Le Gouvernement de la République du Niger a invité les responsables de ces agissements à déposer les armes.

328. Dans le cadre de la gestion de crise, le Gouvernement affirme qu'il remplit l'essentiel des obligations que lui impose l'environnement juridique national et international. Il appartient des lors à la communauté internationale de remplir les siennes notamment en apportant son concours à notre pays pour procéder au déminage de la zone de conflits conformément aux dispositions pertinentes de l'article 6 de la convention de Ottawa de 1997.

Observations

329. Le Rapporteur Spécial remercie le Gouvernement du Niger pour sa réponse détaillée à la lettre du 23 février 2009, et continue à suivre avec intérêt l'évolution de la situation des peuples autochtones en Niger et l'évolution de la situation dans la région d'Agadez.

Norway

Situation concerning the draft Mineral Act

Communication of the Special Rapporteur of 18 December 2008

330. In a letter of 18 December 2008, the Special Rapporteur drew the attention of the Government of Norway to concerns regarding a draft bill regulating the management and use of mineral resources.

331. In summary, according to the information received: On 28 November 2008, the Sami Parliament decided not to give its informed consent to the draft legislation due to concerns regarding the consultation process surrounding the draft bill and specific provisions of the bill that affect Sami rights.

332. The draft bill fails to recognize or protect Sami mineral rights in their traditional lands located outside Finnmark County. While certain sections permit the Sami Parliament an opportunity to comment on applications for licenses in Finnmark County and call for weight to be given to the affects of the mining activities on Sami culture, reindeer management and business activities when reviewing applications, these sections do not provide for an adequate level of consultation with the Sami Parliament on applications within Finnmark County, or any consultation for applications affecting traditional lands outside the county.

333. In addition to transmitting to the Government of Norway the foregoing information, the Special Rapporteur communicated concerns regarding the lack of an adequate provision for benefit sharing when mines are located in traditional Sami lands and affect the Sami communities. At the same time, the Special Rapporteur praised the Government for its efforts in advocating for and protecting indigenous peoples' rights, including its adoption of International Labour Organisation Convention No. 169. He urged the Norwegian Government to adopt a mineral act to which the Sami Parliament could give its informed consent and which would reflect international standards on land and resource rights.

Response of the Government of 24 February 2009

334. On 24 February 2009, the Norwegian Government submitted its response to the questions and concerns raised in the letter of 18 December 2008.

335. In summary, according to the Government's response: With regard to protecting the mineral resource rights of the Sami, the Government has already adopted new legislation, including the Finnmark Act and the amendments to the Mining Act, which ensure the rights of the Sami people and fulfill Norway's obligations under the ILO Convention No. 169. The Mineral Act requires that *substantial* weight be given to Sami interest if affected in Finnmark County. Further, the Sami rights and interests outside the county of Finnmark are currently the subject of a public hearing based on the report of the Sami Rights Committee II. The report and the follow-up process will provide the basis for considering future legal amendments concerning Sami rights outside Finnmark County.

336. With regards to the issue of consultation, there is an agreement on procedures for consultations between the Minister of Local Government and Regional Development and the Sami Parliament from 11 May 2005. The Sami Parliament endorsed the procedures in a plenary session held on 1 June 2005. By a Royal Decree of 1 July 2005, it was confirmed that the procedures would apply to all government administration. In some cases, the central government is also required to consult with other Sami bodies in addition to the Sami Parliament, particularly on issues directly affecting Sami land rights and use, like mineral extraction and reindeer husbandry. The Government has met the obligations by consulting with the Sami Parliament and the Sami Reindeer Herder's Association of Norway.

337. In addition, section 42 of the Mining Act provides for benefit sharing when mines are located in traditional Sami lands and affect the Sami community in Finnmark. Specifically, section 42 states "In the case of mines on *Finnmarkseiendommen's* land, the King may be regulations stipulate a larger fee." The Finnmarkseiendommen was established to ensure a balance of rights between the Sami people and other inhabitants of Finnmark County.

Observations

338. The Special Rapporteur thanks the Government of Norway for the information that it has provided in response to the questions and concerns raised. While still concerned about some of the provisions of the draft legislation, the Special Rapporteur also acknowledges the important advances that Norway has made in protecting the rights of the Sami people in accordance with the international norms enshrined in the United Nations Declaration on the Rights of Indigenous Peoples. The Special Rapporteur hopes that the Government of Norway, with the participation of the Sami people, will continue to protect the human rights of the Sami people in accordance with the norms embraced in the Declaration on the Rights of Indigenous Peoples, including the State's obligations regarding consultation with the Sami, as it adopts and subsequently implements the current draft legislation and subsequent legislation under consideration. The Special Rapporteur will continue to monitor this process and intends to communicate further with the Government of Norway in this regard.

Panamá

Situación sobre la situación en la comunidad Charco la Pava

Comunicación del Relator Especial de 20 de noviembre de 2008

339. En una carta del 20 de noviembre de 2008, el Relator Especial llamó a la atención urgente del Gobierno de Panamá información recibida en relación al supuesto desplazamiento inminente de la comunidad indígena Charco la Pava a causa de la construcción de la represa Chan 75. En seguimiento de esa carta, el Relator Especial, el Gobierno de Panamá, la empresa a cargo de la construcción, los pueblos indígenas, y otras entidades interesadas, intercambiaron información en relación con la situación y, con la cooperación del Gobierno, el Relator Especial realizó una visita a Panamá del 27 al 30 de enero de 2009. Las observaciones del Relator Especial sobre el caso, que incluyen una serie de conclusiones y recomendaciones, se encuentran en un informe que figura como adición al informe anual del Relator Especial al Consejo de Derechos Humanos. A solicitud del Gobierno, el informe incluye en anexo la respuesta del Gobierno de Panamá a las conclusiones y recomendaciones del Relator Especial respecto de las medidas que podrían contribuir a la mejora de la situación, en el marco de las normas internacionales relativas a los derechos de los pueblos indígenas (A/HRC/12/34/Add.5).

Situación sobre los supuestos desalojos forzosos de pobladores Naso de las comunidades de San San y San San Druy

Comunicación del Relator Especial de 23 de abril de 2009

340. En una carta del 23 de abril de 2009, junto con el Relator Especial sobre una vivienda adecuada como elemento integrante del derecho a un nivel de adecuada y sobre el derecho de no discriminación a este respecto, el Relator Especial llamó a la atención del Gobierno de Panamá información recibida en relación a los supuestos desalojos forzados de pobladores Naso de las comunidades de San San y San San Druy.

341. En resumen, según la información recibida: Los Naso llevan a cabo un proceso de reclamación de tierras desde los años setenta, en lo cual solicitan, en particular, la creación de su propia comarca sobre sus tierras tradicionales. Pese al tiempo transcurrido, a la fecha, los Naso no cuentan con el reconocimiento legal de sus tierras tradicionales. En 1914, el Estado otorgó dentro del territorio tradicional Naso un título a favor de United Fruit Company, que incluye las tierras actualmente ocupadas por las comunidades San San y San San Druy. En 1973, el título pasó a la empresa Ganadera Bocas del Toro. En 2006, un estudio del Programa Nacional de Administración de Tierras recomendó la creación de una mesa de diálogo para resolver el conflicto de tierra entre el pueblo Naso y la empresa Ganadera Bocas del Toro, pero la mesa nunca fue establecida.

342. El 17 de diciembre de 2008 y nuevamente el 15 de enero de 2009, la corregidora de Changuinola notificó a los habitantes de la comunidad San San Druy que la solicitud de la empresa para el desalojo de sus tierras había sido admitida. El 22 de enero de 2009, se fijó un edicto en el edificio de la corregiduría de Changuinola comunicando que se celebrará una audiencia el día 2 de febrero de 2009 sobre el trámite de desalojo. Sin embargo, debido a que dicha autoridad no autorizó a representantes de la comunidad el acceso a la misma, sólo

representantes de la empresa acudieron a la audiencia. La corregidora de Changuinola emitió la resolución 107/09 ordenando el desalojo de las comunidades San San y San San Druy. El 18 de febrero de 2009, la corregidora y el subcomisionado de policía de Changuinola se trasladaron a la comunidad de San San Druy para informar a la comunidad sobre la orden de desalojo; sin embargo, no proporcionaron a la comunidad copia de la orden. La falta de este documento, impidió a las comunidades interponer los recursos de apelación y de amparo, que exigen estos recursos.

343. El 16 de enero de 2009, retroexcavadores aparecieron en la comunidad de San San y procedieron a demoler 6 casas y el centro comunitario. Ninguna autoridad estaba presente durante la demolición. El 30 de marzo de 2009, en las horas de la madrugada, la corregidora de Changuinola llegó a la comunidad de San San Druy con aproximadamente 150 policías y varias retroexcavadores manejadas por funcionarios de la empresa Ganadera Bocas del Toro. Sin presentar la orden de desalojo, procedieron a avisar a la comunidad que tenían 10 minutos para retirarse, lanzando de manera indiscriminada aproximadamente 100 cartuchos de gases lacrimógenos a la población, entre la que se encontraban 60 niños. Como resultado de dicha acción, una niña de 4 años sufrió una quemadura en su brazo y al menos 10 niños sufrieron posteriormente reacciones alérgicas a los gases. La ayuda médica que llegó al lugar no fue suficiente para atender a los habitantes porque, supuestamente, los médicos fueron informados por la policía que su presencia no era necesaria en la comunidad.

344. En el transcurso del 30 y 31 de marzo, 20 casas fueron demolidas, afectando a aproximadamente 100 personas; asimismo la casa cultural de la comunidad y toda la artesanía que había en ella, fue destruida. La población de San San Druy se trasladó a un lugar cercano al río donde construyeron un muro de protección con materiales que encontraron en el lugar, en el que permanecen los 65 niños y 43 adultos de la comunidad desde el 30 de marzo. Un representante de la Defensoría del Pueblo se hizo presente en el lugar pero no pudo evitar la destrucción de las casas. El 4 de abril de 2009 entraron nuevamente tractores de la empresa a la comunidad a continuar los trabajos de remoción de escombros y construcción de una reja eléctrica.

345. Además, el 1 de abril de 2009, aproximadamente 40 policías, junto con dos máquinas de la empresa Ganadera Bocas del Toro, llegaron a la comunidad de San San e informaron a la población que tenían 10 minutos para retirarse del lugar. Diez casas fueron destruidas, afectando a más de 60 personas, incluyendo 35 niños; que actualmente se alojan en estructuras hechas de matas de bambú. El 4 de abril de 2009, volvieron a entrar dos máquinas a la comunidad junto con el administrador de la empresa Ganadera Bocas del Toro, el Sr. Roberto Gómez, quien empezó a disparar indiscriminadamente, en contra de los pobladores. No hubo heridos. Asimismo, la empresa ha ubicado en el lugar seis guardias para vigilar el área.

346. La destrucción continuaba durante el 15, 16 y 17 de abril de 2009. El 16 de abril, en horas de la mañana, empleados de Ganadera Bocas, con maquinaria pesada y acompañados por cinco unidades de la Policía Nacional ingresaron a la comunidad de San San, donde menos de 10 ciudadanos mantenían la resistencia pacífica en el campamento. En San San, los afectados por el desalojo ya habían levantado seis ranchos rústicos de bambú y con techo de plástico. Según la información recibida, policías y empleados habrían robado gallinas, plátanos y otros cultivos, de los miembros de la comunidad, para alimentarse y se habrían retirado en horas de la tarde. El 17 de abril, otra vez temprano en la mañana, regresaron los empleados de la

empresa Ganadera Bocas con la maquinaria y, acompañados por los cinco agentes policiales. Aproximadamente a las 3 p.m., la maquinaria pesada tumbó los seis ranchos de la comunidad y solo dejó en pie el campamento de resistencia donde permanecieron los miembros de la comunidad acompañados por unos 10 vecinos de San San Druy. El 17 de abril, la maquinaria, procedió a destruir el campamento de resistencia, así como la inmensa mata de bambú que lo protegía.

Observaciones

347. El Relator Especial lamenta que no consta en el expediente ninguna respuesta del Gobierno de Panamá a la carta de alegación a la fecha de finalización del presente informe. El Relator Especial enfatiza que la práctica del desalojo forzoso constituye *prima facie* una violación grave de un amplio conjunto de derechos humanos y que, en el contexto de los desalojos forzados, hay garantías procesales que se deberían aplicar. También, destaca que en casos que involucran pueblos indígenas, es necesario tener en cuenta la profunda conexión que mantienen estos pueblos con sus territorios tradicionales.

Papua New Guinea

Situation concerning Mr. Jethro Tulin

Communication of the Special Rapporteur of 19 August 2008

348. In a letter of 19 August 2008, the Special Rapporteur, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders, drew the attention of the Government of Papua New Guinea to information received regarding Mr. Jethro Tulin, an indigenous Ipili and human rights defender from Enga Province in Papua New Guinea.

349. In summary, according to the information received: Mr. Tulin is the Chief Executive of Akale Tange, a non-governmental organisation based at Porgera that has been documenting alleged human rights abuses associated with Barrick's Porgera Joint Venture Gold mine. Alleged extrajudicial killings at Porgera Joint Venture Gold mine were the subject of an allegation letter sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions on 18 January 2008.

350. On 4 August 2008, Mr. Jethro Tulin was attacked by three men wielding machetes. The attack took place in Mamale village, Laiagam, about 2½ hours by road from Barrick Gold's Porgera Joint Venture Mine. During the attack, one of the assailants threatened Mr. Tulin that he would not be permitted to return to Canada. Mr. Tulin suffered a broken arm in the attack and is seeking medical attention for his injuries.

351. Prior to the attack, Mr. Tulin, along with Mr. Anga Atalu and Mr. Mark Ekepa of the Porgera Landowners Association, had visited Canada in an attempt to raise awareness of alleged human rights violations, including killings, reportedly being perpetrated by the Barrick mine's security forces on the indigenous population living near the mine site. During the visit in May, Mr. Tulin delivered a statement at the Barrick's Gold Annual General Meeting in Toronto about

the alleged killings by Barrick's security forces. Since his return to Papua New Guinea, Mr. Tulin has received anonymous threats warning him that he should watch out for his own safety.

352. On 17 July 2008, Mr. Tulin, along with members of the Porgera Landowners Association, were called to a meeting with the Community Affairs Officer of Barrick's mine, reportedly in an intimidating atmosphere, who stated that various organizations that have provided Mr. Tulin and his colleagues with support including Minewatch Canada, Conservation International and the United Nations were tainting Barrick's image abroad. Mr. Tulin was reportedly forced to move to a secret location and his movements have been severely restricted.

353. There is concern that the acts of intimidation and harassment against Mr. Tulin may have been linked to his non-violent activities in defense of human rights, and in particular his denouncing of the human rights situation of the indigenous population living in the vicinity of the Barrick's Porgera Joint Venture Gold mine.

Observations

354. The Special Rapporteur regrets that there was no record of any reply from the Government of Papua New Guinea to the letter of 19 August 2008 by the time of the finalization of this report. The Special Rapporteur continues to monitor the situation of indigenous peoples affected by the Porgera Joint Venture mine.

Paraguay

Situación sobre la situación de los grupos del pueblo indígena Ayoreo

Comunicación del Relator Especial de 19 de diciembre de 2008

355. Mediante una carta fechada 19 de diciembre de 2008, el Relator Especial señaló a la atención urgente del Gobierno de Paraguay la información recibida en relación a la supuesta deforestación de grandes zonas del Chaco Paraguayo para establecer ganaderas, situación que pone en riesgo la supervivencia de varios grupos del pueblo indígena Ayoreo.

356. En resumen, la información recibida indica que: Los Ayoreo mantienen una vida nómada dentro de su territorio tradicional, sustentada por la caza, la pesca, y la recolección de frutos silvestres y miel. En la actualidad aproximadamente 2,000 Ayoreos viven en Paraguay, la mayoría en aislamiento voluntario. El territorio tradicional de los Ayoreo se encuentra fragmentado entre las tierras recuperadas por grupos Ayoreo, las tierras denominadas formalmente Parques Nacionales o Áreas Protegidas y las propiedades privadas. La mayor parte del territorio que actualmente utilizan los Ayoreo se encuentra formalmente en manos de propietarios privados. Debido a esta fragmentación, resulta cada vez más difícil para los Ayoreo transitar por sus antiguas sendas de migración, acceder a partes vitales de su hábitat y mantener contacto entre sí. Aunque el Gobierno habría otorgado medidas provisionales prohibiendo la tala de árboles sobre algunas partes del Chaco y algunos grupos Ayoreo, la mayor parte del territorio se encuentra sin la protección de dichas medidas, y aun en los lugares donde existen medidas provisionales vigentes, éstas no han sido respetadas.

357. Algunos ejemplos de zonas deforestadas para establecer estancias ganaderas son los siguientes:

- La región de Amotocodie es habitada y transitada por dos o tres grupos aislados en un territorio con una extensión de 400,000 hectáreas y una zona nuclear esencial de 150,000 hectáreas. El Amotocodie es el territorio tradicional de los grupos locales Ayoreo Totobiegosode, Ducodesgosode y Atetadiesgosode, y de distintos grupos aislados. Dentro de esta área, existen más de 100 propiedades privadas, que oscilan entre 1,000 y 40,000 hectáreas, incluyendo la propiedad de la empresa brasileña Umbu, S.A., que tiene un plan de deforestación de 24,000 hectáreas para establecer ganaderas. Aproximadamente 8,000 de las 24,000 hectáreas fueron desmontadas entre julio de 2007 y octubre de 2008. El centro de esta región coincide con una de las áreas más codiciadas del territorio Ayoreo (Chunguperatei) y es transitada por al menos uno de los grupos Ayoreo aislados.
- La región de Palmar de las Islas (norte de cerro León - Agua Dulce) es hábitat transfronterizo de un grupo aislado, cuya extensión es de 350,000 hectáreas con una zona nuclear esencial de 150,000 hectáreas. Este es el territorio tradicional del grupo Ayoreo Tiegosode/Ijnapuigosode. En esta región se encuentra ubicado Echoi, lugar de gran relevancia cultural para los grupos locales de la zona. Cada tres o cuatro años, los grupos locales Ayoreo llegan desde sus hábitats respectivos, caminando distancias de hasta 400 kilómetros, para abastecerse de las salinas de Echoi. Existen más de 100 supuestas propiedades privadas en un territorio de más de 50,000 hectáreas, incluyendo el área de amortiguamiento del Parque Nacional Defensores del Chaco. Desde julio de 2008, alrededor de 3,000 hectáreas habrían sido deforestadas por la empresa Los Molinos S.A., en preparación para la explotación ganadera.
- La zona del Patrimonio Natural y Cultural Ayoreo Totobiegosode, es parte del territorio ancestral del grupo local Ayoreo Totobiegosode. Los Ayoreo Totobiegosode iniciaron el proceso de recuperación de sus tierras tradicionales en 1993. Hasta el momento han logrado recuperar 100,000 hectáreas, a través de la compra con el apoyo de una fundación suizo-alemán, de las 550,000 hectáreas reivindicadas como territorio tradicional. En 1993, los Ayoreo Totobiegosode solicitaron al Poder Judicial, y lograron, la interposición de medidas provisionales prohibiendo la tala de árboles sobre las fincas que se encuentran dentro del área reclamada, incluyendo la Finca 13.122 (expedientes No. 6.073/93 ante el Instituto de Bienestar Rural y No. 764/93 ante el Instituto Paraguayo del Indígena). Hasta la fecha, estas medidas provisionales siguen vigentes.

358. Sin embargo, el 28 de noviembre de 2007, la Dirección General de Control de la Calidad Ambiental y de los Recursos Naturales de la Secretaría del Ambiente (SEAM), mediante Declaración No. 332/07 otorgó una licencia ambiental a la Finca No. 13.122 de Yaguareté Porá S.A., para el desmonte de 1,500 hectáreas por año a partir del 28 de noviembre de 2007. Durante el transcurso del presente año, 1,725 hectáreas de bosque virgen han sido desmontadas, a pesar de las protestas consistentes de representantes de los Totobiegosode. En los últimos meses se han dado pasos afirmativos para remediar licencia ambiental de la empresa Yaguarete Pora, S.A. para la Finca 13,122, mediante la Resolución No. 2533/08.

359. Sin embargo, en la Finca No. 22.277 y la Finca No. 22.278 (las cuales conforman parte de la Finca no. 384), donde aún permanecen vigentes medidas cautelares a favor de los Ayoreo-Totobiegosode, las empresas River Plate S.A. y BBC, S.A. respectivamente, continúan deforestando aceleradamente grandes extensiones de bosque.

360. Se teme que la deforestación de estas zonas pueda impactar negativamente a las formas de vida tradicional de las comunidades indígenas que se transitan dentro del territorio afectado. Asimismo, se teme que la falta de titulación de los territorios reivindicados por las comunidades indígenas pueda generar un riesgo de continúa intrusión por parte de terceros a sus territorios, en detrimento de sus derechos sobre la tierra y los recursos naturales.

361. Se teme asimismo que la deforestación pueda ocasionar graves efectos negativos en la fauna y la flora, las cuales constituyen básicos e importantes recursos alimentarios para las familias indígenas cuyo estilo de vida depende en gran parte de la caza y la recolección nómada. Además de la pérdida de sus medios de subsistencia, se alega también que los pueblos indígenas en aislamiento son altamente vulnerables al contacto y al riesgo de nuevas enfermedades y epidemias que podrían situarles en grave riesgo de desaparición, por lo tanto la presencia de estas empresas en sus territorios tradicionales suponen una amenaza a su supervivencia.

Observaciones

362. El Relator Especial lamenta que no consta en el expediente ninguna respuesta del Gobierno de Paraguay a la carta de alegación a la fecha de finalización del presente informe. Mientras que el Relator Especial nota con satisfacción la interposición de medidas provisionales prohibiendo la tala de árboles sobre las fincas que se encuentran dentro del área reclamada a la exigencia del pueblo Ayoreo Totobiegosode en 1993, a la luz de las alegaciones recibidas sigue preocupado por la aparente falta de acción del Estado en reconocer y proteger los derechos de propiedad de los pueblos indígenas, especialmente aquellos en aislamiento voluntario. El Relator Especial sigue monitorizando la situación y invita al Gobierno de Paraguay proporcionar una respuesta a las alegaciones. El Relator Especial espera que el Gobierno de Paraguay esté dispuesto a participar en un intercambio de información con miras a resolver la situación de manera que cumple con las normas internacionales.

Perú

Situación sobre los pueblos indígenas de la Amazonía y los sucesos del 5 de junio y días posteriores en las provincias de Bagua y Utcubamba

363. En junio de 2009, el Relator Especial realizó un intercambio de información y comunicaciones con el Gobierno del Perú, pueblos y organizaciones indígenas amazónicos, y otras partes interesadas en relación con los enfrentamientos del 5 de junio de 2009 y los eventos en días inmediatamente posteriores en las provincias de Bagua y Utcubamba, Departamento de Amazonas, en los que resultaron varias personas muertas y heridas. Por medio de una nota verbale del 12 de junio de 2009, el Gobierno del Perú cursó una invitación al Relator Especial a visitar el país para analizar la situación a la que se enfrentaba Perú. Con la cooperación del Gobierno, el Relator Especial realizó una visita al Perú del 17 al 19 de junio de 2009. El objeto de la visita fue observar, comprender y analizar la situación que se produjo en los alrededores de la ciudad de Bagua, en las provincias de Bagua y Utcubamba, así como los hechos que generaron

esta situación. Posteriormente, el Relator Especial comunicó al Gobierno una versión preliminar de observaciones sobre la situación y, después de recibir comentarios del Gobierno al respecto, el día 20 de julio de 2009, hizo público la versión definitiva de su informe con sus observaciones. Este informe del Relator Especial sobre la situación, que incluyen una serie de conclusiones y recomendaciones, se encuentran en un documento que figura como adición al informe anual del Relator Especial al Consejo de Derechos Humanos (A/HRC/12/34/Add.8).

Philippines

Situation concerning the alleged disappearance of Mr. James Balao

Communication of the Special Rapporteur of 12 November 2008

364. On 12 November 2008, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent a letter to the Government of the Philippines concerning the alleged disappearance of Mr. James Balao.

365. In summary, according to the information received: At 6:45 am on 17 September 2008, Mr. James Balao sent a text message to his family informing them that he was leaving his residence in Fairview, Baguio City, to travel to his family residence in La Trinidad, Benguet. He did not arrive at his family residence as expected and has not been seen or heard from since. However, it is now believed that Mr. Balao is alive and is being held at one of the detention facilities of the Philippines state security forces, although the exact details of his whereabouts are unclear.

366. State security forces are responsible for Mr. Balao's disappearance. Since June 2008, Mr. Balao had reported to friends and family that he was under surveillance by the Intelligence Service Unit of the Armed Forces of the Philippines, an institution that is connected to the Philippines army. He reported being followed by a van with the license plate USC 922, which has also been seen parked inside the Intelligence Security Unit compound in the Navy Base of Baguio City. The surveillance of Mr. Balao had increased in the week before his disappearance. It is also reported that Mr. Balao was listed by the Philippines army as head of the Communist Party of the Philippines Education Bureau in the Ilocos and Cordillera regions.

367. In response to the disappearance, a petition for a Writ of Amparo was filed in Regional Trial Court 63 of Benguet, asking the court "(a)...to disclose where James Balao is detained or confined, (b) to release James Balao considering his unlawful detention, and (c) to cease and desist from further harm on his person." The petition also prays for an inspection order "to permit the entry of authorized persons for the purpose of inspecting, measuring, surveying and photographing the property or any relevant object or operation thereon" of police and military facilities at the Camps Aguinaldo and Crame in Quezon City, Fort Bonifacio in Taguig City, the 50th IBPA in San Juan, Ilocos Sur, MIG in Camp Allen, Baguio City, the ISU in Navy Base, Baguio City, including the Northern Luzon Command (NOLCOM) and the Headquarters of the 5th Infantry Division in Isabela province. At the time the letter was sent, the case was still pending.

368. On 28 and 29 October 2008, a delegation of the Balao family, and groups Karapatan, Hustisya, Kalipunan ng mga Katutubong Mamamayan sa Pilipinas (KAMP), Desaparecidos, the

Cordillera Peoples Alliance, and the Cordillera Human Rights Alliance traveled to the National Capital Region to conduct a search for Mr. Balao in military and police camps. Nevertheless, they were refused entry at the receiving office of the Intelligence Services of the Armed Forces of the Philippines (ISAFP) and the gates of the Armed Forces of the Philippines (AFP) Detention Center at Camp Aguinaldo.

369. Although some Government representatives have expressed support for the search for Mr. Balao, including members of the Baguio City Council, the Benguet Provincial Board, the Municipal Council of La Trinidad, and the Governors of Benguet Province, Mountain Province, and Ifugao Province, authorities have taken no action to investigate the disappearance of Mr. Balao, asserting instead that his abduction was the result of a personal dispute within his clan.

370. There is grave concern that the disappearance of Mr. Balao is linked to his non-violent activities in defense of indigenous rights. There is further concern that this disappearance forms part of a pattern of harassment against human rights defenders, including indigenous activists, who have been prosecuted under anti-terrorist legislation in the Philippines. In the past four years, six indigenous activists were killed extra-judicially, allegedly by the Philippine military.

Response of the Government of 20 November 2008

371. In a letter of 20 November 2008, the Government of the Philippines provided an initial response to the allegations contained in the 12 November 2008 allegation letter.

372. In summary, according to the Government's response: Based on the investigation conducted by the Philippine National Police (PNP), on 17 September 2008 at about 7:00 a.m., Mr. James Balao left his rented house at Purok 3, Central Fairview, Baguio City to visit his family residence in La Trinidad, Benguet. Accordingly, he informed his relatives of his plan to go home through text message at about 6:45 a.m. of the same date.

373. In the afternoon of that same day (17 September), Ms. Beverly Longid, Chairperson of the Cordillera People's Alliance (CPA) called up the Regional Director (RD) of the Police Regional Office of Cordillera (PRO-Cordillera) to inform that her colleague, James Balao, cannot be contacted which was very unusual as he usually informs his colleagues of his whereabouts. According to the relatives of Mr. Balao, he did not reach La Trinidad, Benguet, as planned and they have heard nothing from him since that time. This prompted Ms. Mignonet Balao y Moy, sister of James Balao, to report the incident to La Trinidad Municipal Police office on 20 September 2008. At the same time, Mr. Winston Balao, brother of James Balao, also reported the incident to the Police Station 1 of Baguio City Police Office (BCPO).

374. Upon receipt of the report on 20 September of the alleged disappearance of Mr. James Balao, the Regional Director (RD) of the Police Regional Office of Cordillera (PRO-Cordillera) immediately created Task Force Balao. Based on the investigation, Ms. Beverly Longid, Chairperson of the Cordillera People's Alliance, informed the authorities that Mr. James Balao divulged to his family and relatives that his daily chores at his rented house are under surveillance by unknown individuals aboard white and blue vans with plate numbers USC 922 and TNH 787.

375. The following information was also gathered from Mr. Balao's neighbors: Mr. Zusumo Unarosa - 65 years old, claimed that in the first week of September 2008, he frequently observed two (2) unidentified male persons bringing out boxes of unknown contents from the house of Mr. Balao but never saw a van conducting surveillance of the house; Mr. Anselmo Alikim - 35 years old, claimed that he observed some unidentified persons visiting the subject before his disappearance; Mr. Danny Griba - 41 years old, averred that James Balao is not actually residing in that place as there are five (5) unidentified persons - 4 males and a female, believed to be his friends, occupying the house. He added that on several occasions, said unidentified persons left the house at daytime with undetermined boxes of unknown contents and return home at night time; Mrs. Corazon Addun - 47 years old, stated that she had never seen the subject live in the house, however, she saw Mr. Balao on 4 April 2008 visiting the place. She added that a certain "Uncle John" and an unidentified male companion were occupying the house. On 23 September 2008, "Uncle John" went to their house and had coffee. In the course of their conversation, "Uncle John" told her that he would go to Sagada Mountain Province to locate Mr. James Balao because since 21 September 2008, after they sent him to the said place for an undisclosed transaction, he received a phone call from an unidentified person telling him that Mr. Balao did not reach Sagada Mountain Province. From then on, she had not seen "Uncle John". In addition, she said she did not notice any vehicle conducting surveillance in the vicinity.

376. The PNP has likewise coordinated with the military regarding the case, but denied any knowledge on the alleged abduction of Mr. James Balao. In October, Task Force Balao, with the help of the Balao family and the Cordillera People's Alliance, were able to convince two witnesses to shed light on the incident. Cartographic sketches were made of the suspects.

377. At the time of the letter, no one had been charged in connection with the case since the PNP cannot file the appropriate charges against any alleged perpetrator only on the basis of allegations without any substantial and corroborating evidence from eyewitnesses. Nevertheless, the PNP was continuing with its investigation and had intensified information gathering on the subject's whereabouts.

Response of the Government of 2 February 2009

378. In a letter of 2 February 2009, the Government of Philippines provided an update on this case.

379. In summary, the Government responded: On 8 October 2008, Arthur Balao, Winston Balao, Nonette Balao, Jonilyn Balao-Strugar and Beverly Longid filed a petition for a Writ of Amparo on behalf of James Balao before the Regional Trial Court (RTC) Branch 63, La Trinidad, Benguet. The petition is docketed as Spl. Proc. No. 08-AMP-0001. Thereafter, or on 14 October 2008, the Office of the Solicitor General (OSG) received a copy of the Writ of Amparo together with a copy of the petition and its annexes. The Writ ordered the respondents to file a verified return within five (5) days from receipt thereof and set the initial hearing on the case on 16 October 2008.

380. The following are impleaded as respondents in the case: (a) President Gloria Macapagal-Arroyo (b) Hon. Eduardo Ermita, Executive Secretary of the President; (c) Hon. Gilberto Teodoro, Secretary of the Department of Interior and Local Government;

(e) Hon. Norberto Gonzales, National Security Adviser; (f) Gen. Alexander Yano, Chief of Staff, Armed Forces of the Philippines (AFP); (g) Gen. Jesus Versoza, Director General, Philippine National Police (PNP); (h) BGen. Reynaldo Mapagu, Chief of Staff, Philippine Army; (i) Police Director Edgardo Doromal, Chief, Criminal Investigation and Detention Group; (j) Major General Isagani Cachuela, Commanding General, Northern Luzon Command, AFP; and (k) Police Senior Superintendent Eugene Martin, Director, Police Regional Office-Cordillera Administrative Region.

381. James Balao is a founding member of the Cordillera People's Alliance (CPA) which was established in June 1984. CPA is a non-government organization which advocates the rights of the indigenous people of Cordillera. He is a CPA researcher, educator, trainer and organizer prior to his alleged "abduction". The petition alleges that on 17 September 2008, James Balao texted his sister Nonette Balao that he was on his way home to their ancestral house in Pico, La Trinidad, Benguet from his boarding house in Fairview, Baguio City; that James Balao did not arrive at their ancestral house; that Nonette Balao was so worried about the situation that she tried to contact the CPA and James Balao's friends; that Nonette Balao received information about an "abduction" incident and she was able to confirm that James Balao was the person abducted.

382. Likewise, the petition alleges that James Balao, prior to his alleged disappearance on 17 September 2008, reported to the CPA and his family that he was allegedly under surveillance by agents of the AFP-ISU based in Navy Base, Baguio City and PNP Intelligence Unit (PNP R2) based in Camp Dangwa, La Trinidad Benguet. James Balao also reported that several vehicles have been tailing his daily routine. Based on the aforesaid purported circumstances, petitioners believe that James Balao was abducted because of his political beliefs and the government's purported "all out war" policy. In their return dated 27 October 2008, respondents categorically declared that they did not have any direct or indirect participation in the alleged abduction of James Balao. In fact, they do not personally know James Balao or have any knowledge of his activities.

383. The affidavit of Police Sr. Supt. Eugene Martin declared that the Police Regional Office - Cordillera Administration Region (PRO-CAR), PNP did not have any participation in the purported "abduction" of James Balao. In fact, upon receiving information of the alleged disappearance, he immediately sent flash alarm to all lower units to locate James Balao. He ordered also the creation of Task Force Balao to fast track the investigation. On the other hand, based on the Special Report prepared by Gen. Melchor Dilodilo, Commanding General of the 5th Infantry Battalion, Philippine Army, the 3rd ISU is a unit of the Philippine Army based in Camp Aquino, San Miguel, Tarlac. The 3rd ISU has no intelligence operations in Baguio City. It does so only during covert security coverage for Very Important Persons (VIPs) during official visits. Likewise, the Navy Base where the alleged vehicle with platen no. USC922 was found is an Army Cottage house where the Commanding General of the Philippine Army stays during his official visits in Baguio City and that the vehicle is not one of the properties listed in the inventory of property of ISU.

384. The declarations made by Pol. Sr. Supt. Eugene Martin and MGen. Melchor Dilodilo that the PNP and AFP do not have any knowledge or participation in the alleged abduction of James Balao were corroborated by the affidavits of Zusimo Unarosa and Corazon Addun who testified that they never saw any vehicle/van conducting surveillance in James Balao's boarding

house. Notably, Corazon Addun told the investigating officers that an alleged member of the CPA named Uncle John, who was with James Balao prior to the alleged abduction, informed her that James Balao was with James Balao prior to the alleged abduction, informed her that James Balao was supposed to be in Sagada, Mt. Province on the day her was purportedly “abducted”. To date, petitioners or the CPA have not presented Uncle John to the investigating officers.

385. Hearings on the case were held on 16, 23 and 30 October 2008. Petitioners offered the affidavits and testimonies of Aniceto Dawing, Anvil Lumbag, Beverly Longid, Nonette Balao, Samuel Anongos, which the Government summarized in detail in its response. On 17 November 2008, the OSG received a copy of petitioners’ Formal Offer of Exhibits. On 14 November 2008, the OSG filed its comment/opposition thereto. During the last hearing held on 27 November 2008, the Office of the Solicitor General manifested that since petitioners have not presented substantial evidence to prove their case as required by the Rule of the Writ of Amparo, respondents are not presenting any evidence; hence, they are submitting the petition for resolution. On 08 December 2008, the OSG received a copy of trial court’s order directing both parties to file memorandum within five days from receipt thereof.

386. In lieu of memorandum, the OSG filed a manifestation and motion stating that (1) the paragraph (j), Section 11 of the Rule on the Writ of Amparo prohibits the filling of a memorandum; and (2) in any case, respondents have exhaustively presented their positions vis-à-vis the claims of petitioners in their petition; hence, they begged to adopt their verified return as their memorandum in the case. At the time of submission of the update on the case, the Government informed the case is pending decision.

Observations

387. The Special Rapporteur thanks the Government of the Philippines for the detailed response to the questions and concerns raised as well as for bringing to his attention, through a follow-up response, information on the steps taken to locate Mr. Balao and investigate the alleged facts.

Situation concerning the alleged proposed inclusion of traditional territories of non-Muslim (Lumad) indigenous peoples in the proposed Bangsamoro Juridical Entity in Mindanao

Communication of the Special Rapporteur of 28 November 2008

388. In a letter of 28 November 2008, the Special Rapporteur drew the attention of the Government of the Philippines to information received regarding the alleged proposed inclusion of traditional territories of non-Muslim (Lumad) indigenous peoples in the proposed Bangsamoro Juridical Entity in Mindanao. The Rapporteur congratulated the Government for the steps taken to advance the peace process and encourages continuing negotiations in this regard. However, he expressed concern about allegations that affected Lumad indigenous peoples have not been consulted or involved in the development of agreements emerging from the peace process, an oversight that has reportedly contributed to its deterioration.

389. In summary, according to the information received: The Moro and Lumad peoples of Mindanao have carried out separate paths of advocacy and struggle. The name “Bangsamoro”

was bannered by the Moro National Liberation Front (MNLF) and the Moro Islamic Liberation Front (MILF) to refer to the 13 ethno-linguistic groups in southern Philippines who are followers of the Islam religion. The name “Lumad” is used to represent the 18 ethno-linguistic groups who are not followers of the Islam religion.

390. In July 1997, the Government of the Republic of Philippines initiated peace talks with the MILF. In 2001, a draft agreement entitled “The Government of the Republic of the Philippines-Moro Islamic Liberation Front Memorandum of Agreement on Ancestral Domain on Bangsamoro Juridical Entity” (MOA) was adopted. Since the Lumad people were not involved in the armed rebellion, they were not consulted about, nor did they participate in, the development of the MOA.

391. The MOA recognizes the Bangsamoro as a “First Nation” and lays the groundwork for establishing the “Bangsamoro Juridical Entity” as their homeland, with rights to land and resources, and a semi-autonomous status. The Autonomous Region of Muslim Mindanao (ARMM), created in 1989, makes up the core of the proposed Bangsamoro Juridical Entity, though the MOA contemplates the expansion of the boundaries of the ARMM, through the incorporation of 2194 new barangays (villages), comprising approximately two million acres.

392. Of these two million acres, approximately one million acres are occupied by Lumad people (including Erumanen ne Menuvù of Cotabato and Bukidnon provinces; Higaunon of Lanao del Norte province; Subanen of Zamboanga del Norte province; and Zamboanga de Sibugay and Zamboanga del Sur provinces).

393. The MOA defines the Bangsamoro people as “those who are native or original inhabitants of Mindanao and its adjacent islands including Palawan and the Sulu archipelago at the time of conquest or colonization and their descendants whether mixed or of full native blood”, but acknowledges that the “freedom of choice of the indigenous people shall be respected”. However, the Lumad people fear that the “freedom of choice” regarding whether to be considered Bangsamoro would mean having to decide whether to stay or leave their ancestral domains once they were incorporated into Bangsamoro Juridical Entity.

394. In addition, upon inclusion of the ancestral domains in the Bangsamoro Juridical Entity, the Lumad peoples would reportedly have lost the rights and protections afforded to them under the 1997 Indigenous Peoples Rights Act, which was the result of a separate struggle of the Lumad peoples, including the right to ancestral domains, the right to self-governance, the right to self-determination, the right to cultural integrity, and the right to free, prior and informed consent.

395. The MOA between the Government of Republic of Philippines and the MILF was scheduled to be signed on 5 August 2008. However, one day earlier, on 4 August 2008, the Supreme Court of the Philippines issued an interlocutory injunction against the MOA in response to an action filed by local officials in Cotabato city, for failure to be consulted in the process of development of the MOA. Following the grant of the injunction, there was an escalation of violence throughout the Mindanao region, due to the perceived breakdown of the decade long peace process.

396. On 14 October 2008, the Supreme Court declared the MOA “contrary to law and the Constitution” and enjoined the Government from signing and executing it. The Court cited the Indigenous Peoples Rights Act of 1997, which provides for a procedure for the recognition and delineation of indigenous ancestral domains, which entails, among other things, obtaining of the free and prior informed consent of the indigenous peoples concerned.

397. The Rapporteur noted that he was encouraged by the actions taken by the Supreme Court, but that he was nevertheless concerned about reports that the peace talks will remain stalled until the affected indigenous Lumad peoples are represented in the process.

Observations

398. The Special Rapporteur regrets that there is no record of any reply from the Government of the Philippines to the letter of 12 November 2008 by the time of finalization of this report.

Sweden

Situation concerning the alleged proposed relocation of the Kiruna Town and its potential effects on the traditional reindeer herding activities and way of life of indigenous Saami communities in the area

Communication of the Special Rapporteur of 12 December 2008

399. On 12 December 2008, the Special Rapporteur called the attention of the Government of Sweden to information received concerning the alleged proposed relocation of the Kiruna Town and its potential effects on the traditional reindeer herding activities and way of life of indigenous Saami communities in the area.

400. In summary, according to the information received: Kiruna Town is a mining town of approximately 30,000 people. Luossavaara-Kiirunavaara AB (LKAB), a mining company in which the Government of Sweden has substantial ownership, has plans to relocate about half of the population and infrastructure of Kiruna Town, in order to accommodate the expansion of an already existing iron ore mine into areas beneath the town. Kiruna Town is situated in the middle of an area where a number of Saami reindeer herding communities have grazing lands and vital moving paths. At this point, the effects of the proposed mega-project on traditional reindeer herding activities are unknown; it is expected that the effects of the relocation activities on the Saami way of life will depend on how that relocation is eventually carried out.

401. Encouragingly, numerous and ongoing negotiations and consultations have been held by LKAB. The affected Saami have been invited to participate in these discussions. However, it has been reported that nearly all members of the affected Saami communities have been unable to participate in the meetings because they are needed to tend to the daily needs of their reindeer herding businesses. Nevertheless, affected Saami communities have made efforts to participate in the consultation process to ensure that their concerns are addressed in the plans being developed. To date, the affected Saami communities of Gabna and Laevas have allegedly spent over 50,000 Euro to participate in the consultation process.

402. However, the Saami do not have the financial resources to ensure their continued participation throughout the duration of the consultation process. It is alleged that, despite

numerous requests by the Saami, neither the Government of Sweden nor the LKAB has made efforts to provide resources to the Saami to ensure their participation in the consultation process. However, concern is expressed that if the affected Saami communities are denied participation in the consultations, the reallocation will take place in such a manner that invaluable reindeer grazing land will be lost.

Observations

403. The Special Rapporteur regrets that there is no record of any reply from the Government of Sweden to the letter of 12 December 2008 by the time of the finalization of this report. The Special Rapporteur praises the Government of Sweden for initiating a consultation process with the affected Saami people at this early stage of planning and development. However, he remains concerned over some of the circumstances of this consultation process and reiterates his interest in engaging in a constructive dialogue with the Government of Sweden to address those concerns. To that end, the Special Rapporteur again invites the Government of Sweden to submit its comments and observations on the alleged situation.

Thailand

Situation concerning the exhumation of Hmong graves at Wat Tham Krabok

404. The Special Rapporteur exchanged a series of communications and gathered information in relation to the situation concerning the exhumation of Hmong graves at Wat Tham Krabok. This matter was originally raised in a letter of 2 June 2006 from the former Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people, and the Special Rapporteur on freedom of religion or belief. In addition, the Special Rapporteur attended a consultation on this situation at the University of Minnesota, on 10 December 2008. A summary of all the communications sent and responses received in relation to this situation are reproduced here for ease of reference.

Communication of the former Special Rapporteur of 2 June 2006

405. The 2 June 2006 letter by the Special Rapporteur and the Special Rapporteur on freedom of religion or belief that was sent to the Government of Thailand concerning the desecration of Hmong graves in Wat Tham Krabok was originally summarized in the 2007 communications report of the Special Rapporteur (A/HRC/4/32/Add.1, 19 March 2007). According to the allegations communicated in the 2 June 2006 letter, monastery officials from the Wat Tham Krabok Buddhist monastery, which was formerly used as a Hmong refugee camp, had exhumed Hmong graves. There were said to be about 2000 Hmong graves in the Monastery. According to monastery officials the reason for digging up the graves is that they were contaminating the Monastery's water supply. Relatives of the Hmong people buried at Wat Tham Krabok were not given notice of the exhumations. The Hmong consider graveyards to be sacred sites. Allegedly, the exhumations sometimes included dismemberment, separation of parts of the corpses and cremation, which violates Hmong religious and cultural tradition.

Response of the Government of 9 July 2008

406. The 9 July 2009 response of the Government of Thailand was originally summarized in the 2008 communications report of the Special Rapporteur (A/HRC/9/9/Add.1, 15 August 2008). In its letter of 9 July 2008, the Government noted that no complaints had been lodged about the situation. Wat Tham Krabok, a Buddhist monastery in Saraburi, has long been a refuge for Hmongs in Thailand. For years, tens of thousands of Hmongs have lived in the area and thus many have also died in the area. Further, Hmongs buried their deceased in the grounds of the monastery, mostly on hillsides and high ground. According to the Government, this practice posed an environmental risk to local populations, including the Hmongs themselves.

407. In October 2005, the Tham Krabok Foundation initiated a project to convert the area into a destination for religious activities, a public park, and a museum. The Hmong community was informed that that the graves would need to be located. The Abbot of Tham Krabok or the Chair of the Tham Krabok foundation, which apparently owns the monastery, had previously prohibited any burial. As part of this process, some Hmongs reclaimed their relatives' bodies for relocation. For the graves left unclaimed, the monastery arranged a public cremation ceremony, a service that many monasteries generally provide as charity for the deceased with no known relatives and whose bodies were unclaimed. Ashes of those cremated were placed at the Pothipowanasongkrau graveyard in Saraburi Province. The Government notes that all of these processes were carried out with respect for the deceased and consideration for their families.

Notification by the Special Rapporteur of a consultation at the University of Minnesota of 5 December 2008

408. In a letter of 5 December 2008, the Special Rapporteur informed the Government of Thailand that he would participate in a consultation with Hmong relatives of the deceased whose graves were exhumed at Wat Tham Krabok, on 10 December 2008, at the University of Minnesota in St. Paul, United States of America.

Response of the Government of 17 December 2008

409. In a letter of 17 December 2008, Government of Thailand responded to the notification stating, in summary, that its position on the issue was outlined in the 9 July 2009 response. It further stated that the Laotian Hmongs in Thailand had migrated from the Lao PDR to Thailand since 2003 and have been considered as 'illegal immigrants', subject to the judicial process in accordance with the Thai Immigration Act of 1979 (B.E. 2522). The Government asserted that these Laotian Hmongs are not related to the indigenous people and/or any groups of hilltribes.

Consultation at the University of Minnesota on 10 December 2008

410. On 10 December 2008, the Special Rapporteur attended a consultation at the University of Minnesota, United States of America on the situation of the exhumation of Hmong graves at Wat Tham Krabok. The consultation was organized by the Human Rights Program at the University of Minnesota. At the consultation, the Special Rapporteur received information on the matter, including background information on the process of exhumation of the Hmong graves and subsequent investigation, information on the 211 bodies remaining at Hulin cemetery, the cultural background of Hmong beliefs and rituals, and testimony of relatives of the bodies

exhumed at Wat Tham Krabok. The Special Rapporteur also received written information from the Congress of World Hmong People, the Hmong Heritage Foundation, the Hmong Cultural Center, and the Human Rights program at the University of Minnesota.

Communication of the Special Rapporteur of 10 March 2009

411. In a letter of 10 March 2009, the Special Rapporteur once again drew the attention of the Thai Government to concerns raised regarding the exhumation in 2005 of Hmong graves at the monastery, Wat Tham Krabok, based on the exchange of information with the Government and information communicated to the Special Rapporteur during the 10 December 2008 consultation.

412. The Special Rapporteur noted that, at the consultation, he heard from families affected by the exhumations, who now live in the state of Minnesota. The Special Rapporteur noted that the 9 July 2008 letter of the Government confirms that the exhumation of Hmong graves did in fact take place, while providing information regarding the circumstances of the exhumation. The Special Rapporteur noted that, in light of the information received at the consultation in Minnesota and the Government's response of 9 July 2008, there remain questions about the circumstances of the exhumation of Hmong graves at Wat Tham Krabok, a Buddhist monastery, and the measures that might still need to be taken to remedy the alleged harm caused by the exhumations.

413. Regarding the circumstances of the exhumation, the Special Rapporteur stated that it would appear that further explanation is needed about the reason for the exhumations in the first place. According to the information received, the graves of ethnic Chinese that were in close proximity to the exhumed Hmong graves have been left untouched. And, in many cases, allegedly, the workers exhuming the Hmong graves removed the flesh from the bodies and placed it back in the graves with the burial clothing and belongings that relatives had left with the deceased. The Special Rapporteur noted that this information is not fully consistent with the stated reasons for the exhumations, which as indicated in the Government's response of 9 July 2008, were to address environmental concerns and to make way for the creation of a public park and museum.

414. According to the Special Rapporteur, questions also remain about the nature and level of the Government's involvement in the planning for and execution of the exhumations. According to the information received, there was a heavy Thai military presence at the monastery, including approximately 170 soldiers and 42 Thai Government officials, initially due to concerns regarding the significant number of Hmong refugees living at the monastery and alleged activities of some refugees, and later to assist with the resettlement process. The information also states that the Hmong refugees were fenced off with barbed wire and the soldiers closely monitored them. Allegedly these government security agents were seen assisting in the exhumations. Additionally, the information received states that a Thai Government official signed an informational notice regarding the exhumations, which was posted after the diggings began, and two high-level Thai officials, Bangkok Governor Apirak Kosayodhin and the late Air Chief Marshal Harin Hongsakul, were scheduled to attend the opening ritual for the exhumations, although by all accounts the exhumations were carried out by individuals working under the direction of private parties or religious authorities associated with Wat Tham Krabok.

415. Most important are the allegations of ongoing harm caused by the exhumations and of the absence of any measures to date to remedy that harm. The Special Rapporteur noted that, in its response of 9 July 2008, the Government stated that the “allegations have already been overtaken by events.” According to the Special Rapporteur, this would seem to indicate that the Thai Government views this issue as having come to a close. It does appear that the exhumations ceased in December 2005; however, according to the information received, the exhumations were a serious affront to Hmong sensitivities, the relatives of the deceased Hmong whose graves were exhumed continue to suffer harm as consequence of those exhumations, and that harm has not been remedied.

416. The Special Rapporteur noted that, contrary to what has been suggested, Hmong relatives testified that Abbot Luangphaw Chamroon Parnchard, the now deceased abbot who welcomed the Hmong refugees to the monastery, and the monks present at Wat Tham Krabok at the time, gave permission to the Hmong refugees to bury their dead in a designated part of the monastery grounds. In fall 2005, while several hundred Hmong refugees were still living at Wat Tham Krabok, including relatives of those buried at the monastery, Abbot Pha Charoen, who was in charge at the time, arranged for two Buddhist foundations to clear Hmong graves. According to information received, the Thai Government’s security officers who were present at Wat Tham Krabok facilitated the foundations’ entry onto the areas of the graves. From 26 October 2005 until 6 December 2005, persons contracted by these foundations dug up and removed the flesh of at least 691 bodies from Hmong graves. With the exception of 211 bodies that are still being stored at the Hulin cemetery at Amphoe Kaeng Khoi in Saraburi, the bodies were cremated contrary to Hmong religious beliefs and practices.

417. According to information received and testimony of Hmong relatives, these exhumations took place over the protests of both Hmong relatives still living at Wat Tham Krabok at the time, as well as the Hmong community already resettled to the United States, and caused the Hmong people significant anguish. This information alleges that when some Hmong family members tried to stop the exhumations, Thai soldiers intervened, often forcing the family members at gun-point to allow the digging to continue.

418. Other relatives present at the monastery expressed their concerns to International Organization for Migration (IOM) health workers assisting with the resettlement process. Allegedly some employees of the IOM and United Nations High Commissioner for Refugees (UNHCR) were present when Hmong refugees met with the abbot on 28 October 2005, two days after the exhumations began, to inform him that the diggings were against their traditions and to ask him not to proceed. According to the information received, the Abbot responded that there was no way for the Hmong to stop the exhumations completely, but that they could post signs at graves they did not want dug up and find other locations for these bodies. However, allegedly video footage shows that signs, which were subsequently placed at many graves, were ignored.

419. The information also alleges that the 700 Hmong refugees remaining at the monastery in late 2005 were primarily there due to medical conditions, which may have prevented some of them from protesting the exhumations. Additionally, it is alleged that others did not protest for fear that they would not be permitted to resettle to the United States of America. This fear resulted from their belief that the Thai Government supported the exhumations, as illustrated by the signature of a Thai Government official on the informational announcement posted after the diggings began.

420. The Special Rapporteur communicated to the Government that many of the Hmong relatives who had already been resettled to the United States watched video footage of the exhumations sent by family members still in Thailand that showed bodies being removed from graves and de-fleshed. These relatives immediately protested the exhumations by urging the Department of State of the United States of America to examine the situation through diplomatic channels. The Department of State conveyed these concerns to Thai officials through the United States Embassy in Bangkok some time before mid-December 2005. Additionally, the information received states that Hmong-Americans lodged a formal complaint with the Thai Embassy in the United States prior to 1 December 2005 and another complaint with the Thai National Human Rights Commission, which the Commission acknowledged as having received on 16 January 2006.

421. The Special Rapporteur noted that, in its response, the Government has stated that the human remains were handled and treated respectfully and ceremoniously. However, according to the information received, in a number of cases bodies were mishandled and even desecrated. Allegedly, the heads were chopped off and thrown in boiling water, and internal organs were removed from the bodies and tossed on the ground, where dogs would sometimes pick them up and take them back to the camp.

422. Additionally, the information states that the ceremonies performed were Buddhist and not in keeping with the Hmong religious tradition. In fact, cremation itself is contrary to Hmong religious beliefs. According to Hmong beliefs, the spirits of the deceased must be guided to the final resting place by a special song performed during the funeral, which may last a week. Family members of the deceased perform a number of rituals, including the slaughtering of animals, like water buffalo, cows and pigs, and wrapping the body in layers of burial clothes to prepare the spirits of the deceased for the journey ahead. These Hmong traditions must be followed to ensure that the spirits are at peace. Any disturbance of a grave after the funeral results in a number of serious consequences for the surviving relatives.

423. For the Hmong people, a person has three spirits, according to information provided by Hmong elders and religious authorities. As briefly mentioned above, at death, one spirit will be guided to the land of the ancestors; the second seeks to be reborn again; and the last one tends to the grave or burial site. When Hmong human remains are disturbed or cremated, the spirit at the grave no longer has a place to live and therefore goes in search of care and will continue to cause physical problems for the living. The Special Rapporteur noted that he has received written and oral statements from relatives of the deceased, whose graves were exhumed, and they have told him of persistent and ongoing psychological pain and physical suffering that they attribute to the exhumations. For this reason, the Hmong continue to request action by the Thai government.

424. The Special Rapporteur called the Government's attention to the obligation States have under relevant human rights instruments to guard against acts, including acts by private parties, that infringe on human rights, and to ensure adequate remedies when such infringements occur. He noted that the human rights at stake include the rights to religious freedom, culture, privacy, family, and to equal protection under the law, rights that are protected, inter alia, by the International Covenant on Civil and Political Rights, to which Thailand is a party.

425. In particular, the Covenant provides in its Article 27: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied

the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.” A State Party’s obligation to protect the rights conferred under Article 27 extends to all individuals within a State’s jurisdiction, not merely to citizens.

426. The Special Rapporteur also called the Government’s attention to the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on 13 September 2007. In this regard, the Special Rapporteur acknowledged the Government’s position that, like other Hmong people in Thailand, the Hmong people who were living in the vicinity of Wat Tham Krabok and their deceased who were buried there were refugees from Laos. Nonetheless, the Special Rapporteur noted that Hmong people are undoubtedly indigenous to parts of Southeast Asia and have found themselves in conditions similar to those of others around the world who are identified, and self-identify, as indigenous. The Special Rapporteur also noted that he was sure that the Government would agree that, in any event, the Hmong’s refugee status does not alter their entitlement to the enjoyment of fundamental human rights. These fundamental rights are incorporated in the Declaration, which in its Article 11 states:

1. Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

427. The Special Rapporteur communicated to the Government that, in accordance with its affirmative duties to secure the enjoyment of the human rights of the Hmong people who have lived under its jurisdiction and to provide remedies for any violation of those human rights, he urged the Government to take as appropriate the steps necessary to provide redress for the Hmong families who may have suffered or continue to suffer harm from the exhumation of their relatives’ graves.

428. The Special Rapporteur noted that it has been impressed upon him that Hmong people believe that the desecration of their relatives’ graves is so serious that it will be very difficult if not impossible to repair the damage. However, the families who attended the Minnesota consultation overwhelmingly agreed that an appropriate remedy, which would provide them satisfaction and allow for them to begin to overcome the harm they allegedly have suffered, would be constituted of the following elements: 1) Acknowledgement by the Thai government of the harm, and a commitment to not allow similar exhumations of Hmong graves in the future; 2) an apology from the abbot at Wat Tham Krabok for the past desecrations; and 3) re-burial at Wat Tham Krabok of the 211 bodies of Hmong people that are now at Hulin cemetery.

Observations

429. The Special Rapporteur regrets that there is no record of any response from the Government of Thailand to the letter of 10 March 2009 at the time of the finalization of this

report. He remains concerned that the Government has not taken measures to remedy the situation involving the exhumation of Hmong graves and the potential cultural and religious rights affected. The Special Rapporteur again urges the Government of Thailand to engage the Hmong community to resolve this situation and he expresses his willingness to aid in the resolution process to ensure compliance with international legal norms. He reiterates his call to the Government to take appropriate steps to remedy the situation, including: 1) acknowledging the harm the Hmong community has suffered, and expressing a commitment to not allow similar exhumations of Hmong graves in the future; 2) urging the abbot of Wat Tham Krabok to issue an apology for past desecrations; and 3) ensuring the re-burial at Wat Tham Krabok of the 211 bodies of Hmong people still located at Hulin cemetery.

Uganda

Situation concerning the situation of the Benet community living in the Kapchorwa District of Eastern Uganda, on the edges of the Mount Elgon National Park

Communication of the Special Rapporteur of 14 May 2009

430. In a letter dated 14 May 2009, the Special Rapporteur, together with the Special Rapporteur on the right to 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 Representative of the Secretary-General on the human rights of Internally Displaced Persons, brought to the attention of the Government of Uganda information received concerning the Benet community living in the Kapchorwa District of Eastern Uganda.

431. In summary, according to the information received: The Benet community, who have been living in the area that has been now formally referred to as the Mount Elgon National Park since the mid-1800's, traditionally sustain themselves through pastoral and agricultural activities, hunting, bee-keeping, and making handicrafts. Throughout the 1900s, the colonial government and later the government of Uganda declared the area inhabited by the Benet people as a forest reserve, though the Benet continued to remain in those lands. In the 1980s, the Benet community was resettled to an area just outside the formal reserve. The Benet people were supposed to be resettled in an area of 6000 hectares; however, the Government did not survey the land at that time, and the Benet in fact received 7500 hectares, referred to as the Benet Resettlement Area.

432. The Government surveyed the Benet Resettlement Area in 1993. Following this, it declared the extra 1500 acres as part of the Mount Elgon National Park. Six thousand people who had been living on the additional 1500 hectares were declared "encroachers" and were evicted with no alternate land allocation. They were not consulted about their sudden loss of rights to their farms and homes and they received no compensation. For years, Government authorities carried out measures to attempt to evict families of the Benet community living in the area.

433. On 27 October 2005, in a Consent Judgment and Decree before the High Court of Uganda at Mbale, the Uganda Land Alliance, representing the Benet community (applicants), and the Uganda Wildlife Authorities (UWA) and the Attorney General (respondents) agreed that the "members of the Benet community residing in the Benet Subcountry, including those residing in

the Yatui Parish and the Kabsekek Village of Keen County and in Kwoti Parish of Tingey County” (communities within the 1500 acre area), are “indigenous inhabitants of the said areas which were declared a Wildlife Protected area or National Park”.

434. It was also agreed that the areas mentioned to be de-gazetted as a National Park, following inspection of the boundary with the Benet community, and that special measures be taken to provide education, infrastructure, health and social services to the communities in lieu of general damages. Finally, the Consent Judgment held that the Benet community is entitled to stay within the area undisturbed and carry out agricultural activities. Despite this judgment, since 2005, Kapchorwa District authorities and the UWA have continued to attempt to remove the Benet communities from their lands. In response, the Uganda Human Rights Commission appealed to the Attorney General on 25 April 2009 to implement the Consent Judgment.

435. In February 2008, the UWA forcefully evicted 1,400 Benet from their lands within the area formally declared a National Park, but which the Consent Judgment had ordered to be de-gazetted, leaving them seeking shelter in caves and trees. In April 2008, the Minister for Tourism intervened and ordered the resettlement of those evicted in two temporary settlements. The temporary resettlement areas are wholly inadequate for the Benet to sustain traditional agricultural practices and to maintain their traditional livelihoods. In the Kisito settlement, the Benet are residing on land allocated on the basis of family size, with the largest households receiving about four acres and the smallest receiving about two acres. In the Cheberen settlement, the private landowner does not allow the Benet to cultivate any crops on the land. Further, the displaced communities are prohibited, by both the UWA and the private land owner, from setting up permanent housing units in the areas.

436. Moreover, the UWA has been seeking payments amounting to as much as 600,000 Uganda shillings in exchange for permanent resettlement outside the Mount Elgon National Park, contrary to the judgment mentioned above, which affirmed the right of the Benet to live just outside of the National Park in their traditional lands, undisturbed. Reportedly, Benet individuals are regularly threatened by UWA and sometimes evicted from their temporary dwellings. This constant insecurity has resulted in the Benet community being unable to conduct any agricultural or pastoral activity and therefore to have access to sufficient and adequate food. A case reported where two children in Kabsekek village (Bukwo district) died of hunger and ill health in March 2009 would allegedly demonstrate the Benet community’s constraints in accessing food and health care services. Finally, the UWA and the Ugandan Police frequently arrest community members, especially those actively involved in advocacy against forceful evictions and displacement. Community members have also been subjected to beatings by UWA officials whilst in search of food or firewood in territory considered part of the National Park.

437. The Special Rapporteurs expressed concern that the conditions in which the Benet community live since their eviction from the Mount Elgon National Park area and the absence of appropriate resettlement may be incompatible with the realization of their right to an adequate standard of living as recognized in Article 25 of the Universal Declaration of Human Rights and in Article 11 of the International Covenant on Economic Social and Cultural Rights, to which Uganda is a party. Article 11 of the said Covenant stipulates that States recognize “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions” and more specifically “the right of everyone to be free from hunger”.

438. In addition, the Special Rapporteurs pointed out that in cases involving indigenous peoples, such as the present, additional protections are required in the context of resettlement and indigenous peoples have a right to their traditional lands and resources.

Observations

439. To date, the Special Rapporteur has not received any information from the Government of Uganda. He hopes that a reply will be forthcoming and that the Government will engage with the Special Rapporteur in a constructive dialogue on this issue.

United Republic of Tanzania

Situation concerning the alleged forced removal of pastoralists from Kilosa District

Communication of the Special Rapporteur of 23 March 2009

440. In a letter of 23 March 2009, the Special Rapporteur drew the attention of the Government to the alleged forced removal of pastoralists from the Kilosa District, Morogoro region. According to the information received, on 29 January 2009, the government initiated the forceful eviction of Parakuiyo Maasai, Wairaq, Wasukuma and Barbaig people from the villages of Mabwegere, Mbwade, Twatwatwa, Kimamba, Madoto, Kivunga, Mikumi, Myumi, and Msowero, located in south-eastern Tanzania. These pastoralist groups have lived in the area for centuries and have maintained their traditional nomadic lifestyle.

441. In summary, according to the information received: The Government took no measures to identify alternative lands for the relocated communities or to compensate them so that they could continue their traditional livelihoods. Some pastoralists have been moved to the neighboring Lindi region, some 700 kilometers away, and others have been moved to the Pugu livestock market in Dar es Salaam, the country's principal city, located on the coast of the Pwani region.

442. There is no clear explanation for the removals; however, one purported justification is to prevent conflicts between pastoralists and farmers. The Government has contributed to these conflicts by parceling and leasing large portions of the pastoralists' traditional lands to private investors. Now the Government's solution is to remove all the pastoralists from their lands while permitting the farmers to stay. The relocations are also reportedly carried out in the broader context of Government policies to establish national parks and impose restrictions on access to natural resources through stricter conservation policies and legislation. Such policies and legislation, if enacted, will apparently have a devastating impact on the livelihoods of pastoralists and several other groups who depend on these natural resources.

443. To date at least 8000 livestock have been confiscated, and the pastoralist owners have been forced to pay a fine per animal for purported environmental degradation. These seizures have a negative impact on the health of the pastoralists who rely heavily on the milk, meat, fat and blood of these animals in their diet.

444. The January 2009 removals follow a previous eviction, which was carried out between May 2006 and May 2007. During this period, large numbers of Sukuma agro-pastoralists and Ilparakuiyo, Taturu and Barbaig pastoralists and their livestock were evicted from the Usangu Plains in Mbarali District. These removals were carried out to prevent environmental

degradation to the area. However, the environmental harm was not caused by the pastoralists, but rather by increased irrigated cultivation, in particular the increase of rice and other crop cultivation during the dry season by large farms in the area.

445. In March 2007, a fact-finding commission made up of several nongovernmental organizations carried out a study of the eviction operation. According to the report, more than 400 families and 300,000 livestock were removed during that time. The pastoralists were moved to the Kilwa and Lindi districts, where the environment is unsuitable for pastoralism and where the livestock is at high risk for infections by tsetse flies and ticks. Reportedly, the evictions were poorly planned and there were no proper provisions for designating suitable grazing lands and water points for the livestock. Without proper planning and appropriate land allocations, there is a high risk of conflicts arising between the re-settled pastoralists and farmers in the area. The fact-finding mission also reported a number of abuses during the removal process including theft of livestock; imposition of unjustified fines for environmental degradation; forced separation of families; disruption of social networks; denial of access to education for children; death of large numbers of livestock; and widespread hunger.

446. The fact-finding report was presented to the Parliamentary Committee for Natural Resources and Environment on 15 April 2007. The commission recommended that the Government establish its own commission to investigate the reported human rights violations. On 20 April 2007, the Prime Minister announced to Parliament that the Government would form such a commission to investigate the eviction process. The Commission of Enquiry visited Mbarali in May 2007 and presented its report to the President in June 2007; however the results of this report have not been made public.

Observations

447. The Special Rapporteur regrets that there is no record of any reply from the Government of the United Republic of Tanzania to the letter of 23 March 2009 at the time of the finalization of this report. The Special Rapporteur continues to monitor the situation of the indigenous pastoralists in Tanzania, particularly in light of their land, consultation, and resettlement rights. He reiterates his invitation to the Government of the United Republic of Tanzania to engage in a constructive dialogue aimed at resolving the situation by providing its comments and observations. The Special Rapporteur hopes that such an engagement will facilitate the resolution of the issues presented to him.

Venezuela (Bolivarian Republic of)

Situación sobre el pueblo indígena Yukpa y en particular de la comunidad Chaktapa

Comunicación del Relator Especial del 22 de octubre de 2008

448. En una carta del 22 de octubre de 2008, el Relator Especial llamó a la atención del Gobierno la información recibida en relación con la situación del pueblo indígena Yukpa y en particular de la comunidad Chaktapa. El Relator Especial expresó su satisfacción por los esfuerzos del Gobierno por reconocer los derechos del pueblo indígena Yukpa a sus tierras tradicionales, en particular por las declaraciones de S.E. el Presidente de la República ordenando a sus Ministros demarcar las tierras del pueblo Yukpa en la sierra de Perija. Sin embargo,

alegaciones recibidas indican que el Gobierno no ha desarrollado un plan específico para llevar a cabo el proceso de demarcación y titulación de las tierras indígenas, y que existe una historia de conflictividad y violencia en la región que puede deteriorarse si no se resuelve definitivamente la situación de la tenencia de la tierra.

449. En resumen, según la información recibida: El despojo de las tierras indígenas Yukpa en la cuenca del río Yaza se inició en la década de los treinta. El proceso de recuperación de las tierras comenzó en los años 1970, cuando los Yukpa levantaron nuevas casas y demarcaron con alambre los linderos de sus tierras con las haciendas de los ganaderos que llegaron al territorio durante la ausencia de las comunidades Yukpa. Esta situación dio lugar a un largo conflicto entre la comunidad Chaktapa y miembros de la familia Vargas, presuntos propietarios de las haciendas ganaderas Brasil, Tizina, Dinamarca, Kusare, Medellín y Paja Chiquita, entre otras. La comunidad Chaktapa ha estado asentada en la hacienda Tizina desde marzo de 2004.

450. Los acontecimientos destacados son: El 14 de abril de 2005, el hacendado Guillermo Vargas, presunto propietario de la hacienda Kusare, junto con otras 30 sicarios personas armadas, se dirigió a la comunidad buscando al Sr. Sabino Romero Izarra, cacique de la comunidad Chaktapa, con la intención de poner fin a la ocupación de la hacienda Tizina por parte de las familias Yukpa del río Yaza. Al no encontrar al Sr. Romero Izarra, quemaron las casas de la comunidad, con sus animales, enseres y siembras. El 19 de febrero de 2006, la comunidad dirigió una carta al Sr. Guillermo Vargas informándole de su interés en dialogar con él para evitar actos de violencia y amenazas y que habían solicitado al Gobierno la compra de la hacienda. Esta carta no recibió respuesta.

451. El 8 de abril de 2006, el Sr. Sabino Romero Izarra fue amenazado de muerte si continuaba construyendo viviendas en la hacienda por el Sr. Guillermo Vargas y un grupo de hombres armados, mientras salía de la comunidad para asistir a una rueda de prensa en la Plaza Bolívar de Machiques. El 29 de abril de 2006, el Sr. Guillermo Vargas con cuatro hombres armados con escopetas, desmontaron las casas de las familias Yukpa de la comunidad Chaktapa. El 1 de mayo del 2006, el Sr. Guillermo Vargas quemó las casas de la comunidad con todos sus enseres. Asimismo, amenazó con matar al Sr. Sabino Romero Izarra si no se conducía inmediatamente a su comunidad a las montañas del cerro Piyistaco, en la Parroquia Libertad, Municipio Machiques de Perijá, Estado Zulia.

452. El 23 de abril de 2008, un grupo de personas armadas asaltó a la comunidad Chaktapa. Tenían el propósito de dar muerte al Sr. Sabino Romero Izarra. Llegaron a la comunidad en la camioneta del Sr. Alejandro Vargas, hijo del Sr. Guillermo Vargas, que era conducida por el administrador de la hacienda, de nombre Richard. Éste habría disparado al Sr. Sabino Romero Izarra. El 7 de julio de 2008, el Sr. Alejandro Chávez Vargas, conjuntamente con el Administrador de la hacienda de nombre Richard y tres ciudadanos colombianos, todos armados, asaltaron la comunidad Chaktapa con la presunta intención de dar muerte al Sr. Sabino Romero Izarra. Durante el asalto, golpearon, lanzaron al suelo y arrastraron al Sr. José Manuel Romero, anciano de casi 100 años de edad, padre del Sr. Sabino Romero Izarra. José Manuel Romero pudo escapar y salir corriendo hacia las montañas de la Sierra de Perijá, mientras los asaltantes le disparaban.

453. El 22 de julio de 2008 murió el Sr. José Manuel Romero. Su muerte habría sido ocasionada por los golpes propinados por Alejandro Chávez Vargas y otros cuatro hombres.

Desde el 7 de julio hasta la fecha de su muerte, el Sr. José Manuel Romero sufrió dolores en el cerebro y en la espalda, así como una sensación de grave malestar general. El día anterior a su fallecimiento había vomitado sangre y fue trasladado a la sala de emergencias del hospital. La denuncia por su muerte fue presentada ante la Fiscalía de Machques. Su cadáver fue trasladado a la Sierra de Perijá, sin que realizase la necropsia correspondiente. La hoja de traslado sin necropsia fue firmada por la Doctora Nancy N. Azpurua.

454. Se ha denunciado también la presencia amenazante de sicarios en las haciendas vecinas. La información que ha llegado a la atención del Relator Especial indica que la zona de mayor violencia social es el área Yukpa donde se ubican las comunidades Yukpa Chaktapa (Wasameros), Wasama, Kampa, Calendaria, Kasmera, Botoncha, Guamo, Mikibu (Parirí) y Maraca (Rionegrinos), en el río Yaza. Ante la falta de una presencia efectiva de la Guardia Nacional y del Ejército y ante las constantes agresiones y amenazas por parte de los grupos armados irregulares y sicarios, los Yukpa se han armado para defenderse. Algunos efectivos contratados por los hacendados son indígenas Yukpa de otras comunidades.

455. El 5 de agosto de 2008, miembros de la comunidad Chaktapa, junto con otros miembros de comunidades Yukpa, ocuparon la hacienda Kusare en protesta por la falta de cumplimiento del acuerdo del Instituto Nacional de Tierras de establecer una comisión para realizar una evaluación de las bienhechurías de la hacienda. Dicha Comisión fue establecida y fue a la comunidad pero pretendió que una evaluación en vista de una demarcación, era de competencia de la Comisión Nacional de Demarcación.

456. El 6 de agosto de 2008, presuntamente bajo orden de la Fiscalía Superior del Estado Zulia, el General Izquierdo Torres, de la Primera División de Infantería, al mando de 12 Brigadas de Fuerte Macoa y otros efectivos de Ejército, estableció un cerco militar, impidiendo el libre tránsito, suspendiendo el servicio de electricidad y bloqueando el acceso de alimentos básicos y servicios de salud. Los efectivos militares intimidaron a los miembros del pueblo Yukpa, profiriendo insultos, provocaciones, amenazas de muerte y haciendo uso de gases lacrimógenos.

457. Durante una reunión celebrada el 16 de agosto de 2008 con las comunidades yukpa, la Ministra del Poder Popular de los Pueblos Indígenas, Sra. Nicia Maldonado, recomendó a las comunidades que retornaran a sus montañas, donde podrían “promocionar el turismo”, porque las tierras que se encuentran ocupando son de propiedad privada. Ese mismo día, efectivos del Ejército y de la Guardia Nacional retuvieron por cuatro horas a un grupo de periodistas que habían ido a cubrir la reunión. El 23 de agosto de 2008, una delegación humanitaria habría sido interceptada y sufrido agresiones por parte de efectivos de la Guardia Nacional del Destacamento 36 de Machiques.

458. El 24 de agosto de 2008, S.E. el Presidente de la República ordenó a la Comisión de Demarcación que estableciese el área del Estado Zulia que pertenece a la etnia Yukpa, exigiendo a las autoridades de las diferentes instituciones responsables de seguridad y defensa, ambiente y pueblos indígenas que restableciesen los derechos constitucionales del pueblo Yukpa, declarando que “hay que demarcar el territorio con los indígenas porque eso está en la Constitución y en la ley”. Sin embargo, el Gobierno no tiene un plan específico para tratar debidamente esta situación conflictiva y para llevar a cabo la demarcación ordenada por el Presidente de la República. Algunos funcionarios del Gobierno están solicitando a los grupos Yukpas que abandonen sus

tierras y regresen a negociar con los propietarios. Debido a la historia de violencia en la región, así como a la complejidad de la situación, se han expresado temores de que la situación pueda deteriorarse.

459. La presencia de terceros, entre ellos refugiados procedentes de Colombia, y los intereses de compañías mineras por concesiones de carbón y fosfato, hacen aún más compleja la situación. Refugiados ocupan casi todo el territorio de los Yukpa en la Sierra de Perijá, una situación que algunos han considerado una “nueva colonización”. Además, unas 28.000 hectáreas de territorio Yukpa están a punto darse en concesión a Corpozulia, la Corporación de Desarrollo del Estado de Zulia, con miras a la explotación de fosfatos.

Respuesta del Gobierno de 26 de agosto de 2009

460. El Gobierno de la República Bolivariana de Venezuela respondió a la comunicación mediante una carta del 26 de agosto de 2009.

461. En resumen, en su carta, el Gobierno destaca los esfuerzos hechos desde el año 2008 para realizar la demarcación y titulación del territorio Yukpa. Específicamente, nota el Gobierno las actividades realizadas en 2008: se empezó el proceso de interacción con las comunidades indígenas de la Sierra de Perijá, incluso un proceso de consulta e información con las comunidades Yukpa de cuatro centros pilotos: Tokuku, Toromo, Shirapta, y Aroy, así como, la comunidad indígena de Neremu; se realizaron doce asambleas con la participación de ciento treinta Caciques; se llevó a cabo un censo de las comunidades indígenas Yukpa; se empezó un proceso de mediación entre ganaderos e indígenas, a raíz de las tomas de fincas; y se inició formalmente el proceso de demarcación de la comunidad indígena Yukpa en Noviembre de 2008.

462. El Ministerio del Poder Popular para el Ambiente, a través de la Comisión Nacional de Demarcación (CDR) del Hábitat y Tierras de las Comunidades Indígenas, reporta un avance físico; encontrándose actualmente en la etapa más minuciosa del proceso, como lo es, el análisis de los alegatos de terceros y la elaboración de informes técnicos, lo que ameritó una prórroga de los lapsos. Se reporta el avance de las siguientes fases en el proceso: dictar auto de apertura: 100%; librar boletas y notificaciones: 100%; presentación de alegatos y pruebas por parte de interesados (recibidos 350 alegatos): 100%; elaboración de informes técnicos y análisis de alegatos de terceros: 60% completado; distribución y revisión de informes técnicos a miembros de CDR y comunidades: 0%; discusión de informes técnicos en CDR y remisión a Comisión Nacional de Demarcación: 0%.

463. Además se identifican las actividades a realizar en el año 2009, como por ejemplo la búsqueda de información y verificación de censos; reuniones con los líderes de las comunidades para la elaboración de informes y mapas mentales; entrega y distribución del informe socio-cultural a las comunidades. El Gobierno, como parte del informe presentado, proporciona varios mapas mostrando el territorio autodemarcado por el pueblo Yukpa y también las fincas allí ubicadas. El Gobierno además resume los proyectos en beneficio de la Comunidad Yukpa, entre ellos proyectos de infraestructura, incluso la construcción de viviendas; proyectos socioproductivos para el cultivo de café; y la provisión de agua potable a las comunidades.

464. Finalmente, el Gobierno destaca el Decreto No. 6,569 del 14 de octubre de 2008, mediante el cual el Presidente de la República, Hugo Chavez Frias, declaró el Plan Integral para la Defensa, Desarrollo y Consolidación de los Municipios Fronterizos Machiques de Perijá, Rosario de Perijá y Jesús María Semprúm del Estado Zulia, Comunidades Indígenas Yukpa. Según el decreto, el plan se desarrollara con base a cinco objetivos estratégicos:

- Mejoramiento y consolidación de las vías rurales y de penetración, atendiendo los servicios básicos, la infraestructura educativa y la red de salud pública
- Fortalecimiento de la defensa, seguridad e integridad territorial de la zona, a través del incremento de la capacidad operativa de los órganos de seguridad ciudadana y de la Fuerza Armada Nacional Bolivariana
- Crear mecanismos de producción socialista, a fin de garantizar el desarrollo sustentable de la zona, respetando los usos y costumbres de las comunidades indígenas
- Impulsar la ordenación y gestión de las Áreas Bajo Régimen de Administración Especial y garantizar el proceso de la demarcación del hábitat y las tierras de los pueblos y comunidades indígenas
- Establecer un órgano de coordinación para la evaluación, seguimiento y control del plan

Observaciones

465. El Relator Especial agradece la información detallada proporcionada por el Gobierno de Venezuela sobre las preguntas y preocupaciones mencionadas y toma nota de los pasos tomados por el Gobierno para reconocer, demarcar y proteger los derechos del Pueblo Yukpa. El Relator Especial continúa monitoreando esta situación e invita la sumisión de información pertinente al caso por todas las partes involucradas.

Viet Nam

Situation concerning several incidents of allegedly arbitrary killings of indigenous Degar individuals by the Government's security forces

Communication of the Special Rapporteur of 29 August 2008

466. In a letter of 29 August 2008, the Special Rapporteur, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, brought to the Government's attention information have received concerning several incidents of allegedly arbitrary killings of indigenous Degar individuals by the Government's security forces.

467. In summary, according to the information received: On 14 April 2008, Y-Cung Nie, born in 1982, from the village of Buon Cuor Hdang, district of Cu Mgar in Daklak province, took part in a demonstration at the commune of Ia Knuoc to demand the release of three Degars arrested on 9 April. Not long after he arrived home on the same day, security police from the

district of Cu Mgar arrested him in his home and took him into a nearby wooded area. Soon thereafter, the security police returned to the village and told Y-Cung Nie's parents and family that they had killed him and wanted the family to go pick up his corpse and bury it.

468. The security police threatened the family not to tell anyone about Y-Cung Nie's death, particularly not Degars living in the United States. They said that they would come back and kill them all if they did. When the family went to pick up the corpse, they saw that he had been beaten beyond recognition. His face and body were covered with blood, his skull was fractured and his entire body was bruised. The security police watched the family while they cleaned and dressed the corpse and stayed until the burial had taken place on 16 April 2008 to prevent pictures of the corpse from being taken.

469. Y-Song Nie, a 24-year-old man from Buon Pok village, commune Ea Ken, district Krong Pac in Daklak province, married with children, and Y-Huang Nie, aged 23, from Buon Kreh village, commune Ea Ken, district Krong Pac in Daklak province, married with children, also took part in the same demonstration on 14 April 2008. They were on their way back to their villages from Ia Knuet when they were detained by security police. The security police broke both men's legs, both their hands and cracked their skulls. The security police then returned the remains to the families and ordered them to bury the corpses. They gave each of the families one 100 kg bag of rice and one million dong (corresponding to 66 USD). The security police also told the families: "If anyone of you reports this incident to the international community or to Kok Ksor [President of the Montagnard Foundation, Inc.], we will come and kill all of you."

470. On 22 June 2008, A Lat, aged 61, and A Brin, aged 46, two men from Plei Kuk Gyer village, commune of An Thanh, Dak Bo district in Gialai province, were among a group of approximately 35 Degar Catholics trying to cross a lake in canoes to reach a sacred place near Ploi Hamong Katu village, as they would do twice a month. When they approached the other side of the lake security police ambushed them and began throwing heavy rocks at the canoes. A Lat and A Brin were hit by rocks on their heads, fell into the lake and drowned. The families wished to bury their dead at the sacred site, but the security forces forced them to carry the corpses back to their village for burial.

471. On 9 August 2008, Y-Phit Kbuor and his two sons encountered soldiers on the road back to their village Buon Tri after fishing at the river of Ea Kin about 20 km from the village. The soldiers stopped them and ordered them to raise their hands. However, while they were raising their hands, the soldiers opened fire at them. Y-Phit Kbuor died on the spot, while his two sons escaped and returned home to their village. Many villagers accompanied the family to pick up the corpse of Y-Phit Kbuor. At the site of the incident, they found the soldiers still there. The soldiers apologized, said that they had made a mistake, and paid the family ten million dong (approximately \$660 USD) for the coffin and the cost of the burial ceremony.

Response of the Government of 29 October 2008

472. In a letter of 29 October 2008, the Government provided its response.

473. In summary, according to the Government's response: The professional agencies of Viet Nam carried out an investigation on the alleged case. It expressed that they found out that in

Gia Lai province, there is no village named after Plei Kuk Gyer, no district named after Dak Bo, but there is a district named after Dak Po. They also found out that there were no men named after A Lat and A Brin who were drowned in a lake on 22 June 2008.

474. The investigation team found a report stating that two persons were drowned on 25 June 2008. These two persons were Dinh Lak, born in 1948 and Dinh Prin, born in 1961. They together with eight persons of ethnic minority are residing at Kuk Kon village, An Thanh commune, Dak Po district, Gia Lai Province. When hearing the news that the Virgin Mary would appear at Dak Mon commune, Dak Ha district, Kon Tum province, they went to this place to participate in their religious activity on 25 June 2008. On the way back, their boat was upturned, causing Dinh Lak and Dinh Prin to drown.

475. Therefore, the information mentioned in the allegation letter of the Special Rapporteurs that A Lat, aged 61 and A Brin, aged 46, from Plei Kuk Gyer village, An thanh commune, Dack Bo district, Gia Lai province, were drowned by security forces, was untrue.

476. Additionally, the results of the investigation showed that alleged cases mentioned in the letter were wrong, thus causing great difficulties for and took the investigators much time to verify the cases. Moreover, investigations of these false allegations are a waste of the limited resources of a poor country, better spent on socio-economic development programs in general and for the development of the ethnic communities in particular. The Government asked the Special Rapporteurs to, in the future, verify the individual's name and the geographic names of any case before sending a communication in order to facilitate the Government's investigation.

Observations

477. The Special Rapporteur thanks the Government of Viet Nam for the detailed response to the question and concerns raised. The Special Rapporteur will continue to monitor allegations of forced disappearances of indigenous persons, and the situation of indigenous peoples more generally, in Viet Nam.

III. OTHER COMMUNICATIONS SENT BY THE SPECIAL RAPPORTEUR

478. The communications that are summarized in this part of the report do not center on alleged violations of human rights, but rather concern important developments that promote the enjoyment of human rights by indigenous peoples and initiatives aimed at cooperation.

African Commission on Human and People's Rights

Situation concerning ongoing cooperation between the Special Rapporteur and the African Commission on Human and Peoples' Rights

Communication from the Special Rapporteur of 22 April 2009

479. On 22 April 2009, the Special Rapporteur wrote to the African Commission on Human and Peoples' Rights (ACHPR), expressing interest in pursuing avenues of cooperation with the members of the Working Group on Indigenous Communities/Populations of the African Commission on Human and Peoples' Rights. The Special Rapporteur thanked the

ACHPR for their recent initiative to consult with Special Procedures staff members at the United Nations Office of the High Commissioner for Human Rights in Geneva. He welcomed such a collaborative model, and noted that sharing of such information will be of great use to the mandate of the Special Rapporteur, especially when undertaking country visits and transmitting communications to governments.

480. The Special Rapporteur noted that the report of the ACHPR's Working Group of 2005 on Botswana was very useful to him as a research and policy document during his country mission to Botswana in 2009. In this regard, the Special Rapporteur confirmed his willingness to cooperate with the Working Group on Indigenous Communities/Populations of the African Commission and looks forward to exploring concrete ways to enhance collaboration.

Australia

Situation concerning Australia's support of the United Nations Declaration on the Rights of Indigenous People

Communication from the Government of Australia of 3 April 2009

481. In a letter of 3 April 2009, the Government of Australia sent a letter to the Special Rapporteur, drawing attention to the statement delivered on the same date by the Australian Minister for Families, Housing, Community Services and Indigenous Affairs, the Hon. Jenny Macklin MP, announcing the Australia Government's support for the United Nations Declaration on the Rights of Indigenous Peoples.

482. The Government recalled that last year, the Australian Prime Minister, Mr. Rudd, delivered the National Apology to Indigenous Australians for past government policies that resulted in profound grief, suffering and loss for indigenous Australians. Since delivering the national apology, the Government noted that it has been making progress towards improving the lives of indigenous Australians in practical ways. The Government stated that, in supporting the Declaration, Australia has taken another important step towards re-settling relations between indigenous and non-indigenous Australians.

483. The Government noted that the independent Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma, has praised the Government for taking what he described as a "giant step" today. Mr. Calma suggested that the announcement would likely go down in history as a "watershed moment" in Australia's relationship with indigenous Australians. The Government attached the statement in support of the Declaration, to the 3 April 2009 letter.

Communication from the Special Rapporteur of 15 April 2009

484. In a letter dated 15 April 2009, the Special Rapporteur wrote to the Government of Australia to express his warmest congratulations on the Government's formal support of the United Nations Declaration on the Rights of Indigenous Peoples.

485. The Special Rapporteur noted his satisfaction that Australia, in supporting the Declaration, joined in the widely shared understanding about the rights of indigenous peoples that the

Declaration on the Rights of Indigenous Peoples encapsulates, and commented that the commitment represents a historic shift in relations between the Government of Australia and indigenous peoples in the country, especially those of recent years. The Special Rapporteur also noted that Australia's actions have set important example for the three other countries that did not vote in favour of adoption of the Declaration in September 2007.

486. Expressing his commitment to engaging with the Government on the situation of the human rights of indigenous peoples, the Rapporteur expressed his hope that the Government of Australia will continue to work towards operationalizing the rights enshrined in the Declaration. Acknowledging that for all countries in which indigenous peoples live implementing the Declaration is a complex process requiring legal and institutional reform, judicial action, specific policies, special reparations procedures, and the full political engagement and financial commitment of governments to overcome obstacles and difficulties. In this regard, the Special Rapporteur confirmed his willingness to assist the Government of Australia as necessary in this process, including during his visit to Australia in August 2009 and beyond.

Bangladesh

Situation concerning the Government of Bangladesh's pledge to implement Chittagong Hill Tracts Accords

Communication from the Special Rapporteur of 10 March 2009

487. In a letter dated 10 March 2009, the Special Rapporteur wrote to the Government of Bangladesh to express his congratulation on its pledge to fully implement the Chittagong Hill Tracts Accords of 1997 (CHT Accords), which were signed on 2 December 1997. The Special Rapporteur noted that this manifests a commitment on the part of the Government of Bangladesh to advance the human rights and fundamental freedoms of indigenous peoples in Bangladesh.

488. The Special Rapporteur noted that he has been closely following the situation of the indigenous peoples in Bangladesh, including in the Chittagong Hill Tracts and plains region of the country, and reminded the Government that the former Special Rapporteur, Professor Rodolfo Stavenhagen, sent a communication to the Government of Bangladesh on 3 April 2008 concerning the alleged illegal seizure of the traditional lands of Jumma indigenous communities in Barbadan, Khagrachari and Merung districts, in the Hill Tracts. In this communication it was reported that the alleged seizure might have been in violation of article 26(1) of the 1997 CHT Accords, which provides that "notwithstanding 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."

489. In offering his ongoing assistance and support, the Special Rapporteur expressed his pleasure that the Government of Bangladesh has now committed to taking affirmative steps to address the ongoing issues in the Chittagong Hill Tracts region, and remarked that in addition to addressing land issues, the de-militarization of the region is considered an important first step in

this regard. The Special Rapporteur indicated his availability to cooperate with the Government of Bangladesh with a view towards advancing the human rights of indigenous people in Bangladesh, and looks forward to future opportunities to engage in ongoing and constructive consultation and dialogue with the Bangladeshi Government towards this end.

Chile

Situación sobre la ratificación del Convenio No. 169 por el Gobierno de Chile

Comunicación del Relator Especial de 24 de septiembre de 2008

490. En una carta fechada 24 de septiembre 2008, el Relator Especial felicitó al Gobierno de Chile por la ratificación del Convenio No. 169 sobre pueblos indígenas y tribales en países independientes. Notó que se realizó después de diecisiete años de tramitación legislativa y más de seis meses de que el Senado aprobara el Convenio. Asimismo, El Relator Especial dio constancia de la adopción de “Re-conocer: el Pacto Social por la Multiculturalidad”, que contiene la política indígena del Gobierno para los próximos dos años. El Relator Especial comentó que estos avances son el reflejo de un compromiso del Estado chileno en esta materia así como una esperanza del inicio de una nueva etapa de relaciones entre el Gobierno y los pueblos indígenas.

491. Expresando su deseo de mantener un diálogo constructivo con el Gobierno chileno con miras a contribuir a la protección y promoción de los derechos de los pueblos indígenas en el país, el Relator Especial ofreció de promover asistencia específica durante el proceso de implementación de los derechos establecidos en el Convenio 169 y el Pacto Social dentro del marco jurídico, político y social chileno. En una reunión llevada a cabo el 1 de octubre de 2008 con el Señor Embajador Juan Martabit de la misión de Chile ante las Naciones Unidas y otras Organizaciones Internacionales con sede en Ginebra, Suiza, el Relator Especial enfatizó la importancia de implementar el Convenio 169 en su totalidad y sin reserva alguna.

Nicaragua

Situación sobre la demarcación y titulación del territorio tradicional de la comunidad Awas Tingni en Nicaragua

Comunicación del Relator Especial de 17 de diciembre de 2008

492. En una carta fechada el 17 de diciembre de 2008, el Relator Especial expresó su satisfacción con las recientes acciones tomadas por el Gobierno de Nicaragua para finalizar la demarcación y titulación del territorio tradicional de la comunidad Awas Tingni. Notó que este avance es un paso importante en el cumplimiento de la sentencia de la Corte Interamericana de Derechos Humanos del 31 de agosto de 2001 en el caso *Awas Tingni v. Nicaragua*, y en el proceso de titulación de las tierras indígenas del país. El Relator Especial reconoció también que este paso refleja un compromiso del Gobierno de Nicaragua en esta materia y da esperanza en cuanto al comienzo de una nueva etapa de las relaciones entre el Gobierno y los pueblos

indígenas. También instó al Gobierno a que continúe con un diálogo constructivo y de buena fe con la comunidad Awas Tingni para llevar a cabo el proceso efectivo de saneamiento del territorio de la comunidad y para prevenir y detener las actividades ilegales de terceros dentro del territorio de Awas Tingni.

493. El Relator Especial expresó su agradecimiento al Gobierno por haber facilitado su participación en la ceremonia de entrega del título a la comunidad Awas Tingni, que tuvo lugar en la misma comunidad el día 14 de diciembre de 2008. En fin, El Relator Especial notó su deseo de mantener un diálogo constructivo con el Gobierno Nicaragüense con miras a contribuir a la protección y promoción de los derechos de los pueblos indígenas en el país.

Paraguay

Situación sobre la política del Gobierno de Paraguay hacia los pueblos indígenas

Comunicación del Relator Especial de 26 de septiembre de 2008

494. En una carta fechada el 26 de septiembre 2008, el Relator Especial notó con satisfacción las recientes declaraciones del Presidente de Paraguay, Señor Fernando Lugo, durante su primera intervención ante la Asamblea General de Naciones Unidas el 24 de septiembre de 2008, donde pidió reconocer el protagonismo de los pueblos indígenas en el mundo. El Relator Especial espera que estas declaraciones auguren el inicio de una nueva etapa de las relaciones entre el Gobierno de Paraguay y los pueblos indígenas.

495. Asimismo, el Relator Especial llamó la atención sobre la supuesta falta de cumplimiento con el plazo de restitución de las 15.000 hectáreas de tierras ancestrales de la comunidad indígena Yakye Axa establecido por la Corte Inter-Americana de Derechos Humanos en el caso Yakye Axa vs. Paraguay, del 17 de junio de 2005. El Relator Especial notó que según las alegaciones recibidas, la entrada y acceso a los territorios de la comunidad sigue estando prohibida, ya que dichos territorios se hallan en posesión de la firma Agroganadera Loma Verde S.A., del Distrito de Pozo Colorado, Departamento de Presidente Hayes, Chaco paraguayo.

496. El Relator Especial expresó su confianza en las declaraciones del Presidente, las cuales demuestran motivación por parte de la nueva administración del Gobierno de Paraguay para garantizar los derechos de los pueblos indígenas dentro del país, a través de la implementación efectiva de la Sentencia.

Observaciones

497. El Relator Especial nota que el plazo para el cumplimiento con la decisión de la Corte Interamericana de Derechos Humanos en el caso Yakye Axa vs. Paraguay ha vencido.

Suriname

Situation concerning a request for assistance regarding implementation of the judgment of the Inter-American Court of Human Rights in the case of the *Saramaka People v. Suriname*

Communication from the Government of Suriname of 13 November 2008

498. In a letter dated 13 November 2008 the Special Rapporteur received a letter from the Minister for Regional Development, on behalf of the Government of the Republic of Suriname, regarding a request for technical and advisory assistance regarding implementation of the judgment of the Inter-American Court of Human Rights in the case of the *Saramaka People v. Suriname*.

499. The Court required the Suriname Government to adopt various legislative and administrative measures to secure the territorial and other rights of the Saramaka people. This included measures to regularize Saramaka communal tenure rights, their right to juridical personality, and their right to effectively participate in decisions that may affect them. Suriname expressed its desire to implement the judgment in a way that establishes national measures that secures the rights of not only the Saramaka people, but the rights of all indigenous and tribal peoples in the country.

500. The Government of Suriname noted that the courts deadline for implementation is by no later than 19 December 2010, and in light of this impending date expressed its eagerness to draft and adopt the requisite legislative and administrative measures prior to the demarcation and titling of Saramaka territory and requested the technical assistance of the Special Rapporteur to this end.

Communication from the Special Rapporteur of 20 November 2008

501. On 20 November 2008, the Special Rapporteur responded to the request of the Government of Suriname, and readily accepted the invitation. The Special Rapporteur congratulated the Government of Suriname on the positive steps it is taking to protect the human rights and fundamental freedoms of indigenous and tribal peoples in the country, and noted his availability to proceed to work on the legislation.

Observations

502. The Special Rapporteur reiterates his willingness to provide this assistance but notes with regret that at the time of publication of this report, he has not received any further communication from the Government of Suriname on this issue.

IV. TABULATION OF COMMUNICATIONS SENT TO GOVERNMENTS AND RESPONSES RECEIVED

To provide a quick reference and overview of the exchange of communications between the Special Rapporteur and Governments, this report includes a table that contains the following information:

Date

This column lists the date when communications were sent to Governments.

State

This column lists the States to which communications were addressed.

Type of communication

This column contains information on the type of communications, in accordance with articles 9 and 10 of Human Rights Council Resolution 5/2, as follows: UA: Urgent Appeal; JUA: Joint Urgent Appeal; AL: Letter of Allegation; JAL: Joint Letter of Allegation.

Date of Government responses received

This column lists the date when communications were received from Governments.

Type of reply

This column contains information on the character of the responses received from Governments according to the following general criteria:

(a) “Comprehensive response” [CR] denotes a reply that is responsive to the allegations and that substantially clarifies the facts. It does not, however, imply that the action taken necessarily complies with international human rights law;

(b) “No response” [NR] denotes that a response has not been received from the Government and more than 90 days has elapsed since the communication was sent;

(c) Acknowledgement of receipt [AoR] denotes that the State has acknowledged in writing the receipt of the communication.

Date d/m/y	Country	Type of comm. ¹	Date of Government response	Type of reply ²
03.04.2008	Bangladesh	JAL	12.03.2009	AoR
19.05.2009	Cambodia	AL	-	NR
26.01.2009	Canada	AL	03.06.2009	CR
05.03.2008	Chile	JAL	01.10.2008	CR
29.08.2008	Colombia	JAL	-	NR
29.10.2008	Colombia	JUA	05.01.2009	CR
29.12.2008	Colombia		17.03.2009	CR
			and	
			23.03.2009	
10.06.2009	Ethiopia	AL	-	NR
19.08.2008	Guatemala	JUA	20.03.2009	CR
19.07.2007	India	JAL	26.06.2009	CR
24.07.2008	India	JUA	12.02.2009	CR
20.10.2008	India	JUA	06.04.2009	CR
06.04.2009	India	AL	24.06.2009	CR
28.08.2008	Indonesia	JAL	17.11.2008	CR
18.07.2008	Lao People's Democratic Republic	UA	24.10.2008	CR
03.10.2007	Lao People's Democratic Republic	JAL	22.01.2009	CR
22.01.2008	Libyan Arab Jamahiriya	JUA	-	NR
			13.03.2008	CR
14.01.2008	Malaysia	JAL	and	
			23.07.2008	
20.11.2008	Malaysia	JAL	-	NR
18.07.2008	Mexico	JUA	05.11.2008	CR
22.07.2008	Mexico	JUA	-	NR
21.08.2008	Mexico	JUA	-	NR
01.09.2008	Mexico	JAL	-	NR
10.03.2009	Mexico	JUA	-	NR
23.02.2009	Niger	JAL	09.04.2009	CR
18.12.2008	Norway	AL	24.02.2009	CR
20.11.2008	Panama	UA	-	NR
23.04.2009	Panama	JUA	-	NR
19.08.2008	Papua New Guinea	JUA	-	NR
19.12.2008	Paraguay	AL	-	NR
12.11.2008	Philippines	JUA	20.11.2008	CR
28.11.2008	Philippines	JAL	-	NR
12.12.2008	Sweden	AL	-	NR
10.03.2009	Thailand	JAL	-	NR
14.05.2009	Uganda	JAL	-	NR
23.03.2009	United Republic of Tanzania	AL	-	NR
22.10.2008	Venezuela	AL	26.08.2009	CR
29.08.2008	Viet Nam	JAL	29.10.2008	CR

¹ Type of communication: UA: Urgent Appeal; JUA: Joint Urgent Appeal; AL: Allegation Letter; JAL: Joint Allegation Letter.

² Character of replies received: CR: Comprehensive response; NR: No response.