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

Report of the Special Rapporteur on the right to food, Olivier De Schutter*

Addendum

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

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

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I. INTRODUCTION

1. In the context of his mandate, the Special Rapporteur on the right to food receives a large number of communications alleging violations of the right to food and related rights worldwide. Such communications are received from national, regional and international non-governmental organizations, as well as intergovernmental organizations and other United Nations procedures concerned with the protection of human rights. This addendum to the report of the Special Rapporteur contains, on a country-by-country basis, summaries of communications, including urgent appeals, allegation letters and follow-up relating to the Special Rapporteur's mandate for the period 5 December 2008 to 5 December 2009 and the responses received until 6 February 2010. The Special Rapporteur urges all Governments and other actors who have not yet done so to respond promptly to his communications and, in appropriate cases, to investigate allegations of the violation of the right to food and related rights and to take all steps necessary to redress the situation.

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

3. During the period under review, the Special Rapporteur sent a total of 18 communications concerning the right to food to 16 Member States as well as 13 communications to other actors including corporations. Where appropriate, the Special Rapporteur has sent joint urgent appeals or letters with one or more special procedures of the Human Rights Council where the allegations raised relate to the right to food as well as to rights addressed under other mandates.

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

5. Out of the 18 communications sent to Member States, 7 replies were received and out of the 14 communications sent to other actors, 7 replies were received. During the period covered by this report the Special Rapporteur also received 5 replies concerning communications which had been included in Report A/HRC/10/5/Add.1 (17 February 2009) or in Report A/HRC/7/5/Add.1 (29 February 2008). The Special Rapporteur welcomes the replies received as he considers them a useful way to engage in constructive dialogues in relation to specific cases, issues or situations. The Special Rapporteur, however, regrets that an important number of the Governments he corresponded with have failed to respond at all. The Special Rapporteur considers these communications as still outstanding, and encourages Governments to respond to them and to address all concerns raised.

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

II. SUMMARY OF COMMUNICATIONS SENT TO GOVERNMENTS AND REPLIES RECEIVED

Angola

Follow-up communication

7. On 22 January 2009, the Special Rapporteur sent the Government of Angola a letter in which he thanked the Government for his reply of 4 November 2008 to a letter sent on 17 October 2008. The Special Rapporteur reminded the Government of Angola to send any additional information that the Government may receive from the Attorney General's office on the reported confiscation of farmland by Sociedade Mineira do Cuango in order to carry out diamond mining activities in Cafunfo village in Cuango municipality of Lunda Norte province.

Communication received

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

Bangladesh

Communication received

9. On 18 September 2009, the Government of Bangladesh sent a reply regarding a communication on the alleged illegal seizure of the traditional lands of Jumma indigenous communities in Barbadan, Khagrachari and Merung districts and in the Chittagong Hill, sent on 3 April 2008 by the Special Rapporteur jointly with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. Bangladesh concerning The Government of Bangladesh disagreed with the allegations contained in the communication submitted by the Special Rapporteurs. The Government stated that Article 26(1) of the 1997 Chittagong Hill Tracts (CHT) Accord had not been violated as the CHT Land Dispute Resolution Commission and the Court of District Judges, which work on the issue and resolve land disputes, had been established. It also informed the Special Rapporteurs that a thorough enquiry had been conducted in order to investigate the alleged illegal seizure of traditional lands of Jumma communities mentioned in the communication. The Government further indicated that in Khagrachari Hill District indigenous and other local people had been living together for long time and despite the existence of some disputes between them neither the army nor the local administration were biased towards the latter. The Government also stated that in Bandarban Hill District the only case of land acquisition to have taken place was that of 7550 acres of land in the Ruma Upazila which were deemed necessary for the planned construction of six army garrisons. However, as the Government has observed, in the course of several meetings between the local army commander and inhabitants, an amicable solution had been reached and the latter had agreed to leave their lands if due compensation and residential accommodation were provided by the Government. Finally, the Government indicated that in the communities concerned as well as in the other regions of the country, different disputes relating to land occurred however solutions were found.

Observations

10. The Special Rapporteur wishes to express his sincere thanks to the Government for its reply.

China (People's Republic)

Communication received

11. On 25 February 2009, the Government of the People's Republic of China sent a reply concerning a communication sent on 20 October 2008 by the Special Rapporteur jointly with the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The Special Rapporteur wishes to thank the Government of China for its reply and notes that the latter is currently being translated.

Colombia

Comunicación enviada

12. El 14 de agosto de 2009, 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, enviaron una carta de alegación al Gobierno de Colombia en relación con el supuesto desalojo forzoso del que fueron objeto 120 familias residentes en la Hacienda las Pavas en el municipio del Peñón, sur de Bolívar. Según la información recibida: el 14 de julio de 2009, miembros de la Policía Nacional y del Escuadrón Móvil Antidisturbios habrían desalojado 120 familias, incluyendo varios niños, niñas y mujeres embarazadas, de sus casas ubicadas en la Hacienda las Pavas. Los miembros de la Policía habrían saqueado las viviendas desalojadas. El desalojo forzoso se habría realizado a pesar de que representantes del Ministerio Público presentes en el momento del desalojo se opusieron al mismo y solicitaron la suspensión de la operación. Según la información recibida, solo 3 familias permanecían en el predio de la hacienda las Pavas, gracias a una decisión judicial obtenida vía tutela, la cual les reconoció su derecho de posesión. Las restantes 120 familias, supuestamente desalojadas forzosamente, también serían poseedoras de buena fe de las tierras de la hacienda las Pavas en las que estaban ubicadas sus viviendas. Su propietario, Sr. Jesús Emilio Escobar Fernández, habría abandonado el predio en 1997, momento a partir del cual las 123 familias vecinas de la vereda de Buenos Aires habrían iniciado actos dominativos de posesión, incluyendo la explotación económica del predio y mejoras para optimizar su rendimiento agrícola. Posteriormente, las 123 familias se habrían constituido como Asociación, la cual se denomina ASOCAB. En el año 2003, grupos paramilitares habrían llegado a la región y habrían iniciado actos violentos de hostigamiento, los cuales habrían obligado a las 123 familias a abandonar el predio. Entre los años 2003 y 2006, las 123 familias habrían comenzado a retornar al predio, de manera paulatina. Según la información recibida, el retorno de las familias vino acompañado de la explotación económica dirigida a satisfacer sus necesidades alimentarias, incluyendo el mantenimiento de sus cultivos agrícolas, la construcción y mantenimiento de criaderos de peces que contenían varias especies, así como algunas reces. Posteriormente se

inició un procedimiento de extinción de dominio de tierras incultas, con base en el artículo 52 de la ley 160 de 1994, el cual establece la extinción del derecho de dominio o propiedad sobre los predios rurales en los cuales se dejare de ejercer posesión en la forma establecida por la ley, por más de 3 años continuos. En el año 2008, se habría dictado una resolución por parte de la Unidad Nacional de Tierras (Resolución 1473 de 11 de Noviembre de 2008), en la que se habría dispuesto iniciar las diligencias administrativas para declarar extinguido el dominio sobre varios predios rurales, incluyendo las Pavas. Dicho procedimiento se encontraría aún en curso. Sin embargo, las sociedades Aportes San Isidro S.A. y C.I. Tequendama, quienes figurarían como adquirientes parciales de mejoras y dominio del predio desde el año 2007, habrían iniciado una acción policiva, la cual es el origen del desalojo forzoso del 14 de julio de 2009. Según la información recibida, la decisión de desalojo desconocería la normatividad vigente en la materia, en particular, en lo referente al procedimiento de extinción de dominio que está en curso. Incluso la autoridad estatal encargada del tema, el INCODER, se habría pronunciado sobre la irregularidad de un posible desalojo forzoso. ASOCAB habría interpuesto un recurso de amparo en contra la decisión de desalojo, la cual habría sido admitida en primera instancia. Sin embargo, en segunda instancia habría sido rechazada. Según la información recibida, las 123 familias han visto gravemente afectado su derecho a la alimentación desde el desalojo, puesto que han visto interrumpido su acceso a los medios productivos que poseían, los cuales estaban en el predio de las Pavas. Asimismo, las 3 familias que permanecen en el predio estarían siendo el objeto de presiones por parte del apoderado de Aportes San Isidro S.A. y C.I. Tequendama. Éste estaría impidiendo que continúen con la explotación agrícola del predio y con el cuidado de los animales, y les estaría obligando a que permanezcan la mayoría del tiempo en la casa principal de la finca donde cohabitan con los miembros del Escuadrón Móvil de Carabineros ECNAD. Además de los comentarios sobre la veracidad y exactitud de las alegaciones presentadas, los Relatores Especiales solicitaron mayor información sobre base legal en que se habría fundamentado el supuesto desalojo forzado; si se dio un plazo suficiente y razonable de notificación a las familias afectadas por el desalojo y un plazo suficiente para que las comunidades afectadas pudieran sacar sus bienes antes del desalojo; sobre las acciones tomadas para investigar el supuesto saqueo de las viviendas desalojadas por parte de miembros de la fuerza pública; si se ofreció una compensación adecuada a los afectados por la pérdida de sus viviendas y bienes; sobre las medidas tomadas para garantizar el derecho a la alimentación de las familias desalojadas, para garantizar que el desalojo no genere personas sin hogar, para ofrecer vivienda adecuada alternativa, reasentamiento y acceso a tierras productivas a las personas, y para proveerles de techo, alimentación, agua y medicina para atender a las necesidades más básicas ocasionadas por el desalojo.

13. Además de los comentarios sobre la veracidad y exactitud de las alegaciones presentadas, los Relatores Especiales solicitaron mayor información sobre base legal en que se habría fundamentado el supuesto desalojo forzado; si se dio un plazo suficiente y razonable de notificación a las familias afectadas por el desalojo y un plazo suficiente para que las comunidades afectadas pudieran sacar sus bienes antes del desalojo; sobre las acciones tomadas para investigar el supuesto saqueo de las viviendas desalojadas por parte de miembros de la fuerza pública; si se ofreció una compensación adecuada a los afectados por la pérdida de sus viviendas y bienes; sobre las medidas tomadas para garantizar el derecho a la alimentación de las familias desalojadas, para garantizar que el desalojo no genere personas sin hogar, para ofrecer vivienda adecuada alternativa, reasentamiento y acceso a tierras productivas a las personas, y

para proveerles de techo, alimentación, agua y medicina para atender a las necesidades más básicas ocasionadas por el desalojo.

Comunicación recibida

14. Mediante comunicación de fecha 11 de enero de 2010, el Gobierno contestó a la comunicación de los Relatores datada 14 de agosto de 2009. Respecto a la situación de la Hacienda “Las Pavas” el Gobierno informó que las sociedades comerciales “Aportes San Isidro” y “Tequendama C.I.” solicitaron a través de una acción policiva el amparo a la posesión detentada desde el año 2007, en calidad de adquirentes parciales de mejoras y dominio del predio en cuestión. En este sentido, el Gobierno precisó que los hechos ocurridos el día 14 de julio de 2009 no se encuentran dentro de una diligencia de desalojo propiamente dicha (en razón de que ésta ocurre cuando el lugar ocupado es un espacio público) sino dentro de una diligencia de lanzamiento por ocupación de hecho, a saber, un proceso a través del cual se pone fin a la ocupación arbitraria de un inmueble y se restituye su tenencia a favor del tenedor legítimo. El Gobierno informó que esta diligencia de lanzamiento tuvo como fundamento una sentencia proferida por el Juzgado Primero Promiscuo del municipio de Mompox. El gobierno también informó que la Fiscalía 1° de la Estructura de Apoyo (EDA) de la Unidad de Asuntos Humanitarios-Seccional Cartagena se encuentra adelantando la correspondiente investigación penal por el presunto delito de desplazamiento forzado del que dicen haber sido víctimas ciento veinte familias y que la presente investigación se encuentra en etapa de indagación en averiguación de responsables. El gobierno también señaló que las familias presuntamente víctimas de desalojo no habrían sido desprovistas de su vivienda puesto que su residencia no era la Hacienda “Las Pavas” sino que esta se encuentra ubicada en la cabecera del corregimiento Buenos Aires, ubicado a treinta minutos de camino de la Hacienda “Las Pavas”. El Gobierno finalmente precisó que una vez recabe mayor información sobre este caso, la remitirá a los Relatores Especiales. En relación con las medidas tomadas para garantizar el derecho a la alimentación de las familias desalojadas, el Gobierno informó que el Gobierno está adelantando las gestiones pertinentes con la Entidad competente a fin de brindar información completa sobre el particular. En este sentido, el Gobierno solicitó una prórroga de treinta días para contestar a esta pregunta.

Comentarios

15. El Relator Especial le agradece al Gobierno por su respuesta a la comunicación de fecha 14 de agosto de 2009 y queda en espera de mayor información en lo que se refiere a las medidas tomadas para garantizar el derecho a la alimentación de las familias desalojadas.

Ghana

Communication sent

16. On 19 June 2009, the Special Rapporteur together with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context, the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment on human rights, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Independent Expert on the issue of human rights

obligations related to access to safe drinking water and sanitation sent a joint allegation letter to the Government of Ghana regarding information received on the potential impacts that the establishment of an open pit gold mine in Akyem within the Ajenua-Bepo Forest Reserve in the Birim North District of Ghana's Eastern Region may have on the enjoyment of economic, social and cultural rights of the affected communities. Reportedly, permits for such mine had already been issued to Newmont Ghana Gold Limited (NGGL), a branch of the US-based Newmont Mining Corporation, one of the biggest gold mining companies worldwide. In 2006, Newmont Mining Corporation's application to exploit the Akyem site had reportedly been turned down by the Environmental Protection Agency, which had expressed concern about the serious impact that mine's rock dump waste could have on the biodiversity of the forest. Despite this, in early 2009 the Ministry of Mines, Land and Forestry's reportedly granted a permit to the NGGL. According to information received, NGGL was planning to start operating soon. There had been a claim that, in addition to considerable environmental damage within the forest reserve and impact on the rich and rare biodiversity in the forest, the project could have severe impacts on the livelihood of an estimated 7,900 to 10,000 people. Firstly, up to 1,500 persons, most of them small-scale farmers may be evicted, and despite provisions for relocation and compensation existing in the Mineral and Mining Law and in the Constitution of Ghana, reportedly no plans had been developed either by the company or the authorities to do so in a fair and equitable manner. Reportedly, persons who had been evicted when NGGL carried out exploration and preliminary work in 2006 had not been relocated or compensated, as it had also allegedly happened at the other mining site exploited by NGGL, the Afaho mine.

17. According to information received, small scale farmers who would lose their land would not be provided with alternative land on which to resume their agricultural activities. It was also reported that NGGL's offer to farmers for their land would not compensate for the amount of money they were earning at the time from harvesting one acre of cocoa trees for one year. This would affect their ability to sustain themselves and their families would they lose their land. Moreover, by losing access to the forest reserve for hunting and fruit picking, the local communities would lose a significant part of their food supplies. There were also reports indicating that dust generated by the exploitation of the mine may affect the production of crops in the fringes of the reserve.

18. It was also alleged that the digging of pits and dams and their subsequent exploitation were expected to have severe impact on the access of the local population to water from rivers and streams which they use for drinking, domestic use, fishing and irrigation. It was reported that the exploration that had taken place in 2005 and 2006 had already led to significant modifications of the forest cover, leading to some streams drying up and others becoming inadequate for consumption by the population. Moreover, once the mine would start operating, risks of contaminating water and streams would be high. Reportedly, the risks of leakage of cyanide and other pollutants of the ore processing into the rivers posed health and safety concerns for the local population and could render rivers and streams as well as soils completely unusable.

19. Finally, it was alleged that the environmental impact assessment had not been carried out in conformity with international standards, and that local communities had not been adequately involved in the decision-making process affecting them. There were allegations that during 2008 NGGL may have fraudulently enticed local village elders into acquiescing to the projects by paying them large amounts of money in the form of 'administrative costs'. This raised concerns

over fairness and transparency of the negotiations that NGGL may have held with the concerned communities.

20. Apart from international standards the Special Rapporteurs also referred to the Law on Minerals and Mining whose section 74.1 (b) and (c) contains specific provisions on compensation for the loss of earnings or sustenance suffered by the owner or lawful occupier and for the loss income expected from the crops. Section 74.2 points out that the compensation should be prompt, fair and adequate.

The Special procedures also informed the Government that the alleged information contained within this allegation letter will also be communicated to the NGGL. The letter to NGGL is included in this report in the “Other Actors” section.

Communication received

21. On 14 August 2009, the Government of Ghana sent a reply regarding the above-mentioned letter. The Government noted that the Environmental Protection Agency had requested NGGL to modify the size of the proposed pit and its attendant waste rock dumps in view of environmental and public safety concerns. It considered that the Environmental Impact Assessment submitted by NGGL had complied with requirements concerning the scoping process, the holding consultations with the affected population, the data analysis, the identification of mitigation actions, the preparation of a Land Rehabilitation Plan, and evaluation the harmlessness to water quality. In response to the question of what measures had been taken to ensure that the open mine project did not have disproportionate negative impacts on the environment and on the livelihoods of neighbouring communities, the Government informed the Special Rapporteurs that NGGL had been required to submit an Environmental Impact Statement and that this document was evaluated by Environmental Protection Agency pursuant to the Environmental Guidelines for Mining in Production Forest Reserves. Under recommendations from the Environmental Protection Agency, NGGL had agreed to make certain modifications on its planned facilities. In addition, NGGL had committed itself towards the people affected by the project who were promised additional land but for those who wished to pursue alternative livelihoods, it had undertaken to fund training opportunities and business inputs, and to provide necessary benefits to women for the loss of agricultural land. The Government also indicated which measures had been taken in order to ensure that water resources would be protected from risks of leakages and that mining wastes would be disposed appropriately. It also explained how the concerned communities had had opportunity to participate in the planning to open the mine through mining community engagements. For instance at least three public forums were organized during which, inter alia, Environmental Impact Statement was evaluated.

22. In response to the question the procedure for compensation for the lost lands, the Government stated that affected persons/households/communities had been considered eligible for resettlement assistance if they had immovable assets in the proposed mining area. NGGL had proposed a broad range of appropriate and fair compensation and assistance for eligible recipients. The compensation terms and conditions had been negotiated with and agreed to by the Compensation Negotiation Committee which comprises of company, government and community representatives.

23. NGGL was required to prepare and submit Resettlement Action Plan for approval. This plan would contain the specific commitments, procedures and actions which would be taken to resettle and compensate people, households and communities impacted by the project in compliance with Ghanaian law.

24. An estimated 242 households and 25 businesses within the proposed mining area would be physically displaced by the project. All people affected by the project would be eligible for compensation for the loss of crops, buildings and income. NGGL had undertaken to ensure that activities related to resettlement and compensation would be executed in accordance with the Minerals and Mining Law. The company had also undertaken to take measures with respect to the right to health.

Honduras

Comunicaciones enviadas

25. El 22 de enero de 2009, el Relator Especial junto con el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias envió una acción urgente en relación con la muerte del Sr. Guillermo Norales Herrera en hechos ocurridos en frente al área protegida de Vida Silvestre, Cuero y Salado, en Cayos Cochinos. Según la información recibida: el 24 de septiembre de 2008, aproximadamente a las 9h30 de la noche, un grupo de 8 pescadores de la comunidad Garífuna de Triunfo de la Cruz fueron requeridos por miembros de la Fuerza Naval de Honduras, a cargo de la vigilancia del refugio de Vida Silvestre Cuero y Salado, mientras estaban faenando frente al área protegida. Los militares se acercaron a la lancha de los pescadores, que tenía el motor apagado, controlaron su equipaje e interrogaron a los pescadores antes de ordenarles que les siguieran. Cuando uno de los pescadores, el Sr. Guillermo Norales Herrera, se dispuso a encender el motor de la lancha, los militares empezaron a disparar. Según los testimonios de los pescadores, hubo entre 20 y 25 disparos, uno de los cuales alcanzó al Sr. Norales Herrera, quien falleció de manera inmediata. Los pescadores les pidieron ayuda pero los militares se retiraron, sin ofrecerles asistencia. El grupo de pescadores se quedó a la deriva, puesto que uno de los proyectiles había alcanzado el motor y lo había estropeado. A pesar de que llamaron desde alta mar por celular a la policía, no recibieron asistencia. Llegaron remando hasta la orilla de las playas de Triunfo de la Cruz, donde fueron remolcados por miembros de su comunidad. Los relatores especiales expresaron preocupación por el hecho de que la muerte del Sr. Norales Herrera pueda ser el resultado de un uso excesivo de la fuerza militar. Según la información recibida, la muerte del Sr. Herrera y otros hechos violentos ocurridos en Cayos Cochinos podrían formar parte de una dinámica más amplia que habría surgido como consecuencia de la aplicación de los planes de manejo para esta zona y que habría contribuido a generar inseguridad física y alimentaria. Aunque la creación de áreas protegidas en la zona de Cayos Cochinos responda a necesidades medio ambientales importantes, según la información recibida esto habría contribuido a generar tensiones sobre el manejo de los recursos naturales que son vitales para el acceso a una alimentación adecuada y suficiente de las comunidades locales. Según la información recibida, el plan de manejo del área marina protegida de Cayos Cochinos comprende una serie de regulaciones que disciplinan la extracción de recursos naturales y que limitan la pesca, aunque sea para el sustento de la familia. Estas limitaciones habrían afectado en particular a dos comunidades Garifunas de la isla de Chachahuate y de la isla Oriental. La zona de Cayos Cochinos, como toda la costa norte del país, habría además padecido a manos de la flota pesquera industrial un saqueo sistemático de los recursos ictiológicos, afectando el acceso

de los pescadores artesanales, en su mayoría garifunas, a una alimentación adecuada y suficiente, basada principalmente en los frutos de la pesca. Estos pescadores habrían visto disminuir sus capturas teniendo que viajar a mayores distancias de sus comunidades para lograr el sustento de sus familias. Además el acceso a los recursos naturales de estas comunidades está vinculado con el régimen que disciplina el acceso a la tierra. A este respecto, parece que estas comunidades Garifunas no poseen todavía títulos de propiedad de la tierra y que estos asentamientos continúan siendo considerados temporales. Este problema convierte a las comunidades en vulnerables ante las demandas de tierra que vienen de empresarios o consorcios de empresarios que se apropian de esta tierra con fines lucrativos. La falta de títulos de propiedad de la tierra es un elemento que, parece, ha caracterizado una discriminación contra las comunidades Garifunas en todo el país. Por ejemplo, las comunidades se establecieron en Chachahuat y en la isla oriental porque, tras haber perdido su tierra, no habría podido encontrar otro trabajo en la parte continental del país. Cayos Cochinos habría además experimentado un aumento importante del turismo y en particular del turismo científico y aunque las comunidades Garifunas parecen ser favorables a la diversificación de las fuentes de sustento y de ingresos, según la información recibida ellos no harían gozado todavía de los beneficios que esta actividad debería aportar, como por ejemplo la creación de nuevos puestos de trabajo y nuevas fuentes de sustento.

26. El 16 de octubre de 2009, el Relator Especial sobre el derecho a la alimentación envió una acción urgente en relación con el supuesto desalojo y detención de integrantes de organizaciones campesinas que habían estado ocupando las instalaciones del Instituto Nacional Agrario. Según la información recibida, el 30 de septiembre de 2009, alrededor de las 6:00 de la mañana, miembros de la policía y del ejército habrían ocupado las instalaciones del Instituto Nacional Agrario (INA) en Tegucigalpa. Como resultado del operativo de desalojo, supuestamente ejecutado en función del Decreto Ejecutivo PCM-M-016-2009 del 26 de septiembre de 2006, 55 personas habrían sido detenidas y puestas a disposición de la Policía Nacional. Durante el desalojo, los efectivos militares habrían agredido físicamente a algunos de los detenidos. El 5 de octubre de 2009, tras una audiencia inicial frente a la juez de los Tribunales Unificados de Francisco Morazán, Laura Casco, 38 campesinos fueron remitidos a la Penitenciaría Nacional, mientras que a otros 11 se les habrían dictado medidas cautelares; al resto se les habría liberado por falta de elementos. El 7 de octubre de 2009, autoridades del Juzgado Unificado de lo Penal habrían otorgado libertad provisional bajo medidas sustitutivas a los 49 campesinos, aunque los autos de procesamiento en su contra aparentemente continuaban abiertos por el delito de sedición. La defensa de los detenidos supuestamente sostendría que los acusados no podrían ser susceptibles de pena por el delito de sedición por no haber opuesto resistencia a las acciones de la autoridad, en función del Artículo 399 del Código Penal de Honduras. Se alega que las personas procesadas son integrantes de organizaciones campesinas que habían ocupado las instalaciones del INA durante 90 días con el objetivo de resguardar la documentación archivada en la institución. En particular, las organizaciones campesinas habrían expresado su preocupación por los expedientes pendientes de resolución final bajo lo establecido por el Decreto No. 18-2008. El Decreto 18-2008 sobre la “mora agraria” fue emitido por el Congreso Nacional, a solicitud del Gobierno de la República, con el objetivo de solucionar la situación legal de la propiedad de tierras ocupadas por campesinos durante décadas, y formaría parte de una reforma agraria más amplia contemplada por la Constitución de la República en su Título VI, Capítulo III. En sus considerandos, el Decreto en cuestión invoca la intención de garantizar la seguridad y soberanía alimentaria. En su Artículo 1, el Decreto 18-2008 estipula que el inventario oficial de los expedientes elegibles sería elaborado por una Comisión Especial

presidida por el INA con la participación, entre otras, de organizaciones y centrales campesinas. El artículo 3 establece que las tierras en manos de campesinos y contenidas en expedientes sin resolución definitiva serán afectadas para fines de reforma agraria, como un mecanismo para eliminar la mora agraria. Asimismo, el Artículo 4 declara dichas tierras expropiadas o recuperadas de pleno derecho, por causa de interés social, previo pago de una indemnización justipreciada mediante bonos de la deuda agraria. Por su parte, el Artículo 17 establece que todas las tierras en manos de campesinos, donde han vivido y trabajado ininterrumpidamente por más de 10 años y no tienen expediente en el Instituto Nacional Agrario (INA), deberán ser tituladas previa investigación del INA. Según la información recibida, la implementación del decreto habría sido suspendida el 28 de junio de 2009. Se alega que tras el desalojo del INA, efectivos del ejército habrían sustraído documentos de la institución, llevándoselos en autos particulares sin placas a un sitio desconocido. Entre los documentos más sensibles del INA se encontraban cientos de expedientes de la mora agraria que están en vía de resolución final. En tal sentido, se teme que la ocupación militar del INA y la sustracción de los documentos obstaculicen la labor del INA por la resolución de los conflictos agrarios.

Observaciones

27. El Relator Especial lamenta que en el momento de realizarse este informe no haya recibido ninguna respuesta del Gobierno a sus comunicaciones de fecha 22 de enero de 2009 y 16 de octubre de 2009.

India

Communication sent

28. On 16 November 2009, the Special Rapporteur sent an allegation letter to the Government of India concerning allegations of failure by authorities to implement the Integrated Child Development Scheme (ICDS) and other social services such as the Below Poverty Line (BPL) and Antodaya Anna Yojana (AAY) food distribution systems, especially in relation to cases of severe malnutrition of children in the states of Madhya Pradesh and Uttar Pradesh. According to the information received, 46 per cent of children under the age of three in India are undernourished, yet efforts made to reduce malnutrition and its consequences have had limited results. Although ICDS is a long standing programme, it appears from the information gathered that it faces a number of serious challenges that prevent it from reaching the most vulnerable children.

29. Firstly, it has been reported that the system of angawandi centres (AWC), which are in charge of implementing the ICDS, often functions poorly. The absence of such centres in rural areas as well as in some poor urban communities is said to lead to very low coverage of children. Estimates that only about 30 per cent of children are registered in the ICDS are particularly worrying in a context where the Supreme Court of India ordered, in its ruling on ICDS of 2006 – in addition to the previous ruling of 2001 and 2004 - that the scheme be universalized and that priority should be given to opening AWCs or mini-AWCs in remote areas. There were reports that AWCs are often poorly equipped, not sufficiently staffed, and that there are substantial

shortcomings in their functioning. For example, it was alleged that in AWCs in Madhya Pradesh no records of children's registration, weight and health conditions are kept, which prevents adequate follow up of their condition. Also in the State of Madhya Pradesh, AWCs reportedly function with only one staff member and thus cannot deal with both health checks and food distribution.

30. There were also reports indicating that the registration of pregnant and lactating mothers and adolescent girls in AWCs is subjected to quotas in some areas, whereas the Supreme Court also ruled for their universal access to feeding programmes delivered in the centres. Failing to ensure that pregnant girls and lactating women have access to food in adequate quantity and quality risks undermining efforts to combat malnutrition amongst children because the health and development of unborn babies and children under two years old depend on their mother's nutritional status.

31. It was also alleged that children of scheduled castes and tribes often receive less nutrition supplements and immunization than children from other parts of society visiting AWCs. Reportedly, such children are sometimes excluded from the ICDS programme as well as from other child development services, which suggests discriminatory practices by staff of AWCs and other health and nutrition centres.

32. Secondly, there were allegations that public food distribution systems are dysfunctional. This concerns particularly the availability of food for families registered for the Below Poverty Line (BPL) and Antodaya Anna Yojana (AAY) ration cards. For example, it was reported that families are not able to receive their monthly allowance of 35kg in full, due to severe shortages in accredited shops. It also appears that these shops are often closed, sometimes to the point of opening only one day a month, which severely hinders families' access to food.

33. In addition to referring to relevant international standards the Special Rapporteur noted the possible adoption of National Food Security Act which was discussed in India at the moment of submission of the allegation letter. The adoption of such an Act can contribute greatly to the national implementation of the right to food, if it duly specifies the legal and institutional framework, identifies rights and obligations as well as spells out the roles of institutions in the realization of the right to food. The Committee on Economic, Social and Cultural Rights identified the adoption of framework legislation as an element of implementation of the right to food.

Communications received

34. On 29 July 2009, the Government of India replied by two letters to a communication transmitted by the Special Rapporteur on 23 May 2007 and concerning the situation related to the proposed construction of the Tipaimukh Dam in Manipur State, as well as reports that the Dalits who were evicted in 1993 from the Ambedkar Nagar village, (district of Kashipur, Uttarkhand) despite reportedly being recognized as rightful owners of the land by the ruling of the Supreme Court, face difficulties to repossess their land.

35. In the first letter the Government of India indicated that it had examined the communication and found the concerns pertaining to Tipaimukh Dam to be an incomplete and misleading picture of the actual project. The letter explained that the construction of the dam

would lead to submerge 12 villages in Manipur (affecting 313 households with 2027 people) only. No village in Mizoram would be fully submerged. There are 4,716 owners (4,376 in Manipur and 340 in Mizoram) whose landed properties alone would be affected. The Government also informed that the project has been planned after required consultations with affected people and with appropriate compensation, physical rehabilitation and economic rehabilitation schemes, keeping in mind the socio-cultural practices of the affected people. Aimed at generation of hydel power and food relief that would help, and are crucial to, local development, the project has been undertaken only after extensive surveys and investigations, including environmental impact assessment, and is reviewed regularly for any improvisations that may be necessary.

36. In its second letter, the Government of India informed the Special Rapporteur that it had examined the content of the allegations about forced evictions in Ambedkar Nagar village Kashipur, Uttarakhand and that it found them inaccurate. The Government denied the existence of the order by the High Court or Supreme Court mentioned in the communication. Accordingly, the families were served a legal notice for attempting to occupy the land illegally.

37. On 26 June 2009, the Government of India sent a reply to a communication sent jointly by the Special Rapporteur on 19 July 2007 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 situation of human rights and fundamental freedoms of indigenous people concerning the alleged threat of eviction of Adivasi families in the state of Chhattisgarh. The Government stated that the allegations on the right to food presented by the Special Rapporteur were inaccurate. The Government and Tata Steel had signed a Memorandum of Understanding for setting up a steel plant in Chhattisgarh, the Chhattisgarh State Industrial and Development Corporation 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 submitted by the Special Rapporteurs. Less than 26 per cent of private land was to be acquired, causing minimal displacement of only 101 houses. The Government further stated that before initiating land acquisition proceedings, the state authorities had held several rounds of consultations with the affected villagers, as required by law and that the villagers' suggestions concerning the compensations were taken into account. The Government further stated that since there were no share-croppers in the area where the steel plant had been proposed to be set up, it had not been necessary to make any provision for compensation to share-croppers. Finally, the Government informed the Special Rapporteurs that the land acquisition notification of 23 February 2007 was in accordance with the 1984 Land Acquisition Act, which does not have any provision for giving 30 days prior notice.

38. On 11 December 2009, the Government of India sent a reply to a communication sent by the Special Rapporteur on 3 December 2008 concerning the allegations received on the challenges and obstacles that the internally displaced communities from Dantewada and Bijapur districts in Southern Chattisgarh have faced in the exercise of their right to food. The Government noted that in Dantewada and Bijapur districts in Southern Chattisgarh, about 50.929 people were living in 23 camps as of September 2009 (35.668 people in nine camps in Dantewada and 15-261 in 14 camps in Bijapur). In the camps of Dantewada 34.733 inhabitants were being provided free ration and the remaining 935 were being provided subsidised rations under the government public distribution system. Furthermore, according to the Government, no family was being asked to produce proof of identification and ration cards had been distributed to 3.713 families of the total of 7.167 families residing in the nine camps. Similarly in Bijapur,

3.966 families had been provided a below-poverty-line card under which they could buy rice at the price of Rs 2 per kg while another 2.104 families had been issued antyodaya card under which they could buy rice at a price of Rs 1 per kg. With regards to employment, the Government noted, 5.857 families had been registered and issued job cards under NREGA in Dantewada camps. A total of 12.137 labourers were engaged in various works executed under NREGA in the nine camps. In addition, the Government was providing support in the form of free cultivable land on community holding basis, tractors, trolleys, and distribution of agricultural implements, hybrid seeds and quality fertilizers. Vocational training such as bamboo crafts, handloom weaving, bell-metal craft and terracotta works was also being given. The local government was also in the process of finalizing the distribution of lease of forest plots in conformity with the Forest Dwellers Rights to Land Act. Similarly, in Bijapur, all families living in the camps had been offered employment under NREGA and 5.369 people provided job cards. In addition, the government was facilitating recruitment and skills training like carpentry, masonry and electrical works repair in 19 training centres. In both Dantewada and Bijapur, the government had also provided for adequate security, apart from water supply, sanitation, electricity, play schools and health care.

Observations

39. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted any reply to his communication dated 16 November 2009.

Indonesia

Communication sent

40. On 14 August 2009, the Special Rapporteur together with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation and the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment on human rights sent a joint allegation letter to the Government of Indonesia regarding the potential impacts that gold and copper mining activities in Lembata, East Nusa Tenggara, Indonesia, may have on the enjoyment of the right human rights of Lembata communities.

41. According to the information received, in 2005 the Indonesian mining company PT Merukh Lembata Copper has been permitted by the local government to carry out exploration activities for gold and copper on Lembata. The company reportedly holds exploration rights for at least two thirds of the island, and three companies – identified as KPG Kupferprodukte GmbH, Norddeutsche Affinerie AG and IKB Deutsche Industriebank AG – are said to be involved in financing the project. It was also reported that the Chinese Yunnan copper Group Limited entered in the joint venture partnership with PT Merukh Lembata Copper. Following the results of the above-mentioned explorations, the exploitation stage is reportedly scheduled to start in 2011.

42. Allegedly, this planned mining project would concern 7 of the 8 sub-regencies in Lembata, possibly as much as 75 per cent of the entire island, and would result in the forced eviction of at least 60,000 local people. Most of them are members of Lamaholot and Kedang communities and would be forced to relocate on other islands in order to give way for the mining. Apart from a proposal submitted by the mining company to move the affected communities to other locations, the local government reportedly has not shared any information concerning a possible relocation plan. It is further reported that considering that those communities' livelihood rely on agriculture, animal husbandry and fishing, their eviction and their relocation on other people's land would cause conflicts among communities and increase impoverishment and unemployment. This situation would severely threaten people's food security, in a region that is reported to be already food scarce as a result of the dry climate and very poor infrastructures that lead people to rely mostly on subsistence farming and fishing. There are therefore risks that the population may not be in a position to have access to or produce sufficient food to ensure an adequate standard of living; for example, it is feared that existing cashew nut plantations would be destroyed and those living from their yield would lose their means of subsistence.

43. It was also reported that the agreement between the local Regent and PT Merukh Lembata Copper was signed without any discussion or consultation with the concerned communities. The same information states that when local people found out about the mining agreement, they reacted with strong protests but that the local government has been refusing to hear their complaints. In order to gain people's agreement after contract signing, the Regent of Lambata reportedly resorted to ambiguous means, including attempts to bribe influential local leaders, manipulation of opinion by grossly exaggerating the actual richness of the island's soil and the potential yield of the mine, and intimidation and threats against people, including traditional leaders, who expressed their opposition to the project.

44. According to information received, previous mining exploration activities linked to other mining projects have already had negative impact on the enjoyment of Lembata local people's human rights. For example, it has been stated that mining companies employed local farmers and fishermen as manual labourers, with no contract and very low wages. It has also been reported that occupational health and safety standards were neglected, as for instance the explosive used created excessive dust levels that resulted in breathing problems of labourers. In addition to that, the information received mentions that tailings and waste from the mining activities were released in water sources, thereby increasing sulfur rates to harmful levels. After cessation of activities, most of the mine holes were reportedly left uncovered, without any rehabilitation programs, which may lead to negative impacts on local people's water and food resources. Such elements seem to set a very worrying precedent that justifies concern about the ongoing activities and the foreseen exploitation project.

45. Reportedly, no environmental impact assessment was carried out in conformity with international standards, and that local communities have not been adequately involved in the decision-making process affecting them. There were also reports that neither the central nor the local government ensured that any environmental impact assessment, or AMDAL, be carried out in conformity with national regulations. It is also reported that that geological properties of the island's soils put forward by PT Merukh Lembata Copper have been contradicted in a number of other studies. There were also claims that local authorities have refused to consider alternative development plans put forward by communities, including tourism projects and a proposed

marine park that was already in planning in the same area and which would protect marine resources around the island.

Observations

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

Iraq

Follow-up communication

47. On 17 July 2009, the Special Rapporteur together with the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, following-up on a previous communication of 6 March 2008 which has remained unanswered, sent a joint allegation letter to the Government of Iraq regarding the alleged blockages of food destined to the inhabitants of Camp Ashraf. According to the information received, over the previous two weeks, Iraqi army personnel had prohibited the entry into the camp of at least 13 trucks carrying food items such as flour, dried fruits and cereals. It was also reported that two trucks carrying fuel had not been allowed to enter the camp during the same period, as it has reportedly happened for truckloads of seeds over the past six months. It was alleged that the reason given each time was that drivers lacked proper documentation, while at the same time it was reported that these persons had been allowed in the camp with their loads on previous occasions. It was alleged that food stocks had decreased to alarming levels and that camp's inhabitants risk facing food shortages. The Iraqi army and police personnel reportedly have prevented inhabitants of Ashraf and Iraqi water technicians from accessing the pump that supplies water to the camp. Residents of Ashraf were allegedly able to use the water pumping station, located 30 km away, which was damaged during the explosion in May 2008, until recently. The station appears to have completely stopped operating and it was alleged that residents have been prevented from accessing the station in order to replace the transformer. It was also alleged that the Iraqi army did not authorize the transport of spare parts for water and electricity systems, despite the fact that the directors of the Diyala water and electricity authority had allegedly agreed that representatives of this authority would assess and authorize Ashraf's needs for water and electricity items. According to the information received Iraqi army commanders had lately prevented this work from being completed and obstructed the entry of items previously authorized to the camp. This had allegedly hampered the proper functioning of the pump and low quantities of water have reached the camp. If not repaired shortly the pump, access to water for the residents would be seriously jeopardized. The restrictions imposed on the entry of parts that have been used to make trailers in workshops inside the camp had reportedly affected the ability of the residents to earn a living that enabled Ashraf residents to buy food on the market. In addition it was reported that visits of family members living outside the camp had been reduced thereby cutting off the residents from a significant portion of remittances allowing them to purchase food in the market.

Observations

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

Israel

Communication sent

49. On 24 December 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 and the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, sent a joint allegation letter to the Government of Israel regarding the closure of all commercial crossing points between the Gaza Strip and Israel and the obstacles to the delivery of humanitarian assistance in the territory since 5 November 2008. These measures had allegedly resulted in shortages of food, medicines and fuel and they threatened to have serious effects on the food security situation of the 1.4 million Palestinians who live in the Gaza Strip. According to the information received by the Special Rapporteurs, on 17 November 2008, the Erez border crossing had briefly reopened to allow a convoy of 33 truckloads carrying humanitarian aid and medical supplies to enter the Gaza Strip. However, this had been the first time for the passage to be authorized in two weeks. Reportedly, on 26 November and 4 December 2008 crossings had reopened again to allow in a limited amount of food assistance and fuel supplies. However, it had appeared that these supplies, which had been brought in during these re-openings, had not been sufficient to alleviate the shortages of basic essential items such as fuel, fresh food, meat and fruits, and that they were insufficient to build reserves for meeting daily the basic food needs of the 1.4 million Palestinians living in the Gaza Strip. Despite these re-openings, it had been estimated that the level of imports had remained well below the level of last year. The unpredictability of humanitarian assistance and delivery has also affected the organization and conduct of assistance programmes, thus contributing to undermine the food security situation of beneficiaries. It was alleged that eighty per cent of the Palestinians in the Gaza Strip are living under the official poverty line and depend on humanitarian assistance, including food aid. Restrictions of the entry of supplies which were essential for the production of food, such as fuel, fertilizers, plastics and seeds, had been alleged to have undermined the ability of the population to produce part of its own food. The Special Rapporteurs had also informed that food prices had continued to increase due to limited stocks, so levels were beyond the purchasing power of the large part of the population that did not have the ability to generate income allegedly as a result of the restrictions imposed since 2006. It was also reported that the global rises in food prices over the previous 12 months and reduced domestic agricultural production due to adverse weather conditions that had exacerbated the already precarious food security situation of this population. It was deemed useful to recall that these territories were highly dependent on imports and that only 4 percent of dry staple food - including cereals and pulses - consumed there was produced locally. It was estimated that rates of food insecurity had risen from 34 percent in 2006 to 38 percent in 2008. This had particularly severe impacts on children, who were the first victims of malnutrition, and whose physical and mental development was severely affected by such shortages. According to the information received, the ongoing blockade had had the effect of decreasing the humanitarian assistance provided by the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) to the 830,000 refugees in the Gaza Strip. It was also alleged that food reserves in UNRWA distribution centres in Gaza had been gradually depleting and were in need of essential supplies such as wheat, powdered milk and oil, in order to guarantee the food security of its beneficiaries. Reportedly, on both 17 and 24 November 2008, the UNRWA were also allowed to bring into Gaza eight trucks of humanitarian aid each day, after having been unable to do so since 5 November 2008. It appeared that the agency needed a minimum of 15 trucks per day to sustain normal humanitarian

operations in the territory. Reportedly, on 18 December 2008, UNRWA had suspended its emergency and regular food distribution programmes in the Gaza Strip until further notice. According to reports, the suspension had been due to the depletion of the agency's stocks of wheat flours which was a result of the ongoing crisis and limited border crossing access for humanitarian assistance. Furthermore, the reports received also indicated that the supply of industrial fuel, which had been donated by the European Union and was needed to power Gaza's power plant, had been blocked. Reports indicated that the Nahal Oz fuel pipeline, which was the only line to import fuel into the Gaza Strip, had remained closed since 5 November 2008 except on two days, 11 and 12 November 2008, in which it had been partially reopened in order to allow the inflow of approximately less than 230,000 litres to the Gaza power plant's industrial gas. Reports also indicated that on 24 November 2008, 440,000 litres of industrial gas had been pumped through to Gaza's power plant. According to these reports, between 1 and 17 November 2008, the Gaza power plant had received a total of 1,345,430 litres or (24 percent) of the 5,700,000 litres it should have received under normal circumstances over a period of 16 days. It was alleged that due to lack of fuel, Gaza's power plant had been forced to shut down completely on 9 and 10 November and since 13 November it had required rolling blackouts of up to eight hours per day in most areas of Gaza. The information received indicated that the Gaza Electricity Distribution Company had set a daily power cut schedule whereby each household in Gaza City and in the middle area of the Gaza Strip had no power for 16 hours per day, 8-12 hours/day in northern Gaza, 4-8 hours/day in Khan Younis and 2-4 hours/day in Rafah. In particular the blockade on fuel deliveries and the reduction of electricity supply had disrupted water and sewage services which were dependant on electricity to operate. The information received alleged that 15 percent of Gaza's population, around 225,000 people, had not been receiving an adequate amount of drinking water due to lack of fuel. There had also been a severe shortage of cooking gas in the Gaza Strip and more than 30 pita-bread bakeries out of the existing 47 were no longer operational. As a result, the bread rationing scheme remained allegedly in effect. It was also reported that the closure of bakeries had affected UNRWA's school feeding programmes that had been targeting around 200,000 school children. In addition it appeared that chicken farms had been particularly affected by the shortage of cooking oil which together with the lack of animal feed had led hatchery owners to destroy their animals, thus losing sources of livelihood to feed themselves and their families. Finally, it was also reported that access to quality health care was deteriorating due to closure of hospitals and lack of medicine supply. In addition, shortage of fuel and electricity materials reportedly had affected essential maintenance and rehabilitation of health infrastructure, and particularly hit maternal and neo natal units. It was also reported that even though the number of patients referred to treatments outside Gaza had increased, access to such care remains constrained. It was estimated that only 66 per cent of requests for medical permits had been approved from January-August 2008, compared with 80 per cent during the corresponding period in 2007.

Communication received

50. On 29 December 2008, the Government of Israel sent a reply regarding the above-mentioned communication expressing regret that the Special Rapporteurs did not pay any serious attention to the right of Israeli residents in the southern part of the country. The Government also stated that the allegations expressed in the communication did not correspond to the status of Gaza Strip after the Israeli withdrawal in 2005. It further stated that since its withdrawal and Hamas takeover, all responsibilities for the situation in that region lie with

Hamas. The Government finally informed the Special Rapporteur that the communication has been forwarded to Jerusalem for a response.

Observations

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

Myanmar

Follow-up communication

52. On 30 June 2009, the Special Rapporteur together with the Special Rapporteur on the situation of human rights in Myanmar sent a joint allegation letter to the Government of Myanmar following-up on the previous communications dated 17 July 2006 and 28 February 2008 and seeking to bring to the Government's attention the precarious food security situations in North Rakhine State, particularly among the Muslim communities. The Special Rapporteurs continued to receive information concerning violations of the right to food of people living in the two Maungdaw and Buthidaung townships – approximately 760,000 people in total – as a result of a number of factors. According to this information, the living conditions and humanitarian situation of the Muslim population of North Rakhine had been severely affected by constant restrictions and discrimination. For example, travel restrictions applying to them as a result of citizenship denial prevented individuals from trading and finding work in neighbouring villages or regions. Arbitrary and unpredictable taxes were also reported to make it impossible for many households to build food stocks, thus exacerbating food insecurity. According to the reports received, the economic system that prevailed in North Rakhine relies on the allocation of exclusive licenses to economic actors to whom any individuals wishing to carry out an activity in the concerned sector should first pay a tax. This appeared to operate as a disincentive for new opportunities for creating livelihoods and increasing access and availability of food. The reports received indicated that 68 per cent of the Muslim population of North Rakhine had no access to land while the national average for people without land is 40 per cent. This had allegedly resulted from a governmental decree adopted in April 1997 to prohibit Buddhist Rakhine owners from renting their land to the Muslim population. This landless population was particularly vulnerable to food insecurity as its sources of income were precarious and depend on individuals' abilities to find daily labouring jobs. According to the information received, land confiscation was a routine matter in North Rakhine, Muslim households being dispossessed to settle non-Muslim ones from other regions in the area. Information received also mentioned that the construction or extension of military camps had led to land confiscation. This reportedly happened without prior notice or compensation. Furthermore, the army appeared to be using land as a source of profit, re-letting confiscated lands and imposing rents and taxes on its produce. The information received further mentioned that forced labour continued to be imposed on the Muslim communities of North Rakhine, thus preventing individuals from accessing employment opportunities. The Special Rapporteurs also reminded the Government of elements contained in the last communications from the former Special Rapporteur on the right to food and on the situation of human rights in Myanmar. These included information referring to villagers being requisitioned with no prior warning to accomplish physically demanding and unpaid work such as rubber plantation, paddy cultivation in the military and NaSaKa (the security forces along the border with Bangladesh) fields, brick baking, construction of roads, bridges, model villages and

military facilities, the transportation of compulsory crop procurement beside sentry duty, daily camp maintenance and portering. Reports mentioned children as young as 12 years old being recruited and refusal to take part resulting in either a financial penalty, or in kind, including imprisonment. Reportedly, villagers who had the means to do so are given the opportunity to pay to be exempted. That resulted in those who could not afford to pay the required sum of money being requisitioned more often. Besides, the sums required for being exempted were reportedly equivalent to what a daily labourer earned in one day, thus perpetuating families' impoverishment while the poorest families were hit hardest. There had been reports indicating that forced labour had increased since November 2008, as villagers complained that they were recruited for forced labour 2 days and 1 night per week as opposed to 1 day and 1 night during the previous dry season. According to the information received, forced labour increased again in March 2009 in relation with Government's decision to launch a construction project aimed at erecting a fence along the border with Bangladesh, i.e. along the Naf River. In addition to new exactions of compulsory labour, this project reportedly involved the confiscation of boats from Muslim fishermen as well as the destruction of many shrimp farms along the river. According to the information received, the factors described above all contributed to a situation of chronic food insecurity for the Muslim population of North Rakhine. Reports received mentioned that only 13 per cent of households were able to meet their food needs for the entire year, while the levels of chronic and acute malnutrition remain high throughout the year, and not only during traditional food shortage periods. The level of acute malnutrition reportedly reached 26 per cent in spite of humanitarian assistance provided by various actors such as NGOs and international organizations.

Communication received

53. On 21 August 2009, the Government of Myanmar sent a reply regarding the above mentioned communication. The Government stated that the information brought to its attention was misleading the internal political affairs of Myanmar by disseminating unfounded and unsubstantiated allegations on the discrimination of religions in the country since religious intolerance or discrimination on grounds of religion was non-existent in the Union of Myanmar. The Government also stated that in Myanmar, there was no restriction against or discrimination with regard to food, trading and seeking jobs based on religion, race or gender. Neither travel restriction nor arbitrary taxation applied to the Muslim population of Northern Rakhine State based on races or religious grounds. The Government further informed the Special Rapporteurs that child labour did not exist in Myanmar. In this regard the Government drew to the attention of the Special Rapporteurs the agreement for a Supplementary Understanding reached between Myanmar and the International Labour Organization (ILO). This Agreement would allow any citizen to file complaints to the ILO Liaison Officer. These complaints would then be forwarded to the Working Group for Prevention against Forced Labour under the Ministry of Labour. The Government stated that no complaint had yet been received by this Working Group. The Government also stated that Rakhine State produced sufficient quantity of rice and food and that there was therefore no need for the authorities concerned to carry out specific programme aimed to assure food availability and accessibility for the population. Finally, the Government informed the Special Rapporteurs that there was no law enacted in 1997 prohibiting the lease of land owned by the Buddhist Rakhine to the Muslim population, that there was no land confiscation in Northern Rakhine State and that the allegations on food insecurity were not true.

Niger

Suivi

54. Le 22 janvier 2009, le Rapporteur spécial a envoyé une communication au gouvernement du Niger en faisant référence à sa communication du 28 août 2008. Dans cette communication le Rapporteur Spécial attirait l'attention du Gouvernement du Niger sur les informations qu'il avait reçues concernant l'impact préoccupant du conflit armé sur la situation alimentaire que connaîtrait la population civile et plus particulièrement la communauté Touarègue dans la région d'Agadez. Le Rapporteur spécial par sa communication du 22 janvier 2009 demandait au Gouvernement du Niger de lui transmettre ses réponses aux questions indiquées dans sa communication précédente ainsi que toute information complémentaire dont le Gouvernement du Niger aurait pu disposer.

Commentaires

55. Le Rapporteur spécial regrette qu'au moment de la finalisation de ce report, le Gouvernement n'ait pas encore répondu à ses communications du 28 août 2008 et du 22 janvier 2009.

Nigeria

Communication sent

56. On 4 September 2009, 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, the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, and the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment on human rights sent a joint allegation letter to the Government of Nigeria regarding the possible negative impacts that the petroleum industry in the Niger Delta may have had and would likely continue to have on the full enjoyment of economic, social and cultural rights by the affected communities. It was alleged that both governmental and private sector activities of the petroleum industry in the Niger Delta had had widespread negative impacts on the environment. Over 60 percent of the region's population were said to depend on their natural surroundings for their livelihood and many viewed their cultural identity as being closely related to the ecosystem of the delta. Hence, the affected communities were particularly vulnerable to potential environmental pollution that the petroleum industry can engender. Pollution attributed both directly and indirectly to the petroleum industry included damage to fisheries, farmlands and crops, pollution of water bodies and the release of gas, oil and other pollutants into the air. This pollution was allegedly the result of oil spills, waste dumping, dredging and other environmentally harmful activities by the petroleum industry. For example, information received suggested that an oil spill occurred at Bodo Creek on 28 August 2008 following a failure by the responsible multinational company to repair or replace an evidently aged and ruptured pipeline. The consequent release of crude oil into Bodo Creek, over many weeks, had allegedly resulted in irreparable damage to food species and significantly weakened the mangroves in the region. More specifically, according to information received, the people of the Niger Delta suffered from a range of preventable health problems. Many people continued to rely on natural waterways for

drinking water and also used these rivers and creeks for bathing and other domestic purposes. Community consultation reflected widespread concern about the health implications of contaminated waterways, yet systematic monitoring of water quality did not appear to take place. Companies supplied emergency water supplies to communities in the immediate aftermath of an oil spill. However, this supply were often delayed and only temporary, and reportedly did not reach affected communities beyond the immediate spill vicinity. Furthermore, according to information received, efforts by those actors at the source of the problem to clean up and remediate the land after an oil spill were often inadequate or even non-existent. Health problems reportedly experienced in relation to oil spills included skin rashes, breathing problems, nausea and headaches. Yet, corresponding medical data had hitherto not been collected. An additional health concern was posed by gas flares. These were said to create noise pollution, expose local communities to permanent light, produce black oil dust that settled on clothes, homes and food, and possibly result in acid rain. There were also concerns relating to the food safety and security of the population of the Niger Delta. Both soil and groundwater resources allegedly presented contents of heavy metals, such as lead, mercury, cadmium, manganese and nickel that are above the normal level. Heavy metals build up inside living organisms, and exposure to large amounts of these metals may lead to severe long-term effects, including cancer and damage to the nervous, digestive, reproductive, and respiratory systems. Therefore, they posed a significant health risk. Despite complaints by local residents of unpleasant odours and taste in fish, indicating contamination of this food source, no action appeared to have been taken by the oil industry to address the matter. Allegations of ecosystem changes following oil spills, such as a reported reduction in the shellfish population of the region, also did not appear to have been followed up on. The long term effects of a petroleum polluted environment included a reduction in the agricultural potential of farmland and fisheries. This was of particular concern in the Niger Delta as the population of this region is highly dependent upon the environment as a source of food and income. In addition, according to the information received, the current planning and operating methods of actors involved in the Niger Delta oil industry were of concern as they failed to sufficiently take into consideration the needs and desires of local communities. Petroleum-related infrastructure included the laying of pipes, construction of roads and the carrying out of seismic surveys. Current governmental licences and leases allegedly permitted companies to complete such projects without consulting affected communities and without conducting extensive environmental impact assessments. Road construction without adequate bridges and drains, as had allegedly been the case for the Gbarain link built for SPDC in 1990, had reportedly resulted in deforestation. Where the natural flow of water was altered, damage to local fisheries was often also reported. In this process, communities were apparently not consulted. Furthermore, in most cases, the compensation to which they were entitled under both Nigerian and international law was said to either not be paid or to be insufficient. For instance, an oil spill in the village of Kira Tai in Ogoniland on 12 May 2007 had been attributed to a corroded section of pipeline and destroyed both crops and fish. A year after the incident, the affected community was reportedly still waiting for compensation, as well as adequate clean up measures.

57. After recalling international human rights law pertaining to the right to food, the Special Rapporteur quoted the Committee on Economic, Social and Cultural Rights, according to which "while only States are parties to the Covenant and are thus ultimately accountable for compliance with it, all members of society - individuals, families, local communities, non-governmental organizations, civil society organizations, as well as the private business sector - have

responsibilities in the realization of the right to adequate food. The State should provide an environment that facilitates implementation of these responsibilities. The private business sector – national and transnational - should pursue its activities within the framework of a code of conduct conducive to respect of the right to adequate food, agreed upon jointly with the Government and civil society.” In this respect the Special Rapporteur added that he will communicate this information to major multinational oil companies active in the Niger Delta. The abovementioned communication is included in this report in the “Other Actors” section.

Observations

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

Philippines

Communication sent

59. On 17 June 2009, the Special Rapporteur sent an allegation letter to the Government of Philippines concerning information received about threats to the right to food of the communities living along the Tañon Strait in Central Philippines, due to off-shore oil and gas exploration activities in the area. Tañon Strait was a declared protected seascape by virtue of the 1998 Presidential Proclamation No. 1234, for its rich diversity of cetaceans and other marine species. Reportedly, it had very rich fishing grounds and fishing is the primary source of livelihood of its inhabitants. According to the information received, there were a total of 26,850 fishermen operating in the area. A large number of coastal communities in the provinces of Cebu, Negros Occidental and Negros Oriental reportedly depended on fishing for access to food or means of its procurement. The Department of Energy had reportedly been contracting various foreign oil and gas exploration companies over the past few years, including the Japan Petroleum Exploration Co. Ltd. (JAPEX), the Australia-based NorAsia Energy Ltd, and Kuwait Foreign Petroleum Exploration Co. The Department of Energy had awarded a seven-year exploration contract to the JAPEX to explore for oil in the country. As a seismic study conducted in May 2005 had revealed that large amounts of oil – up to 1 billion barrels – and natural gas might lie beneath the seabed of the Tañon Strait, JAPEX had started to conduct drilling operations in the area in November 2007. The allegations received claimed that in October 2007, an international fact-finding mission composed of representatives from civil society had come to the conclusion that offshore oil and gas exploration and production were not compatible with the present uses, especially fishing, of the directly affected coastal area. According to these allegations local communities had not been consulted prior to exploration drilling. Fishermen had reportedly been banned from fishing in the 2.73 square zones while exploration activities were ongoing ignoring their right to access municipal waters. This had reportedly happened without receiving any prior information. According to the reports received, JAPEX and the Department of Energy had only recently started to conduct “information drives” in affected cities and municipalities, but these meetings seemed to have been attended by very few people as a result of lack of sufficient information provided and dialogue between the relevant authorities and local communities. In addition, the information received stated that seismic surveys as well as drilling had resulted in a reduction in fishing yields, due both to fish being killed as well as fish fleeing traditional fishing areas, due to activities that involved the firing of explosive charges in the sea. As a result, fish catch had reportedly declined by 50 to 70 percent; fishermen were able to catch only two to three kilos a

day whereas they had used to produce between 10 and 15 kilos a day before the oil exploration started. The drastic reduction of fishing yields was attributed to the destruction of artificial reefs (called “payao”) which had been built and used by local fishermen to increase fish catch. 136 payao were reported to have been destroyed by the exploration vessel during the seismic survey, thus affecting local communities’ livelihood. Reportedly, some of the payao owners had been paid compensation – P4,000 to P5,000 per destroyed payao – but some others had not. Furthermore, it appeared that fisherfolk had not received any compensation for being prohibited from fishing during the seismic survey. The information received indicates that some of the affected people had shifted to other activities, working as cab drivers or construction workers, while the majority of fishermen had reportedly opted to move to other fishing grounds. This entailed either additional expenses to reach distant areas or smaller fishing yields in coastal zones where resource-use competition had reportedly been increasing. In both cases, this may lead to a loss of economic opportunities and food resources for the fisher folk and their families. Local communities reportedly suffered from the lack of sufficient and adequate food in all affected provinces, as fishing is the main food resource for these populations. In addition, some children had reportedly stopped schooling and women had been forced to search for domestic work in order to offset economic loss. According to information received, fishermen organizations as well as environmentalist groups and lawyers had seized the Philippines’ Supreme Court against JAPEX, the Department of Energy and other governmental agencies and called for immediate cessation of offshore activities and cancellation of the concerned service contracts. At the time of submission of this communication the case was still pending before the Supreme Court. It was reported that despite this social mobilization the authorities and JAPEX had proceeded in executing their contract, while the police and the army had allegedly intervened in some instances to prevent local leaders from demonstrating against oil exploring activities. Hence for example, it was reported that in November 2008 local fisherfolk organizations from the municipality of Argao and Sibonga had heard that President Gloria Arroyo would visit the area. In an attempt to manifest their opinion on the exploration activities, they had reportedly deployed banners where the President would pass by. The police had allegedly confiscated these banners and several local residents – who were called “subversive” – were allegedly subjected to interrogation by the army. The information received also indicated that soldiers from the 78th Infantry Battalion had used different techniques to threaten fisherfolk leaders, such as visiting their houses and compelling some of them to sign up for military-type training called Barangay Defense System, as a way to prevent them from campaigning against oil and gas exploration projects.

Observations

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

Sri Lanka

Communication sent

61. On 31 December 2008, the Special Rapporteur sent an allegation letter to the Government of Sri Lanka regarding the restrictions that had been imposed on humanitarian aid, including food aid, in the Vanni region. According to this information, such restrictions had contributed to worsen the food security situation of those people displaced since April 2006, as well as of the

population residing in the area prior to that date. On 16 September 2008, international non-governmental organizations (INGOs) including UN agencies had been ordered to leave the Vanni region following a directive requiring staff to be relocated outside the LTTE-controlled areas due to security concerns. According to the information received this directive had had the effect of decreasing the humanitarian assistance provided to the region. As a result, the food security situation of the affected population had worsened. According to the reports received, since the UN agencies had been forced to withdraw temporarily from the Vanni region, seven UN convoys of humanitarian assistance including foodstuff had been dispatched to this region. Reportedly, food shortages continued to affect the displaced as well as the local population. In particular it appeared that the approval and transportation of food to the Vanni region through the Omanthai checkpoint, the crossing point between government-controlled territory and that held by the LTTE, continued to be problematic as, for example, convoys were systematically controlled at the check point causing delays in distribution. In addition, it was alleged that there were instances where the size of those convoys crossing the Omanthai checkpoint had been reduced. The Special Rapporteur had also been informed that at the time of submission of this communication there had not been a comprehensive needs assessment in the region which rendered it difficult improving the quality of the assistance provided. The reports received also indicated that the prolonged displacement resulted in farmers having to abandon their crops. Reportedly, 60 percent of agricultural production had been affected in the Vanni area. This was likely to affect the next harvest and the quantities of food available in the region next year thus depriving those families whose livelihoods depend on small-scale agriculture of their usual means of procuring food. It was further alleged that continued fighting affected infrastructure, such as bridges and roads, which is essential for the prompt and safe passage and delivery of humanitarian assistance. The Government had taken measures to repair some of this infrastructure. Yet, this destruction of infrastructure, coupled with the heavy rains of the monsoon period, had resulted in humanitarian agencies finding it increasingly difficult to move material, including food.

62. In addition to relevant provisions of international human rights law, the Special Rapporteur referred to international humanitarian law. Pursuant to the rules of customary law applicable in both international and non-international armed conflict identified by the International Committee of the Red Cross. Rules 54, 55 and 56, which are a corollary to the prohibition of starvation of civilians as a method of warfare, state that attacking, destroying, removing objects indispensable to the survival of the civilian population (Rule 54) and denying access of humanitarian aid intended for civilians in need, including deliberately impeding humanitarian aid (Rule 55) or restricting the freedom of movement of humanitarian relief personnel (Rule 56) may constitute violations of the prohibition of starvation.

Communication received

63. On 6 January 2009, the Government of Sri Lanka sent a reply regarding the above-mentioned communication. The Government denied the allegations of food shortages in the Vanni region. The letter mentioned that the Government of Sri Lanka, as well as the International Committee of the Red Cross (ICRC), had sent many convoys of humanitarian assistance to the affected region. In addition, the Commissioner General of Essential Services almost on a daily basis ensured the provision of supplies for sale through the Cooperative System and therefore food supplies were available and affordable in the Vanni region. The Government acknowledged that the movements through the checkpoints were problematic but maintained that

such measures were necessary as the primary responsibility of the Government was to provide physical security to the people. The Government also undertook to ensure that the displaced persons would return rapidly and that the disruption of their livelihoods would not lead to deprivation. The Government also informed the Special Rapporteur that despite the fact that fighting affected infrastructure such as bridges and roads the Government had succeeded in fulfilling basic needs of the populations in the Vanni region. Finally, the Government highlighted its achievements with regard to economic, social and cultural rights, and denied any violations of international humanitarian law with regards to the prohibition of starvation.

Follow-up communication

64. On 29 April 2009, the Special Rapporteur together with the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent a joint urgent appeal to the Government of Sri Lanka. The Special Rapporteur thanked the Government for the response letter of 6 January 2009 and expressed his interest in receiving responses to the detailed questions contained in his communication of 31 December 2008. The Special Procedures brought to the attention of the Government information which they had continued to receive concerning the persisting serious humanitarian situation, including access to food, water and health care of internally displaced persons (IDPs) in the Vanni region. According to the information received IDPs in Vavuniya had been unable to have regular access to sufficient and adequate food as the food distribution system had been subject to delays and unclear procedures. It had been reported that IDPs may receive food ration cards but only after having registered. The registration process had reportedly been very long. In some places it appeared that there were no registration mechanisms in place yet. Reportedly, there had been instances of people fighting over access to food which, in one case, had resulted in the death of a 7 year old. It had also been reported that paramilitary and other groups had been providing for unorganized and ad-hoc distributions of small amounts of food which, since they could not satisfy needs, had contributed to fuel a tense and frustrating situation within IDP camps and sites. Reports indicated that in at some of the sites, including the screening site of Omanthai, IDPs had not received any food for three consecutive days. It appeared that due to the critical situation in the food sector, the Government had committed to resume providing cooked food for the first three days of new arrivals at the camps. At the time of the preparation of this communication it remained to be seen whether the Government had the capacity to implement this measure. It was also reported that the health situation in the Vanni region had further deteriorated. Due to malnutrition and dehydration, the population was becoming weaker and more vulnerable to infectious diseases. Chicken pox and watery diarrhoea epidemics has already been reported as well as a case of typhoid fever. Treatments for diabetes, hypertension, cancer, different psychiatric conditions and other chronic diseases were still unavailable. It had also been alleged that even though some transit sites got ambulances to visit every day, the majority was without a full time doctor and some reported no doctors visit at all for a few days. It was also reported that there was no data concerning the number of deaths, but it appeared that the majority was that of infants below the age of two and the elderly. In addition, referrals to hospitals remained problematic since the Ministry of Health had not developed a contingency plan. Consequently, the likelihood of preventable deaths during new arrival influxes was very high. The situation in hospitals receiving IDPs was reported to be increasingly difficult, as they were extremely under-staffed and severely overcrowded. In Vavuniya there was an estimated 1500 to 1800 patients with a bed capacity of 600. A similar situation was reported in

Chettikulam hospital which was currently treating more than 520 patients with a bed capacity of 140. IDPs who had received life saving surgery were reportedly dying due to a lack of post-operative capacity to care for the patients. It was alleged that there was an urgent need for professional mental health support as significant numbers of IDPs were reportedly suffering from mental trauma as a result of their experience during the conflict. In addition, it was alleged that since 1 April hardly any shipment of food, medical supplies or non-food relief items had been delivered to the no fire zone. It was further alleged that for the previous 6 months, shipment of essential medicine and medical supplies for the people in the no fire zone had consistently met with delays in clearance from the Ministry of Defence which was consequently hindering access to life-saving supplies. Chronic water shortages as well as limited access to scant water supplies had been reported at Omanthai as well as in most of the transit sites. It was also alleged that the quality of drinking water was not satisfactory and that chlorine tablets to treat water supplies in the no fire zone had consistently not been cleared by the Ministry of Defence. In the transit sites and IDP camps, there were reports of insufficient toilet facilities and inadequate drainage system in place to manage the situation, particularly with heavy rains. It was also reported that sanitation facilities and water supplies were located far away from the blocks at Menik Farm zone 3 creating access problems particularly for the elderly and the disabled, and security concerns for women and children. Furthermore, the lack of adequate access to sanitation was reportedly leading to increased open defecation, which could cause serious health problems for the entire IDP population.

Communication received

65. On 11 May 2009, the Government of Sri Lanka sent a reply regarding the Follow Up communication mentioned above. Concerning the availability of food the Government informed the Special Rapporteur that despite the temporal problems during the sudden influx of people fleeing from the LTTE-controlled areas, food availability wasn't a problem any more. The Government also regretted the bad quality of rice provided by the World Food Program. The Government also informed the Special Rapporteur that it has started communal cooking in most centers. The Government also stated that the people fleeing from the LTTE-controlled areas have suffered from malnutrition there. The Government explained that despite it was sending food to the LTTE-controlled areas on regular basis it rarely reached the populations. The Government further denied the allegation that in one of the IDPs camps a child would have been killed by another child while fighting over the food. According to the Government, the child died because of stampede. The Government also denied the allegations that in the IDPs' camps the populations would suffer from epidemics, although it admitted that the health situation is problematic due to a big number of people living in the camps. Additionally the Government included some statistics indicating the amount of supplies provided for the people from the LTTE-controlled zones. Finally the Government informed the Special Rapporteur that it requested more detailed information to a number of Ministries in Sri Lanka.

Sudan

Communication sent

66. On 24 March 2009, the Special Rapporteur together with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, the Independent Expert on the issue of human rights

obligations related to access to safe drinking water and sanitation, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the right to education, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on violence against women, its causes and consequences sent a joint urgent appeal to the Government of Sudan regarding the revocation of licenses of 16 non-governmental organisations working in the region of Darfur, in Northern Sudan and in the Transitional Areas as such a decision would have devastating consequences on the human rights of approximately 4.7 million people affected by the conflict, particularly in the sectors of food, health, water, sanitation, adequate housing and education. Of this population approximately 2.7 million were internally displaced persons living in camps across the country. According to the information received on 5 March 2009, following the issuance of an arrest warrant against President Omar al-Bashir by the International Criminal Court, it had been announced that the operations relating to humanitarian assistance and human rights work of these organisations were suspended. These organisations included 13 international non-governmental organisations, namely Action contre la Faim, Solidarités, Save the Children UK and Save the Children US, Médecins sans Frontières Holland and Médecins sans Frontières France, Care International, Oxfam GB, Mercy Corps, International Rescue Committee (IRC), Norwegian Refugee Council, Cooperative Housing Foundation and PADCO. In addition, the activities of three national organisations were also terminated, namely the Sudan Social Development Organization (SUDO), the Amel Centre for Treatment and Rehabilitation of Victims of Violence, and the Khartoum Centre for Human Rights. These 16 organisations had been employing nearly 6,500 national and international personnel, this constituting close to half of the workforce in Darfur. Eviction orders had reportedly been appealed (according to Sudanese law) by relief and humanitarian NGOs, while the closing down of local NGOs could not be appealed according to the Humanitarian Act of 2006. Incidents of threats against NGO personnel had been reported as well as systematic confiscation and seizure of property, including passports, computers, cars and confidential items, reportedly on the basis of an agreement signed by NGO personnel with the Humanitarian Aid Commission (HAC) stipulating that they had to hand their assets over to the State if they leave. The impact would not only be limited to Darfur, but also the Three Transitional Areas and Eastern Sudan. According to estimates, 1.5 million beneficiaries no longer had access to health and nutrition services. Host and IDP populations were particularly affected. Water supply, sanitation and hygiene services provided by these NGOs to 1.16 million people had been interrupted (Blue Nile – 102,000; Eastern States – 50,000; and Darfur – 1,007,000). Some 1.1 million people had stopped receiving general food distribution and the treatment of some 4,000 children for severe and moderate malnutrition over the next three months could be interrupted. In the Non-Food Item (NFI) and Emergency Shelter (ES) sector, 670,000 individuals were to be affected. Distributions of Non-Food Relief Items (which include cooking equipment and other basic household goods) and emergency shelter had ceased in 19 camps and locations in Darfur. The longer term humanitarian consequences, such as depletion and shortages of food stocks and other assets and the upcoming rainy season, would reportedly have a serious impact on the ability of the communities concerned to have access to sufficient and adequate food. On 8 March 2009, the decision to terminate the activities of the abovementioned organisations had started to show its effects. In some IDP camps in the Zalingei area, for example, the fuel for operation of the water pumps had begun to run low without an alternative option in place for its re-supply. Garbage had also started piling up inside these camps. Absence of water and a waste disposal system would have serious consequences on

people's health and nutrition. Disturbing reports of censorship, temporary newspaper suspensions, threats and arbitrary arrests and detentions to prevent human rights defenders, journalists and members of opposition parties from freely expressing their opinions, had been reported. Privately-owned print media reportedly continued to be subjected to daily censorship by officials of the National Intelligence and Security Service (NISS) who could order the removal of any article from the following day's paper. In response to the censorship there had been a number of protests by journalists.

Observations

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

Uganda

Communication sent

68. On 11 May 2009, the Special Rapporteur together with the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people sent a joint allegations letter to the Government of Uganda regarding the received information on the living conditions of the Benet community living in the Kapchorwa District of Eastern Uganda, on the edges of the Mount Elgon National Park. The Benet community, who had been living in the area that has been now formally referred to as the Mount Elgon National Park since the mid-1800s, 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 had declared the area inhabited by the Benet people as a forest reserve, though the Benet had continued to remain in those lands. In the 1980s, the Benet community had been resettled to an area just outside the formal forest reserve. The Benet people were supposed to be resettled in an area of 6000 hectares; however, it had been reported that the Government had not surveyed the land at that time, and the Benet in fact received 7500 hectares, referred to as the Benet Resettlement Area. According to the information received, the Government had surveyed the Benet Resettlement Area in 1993. Following this, it had 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 had reportedly carried out measures to attempt to evict families of the Benet community living in the area. 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 Authority (UWA) and the Attorney General (respondents) had agreed that the "members of the Benet community residing in the Benet Subcounty, 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), were "indigenous inhabitants of the said areas which were declared a Wildlife Protected area or National Park". It had also been agreed that the areas mentioned 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 had held that the Benet community was entitled to stay within the area undisturbed and carry out agricultural activities. Despite this judgment, since 2005, Kapchorwa District authorities and the UWA had allegedly continued to attempt to remove the Benet communities from their lands. According to the information received, in response, the Uganda Human Rights Commission had appealed to the Attorney General on 25 April 2009 to implement the Consent Judgment. In February 2008, the UWA reportedly 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. It was alleged that the temporary resettlement areas were wholly inadequate for the Benet to sustain traditional agricultural practices and to maintain their traditional livelihoods. In the Kisito settlement, the Benet were 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 did not allow the Benet to cultivate any crops on the land. Further, the displaced communities were prohibited, by both the UWA and the private land owner, from setting up permanent housing units in the areas. Moreover, the allegations claimed that the UWA had 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 judgement mentioned above, which affirmed the right of the Benet to live just outside of the National Park in their traditional lands, undisturbed. There were also reports that Benet individuals were regularly threatened by UWA and sometimes evicted from their temporary dwellings. Reportedly, this constant insecurity had resulted in the Benet community being unable to conduct any agricultural or pastoral activity and therefore to have access to sufficient and adequate food. The reported case where two children in Kabsekek village (Bukwo district) died of hunger and ill health in March 2009 allegedly demonstrated the Benet community's constraints in accessing food and health care services. Finally, it was alleged that the UWA and the Ugandan Police frequently arrested community members, especially those actively involved in advocacy against forceful evictions and displacement. There were also allegations that community members have been subjected to beatings by UWA officials whilst in search of food or firewood in territory considered part of the National Park.

Observations

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

Zimbabwe

Communication sent

70. On 17 December 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, the Special Rapporteur on the situation of human rights defenders and the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation sent an urgent appeal to the Government of Zimbabwe concerning the alleged violations of the right to the highest attainable standard of health in Zimbabwe, due to the closing

of public hospitals and medical schools despite the spread of a cholera epidemic throughout the country, the right to food and nutrition, as well as violations of the right to freedom of peaceful assembly. It was alleged that the cholera epidemic had spreading throughout the state resulting in a daily increase in death tolls. The spread of cholera had been exacerbated by the breakdown of water and sanitation systems. The reports indicated that there had been a lack of access to clean water and that fresh water was no longer being pumped into urban areas. It was also alleged that sewage systems had been blocked or pipes had burst, and uncollected garbage had been overflowing into the streets. Furthermore, it was reported that essential medicines were unavailable to treat the acute epidemics. Anti-retroviral therapy for HIV/AIDS patients and TB treatment for chronically ill patients had also reportedly been severely disrupted. According to the information received, due to a lack of medicine, equipment, services, and health staff, public hospitals and clinics had been closed, resulting in the preventable deaths of individuals. It was alleged that the only maternity hospital in the capital had been closed and patients with fractures, meningitis and other acute and dangerous conditions had been sent home. This reported decrease in access to basic health care has meant that, despite the spread of the cholera epidemic, many individuals could not afford health care because of the high cost of private clinics. It was further alleged that there had been a violent police crack-down on peaceful demonstrations relating to the right to health and that medical schools had been closed. Reportedly, riot police had forcefully dispersed hundreds of doctors, nurses and other health workers who had gathered peacefully at Parirenyatwa Hospital in Harare, to protest working conditions. It had been also alleged that more than five million people were in need of food aid and that 45 per cent of the population was malnourished. Children had been particularly affected by increasing levels of malnourishment. Hungry people had also allegedly resorted to eating animals and vegetables that were unsuitable for human consumption and that were risky for their health. In addition, it had been reported that drinking unsafe water had rendered already malnourished people more vulnerable to diseases.

Communication received

71. On 13 March 2009, the Government of Zimbabwe sent a reply concerning the above mentioned urgent appeal. The Government of Zimbabwe maintained that the health staff at Parirenyatwa Hospital had sought to demonstrate or hold a public procession in contravention of section 25 of the Public Order and Security Act Chap11:17 which prescribed the manner in which a public demonstration could be conducted. The Government pointed out that the poor conditions at hospitals and non-availability of medicines, against which the demonstration in question had been held, were result of economic sanctions imposed on Zimbabwe. The Government informed the Special Procedures that the police had engaged the demonstrators' leadership and had advised them that they were breaching the law. The police had advised the demonstrators to select two representatives who could take their petition of grievances to the Minister of Health. The demonstrators had refused the proposal, started chanting and proceeded to cut the security fence to create an exit route where the police had stopped them. The demonstrators had eventually dispersed on their own accord. No person had been reported injured during or after the demonstration. The police did not arrest anyone.

III. SUMMARY OF COMMUNICATIONS SENT TO OTHER ACTORS AND REPLIES RECEIVED

ITM Angola

Follow-up communication

72. On 17 October 2008, the Special Rapporteur sent an allegation letter to ITM Angola, regarding the information received about the activities of ITM-Mining in the Republic of Angola which reportedly involved the confiscation of farmland by Sociedade Mineira do Cuango (in which ITM owns half the shares) in order to carry out diamond mining activities in Cafunfo village in Cuango municipality of Lunda Norte province. On 23 January 2009, the Special Rapporteur sent ITM Angola a follow-up letter reminding to provide him with the information requested in the above-mentioned communication.

Communications received

73. On 9 February 2009, ITM Mining Limited sent a reply to the Special Rapporteur, explaining that it took note of the allegations made but that the company was not a principal shareholder of the Sociedade Mineira do Cuango, in contrary to what the allegations letter indicated. As all other shareholder, ITM was not in charge of the governing of the mining society, which has its own managing council. ITM invited the Special Rapporteur to refer his concerns to the said managing council and to the Sociedade Mineira do Calonda.

Newmont Ghana Gold Limited

Communication sent

74. On 1 July 2009, the Special Rapporteur together with the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent an allegations letter to the Newmont Ghana Gold Limited (NGGL) concerning the reports indicating potential negative impacts that the establishment by NGGL of an open pit gold mine in Akyem, more precisely within the Ajenua-Bepo Forest Reserve in the Birim North District of Ghana's Eastern Region may have on the enjoyment of economic, social and cultural rights of the affected communities.

75. The Special Rapporteurs shared the concerns that they had had raised with the Government of Ghana, which is included in the "Governments" section of this report, and drew the company's attention to the relevant provisions of international human rights law. In addition to comments on the accuracy of the allegations, the Special Rapporteurs informed NGGL about the relevant provisions of international human rights law and requested further information on whether any study on social, environmental and health impact of the open mine project had been realized by NGGL and the conclusions of the studies; on the measures taken by NGGL to ensure that the open mine project does not have disproportionate negative impacts on the environment and on

the livelihoods of neighboring communities; on the measures been taken by NGGL to ensure that water resources would be protected from risks of leakages, and to ensure that mining wastes would be disposed of appropriately; if the concerned communities had been allowed to participate from the inception of the plans to construct the mine; if the land subject to expropriation had been duly evaluated; if any ongoing consultation was undertaken with the persons threatened with eviction; on the measures foreseen by NGGL in terms of compensation for the persons threatened with eviction; and on the measures taken by NGGL to ensure that the right to health of neighboring communities was respected.

Communication received

76. On 8 September 2009, the Special Rapporteur received a reply from Newmont Mining Corporation (NMC). The company stressed its commitment to implement the best possible practices in the areas of social and environmental management and impact mitigation at the Akyem project. Accordingly, Newmont's Akyem project had been studied extensively by international and national environmental experts, members of the communities living in the area, and by agencies and departments of Ghana government, as well as the International Finance Corporation. In addition, Newmont project leaders had engaged with numerous community representatives, government agencies, nongovernmental organizations and international organizations on many occasions. NMC indicated that at three public hearings conducted by Ghana's Environmental Protection Agency (EPA), the Akyem communities had demonstrated overwhelming support for the project. More than 150 Ghanaian community leaders had since issued their own statements in support of the Akyem project. Moreover, the results of the discussions with the local communities had been presented in an environmental impact study that recently reviewed by the Environmental Protection Agency. The latter had granted Newmont an environmental permit to operate at Akyem. Finally, the letter informed that additional enquiry had been made with the Senior Regional Vice President for Africa at the NMC.

Addax Petroleum Development; Chevron Nigeria Limited; Conoco Phillips; Hardy Oil Nigeria Limited; Mobil Producing Nigeria; Nexen Petroleum Nigeria Offshore; Philips Oil Co. (Nigeria) Limited; Shell Petroleum Development Company of Nigeria Limited; Statoil Hydro, Statoil Nigeria Ltd.; Texaco (Nigeria) Plc; Total E&P Nigeria Limited

Communication sent

77. On 9 October 2009, 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, Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation and the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights sent an allegation letter to the Addax Petroleum Development, Chevron Nigeria Limited, Conoco Phillips, Hardy Oil Nigeria Limited, Mobil Producing Nigeria, Nexen Petroleum Nigeria Offshore, Philips Oil Co. (Nigeria) Limited, Shell Petroleum Development Company of Nigeria Limited, StatoilHydro, Statoil Nigeria Ltd., Texaco (Nigeria) Plc, and Total E&P Nigeria Limited concerning possible negative impacts that the petroleum industry in the Niger Delta may have had and will likely continue to have on the full enjoyment of economic, social and cultural rights by the affected communities.

The Special Rapporteurs shared the concerns that they had had raised with the Government of Nigeria, which is included in the “Governments” section of this report, and drew the company's attention to the relevant provisions of international human rights law. They mentioned in particular Article 25 of the Universal Declaration of Human Rights, which recognizes that “everyone has the right of living adequate for the health and the well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services”. The Universal Declaration of Human Rights proclaims that every organ of society shall strive to promote respect for human rights and fundamental freedoms and to secure their universal and effective recognition and observance. Moreover, in resolution 8/7 (2008), the Human Rights Council affirmed that “transnational corporations and other business enterprises have a responsibility to respect human rights and assist in channelling the benefits of business towards contributing the enjoyment of human rights and fundamental freedoms”. The Human Rights Council has also welcomed the policy framework for managing corporate related human rights issues presented by the Special Representative of the Secretary General of the United Nations on human rights and transnational corporate bodies and other business enterprises. The framework identifies differentiated, but complimentary responsibilities of governments and companies with regard to human rights. The framework confirms the State duty to protect against corporate-related human rights abuses but also confirms that the “baseline responsibility is to respect human rights”. This responsibility, which applies to all internationally recognized human rights, exists independently of State duties and requires companies to exercise due diligence to become aware, prevent, address and mitigate negative human rights impacts. The due diligence required from the companies entails a responsibility to undertake human rights impact assessment, either in conjunction with or separately, based on recognized international human rights law.

Communications received

Chevron Nigeria Limited

78. On 4 December 2009, the Special Rapporteur received a reply from Chevron Nigeria Limited (CNL) in which the company acknowledged that the companies can play a positive role in contributing to the protection and promotion of human rights. To this end CNL worked actively to conduct its operations in a manner consistent with human rights principles applicable to business. This included recognizing and respecting the relevant ideals expressed in the Universal Declaration of Human Rights. In addition, CNL condemned human rights abuses. In the meantime CNL pointed out that it was not in a position to comment on the incident concerning release of the crude oil into Bodo creek, as well as in the village of Kira Tai IN Ogoniland, as these incidents had not occurred in the CNL's area of operations and were not directly linked to company's production activities. CNL further informed the Special Rapporteurs on the actions which the company was taking when oil spills occurred, as well as on the relevant regulations contained within Nigerian law. CNL described the process for Environmental, Social and Health Impact Assessments which it observed in its daily practices. The objective of this process was to identify, assess and mitigate potential operational impacts on the environment and local communities in a formal and structured manner. In addition, CNL commented on its community engagement programs which are an integral part of company's commitment to human rights and which focus on improving access to basic needs supporting education and health care and promoting infrastructure developments and economic livelihoods. As an example of such community engagement it mentioned a community hospital that CNL had

built in the Escravos area in order to provide comprehensive health care to the area. Finally, CNL indicated that since 2005 its approach towards community engagement has been based on the Global Memorandum of Understanding signed with communities and governments in 5 states where the company was operating in the Niger Delta.

Nigerian Agip Oil Company Limited

79. On 30 November 2009, the Special Rapporteur received a reply from the Nigerian Agip Oil Company Limited. The company informed the Special Rapporteur that the contents of the allegation letter were currently being reviewed and provided him with its assurances to submit a detailed response soon.

Shell Petroleum Development Company of Nigeria Limited

80. On 6 December 2009, the Special Rapporteur received a reply letter from Shell Petroleum Development Company of Nigeria Limited (SPDC) in which the company recognized its commitment to the principle of sustainable development and determination to always look to improve SPDC's performance in order to reduce environmental impact and footprint as far as possible and to maximize its social contribution. SPDC's operations in Niger Delta were heavily dependent on maintaining good relations with communities. The company found inaccurate the allegation that the petroleum industry, in particular SPDC was responsible for most oil spills, arguing that 85 per cent were the result of criminal activities. It said that SPDC was providing relief materials and carrying out clean up operations whenever spills occurred, and that both government and community representatives monitored these operations. As regards health concerns, SPDC then referred to a 1995 World Bank report that considered oil related pollution a low priority concern, and to an undated WHO report which considered poverty as the main cause of poor health. Waste disposal was said to be carried out by licensed service providers in accordance with regulatory guidelines. As for water discharges, SPDC was committed to gear its operations towards complying to the limits set by the Directorate of Petroleum Resources. As for heavy metals in soils and groundwater, SPDC carried out environmental evaluation reviews for its facilities in old "brown" fields. About impact assessment and community consultations, SPDC replied that for all new projects it conducted environmental social and health impact assessment in line with guidelines of the department of petroleum resources and the federal ministry of environmental. The impact assessment documents were public documents available to all stakeholders in the process, and they were available at local and federal government offices for consultation. SPDC felt that the impact assessment process ensured fair community participation and fair compensation – SPDC compensation rates were negotiated with communities. After oil spills, SPDC complied with all measures required by law, including compensation, relief and clean up operations. Studies on long term impact had been carried out by UNICAL Consult, World Bank and WHO. For its part, SPDC strongly supported a study undertaken by the World Bank in collaboration with the government on gas flaring, as well as a UNEP-led environmental study on spills in Ogoniland. Finally, SPDC indicated its support to the voluntary guidelines on security and human rights, and to the principle of development, which extended in its case to health, education and microcredit, conflict resolution, and to infrastructure development such as water provision and electrification. SPEAC worked alongside with NGOs, UNDP and the World Bank. It also contributed to development commitments through the taxes paid to the federal government.

Total E&P Nigeria Limited

81. On 9 December 2009, the Special Rapporteur received a reply from Total E&P Nigeria Limited (TEPNG) in which the company acknowledged that it was not in a position to provide a response or to comment on the specific allegations contained within the communication received from the Special Rapporteur since the alleged incidents are not related to the TOTAL Group operated activities in Nigeria, but that it wished to clarify its position with regards to the allegations of a general nature. Total and its subsidiaries in Nigeria were responsible operators with stringent environmental and community social responsibility guidelines which place highest importance on the respect for the environment, as well as social and economical development of the local communities. Moreover, spills of a technical nature only amounted to 16% of the incidents, while all others were the result of acts of sabotage. TEPNG's refuted the allegation that operations induced water discharges, it also denied that its operation may induce the presence of heavy metal in soils and groundwater. With regard to emergency water supplies in case of oil spills, this was not a case it had encountered as none of the spills it had suffered reached the extent to which it would be needed. In case of oil spills, TEPNG followed federal guidelines, by informing the department of petroleum resources, negotiating access to affected areas with communities, organising joint inspection visits, negotiating compensations except in cases of sabotage, carrying out repair works, and doing final inspections after the works were completed. Total was also fully committed to the economic development of communities, and it entered in consultation with them for its operation, notable by signing memorandums of understandings. For all its new projects, it carried out environmental impact assessment as required by the regulations of the oil and gas industry. Total was committed to follow the requirements of these impact assessment processes, including regarding community participation. Finally, TEPNG noted that Total was conscious of its obligations as a good corporate citizen to its environment, its host communities and its host countries, It was also committed to carrying out sustainable development projects in such areas as health, infrastructure, education and capacity building of members and community groups. As it was committed to improving its actions, Total had made efforts to get an independent third party review on the way it implemented corporate social responsibility programmes, of the types of relationships maintained with communities and of necessary improvements.
