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

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

**Addendum**

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

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

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## I. INTRODUCTION

1. In the context of his mandate, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, receives a large number of communications alleging violations of the right to adequate housing and related rights worldwide. Such communications are received from national, regional and international non-governmental organizations, as well as intergovernmental organizations and other United Nations procedures concerned with the protection of human rights.
2. The present addendum to the annual report of the Special Rapporteur contains, on a country-by-country basis, summaries of communications sent by the Special Rapporteur to States, responses received from States, observations of the Special Rapporteur, and follow-up communications and activities relating to earlier communications, from the period of 5 December 2007 to 5 December 2008 and replies received for the period of 24 January 2008 to 6 February 2009. A number of the communications contained in the present report were sent by the former Special Rapporteur, Mr. Miloon Kothari.
3. Where appropriate, the Special Rapporteur has sent joint urgent appeals or letters with one or more special procedures of the Human Rights Council where the allegations raised concerned the right to adequate housing as well as rights addressed under other mandates.
4. During the period under review, the Special Rapporteur sent a total of **34 communications** concerning the right to adequate housing to 25 States. Of these **34 communications** transmitted, **17 replies were received from Governments**.
5. The Special Rapporteur appreciates and thanks the concerned States for these replies. However, she regrets that several Governments have failed to respond, or when they have, have done so in a selective manner that does not respond to all the questions arising from the communication. These communications remain outstanding and the Special Rapporteur encourages Governments to respond to every communication, and all concerns raised in each communication.
6. A large number of the communications in the period under review are related to cases of forced evictions. Forced evictions constitute prima facie violations of a wide range of internationally recognized human rights and large-scale evictions can only be carried out under exceptional circumstances and in full accordance with international human rights law. The Special Rapporteur notes that in the majority of cases, state authorities carrying out evictions appear completely unaware of the state's human rights obligations, in particular the need for assessing the impact of evictions on individual and communities, the need to consider eviction only as a last resort after having envisaged all other options, meaningful consultation with affected communities, adequate prior notification, adequate relocation and compensation. The Special Rapporteur reminds all states that eviction should never result in rendering people homeless and putting them in a vulnerable situation. In this context, the Special Rapporteur

reminds all Governments of the Basic principles and guidelines on development-based evictions and displacement that can be used as a tool to prevent human rights violations in cases where evictions are unavoidable.<sup>1</sup>

7. The Special Rapporteur notes with concern the reports that the mandate continue to receive in regards to threats, harassment, and imprisonment of human rights defenders, community representatives and activists working on the right to adequate housing.

8. The Special Rapporteur believes in the importance of engaging in a constructive dialogue with States aimed at implementing and realizing the right to adequate housing. The communications sent by the Special Rapporteur have to be understood in this context. In a spirit of cooperation, the Special Rapporteur urges all States and other actors to respond promptly to the communications, to immediately take appropriate measures, to investigate allegations of the violation of the right to adequate housing and related rights and to take all steps necessary to redress the situation.

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

## **II. SUMMARY OF COMMUNICATIONS SENT TO GOVERNMENTS AND REPLIES RECEIVED**

### **Argentina**

#### **Seguimiento**

10. El 31 del enero de 2008, el Relator Especial en conjunto con el Relator Especial sobre el derecho a la alimentación y el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, enviaron una comunicación para acusar recibo de la información transmitida por el Gobierno de Argentina el 4 de julio de 2007 en respuesta a la comunicación conjunta de 27 de marzo de 2007, precisando que un resumen de dichas comunicaciones fue incluido en el informe del Relator Especial sobre la vivienda adecuada ante la séptima sesión del Consejo de Derechos Humanos (A/HRC/7/16/Add.1, para 11). Los Relatores Especiales agradecieron la detallada información suministrada por el Gobierno, así como por las acciones emprendidas para proteger los derechos de las personas afectadas por los desalojos de familias diaguitas en marzo de 2007, en el marco de la legislación argentina y de los estándares internacionales en la materia. En este sentido, solicitaron al Gobierno cualquier

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<sup>1</sup> The Basic principles and guidelines on development-based evictions and displacement are contained in report A/HRC/4/18. See also the Special Rapporteur's web page on forced eviction: <http://www2.ohchr.org/english/issues/housing/evictions.htm>

información que estime conveniente sobre el resultado del proceso judicial relativo a la propiedad de las familias desalojadas de la comunidad de Los Cuartos, así como de los otros casos que fueron objeto de su comunicación conjunta del 4 de julio de 2007.

### **Observación**

11. El Relator Especial señala que en el momento de realizarse este informe no haya recibido ninguna respuesta adicional del Gobierno a su comunicación de fecha 31 de enero de 2008.

## **Bangladesh**

### **Communication sent**

12. On 27 December 2007, the Special Rapporteur together with the Special Rapporteur on the Right to Food and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people sent a joint allegation letter to the Government of Bangladesh to inquire about reports alleging forced evictions and illegal land seizures in the Sadhana Tila area and other Jumma indigenous communities in Chittagong Hill Tracks. According to the information the Special Rapporteur received, in August 2007, Bangladesh army personnel, led by the Dighinala Army Zone Commander, Major Kamrul Hassan, ordered the eviction of the Sadhana Tila area, in Dighinala Upazilla, Khagrachari Hill District, an area comprising approximately 300 acres of land that houses a Buddhist Meditation Center and Jumma indigenous village, with the objective of allowing for the settlement of 800 non-indigenous settler families. The settlement plan of Sadhana Tila allegedly involved high-ranking officials of the Bangladeshi Army, which have reportedly put pressure on the Baghaichari Mouza No. 50, on the Union Council Chairman, and other local elders to agree to the settlement plan. As the local Jumma community refused to comply with the eviction order, the military have reportedly forced the gradual removal of the Jumma community from their traditional lands. In the meantime, military trucks and jeeps have reportedly transported settler families into Sadhana Tila. These settlers have reportedly started to clear the jungle around the Buddhist temple and to build their houses under the protection and command of the Army and of the police personnel. The Army personnel have reportedly been actively involved in the clearing of jungle areas around the Kamala Bagan School, near Sadhana Tila Buddhist temple. The army personnel have reportedly announced an incentive grant of Taka 50,000 for each settler family who will be willing to settle in the area, in addition to Taka 1,000 as monthly allowance. The army personnel have also reportedly threatened to cut free food rations to those settlers who do not want to settle in Sadhana Tila area. In the meantime, the local administrator of Dighinala has been allegedly asked to provide forged land documents to the settlers. It was reported that the case of the Sadhana Tila area is part of a wider trend of illegal occupation of the Jumma's traditional lands in the Chittagong Hill Tracks in Bangladesh since the Caretaker Government declared the State of Emergency in January 1997. These cases have reportedly led in many instances to the forced eviction of Jumma families, with the active support of members of the security forces. The special Rapporteur has received information about different cases in a recent period, including the following:

- In March 2007, more than 400 Mro indigenous families were ordered to their ancestral lands in the vicinities of the forcefully evicted from their traditional lands in the vicinities of the Ruma military cantonment, in Ruma Upazila Parishad, Bandarban

district. This eviction followed the reported irregular purchase of 7,570 acres of land belonging to the Mro community from the military, in which neither the Mro leaders nor the affected communities were reportedly consulted.

- In May 2007, about one hundred settlers reportedly took possession of a total of 37 acres of hilly land belonging to nine Jumma families in the village of Betchari, Rengkarjya Mouza, Merung District. It is reported that Chongrachari army camp commander Subedar Siraj provided protection to the settlers, who have already built their houses on the occupied land.
- In June 2007, 12 Jumma families were reportedly evicted by the Military from their traditional lands in Dhankupya village, in Khagrachari district, in order to give ground to the settlement of at least 200 non-indigenous families.
- In early July 2007, a total of 200 allegedly illegal settler families occupied the lands belonging to the local Jumma villagers in East Gamaridhala, Dadkuppya Mouza (No. 259), Khagrachari District. The settlers were allegedly brought from different parts of the district including Bhuachari, Mahalchari, Chongrachari, Manikchari, Joysen Para, Kala Pahar, Maischari and Shalbon cluster village. According to the reports, the army personnel directly planned and implemented the settlement.
- On 19 July 2007, Betchari Sub-zone Commander Major Kamrul Hassan reported called for an unsolicited arbitration between Jumma communities and irregular settlers in his military camp in Bara Merung, Dighinala Upazila, Khagrachari District. As a result of his verbal judgment, 5.2 acres of land traditionally belonging to three Jumma villagers, but which were not officially recorded, were given way to other three settler families.
- In an operation lasting from 1 to 15 August 2007, a large number of settlers reportedly occupied 300 acres of hilly land belonging to 17 Jumma families in Kobakhali Mouza (No. 51), Dighinala Thana, Khagrachari District, under the alleged protection of the Military. Approximately 85 non-indigenous families have reportedly settled in the area, and have now cleared the jungle of the occupied lands and are in process is on to construct houses. According to the reports, the Military intends to settle a total of 200 families.
- According to the information received, in another recent case of land-grabbing, illegal settlers have reportedly taken over 59 acres of land belonging to 17 Jumma indigenous people in Kobakhali mouza, under Dighinala police station, in Khagrachari district. Moreover, in an operation lasting from 1st to 15th August 2007, large groups of settlers led by former Union Parishad (UP) member Mohammed Abu Taleb of Hashinchonpur village and former UP member Mohammed Kader of Kobakhali bazar took control of the hilly lands belonging to Chakma people with the direct assistance of the army, the paramilitary forces and the local Village Defence Party (VDP) members. Due to the presence of the Bangladesh security forces, which provided protection to the illegal settlers, the Jummas could not offer any resistance. Presently, works for construction of houses in the lands seized from the indigenous peoples are reportedly underway. The army has reportedly planned to settle 200 plain settlers' families in Kobakhali Mouza.

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

13. It was reported that all these actions may be in violation of article 26 (1) of the 1997 Chittagong Hill Tracks Accord provides that “[n]otwithstanding anything contained in any law for the time-being in force, no land within the boundaries of Hill District shall be given in settlement, purchased, sold and transferred including giving lease without prior approval of the [Chittagong Hill Tracks] Council.” In addition, it was reported that in those cases in which the Jumma villages lack a title deed over their traditional lands, the authorities consider them to be State land, freely disposing of it to facilitate the settlement of non-indigenous settlers. Concern was expressed that these cases may be part of a systematic campaign to support the settlement of non-indigenous families in the Chittagong Hill Tracks, with the active support of the security forces, with an ultimate view to outnumber the local Jumma indigenous community in the region.

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

1. Sadhana Tila Buddhist Temple, Dighinala Union
2. East Gamaridhala, Kamalchari Union
3. Tholipara, Non chari, Khagrachari Union (No.1)
4. Headman Para, Noon chari, Khagrachari Union (No.1)
5. Rangapanichara, Kiang-ghat Union
6. Hazachara Village, Kiang-ghat Union
7. Kiang-ghat village, Kiang-ghat Union
8. Ratna Sen Karbari Para, Maischari Unbion
9. Rabi Chandra Para, Maischari Union
10. Pakujjyachari Inner Village, Maischari Union
11. Posai Karbari Para. Maischari Union

12. South Joysen Para, Maischari Union
13. Middle Lemuchari, Maischari Union
14. Lemuchari Boradam, Maischari Union
15. Bodanala, Maischari Union
16. South Joysen Para Community Primary School, Maischari Union

15. The mandate holders indicated that similar patterns seem to have taken in other districts. By way of illustration, in May 2007, about one hundred settlers reportedly took possession of a total of 37 acres of hilly land belonging to nine Jumma families in the village of Betchari, Rengkarjya Mouza, Merung District. In the Barbadan district, more than 400 Mro indigenous families were reportedly forcefully evicted from their traditional lands in the vicinities of the Ruma military cantonment, in Ruma Upazila Parishad, in March 2007, following the alleged irregular purchase of 7,570 acres of land. It is reported that the Government is currently in the process of acquiring 9,560 acres of land for further expansion of the Garrison. According to the allegations, these lands have been illegally and forcibly grabbed by Bengali settlers from different cluster villages gathered around army camps. It is reported that army personnel were directly involved in all these cases, creating a climate of fear among the local Jumma villagers and instigating the settlers to seize their lands. In other cases, army personnel have reportedly given grants to settler family willing to build their houses in the area. In other cases, army personnel have been allegedly been directly involved in the planning and implementation of the settlement. It is also reported that army personnel have actively assisted the settlers in the construction of houses in the allegedly seized lands. Finally, in other instances, local administrators have been reportedly asked to provide forged land documents to the settlers. In many of the reported cases of eviction, the indigenous families have been forced to leave their homesteads, as well as their domestic fruit gardens, bamboo and teak orchards, on which they traditionally rely for their subsistence economies. It was reported that the cases reported above may be in violation of article 26 (1) of the 1997 Chittagong Hill Tracks Accord provides that “[n]otwithstanding anything contained in any law for the time-being in force, no land within the boundaries of Hill District shall be given in settlement, purchased, sold and transferred including giving lease without prior approval of the [Chittagong Hill Tracks] Council.” In addition, it was reported that in those cases in which the Jumma villages lack a title deed over their traditional lands, the authorities consider them to be State land, freely disposing of it to facilitate the settlement of non-indigenous settlers. Concern was expressed that these cases may be part of a systematic campaign to support the settlement of non-indigenous families in the Chittagong Hill Tracks, with the active support of the security forces, with an ultimate view to outnumber the local Jumma indigenous community in the region. Concern was further expressed that this process may be deliberately taking place to coincide with the state of emergency imposed on 11 January 2007 by the Caretaker Government. In addition to comments on the accuracy of the facts of the allegations, the Special Rapporteurs requested further information on the details, and where available the results, of any investigation, and judicial or other inquiries which may have been carried out in relation to this case; whether complaints have been lodged; if no inquiries were realized, an explanation to that effect; any penal, disciplinary or administrative sanctions that were imposed on the alleged perpetrators; and if any compensation has been provided to the victims or their families.



16. On 8 July 2008, the Special Rapporteur together with the Special Representative of the Secretary-General on the situation of human rights defenders, and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent a joint allegation letter to the Government of Bangladesh regarding information they received concerning Mr. Rabindra Ghosh, the President of the Dhaka Chapter of the Human Rights Congress for Bangladesh Minorities (HRCBM). Mr. Ghosh was previously the subject of an urgent appeal sent by the then-Special Representative of the Secretary-General on the situation of human rights defenders on 30 August 2005 and an urgent appeal sent by the then-Special Representative together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on adequate housing and the Independent Expert on minority issues, on 10 August 2007. Mr. Ghosh has reportedly been subject to intimidation and threats following his investigation of a land conflict in Jaintapur between four individuals belonging to a minority group and officials of the Jainta Press Club. Officers at Jainta Station allegedly refused to file a complaint on behalf of the four claimants. On 29 April 2008, Mr. Ghosh was contacted by a police officer, who warned him not to investigate the matter any further; allegedly threatening him with criminal charges and personal injury. Mr. Ghosh claims he reported this incident to the Deputy Commissioner of Sylhet, who reportedly did not pursue the complaint. Mr. Ghosh subsequently filed a complaint regarding the incident at the Jaintapur Police Station. The Special Rapporteurs are concerned that the intimidation and threats to Mr. Rabindra Ghosh may be directly related to his activities in defense of human rights, in particular land rights and rights of minority groups. In addition to comments on the accuracy of the facts of the allegations, the Special Rapporteurs requested further information if any complaint has been lodged; on details, and where available the results, of any investigation and judicial or other inquiries carried out in relation to this case; and full details of any prosecutions which have been undertaken.

### **Responses received**

17. On 4 February 2009, the Government of Bangladesh replied to the joint allegation letter sent by the Special Rapporteur on 8 July 2008 which was a follow up to a previous joint urgent appeal (for the summary of this urgent appeal, please refer to the Special Rapporteur Report: A/HRC/7/16/Add.1). The Government informed that on 16 April 2008, Mr. Rabindra Gosh visited Jaintapur Upazilla to conduct an enquiry into the Police Case No. 19 dated 19.6.2008 lodged in Jaintapur Police station. As Mr. Rabindra Gosh could not talk with Upazilla Nirbahi Officer (Head of Sub-District administration), once back to Dhaka he had a phone conversation with him. The Government indicated that allegedly during this conversation each side intimidated the other side and that both filed general diary with the Jaintapur Police station concerning the threats received. Neither Mr. Rabindra Gosh nor the Upazila Nirbahi Officer did proceed any further with their complaints made against each other. The Government further informed that the Police case No. 19 dated 19.6.2008, was lodged by Mr. A.K.M. Kudrat Ullah, Secretary of Jaintapur Press Club and the accused persons were Ajoy Dev, Apu Dev, Pappa Dev and Suckla Rani Dev. The accused had been enjoying a 17 decimal of land since 1980, which is owned by the Government and she was alleged to have illegally encroached Government land. The Government decided to evacuate illegal occupants of Government lands, including the portion of land illegally occupied by Suckla Rani and decided to award this land to the Jaintapur Press Club. The accused persons protested while the press club authorities started to erect the office premises. This issue ended up in violence and several persons of press club were injured by the other group. The Government indicated that this case was investigated and charges were

proved against the accused and it is now pending before the court. The Government finally assured that it is always aware to uphold, protect, promote and implement the human rights and fundamental freedoms of minorities in accordance with the law of the land.

18. On 11 April 2008, the Permanent Mission of Bangladesh acknowledged receipt of the communication of 3 April 2008 and channeling it to the capital.

### **Observations**

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

## **Brazil**

### **Communications sent**

20. On 3 April 2008 the Special Rapporteur together with the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent a joint allegation letter to the Government of Brazil regarding information they received concerning the reported attack against the human rights defender Mr. Welinton da Silva, member of the Movimento Sem Terra (MST) (Movement of Landless Peasants) which is a part of the Vía Campesina network that is currently supporting the rights of the communities being affected by the construction of a dam in Estreito, Maranhão. The hydroelectric project requires the flooding of 400 square kilometres, affecting the lands and homes of 21,000 people, including the African-Brazilian communities of Bico do Papagayo. On 11 March 2008, at 11.30 pm, Mr. da Silva was attacked while participating in an on-site demonstration in a quarry in Estreito, Maranhão, to protest against the building of a dam. He was sleeping in the camp of Movimento dos Antingidos por Barragens [MAB] (Movement of Dam-affected People), in the workers' area of the quarry, when he was shot in the leg by an individual who reportedly fired gunshots from a passing car. Mr. da Silva was taken to the Municipal Hospital in Estreito where he received treatment for his injuries. The demonstration at the quarry formed part of protests to mark the International Day of Action against Dams and for Rivers, Water and Life, on 14 March. Participants were calling for further studies to be undertaken to investigate the impact the project is to have on the River Tocantins, as well as for compensation to be given to the communities that are to be displaced as a result of the construction of the dam. It is feared that Mr. da Silva has been targeted as a result of his human rights activities, in particular his work to defend the land rights of communities in Brazil. The Special Rapporteurs are concerned about the physical and psychological integrity of Mr. da Silva and other members of the MST. Attacks against defenders working on the protection of the environment and land rights in several reports form part of a trend which has been detected by the Special Representative both in her report on the visit to Brazil (A/HRC/4/37/Add.2) and in some of her thematic reports. "According to the statistics of communications sent by the Special Representative, the second most vulnerable group when it comes to the danger of being killed because of their activities in the defense of human rights, are defenders working on land rights and natural resources." (A/HRC/4/37, para. 45). The mandate holders reminded the Government of Brazil of the recommendations of the Special Representative contained in her report on the visit to Brazil (A/HRC/4/37/Add.2). In particular,

in paragraph 102 the Special Representative recommended that “the State must play a more proactive role in mediation of social conflict and in giving legitimacy to interventions by human rights defenders to promote and protect economic, social and cultural rights. In particular defenders must not be left isolated in their struggle for or support of social justice against powerful or influential social entities and economic interests [...]”. The Special Rapporteur on adequate housing has repeatedly drawn the attention of the international community to the worrying practice of forced evictions worldwide. Forced evictions constitute *prima facie* violations of a wide range of internationally recognized human rights and large-scale evictions can only be carried out under exceptional circumstances and in full accordance with international human rights law. In view of this, the Special Rapporteur has developed a set of guidelines, presented to the Human Rights Council (A/HRC/4/18) aiming at assisting States in developing policies and legislation to prevent forced evictions at the domestic level. In this context, the mandate holders remind the recommendations made by the Special Rapporteur in his mission report to Brazil (E/CN.4/2005/48/Add.3). The mandate holders urge the Government of Brazil to take all necessary measures to guarantee that the rights and freedoms of the aforementioned person are respected and that accountability of any person guilty of the alleged violations is ensured, and request that the government adopt effective measures to prevent the recurrence of these acts. In addition to comments on the accuracy of the facts of the allegations, the Special Rapporteurs requested further information on the details, and where available the results, of any investigation, medical examination, and judicial or other inquiries which may have been carried out in relation to this case; if no inquiries were realized, an explanation to that effect; if a complaint has been lodged; on any measures adopted to ensure the physical and psychological integrity of Mr. da Silva and other members of the MST; on the measures adopted to implement the recommendations of the Special Representative contained in her report on the visit to Brazil and in particular the recommendation of paragraph 102 (A/HRC/4/37/Add.2).

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

the people. Women and children were beaten up and four children were used as human shields. A woman that was photographing some of the abuses perpetrated was aggressed and had her camera destroyed by the guards. Later on the same day the police arrived to contain the violence and to re-establish public order.

22. According to the information received, for over a century the traditional communities were settled in the same area. The dispute over those lands started in 1980, when they were supposedly acquired by a private company despite the fact that the aforesaid communities occupied and cultivated the lands long before that date. The company was established and became operational in a great part of the lands, which caused the families to lose part of the lands where they raised animals and cultivated. Notwithstanding the presence of the company, the families continued to occupy and earn their livelihoods from the lands that were not seized by the company. A few years later, the company went bankrupt and the communities reoccupied the totality of the lands. Even though the former Land Institute of Bahia (INTERBA - Instituto de Terras da Bahia) measured and delimited part of the land at that time, its work was never completed. Additionally, numerous requests were made by the families to the National Institute for Land Settlement and Agrarian Reform (INCRA - Instituto Nacional de Colonização e Reforma Agrária) to come up with a reasonable solution, which, unfortunately, did not occur. It appears that after the company went bankrupt, the Bank of Brazil became its main creditor, having financed many of the company's projects. The bank ended up ceding its credit to two entrepreneurs. As the lands were given as a guarantee for the bank loans, the two entrepreneurs initiated a judicial procedure claiming title of ownership over the disputed lands. The judge of first instance confirmed their title and, as a consequence, rendered the order to evict the families that occupied the lands. The families claim the judgment to be null and void, particularly because due process was not observed in the proceedings. A representative of the Office of the Prosecutor was not notified to intervene, which should be mandatory in cases where collective rights are at stake. The Special Rapporteurs added that although they are aware of the recently adopted judicial decision to reintegrate the families into the disputed lands, concern is still expressed for the living conditions of these families, in particular, their right to adequate housing and food. Allegedly, many houses and facilities needed for the families' livelihoods were destroyed. In addition, they expressed concern for the security of the evicted families during and after the reintegration procedure, especially for the possible presence of private security guards in the area. The Special Rapporteurs referred to the General Comment No. 4 of The Committee on Economic, Social and Cultural Rights, which stresses that the right to housing should not be interpreted in a narrow or restrictive sense such as merely having a roof over one's head; rather, it should be seen as the right to live somewhere in security, peace and dignity. It is also stated in this document that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. In addition to comments on the accuracy of the facts of the allegations, the Special Rapporteurs requested further information on the legal status of the lands or, if it is the case, the stage of the judicial proceedings that are in place to settle the dispute over the lands; the measures adopted to guarantee the security of the families during and after the implementation of the reintegration order, especially in respect to the presence of private security guards in the area; the measures adopted in order to provide the families concerned with shelter and livelihood and indications on whether the Government is undertaking the necessary measures in order to provide the families concerned with reparation for their losses.

23. On 13 November 2008, the Special Rapporteur sent an allegation letter to the Government of Brazil to inquire about reports that, on October 23<sup>rd</sup> of that year, 1.000 families (approximately 6,000 people including a number of children and elderly people) were forcibly evicted by the Military Police, from the area they had occupied since early September of that year. The 170.000 square meters corresponded to Varuna Real Estate Ventures, an enterprise belonging to the economic group Construtora C.R. Almeida. According to reports received, the eviction was executed following a decision by the 19th Civil Chamber of the Central Court of Curitiba granting the reinstatement of possession to the enterprise Varuna Real Estate Ventures. Reportedly, in its decision, the Court had not requested any alternative or temporary shelter for the occupants. Previous to this Court decision, in September 2008, the residents and housing movement supporters - such as the UNMP (National Union for Popular Housing) and the CMP (Center for Popular Movements) - would have allegedly sent several official communications to the concerned organs of the Curitiba Municipality and the Paraná State, requesting them to mediate in order to reach a solution. However, it was reported that nor the Municipality, neither the Paraná State authorities would have entered into dialogue with the residents in order to find an alternative solution to the forced eviction. During the forced eviction, the Military Police, including officials from the Shock Battalion, would have allegedly used against the residents' peaceful protest tear gas, rubber bullets and trained dogs. It was reported that more than fifteen people would have resulted injured by the action of the Military Police, among them an eight years-old boy, and a filmmaker - Mr. Anderson Leandro from "Quem TV," who would have been shot in the face. It was further alleged that the persons affected by the forced eviction would be in very precarious conditions and it seems that no temporary location would have been provided to the majority of them and as a consequence they would have been rendered homelessness. In addition to comments on the accuracy of the facts of the allegations, the Special Rapporteur requested further information on the measures that have been taken to ensure that the eviction was in accordance with Brazil's obligations under international human rights law, in particular, information on any consultation undertaken with those affected; measures foreseen by the authorities to ensure that the eviction do not result in homelessness of the affected persons; on details on what was foreseen in terms of relocation of the affected people and if relocation sites have been designated, on the exact location, including on the quality of land and access to public services and livelihood; if any assistance, financial or otherwise was provided in relation to the evictions from the occupied area in the Fazendinha Neighborhood in Curitiba. She also requested information on the current situation of the families affected by the eviction, including information on the persons who were rendered homeless; details, and, where available, the results, of any investigation, which may have been carried out in relation to the use of undue force by law enforcement official during the eviction.

### **Response received**

24. On 10 October 2008, the Government of Brazil replied to the joint allegation letter sent on 03 April 2008. At the time of the finalization of this report, the reply was still under translation. A complete summary will be provided in the Special Rapporteur's next communication report.

## Cambodia

### Communications sent

25. On 20 March 2008 The Special Rapporteur together with the Working Group on Arbitrary Detention, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the Independence of Judges and Lawyers sent a joint urgent appeal to the Government of Cambodia regarding information they had received regarding Mr. Pring Pov, aged 40, a police officer in the town of Kep. According to the information received: “On 19 February 2008, he was arrested without a warrant by his superior, Mr. Ing Sam Ol, Police Commissioner of Kep, and charged with ‘disobeying orders from his superiors’. This stemmed from his refusal to vacate his land without compensation for the benefit of a senior government official, Eng Marie. The arrest was carried out on the order of the National Police Commissioner, General Hok Lundy. After his arrest, Mr. Pov was transferred to the Police Discipline Unit located in Samaki village, Trapeang Krasaing commune, Russey Keo district, where he has been detained ever since. When his wife, Ms. Yin Neang, visited him on 20 February, he had open wounds on his wrists and ankles because he was shackled all night, as well as bruises on his chest. Despite his worsening mental and physical condition, General Hok Lundy has denied Mr. Pov a visit by a medical doctor, even after his wife brought a doctor to the detention facility herself. The legally permitted period of police custody of 72 hours, within which a detainee must be brought before a court to be charged, in accordance with article 96 of the Code of Criminal Procedure, has been exceeded. Mr. Pov was denied his right to access to legal counsel within the first 24 hours after his arrest in violation of article 92 of the Code. Medical treatment of prisoners in police custody is left to the discretionary power of the prosecutor and the custody officer, according to article 99 of the Code. It was reported that the Cambodian police have no jurisdiction over land disputes. Only the municipal or provincial National Cadastral Commissions for unregistered land, the courts of law for registered land, and the National Authority for the Resolution of Land Disputes for unclear or politically related disputes are competent in such matters. Concerns were expressed for the state of health of Mr. Pring Pov. In addition to comments on the accuracy of the facts of the allegations, the Special Rapporteurs requested further information if any complaint has been lodged by or on behalf of the alleged victim; on the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case; on the legal basis for the arrest and detention of Mr. Pring Pov and how these measures are compatible with applicable international human rights norms and standards as stipulated, *inter alia*, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.”

26. On 3 April 2008 the Special Rapporteur, together with the Special Rapporteur on the right to food and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, sent a joint allegation letter regarding information received on the alleged illegal seizure of the lands traditionally belonging to the indigenous Jarai people in Kong Yu and Kong Thom villages, Pate commune, O’Yadao district, in Ratanakiri province. The reported situation concerns over 500 hectares of traditional lands belonging to approximately 65 Jarai villagers, which have been reportedly seized by irregular means by an entrepreneur, Ms. Keat Kolney. Information was transmitted to the Special Rapporteurs concerning the alleged land-grabbing and illegal sale of indigenous Jarai land. According to the information received, in March 2004, four Pate commune officials and the Kong Yu village chief made several attempts

to persuade villagers from Kong Yu to sell their communal land to a buyer from Phnom Penh. The villagers refused to sell the land, stating that it was required for farming and the future needs of the community. On the last occasion, local officials reportedly claimed the land was State land and did not belong to the villagers, and said it was required to provide land to disabled soldiers from Prime Minister Hun Sen's army. The villagers understood that they did not have a choice, and agreed to donate an area of 50 hectares for this purpose. According to the reports, in August 2004, Ms. Keat Kolney, an entrepreneur, visited Kong Yu with the O'Yadao district governor, Pate commune chief and the village chief, and distributed envelopes with money and gifts of sarongs to each family. Before receiving the money and gifts, the villagers were asked to thumbprint documents which they could not read, as the majority of villagers in Kong Yu and Kong Thom do not speak, read or write Khmer. Following the ceremony, the commune and village chiefs took the envelopes from the villagers. The next day, the village chief reportedly delivered an amount of money to each family, widow and single person in Kong Yu. The villagers reportedly understood that the money and the gifts had been given as sign of gratitude for the donation of 50 hectares to disabled soldiers, agreed in March 2004. However, they were subsequently informed that they were the payment for the sale of 500 hectares of land to Ms. Keat Kolney. These 500 hectares included 180 hectares of land that was managed and used by Kong Thom villagers, pursuant to a longstanding agreement between the two villages. It was reported that, shortly afterwards, personnel working for Ms. Keat Kolney started clearing the land to create a rubber plantation, destroying villagers' crops. Since then, the company has denied villagers access to the land, preventing its use as a grazing area for cattle and for planting further crops. It was reported that all these actions are in violation of articles 23 to 28 of the Land Law, which recognize the rights of indigenous communities to collective ownership of their lands. According to Article 265 of the Land Law, it is a penal offence for an authority to commit an infringement against the land rights of an indigenous community. Further, it is reported that the alleged sale of the land to Ms. Keat Kolney is invalid under the Contract Law due to fraud. Information received also mentioned legal action against Ms. Keat Kolney and alleged intimidation on indigenous villagers and their lawyers. According to the information received, since October 2004, representatives of Kong Yu village have sought assistance from non-governmental organizations (NGO) in order to obtain the return of the land irregularly seized from them. Since 2005, Kong Yu villagers have been represented by lawyers from the Community Legal Education Center (CLEC) and Legal Aid of Cambodia (LAC).

27. In October 2004, Kong Yu representatives reportedly filed a complaint with the local administrative office in Ratanakiri, requesting the dissolution of the Pate commune council due to its role in facilitating the fraudulent deal. In January 2007, six representatives from Kong Yu and six representatives from Kong Thom, whose names are on file with the Special Rapporteur, filed a civil complaint with the Ratanakiri provincial court, seeking the cancellation of the contract of sale on the basis of fraud, and the return of the land. The villagers sought the return of 450 hectares of land, as they had agreed to give 50 hectares to disabled soldiers. Also in January 2007, the 12 village representatives filed a criminal complaint with the Ratanakiri provincial prosecutor, requesting that Ms. Keat Kolney, the former Kong Yu village chief, five Pate commune officials, the O'Yadao district governor and two others be charged with fraud, forgery of private documents, corruption, bribery and infringement of the land rights of indigenous communities. Reportedly, the Provincial Prosecutor has investigated the complaint, questioning Ms. Keat Kolney and others, but has not yet decided whether to pursue criminal charges against the above-mentioned individuals. In June 2007, Ms. Keat Kolney filed a criminal

complaint against the 12 village representatives, their lawyers from CLEC and LAC, and two representatives of Ratanakiri-based NGOs. She requested the Ratanakiri provincial prosecutor to investigate the case and pursue charges of fraud, defamation, incitement leading to the commission of a crime, incitement not leading to the commission of a crime and complicity in an offence. The Provincial Prosecutor is reportedly investigating this complaint. In July 2007, the former Kong Yu village chief, named in the villagers' criminal complaint, and a representative of Ms. Keat Kolney's company, the Progressive Farmers Association, brought the village representatives to the provincial court for questioning by the Prosecutor's clerk, in connection with the criminal complaint filed by Ms. Keat Kolney. They remained during the questioning, and the former village chief translated when the villagers did not understand questions in Khmer. He reportedly asked them to speak in favor of the company, threatening them that they would otherwise not be able to return home. The villagers' lawyers subsequently requested the formal annulment of the statements made to the Prosecutor's clerk. However, it is reported that these statements have been submitted as evidence in the civil case by Ms. Keat Kolney's lawyer. In November 2007 and January 2008, the prosecutor himself questioned the village representatives with their lawyers present. The lawyers and NGO representatives have not yet been called for questioning. Concern has been expressed about the prospect of the villagers facing criminal charges as a result of their efforts to seek an effective remedy in relation to this case, and the proper and equitable application of the law and legal process. Alleged restrictions on communities, lawyers and civil society organizations defending human rights were also mentioned in the information the Special Rapporteurs received. It was reported that since the villagers filed their action against Ms. Keat Kolney, freedoms of assembly and movement have been restricted in and around Kong Yu on a number of occasions. In February 2006, approximately 200 Kong Yu villagers gathered at the Pate commune office in order to voice their concerns and seek information on the company clearing their land. Commune officials reportedly accused the villagers of holding a demonstration and causing unrest, and threatened village leaders with arrest if any further demonstrations were held. In September and November 2007, local police reportedly prevented representatives from the NGOs Cambodian Center for Human Rights and the Voice of Democracy from holding public forums in the village, citing security concerns. On 23 October 2007, after spending the day with their clients in Kong Yu village, lawyers from CLEC and LAC were reportedly denied re-entry to the village that night by district police, citing security concerns. The lawyers were admitted to the village after an intervention by a Secretary of State in the Ministry of Interior, but were only permitted to sleep in the pagoda. In December 2007, the Special Representative of the Secretary-General for human rights in Cambodia visited Kong Yu during an official mission to Cambodia. The O'Yadao district chief came to the village accompanied by armed gendarmes, and asked the Special Representative and staff from the Office of the High Commissioner for Human Rights whether they had been granted authorization by provincial authorities to visit the village.

28. According to the reports, there have also been increasing numbers of accusations by authorities and the media that NGOs are 'inciting' communities to protest or complain about the violation of their rights. In this case, Cambodian media outlets have accused CLEC, LAC and other NGOs of inciting the villagers of Kong Yu and Kong Thom to take legal action against Ms. Keat Kolney, for politically-motivated reasons. It was reported that these restrictions on freedoms of assembly, movement and expression have no basis under Cambodian law, and it is noted that the Constitution guarantees the enjoyment of these freedoms. In June 2007, Ms. Keat Kolney lodged a complaint with the Bar Association of the Kingdom of Cambodia



against 7 lawyers from CLEC and 3 lawyers from LAC. Ms Keat alleged that the lawyers incited the villagers to file complaints against her, encouraged them to defame her, and gave false information to the media. Reportedly, the Bar Association has initiated inquiries concerning the 10 lawyers, but has not yet taken a decision in relation to this complaint. The Special Rapporteurs referred to the UN Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on 13 September 2007, and reminded the Government of repeated statements by the Special Rapporteur on the right to adequate housing to draw the attention of the international community and the Government, to the fact that forced evictions constitute *prima facie* violations of a wide range of internationally recognized human rights. In this context, the Special Rapporteurs reminded the recommendations contained in his mission report to Cambodia (E/CN.4/2006/41/Add.3) as well as the Basic principles and guidelines on development-based evictions and displacement (contained in document A/HRC/4/18). In addition to comments on the accuracy of the facts of the allegations, the Special Rapporteurs requested further information on the actions that have been taken to implement and enforce the provisions of the Land Law, including the actions taken to ensure that indigenous communities are able to enforce their rights; in the event that the alleged perpetrators are identified, full details of any prosecutions which have been undertaken; if penal, disciplinary or administrative sanctions has been imposed on the alleged perpetrators; on details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case (if no inquiries have taken place, or if they have been inconclusive, explanations to that regard were requested); on action that the Government is taking to ensure that lawyers can carry out their work without undue interference.

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

other forms of compensation in exchange of the land they had. It is reported that other people have been forced to sign similar agreements. According to information received, the blockade was discontinued in mid February, and hundreds of families who had left the area returned to Banteay Rogneang village. On 6 or 7 March 2008, the blockade was reinstated for a week. This decision was allegedly taken by the Santuk district police chief upon the orders of the Kompong Thom provincial governor. Reportedly, the blockade of food and medicine had grave consequences for the health and well-being of the community. It is reported that families suffered food shortages leading to malnutrition, and that a number of individuals fell gravely ill from malaria and were unable to access medication. In addition to comments on the accuracy of the facts of the allegations, the Special Rapporteurs requested further information on legal basis on which the evictions were carried out, and whom decided the evictions; whether appropriate consultation with the communities and affected persons was undertaken; whether alternative solutions to the evictions and displacements of these communities have been studied; whether the communities and affected persons were given adequate and reasonable prior notice before the eviction; whether the communities and affected persons had the opportunity to seek redress without sanction, whether judicial recourse was made available to the affected persons, if any access to due process for the poor and people with low income of these communities has been foreseen. They requested further information on whether any complaints have been lodged; whether sufficient information was provided to those affected by the evictions; whether the communities and affected persons were offered compensation for the loss of their houses and livelihood; and further details on any measures that have been foreseen to ensure that the evictions do not result in homelessness of the affected persons, details on relocation of the affected people.

30. On 13 November 2008, the Special Rapporteur and the Special Representative of the Secretary-General on the situation of human rights defenders sent a joint allegation letter to the Government of Cambodia concerning information received regarding the arrest and detention of community representatives and citizens facing forced eviction in Sihanoukville's Mitaheap District and in Dey Kraham in Phnom Penh. They recalled the situations brought to the attention of the Royal Government of Cambodia by the Special Rapporteur on adequate housing in previous communications (dated 30 September 2005, 11 November 2005, 5 May 2006 and 5 February 2007) and raised further concerns regarding the pursuit of criminal charges against community members facing eviction. Concern was expressed regarding the reported increase in forced evictions throughout Cambodia and the conduct of the evictions and resettlement. According to information received, more than 11,000 families have been forcibly evicted in the Municipality of Phnom Penh between 1998 and 2003. Since then, forced evictions have reportedly displaced over 30,000 people in the capital. So far in 2008, around 150,000 Cambodians across the country were known to be at risk of being forcibly evicted as a result of development projects, land disputes and land grabbing. A pattern of violation of rights has been alleged during the conduct of these forced evictions and resettlement:

- There has been a systematic lack of due process and procedural protections, including establishing the legal basis of evictions, consultation with affected communities; adequate notice of pending evictions, and access to legal remedies and assistance.

- Compensation, if offered, is far below the market value of the properties that the communities are vacating and there is a lack of effective remedies for communities facing eviction. Resettlement sites, typically located in remote and undeveloped areas far from the city, rarely provide basic services and infrastructure.
- In many cases, police and/or military use excessive force or threaten to use unnecessary force in order to remove residents and destroy their homes and other material possessions.
- NGOs have been subject to campaigns of harassment and intimidation in relation to the forced evictions.
- Human rights activists have been denied access to sites of human rights violations and are subject to similar campaigns of harassment and intimidations.
- Lawyers acting for clients in land disputes have been subject to criminal investigation.

31. Concern was particularly expressed regarding the alleged pursuit of criminal charges against community members facing eviction. It has been alleged that certain community representatives and citizens have been targeted by authorities with criminal sanctions. These sanctions have been used to intimidate and silence community representatives as well as ordinary villagers from exercising their democratic right to demonstrate over land disputes in regards to the forced evictions. It was also alleged that the authorities and courts have failed to protect these community representatives and citizens from the reported misuse of the criminal justice system. It was alleged that the court has failed to deliver justice equally and expeditiously to community representatives and citizens, including the poor and marginalized. This includes the alleged unwillingness of the court to throw out cases that have no merit immediately. According to information provided, the number of individuals arrested and detained because of their involvement in land disputes has more than doubled since 2005. During 2005, 53 poor persons involved in land disputes were arrested and detained. During 2006, 78 persons were arrested and detained. By 2007, this number had increased to at least 121 persons. In the first six months of 2008, at least 33 villagers were arrested and detained. In the majority of cases, people were reportedly charged with criminal offences with little evidence behind the charges, the arrests preventing them from acting to defend the land under dispute or protest against perceived violations of their rights. In this context, the mandate holders discussed two cases which illustrate these concerns. On 20 April 2007, 105 families were forcibly evicted from Sihanoukville's Mittapheap District. It was reported that hundreds of armed police and military personnel used excessive force to evict the families, injuring 18 people, burning houses, destroying property and looting material possessions. This case was the object of a communication by the Special Rapporteur on adequate housing, the Special Rapporteur on the question of torture and the Special Rapporteur on the right to food on 7 June 2007, for which no response has been received to date. Additional information received indicates that following the eviction, 14 villagers were charged with battery with injury and wrongful damage to property, or complicity in these crimes. At the trial on 4 and 5 July 2007, the prosecution allegedly did not produce evidence linking the defendants to the alleged crimes, and police officers who testified for the prosecution were allegedly unable to confirm that any of the defendants had in fact committed assault or caused damage. Yet the trial judge convicted 9 men, and sentenced 7 men to 75 days imprisonment and 2 men (one of them convicted in absentia) to 8 months

imprisonment, to be suspended after 4 months served. The remaining 5 defendants were acquitted and released. The court reportedly refused to examine the merits of the eviction, and allegedly no action was subsequently taken against police and military in relation to the physical violence and destruction of property during the eviction. The seven villagers who were sentenced to 75 days imprisonment had largely served their sentence in pretrial detention and were due for release on 7 July 2007. The second man who received a 4-month custodial sentence (and a 4-month suspended sentence) was due for release on 20 August 2007. However, all 8 men remained in custody due to an appeal by the provincial prosecutor against their sentences, lodged on 5 July 2007. It was reported that there were excessive delays prior to the appeal being heard by the Appeals Court on 3 April 2008, when the Court upheld the original sentences imposed by the trial judge. Thus, when the 8 men were released from prison on 10 April 2008, 7 men had been detained for close to 9 months in excess of their sentence, and one man had been detained for 7 and a half months in excess of his sentence. Similarly, it was reported that over 100 families are facing forced eviction from Dey Kraham in central Phnom Penh. Since late 2003, a private company named 7NG has been negotiating with community members to exchange their land for an apartment on the outskirts of the city, enabling 7NG to redevelop the site. The majority of the community has agreed to exchange their land for apartments, but it is reported that over 100 families still remain in Dey Kraham. It was alleged that 7NG, acting either through the police and military police or directly through its officials, has been involved in intimidatory action, such as violent incidents within and against the community, reportedly intended to push the remaining families to sell their houses to the company. It was also reported that 7NG is offering to buy families' land at prices well below the market rates, and that some families have accepted out of fear of eviction. In this context, it was reported that at least 14 community representatives and community members from Dey Kraham are facing criminal charges, which are allegedly not well founded and may have been pursued to discourage community members from resisting eviction or organizing against eviction. It is reported that a number of community leaders face multiple charges. It is reported that three people were found guilty of battery with injury and sentenced to 2 month suspended sentences; a woman was convicted with battery with injury and sentenced to 6 months imprisonment and a further 18 month suspended sentence; five people are charged with wrongful damage to property; one person is charged with robbery; five people are charged with destruction of police property; eight people are charged with destruction of commune property; at least three people are charged with wrongful damage to property and battery with injury; and five people are charged in relation to an incident where a truck was set on fire on the night of 7 January 2008. In all of these cases, it was alleged that there is an insufficient factual basis to support the charges, or evidence to link the individuals to the crimes of which they are accused. In many cases, eyewitnesses have denied that the alleged crimes took place, or that the accused people were involved. It was further reported that 7NG filed a civil action against 58 families for breach of contract, alleging they had agreed to exchange their land for an apartment, but had failed to comply with the contract. The concerned families either denied placing their thumbprints on the contracts, or alleged they were coerced into doing so. It is reported that the court arbitrated in favor of 7NG on 8 November 2007 and gave the families three weeks to vacate their houses. The mandate holders referred to the recommendation made in this report by the Special Representative of the Secretary-General that "no one should be imprisoned in relation to protecting their rights to land and housing and anyone detained in this context should be released". In the context of the events reported in the present letter, the mandate holders urged the Government of Cambodia to take all necessary measures to guarantee that the rights and freedoms of the aforementioned persons are respected and accountability of

any person guilty of the alleged violations ensured. They also requested that the Government adopt effective measures to prevent the recurrence of these acts. In addition to comments on the accuracy of the facts of the allegations, the Special Rapporteurs requested further information on the measures taken to ensure that the evictions are in accordance with Cambodia's obligations under international human rights law; on the measures taken to ensure that private companies such as 7NG respect international law in the dealings with communities; on the measures taken to ensure equal access to the courts for communities and their representatives affected by forced evictions, in particular in the Dey Khrom case; on details, and, where available, the results of any investigation and judicial or other inquiries into the criminal proceedings of the 14 villagers into Sihanoukville's Mittapheap District; and an explanation if no inquiries have taken place or if they have been inconclusive; on measures taken to ensure the ability of non-government organizations to conduct their activities.

## Observations

32. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted any reply to his communications dated 20 March 2008, 3 April 2008 and 28 April 2008.

## Cameroun

### Communication envoyée

33. Le 19 septembre 2008, la Rapporteuse Spéciale sur le droit au logement a adressé une lettre d'allégation au Gouvernement au sujet d'expulsions forcées dans le quartier de Ntaba-Nlongkak, dans la Commune de Yaoundé 1<sup>er</sup>. Selon les informations reçues, le 31 juin dernier, la Communauté Urbaine de Yaoundé aurait signifié à la population du quartier de Ntaba-Nlongkak (Commune de Yaoundé 1er) l'ordre de quitter leurs habitations au plus tard le 8 juillet 2008. Le 1er juillet 2008, une équipe de la Communauté urbaine de Yaoundé se serait rendue à Ntaba-Nlongkak et aurait apposé des croix sur les habitations devant être détruites dans les 8 jours suivants. Etant informés que des habitations dans d'autres districts de Yaoundé (Etetak, Mballa II, Tsinga, et Nkolbisson) auraient aussi été rasées par la municipalité, les habitants des maisons concernées auraient transporté et déposé leurs effets personnels à l'extérieur des habitations au bord de la route. D'après les allégations reçues, le mardi 29 juillet, la Communauté Urbaine de Yaoundé aurait procédé aux démolitions des dites maisons. Ces expulsions forcées auraient laissé sans-abris plus de 5.000 personnes, incluant un grand nombre d'enfants. La scolarisation de ces derniers serait en conséquence très fortement perturbée. Le quartier Ntaba-Nlongkak est formé de constructions informelles appartenant à des familles démunies qui vivent sur ce lieu depuis 40 ans. Il se situe le long de l'un des grands boulevards reliant le centre urbain de Yaoundé au siège de la Présidence de la République du Cameroun. Cette localité ferait partie des zones marécageuses relevant du domaine administratif de l'État. Les expulsions forcées auraient pour effet de marginaliser et d'appauvrir davantage des communautés vivant déjà dans des conditions précaires. La Rapporteuse Spéciale a mentionné l'article 45 de la Constitution du Cameroun qui indique que les traités et accords internationaux régulièrement approuvés ou ratifiés ont, dès leur publication, une autorité supérieure à celle des lois nationales. Les expulsions forcées constituent des violations *prima facie* de nombreux droits de l'Homme reconnus internationalement et les expulsions massives ne peuvent s'effectuer que dans des circonstances exceptionnelles et en total respect du droit international en la matière. La

Rapporteuse Spéciale a rappelé au Gouvernement que des principes de base et directives concernant les expulsions et les déplacements liés au développement élaborés par son prédécesseur sont disponibles (A/HRC/4/18). Ceux-ci visent à assister les Etats dans le développement de politiques et de législations pour prévenir les expulsions forcées au niveau domestique. Ces « Principes de base et directives concernant les expulsions et les déplacements liés au développement » ont par ailleurs été communiqués au Gouvernement dans une précédente lettre en date du 20 avril 2007, qui est au demeurant restée sans réponse. La Rapporteuse Spéciale a demandé au Gouvernement de lui fournir des informations détaillées au sujet de la situation énoncée précédemment, ainsi que sur les mesures prises par les autorités compétentes conformes aux provisions contenues dans les instruments légaux internationaux que le Cameroun a ratifié, en particulier que les expulsions ne doivent pas conduire à rendre des individus, familles et communautés sans abri et qu'elles doivent être : (a) autorisées par la loi ; (b) raisonnables et proportionnelles ; et (c) régulées de manière à assurer une pleine et équitable compensation et réhabilitation. De plus, la Rapporteuse Spéciale a demandé que lui soient communiqués des informations sur les éléments suivants : L'existence éventuelle d'une étude d'impact préalable et la prise en compte de projets alternatifs à l'expulsion de ces personnes par les Autorités ; Les consultations menées avec les résidents du quartier Ntaba-Nlongkak avant les expulsions ; La manière dont les résidents ont été notifiés de leur expulsion, la date de ces notifications, ainsi qu'une copie du courrier reçu par les habitants ; Les moyens de recours mis à la disposition des habitants, en particulier les plus démunis ; Les mesures de relogement prévues pour les habitants du quartier Ntaba-Nlongkak dans l'hypothèse d'une expulsion ; Les compensations prévues pour les expulsions et les pertes subies par les habitants ; et Les mesures prises pour protéger les enfants des conséquences de ces expulsions.

### **Communication reçue**

34. Le 11 Novembre 2008, le Gouvernement de la République du Cameroun a adressé une réponse à la Rapporteuse Spéciale à la suite de sa lettre d'allégation datée du 18 Septembre 2008, contenant les informations suivantes : « Dans le cadre de l'aménagement de la ville de Yaoundé et guidée par le triple souci de respecter les normes nationales d'urbanisation, de préserver les zones à écologie fragile et surtout de sécuriser les personnes installées dans les zones à risque, la Communauté Urbaine de Yaoundé a identifié 13 vallées inondables dans ladite ville dont Ntaba, et a sollicité du gouvernement une déclaration d'utilité publique des travaux relatifs à la protection des populations contre les risques d'inondation. Le 1<sup>er</sup> février 2001, le Ministre de l'Urbanisme et de l'habitat a fait droit à cette demande, prenant un arrêté No. 0010/Y/144/MINDUH/D200 déclarant d'utilité publique les travaux relatifs à la protection des populations contre les risques d'inondations dans les 13 vallées de la ville de Yaoundé. Le quartier de Ntaba qui fait partie de ces zones à risques est une enclave située dans les bas-fonds marécageux de la vallée de Djoungolo et comporte sociologiquement des populations d'origines diverses vivant dans une insalubrité et une promiscuité insoutenables. Ces populations subissent des inondations récurrentes dans la zone, dont l'une, la plus grave a été enregistrée en mars 2008 à la suite de la crue des eaux du Mfoundi. » Les éléments fournis par le Gouvernement apportent les réponses suivantes aux questions de la Rapporteuse Spéciale :

- Sur la première question : en avril-mai 2001, la Communauté Urbaine de Yaoundé a fait réaliser une étude sur l'état des lieux des zones d'occupation illégale par le Groupe de Recherche Technologique (GRET) et en janvier 2002, elle a confié à une équipe de

sociologues, une étude anthropologique *in situ* qui a révélé que les pancartes et les avertissements de l'administration n'avaient aucun effet dissuasif que les occupants de la zone.

- Sur la deuxième question : Comme il a été signalé dans la réponse précédente, les populations ont été approchées et sensibilisées dans le cadre des études susmentionnées et étaient de ce fait conscientes, depuis plusieurs années, de l'illégalité de leur occupation et des risques auxquels elles étaient exposées du fait de la fragilité écologique du site.
- Sur la troisième question : En 2000, des mises en demeure ont été servies aux populations et des panneaux indiquant « Zone marécageuse - construction interdite » ont été implantés sur le site. Le 30 juin 2008, des significations aux fins de démolir ont été servies aux populations. Le 1<sup>er</sup> Juillet 2008, des croix ont été apposées sur les habitations qui ont été démolies le 29 Juillet 2008.
- Sur la quatrième question : En droit camerounais les recours devant le juge administratif sont ouverts à toute personne estimant qu'un acte de l'administration lui a fait grief. Le juge judiciaire peut également être saisi lorsqu'il s'agit d'une voie de fait, c'est-à-dire un acte dont l'irrégularité est tellement manifeste qu'on ne peut le rattacher à l'activité de l'administration. Il appartient donc aux habitants concernés d'exercer lesdits recours s'ils le jugent nécessaire. Par ailleurs, toute personne démunie peut demander le bénéfice de l'assistance judiciaire pour toute action en justice conformément au décret No 76 - 521 du 09 novembre 1976 portant réglementation de l'assistance judiciaire.
- Sur la cinquième et la sixième question : Les mesures de relogement et de compensation n'ont pas été prévues pour les habitants de Ntaba dans l'hypothèse d'une expulsion, car conformément à la législation en vigueur (loi No 85/09 du 04 juillet 1985 relative à l'expropriation pour cause d'utilité publique et aux modalités d'indemnisation), des personnes ne disposant pas de titre foncier ou de permis de bâtir ne pouvaient réclamer aucune indemnisation, nul ne pouvant au demeurant se prévaloir de sa propre turpitude.
- Sur la septième question : Le Ministère des Affaires sociales et le Ministère de la Promotion de la Femme et de la famille ont pris un certain nombre de mesures pour protéger les enfants. De plus, certaines organisations non gouvernementales comme la Croix Rouge camerounaise ont apporté une aide aux enfants victimes de cette situation. »

### **China (People's Republic of)**

#### **Communications sent**

35. On 5 March 2008, the Special Rapporteur together with the Special Representative of the Secretary-General on the situation of human rights defenders, the Special Rapporteur on the question of torture, and the Special Rapporteur on the independence of judges and lawyers sent a joint allegation letter to the Government of the People's Republic of China, regarding information they received in relation to Mr. Zheng Enchong, a human rights lawyer in Shanghai. Mr. Zheng Enchong has been the subject of three communications sent by mandate holders; an

urgent appeal sent by the Special Representative, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on extrajudicial, summary or arbitrary executions on 16 March 2004, an urgent appeal sent by the Special Representative, together with the Special Rapporteur on the independence of judges and lawyers on 20 July 2006, and an urgent appeal sent by the Special Representative, together with the Special Rapporteur on the question of torture and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living on 27 July 2007. The mandate holders, authors of this current communication, acknowledged receipt of the response of the Government of the PRC dated 18 December 2007, however, it does not entirely dispel their concerns regarding the situation of Mr. Zheng Encong, as illustrated by the new information they received. On 16 and 17 February 2008, Mr. Zheng Enchong was reportedly assaulted by police officers who were following him and his wife, Ms Jiang Meili. Later on 17 February 2008, he was summoned to the police station and detained for over 12 hours, during which time he was beaten by unidentified men. The police reportedly questioned Mr. Zheng Enchong about legal aid he recently provided to petitioners and victims of land grabs. The questions also focused on an interview Mr. Zheng Enchong had given to the Epoch Times on 12 February 2008, in which he discussed the corruption case of Shanghai tycoon Mr. Zhou Zhengyi and the possible involvement of former Chinese Communist Party leader Mr. Huang Ju. On 19 February 2008, the interview to the Epoch Times was published and the following day, Mr. Zheng was again arrested. While in detention, he was once more beaten by an unidentified person, sustaining injuries as a result, before being released that evening. Concern was expressed that the arrest and detention of Mr. Zheng Enchong may be directly related to his activities in defense of human rights. In view of allegations of ill-treatment, further concern was expressed for the physical and psychological integrity of Mr. Zheng Enchong. The mandate holders requested clarification of the circumstances regarding the case of the person named above. The mandate holders stressed that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In addition to comments on the accuracy of the facts of the allegations, the Special Rapporteurs requested further information on whether a complaint has been lodged, on the legal grounds for the arrest, detention and questioning of Mr. Zheng Enchong, and how these measures are compatible with international norms and standards; on details of any prosecutions which have been undertaken against the officers who allegedly assaulted Mr. Zheng Encong; and regarding any penal, disciplinary or administrative sanctions imposed on the alleged perpetrators.

36. On 28 July 2008, the Special Rapporteur together with the Special Representative of the Secretary-General on the situation of human rights defenders, the Special Rapporteur on the question of torture, and the members of the Working Group on Arbitrary Detention sent a joint urgent appeal to the People's Republic of China regarding Mr. Ye Guozhu. Mr. Ye has already been the subject of a joint communication sent by the then Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the then Special Representative of the Secretary-General on the situation of human rights defenders on 5 April 2005, which regrettably went unanswered. On 22 July 2008, Mr. Ye Guozhu was taken away from Chaobai Prison in Tianjin by officers of the Beijing Public Security Bureau (PSB), Xuanwu Sub-division, where he has been serving a prison sentence that was due to come to an



end on 26 July 2008. His brother received a call from the prison authorities at around 4 pm on 22 July, explaining that it would not be necessary for him to come and pick up his brother on 26 July. Mr. Ye's brother immediately called the police in Xuanwu, who initially denied any knowledge of Mr. Ye Guozhu's whereabouts, however, later admitted that Mr. Ye had been transferred from Chaobai Prison. The authorities refused to disclose Mr. Ye's place and envisaged duration of detention. Mr. Ye Guozhu was active in assisting petitioners to file complaints with the central government against forced evictions. After he had applied for permission, in August 2004, to organize the so called "September 18 10,000 People March" he was sentenced by the Beijing Intermediate People's Court to four years in prison for "disturbing the social order". He was reportedly ill-treated while in detention. In view of his reported incommunicado detention at an undisclosed place of detention grave concerns were expressed as regards Mr. Ye Guozhu's physical and psychological integrity. Further concern was expressed that Mr. Ye's continued detention beyond the reported release date might be solely connected to his previous activities in defence of human rights and the upcoming Olympic Games. In addition to comments on the accuracy of the facts of the allegations, the Special Rapporteurs requested further information on any complaint lodged by or on behalf of Mr. Ye Guozhu; on the legal basis for the continued detention of Mr. Ye Guozhu and how these measures are compatible with international norms and standards as contained, inter alia, in the Universal Declaration of Human Rights and the Declaration on Human Rights Defenders; and on the current whereabouts of Mr. Ye Guozhu.

### **Responses received**

37. On 24 April 2008, the Government of the People's Republic of China replied to the joint allegation letter sent by the Special Rapporteurs on 5 March 2008. At the time of the finalization of this report, the reply was still under translation. A complete summary will be provided in the Special Rapporteur's next communication report.

38. On 17 November 2008, the Government of the People's Republic of China acknowledged receipt of the joint urgent appeal sent on 28 July 2008. At the time of the finalization of this report, the reply was still under translation. A complete summary will be provided in the Special Rapporteur's next communication report.

## **Colombia**

### **Comunicación enviada**

39. El 28 de diciembre de 2007, el Relator Especial sobre una vivienda adecuada como elemento integrante del derecho a un nivel de vida adecuado y sobre el derecho de no discriminación, junto con el Relator Especial sobre el derecho a la alimentación, el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, y el Relator Especial sobre los Defensores de los Derechos Humanos enviaron una carta de alegación en relación con las consecuencias del conflicto armado sobre el pueblo indígena Awá de los Municipios de Tumaco y Ricaurte, en el Departamento de Nariño. Según las alegaciones, a pesar de la reiterada voluntad las comunidades Awá de los Municipios de Tumaco y Ricaurte de permanecer al margen de la actuación de los actores armados, se encontrarían, entre los más afectados por el conflicto armado, extendido en sus tierras tradicionales. Así, desde comienzos de 2007, habrían tenido lugar 18 casos de desplazamiento

masivo de comunidades indígenas al interior del Departamento de Nariño, que habrían generado más de 10,000 desplazados internos. El último desplazamiento forzado de gran magnitud habría sido el de población indígena Awá del Resguardo de Inda Sabaleta, Corregimiento de Llorente, Municipio de Tumaco (1). Además, como otra consecuencia del conflicto, se habrían reportado numerosas muertes entre los integrantes de las comunidades Awá, tanto como resultado de accidentes causados por minas antipersonas (2), como por asesinatos selectivos cometidos por actores armados ilegales (3). Las informaciones recibidas por el Relator Especial mencionaron desplazamientos en el Resguardo Inda Sabaleta. La semana del 17 de septiembre de 2007 se habría producido un desplazamiento masivo de los pobladores del Resguardo Inda Sabaleta, en particular de las veredas de Sabaleta, Pilvicito, Inda Bajo, Nortal y La Victoria, como resultado del enfrentamiento entre efectivos del Ejército colombiano y las Fuerzas Armadas Revolucionarias de Colombia-Ejército Popular (FARC-EP). Según la información recibida, el día 17 de septiembre, aproximadamente a las 6.00 a.m., habrían comenzado los enfrentamientos entre las tropas pertenecientes a la Brigada 29 del Ejército Nacional y el Frente 29 de las FARC-EP, en inmediaciones de la comunidad de Pilvicito, en el Resguardo Inda Sabaleta. En la carretera de acceso al resguardo Inda Sabaleta se habrían estacionado una tanqueta y dos camiones. Alrededor de las 6.40 a.m., ante la escalada del combate (en el que se habrían producido muertos), la fuerza pública habría obligado a tres familias Awá de la vereda Sabaleta a abandonar sus casas. Otras familias Awá habrían abandonado voluntariamente sus casas ante el temor de verse afectados por los enfrentamientos. El día 19 de septiembre, alrededor de las 4.30 a.m., 1.018 Awá de las veredas de Sabaleta, Pilvicito, Inda Bajo, Nortal y La Victoria (incluyendo 488 menores de edad, 261 mujeres y 20 mujeres en estado de embarazo) habrían llegado al centro educativo de la comunidad Inda Sabaleta, donde se habrían instalado con sus escasas posesiones. Se alega que ulteriormente el número de refugiados habría alcanzado aproximadamente las 1.380 personas. Según las alegaciones, a partir del 23 de octubre de 2007, la población habría comenzado a retornar a sus hogares. Actualmente la población en el centro educativo ascendería a algo más de 200 personas de las cuales el mayor porcentaje continuaría siendo niños y niñas. Según las alegaciones, la respuesta del Comité Municipal de Atención a la Población Desplazada de Tumaco, autoridad responsable del sector salud, habría sido hasta la fecha muy insuficiente. De acuerdo con un estudio realizado en noviembre de 2007 por una misión conjunta del Instituto Departamental de Salud de Nariño, el Instituto Colombiano de Bienestar Familiar, el Programa Mundial de Alimentos, la Oficina de las Naciones Unidas de Coordinación de los Asuntos Humanitarios (OCHA) y la Organización Mundial de la Salud (OMS), las personas que aún se encuentran refugiadas en el centro educativo del Resguardo Inda Sabaleta se encontrarían en condiciones de extremo hacinamiento. La situación de salud de la población indígena de Inda Sabaleta se vería todavía amenazada por unas condiciones de higiene deficientes, tanto en los lugares de preparación de alimentos, como en aquellos destinados para la disposición final de basuras. Las condiciones de saneamiento básico y agua potable serían igualmente deficientes. Se alega además un grave problema de desnutrición crónica especialmente en el grupo de niños y niñas. Actualmente la alimentación que se estaría ofreciendo en los albergues carecería de alimentos lácteos, de verduras y frutas. A raíz de estas condiciones, el día 10 de octubre de 2007 habría fallecido la niña Carol Narváez, de 6 meses de edad. Según las informaciones recibidas por el Relator Especial, unos miembros de comunidades indígenas murieron por causa de minas antipersona. Entre las consecuencias del conflicto armado que habrían justificado el desplazamiento masivo de las comunidades Awá, se encontraría el alto número de víctimas civiles, resultado a la vez de las minas antipersonas que, según las alegaciones, estarían siendo sembradas tanto por parte de los grupos armados

irregulares como por el propio Ejército colombiano. Desde el comienzo del año 2007, se habrían compatibilizado 13 víctimas de las comunidades indígenas del Municipio de Ricaurte, Departamento de Nariño, por la acción de los campos minados. Los últimos fallecimientos relatados de miembros del pueblo Awá, causados por minas antipersonas son los siguientes:

- El 22 de septiembre, a las 2:30 p.m., habrían fallecido los niños Nuri Fabiola Maín Moreano, Ferney Rolando Marín Moreano y Yo María Canticus, de 14, 11 y 12 años de edad respectivamente, todos ellos pertenecientes a la comunidad de Chicandina, Resguardo Nulpe Medio Alto Río San Juan, Municipio de Ricaurte. Los niños habrían perdido la vida instantáneamente al pisar una mina cuando transitaban por los caminos de la comunidad.
- El sábado 18 de agosto, los Sres. Robert Guanga y Alonso Guanga, de 20 y 25 años de edad respectivamente, quienes se trasladaban de la población de Maldonado, Ecuador, hacia la Comunidad de Quembi, en el Resguardo de Nulpe Alto, habrían muerto de manera instantánea cuando cayeron en un campo minado.
- El día 15 de julio a las 10:30 a.m., en el mismo municipio, habría igualmente perdido la vida el Sr. Arcenio Canticus al pisar una mina antipersonal cuando se dirigía a trabajar en su parcela. Se alega que sus hijos, Andres Canticus, de 8 años de edad, y German Canticus, de 12 años, también habrían perdido la vida al pisar una mina antipersonal cuando, al conocer la situación de su padre, se habrían dirigido al lugar de los hechos.
- El día 14 de julio a las 8:30 a.m., los Sres. Juan Dionicio Ortiz Vasquez, ex gobernador del Resguardo Vegas Chagui Chimbuza y Ademelio Pai Taicus, de la comunidad del Guadual, habrían igualmente perdido la vida al pisar una mina antipersonal cuando se habrían desplazado a sus labores de campo.

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

### **Comunicaciones recibidas**

41. El 20 de febrero de 2008, el Gobierno de Colombia envió una carta a los Relatores Especiales en respuesta a la comunicación conjunta enviada el 28 de diciembre 2007. En esta carta, presentaron la siguiente información enviada por la Dirección de Derechos Humanos del

Ministerio de la Defensa de la República de Colombia: “ El 2 de octubre de 2007, el Jefe de Estado Mayor, Tercera División, envió un oficio al Inspector General del Ejército. La comunicación dice que, mediante un oficio con fecha 18 de septiembre de 2007, instauró la denuncia penal (anexado) por la muerte de los hermanos ROBERT y ALONSO GUANGA. Igualmente, informa que el ánimo de disminuir las víctimas por acción de campos minados del día 17 de julio de 2007 se realizó un Consejo de Seguridad en las instalaciones de la Personería Municipal de Ricaurte y en coordinación con las diferentes autoridades locales y regionales, se promovieron diferentes campañas de sensibilización y prevención de desplazamientos por esta causa. El 20 de septiembre 2007, el Ejecutivo y 2do Comandante Grupo de Caballería Mecanizado No. 3 Cabal (E) envió un oficio al Señor Brigadier una copia de la denuncia por la muerte por acción de campo minado de los indígenas ROBERT Y ALONSO GUANGA así como las acciones adelantadas por esta unidad en cuanto a la prevención para que los habitantes de las comunidades Awá caigan en campos minados en su zona de resistencia. El Grupo de Caballería Mecanizado No. 3 “CABAL,” en cumplimiento a los tratados de Ottawa los cuales relacionan con la destrucción de los artefactos explosivos de uso indiscriminado en el conflicto armado, se dispuso a la destrucción de todo tipo de artefactos de este tipo con el fin de garantizar a la población civil que de parte de su fuerza pública no se verían afectados por este tipo de elementos. En actualidad este tipo de artefactos son ubicados por los diferentes grupos ilegales que delinquen en el área general del territorio indígena sobre los caminos y senderos que comunican a las diferentes veredas y/o corregimientos poniendo en riesgo inminente a estas comunidades forzándolas al desplazamiento bajo amenazas y restricciones de movilidad. El día 17 de julio del año en curso se efectuó en las instalaciones de la Personería Municipal del municipio de Ricaurte Consejo de Seguridad Extraordinario con el fin de adoptar medidas tendientes a la disminución de víctimas por acción de campos minados en territorio Awá y del campesinado en la región donde se exhorta la labor adelantada por la Fuerza Pública y se pone en conocimiento la muerte de 06 indígenas por acción de estos artefactos explosivos.”

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

## Ethiopia

### Communication sent

43. On 11 December 2007, the Special Rapporteur together with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Special Rapporteur on the right to food, sent a joint allegation letter regarding the human rights situation of the Mursi and the Suri, Dizi, Me'en, Nyangatom, Guji, Core, Chai, Tirma, Bodi, Kwegu, Hamar, Banna, Aari communities, in and around the Omo, Mago and Nech Sar National Parks, located in South Ethiopia. The alleged human rights violations occurred in these indigenous and minorities communities and allegedly caused by the Omo, Mago and Nech Sar National Parks, were the subject of a joint communication sent to the Government on 15 August 2006 by the Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and the Special Representative of the Secretary-General on the Human Rights of Internally Displaced Persons. The Special Rapporteurs referred to the information they continued to receive, particularly regarding the adoption on 21st August 2007 of the Development Conservation and Utilization of Wildlife Proclamation No 541/2007, concerning all National Parks in Ethiopia. Reportedly, the Mursi and the Suri, Dizi, Me'en, Nyangatom, Guji, Core, Chai, Tirma, Bodi, Kwegu, Hamar, Banna, Aari communities, consisting of approximately 130 000 persons, are semi-nomadic people. Their traditional lands and territories are, today, in and around the Omo, Mago and Nech Sar National Parks. Although the bordering process began only last year, the Omo National Park (4,068 sq. km.) was designated in 1966 and the Mago National Park (2,162 sq. km.) in 1978. According to the information received, the affected communities traditionally practice rain-fed cultivation, cattle herding, as well as hunting and fishing. For climatic reasons and for the necessity of the traditional agriculture and cattle breeding, these communities move in and out the boundaries of these National Parks. For example, as the weather in the region is very dry, these communities gather, cultivate and shepherd their cattle within the boundaries of the parks due to their fertility and the proximity of water sources. It was also alleged that 75 percent of the total Mursi's food supplies used to come from land now included in these parks. The Mursi depend on three main subsistence activities: flood retreat cultivation, rain-fed cultivation and cattle herding. Their diet depends mostly on the products they grow on this land while cattle, apart from being an important source of milk (especially for children) and meat, are a vital standby at times of crop failure, when they can be exchanged for grain in the highlands. Because of their relatively small number of cattle, the low and unpredictable local rainfall and the wide annual fluctuation in the level of the Omo flood, the Mursi must integrate all three of these sources of subsistence by means of a complex cycle of seasonal movements. This mix of subsistence activities, and the seasonal movement of people and cattle, has reportedly been the main condition both of Mursi survival and of the sustainable use of renewable resources in this area. Moreover, according to the information received, there are two harvests each year, one along the banks of the two permanent rivers, Omo and Mago, where fertile silt is deposited by the annual flood, and one in forested areas further away from the rivers which are cleared for rain-fed, shifting cultivation. Planting takes place on the banks of the Omo and Mago in October and November, after the flood has receded and the banks have been cleared of vegetation that had grown up since the previous season. The harvest comes in January and February. River-bank land is the most valuable agricultural resource the Mursi possess. The unpredictability, caused by the weather and floods, coupled with the limited area available for flood retreat cultivation makes cattle a vital resource for the Mursi and they

attribute overwhelming cultural importance to cattle. Every significant social relationship - most notably marriage - is marked and validated by the exchange of cattle. The Development Conservation and Utilization of Wildlife Proclamation No 541/2007 adopted on 21st August 2007 reportedly aims at strengthening some of the provisions already included in the Agreement signed on 4th November 2005 between the Government and the Southern Nations, Nationalities and Peoples Regional State, and African Parks (Ethiopia) PLC concerning the management of the Omo National Parks. The Government reportedly transferred the management of all National Parks to African Parks (Ethiopia) PLC, a private company and a subsidiary of Stichting African Parks Foundation ("African Parks"), a Netherlands-based organization that manages conservation of parks throughout Africa. The African Parks (Ethiopia) PLC management for the Omo National Park has been effective since January 2006 after the signing of the 4th November 2005 Agreement, whereas in February 2004, African Parks Foundation signed an agreement with the Government allowing it to manage the Nech Sar National Park on a 25 year lease. The 2005 Agreement reportedly provided employees of the African Parks powers of law enforcement similar to those of public officials. It was also alleged that, through Proclamation No. 541/2007, restrictions and regulations have been imposed on the Mursi, Suri, Dizi, Me'en, Nyangatom, Guji, Core, Chai, Tirma, Bodi, Kwegu, Hamar, Banna, Aari communities regarding the use and enjoyment of their ancestral lands. These restrictions and regulations reportedly prevent them from fishing and hunting without a permit. This Proclamation also established an "anti-poaching" fund, a no tree felling policy, and entrance fees. It also provided for the control of visitor use and included the construction of a fence in and around the Park. It appears that the same restrictions have been applied to the Nech Sar National Park, also managed by the African Parks (Ethiopia) PLC. It was alleged that the December 2006 report of the African Parks Foundation identified as one of the "illegal activities" in the Omo National Park the Mursi traditional livelihood practices like clearing of land for cultivation or hunting. According to the information received, the Development Conservation and Utilization of Wildlife Proclamation No 541/2007 adopted the 21st August 2007 was signed and managed without the free, prior and informed consent of the Mursi and others affected communities. According to these allegations, a "demarcation ceremony" was held in the Omo National Park in March 2005, at which members of various local groups were asked to sign (with their thumbprints) documents describing the park boundaries. In July 2005, game guards, that are employees of the Mago National Park, visited the Mursi settlement of Maganto (known to the government as Hailu Wuha) and allegedly persuaded three men to put their thumbprints on a document defining the Mago Park boundaries. As a result, the Mursi and the other affected communities living in the Omo and Mago Parks reportedly became illegal squatters on their own land. The lack of sufficient information in the languages of the affected communities and sufficient time for prior and informed consent according to tribal customs have also reportedly affected the process. It also appears that the Development Conservation and Utilization of Wildlife Proclamation No 541/2007 is in contradiction with the Constitution whose Article 40 proclaims that "Ethiopian pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their own lands". In addition Article 32 stipulates that "Any Ethiopian or foreign national lawfully in Ethiopia has, within the national territory, the right to liberty of movement and freedom to choose his residence (...)". The Special Rapporteur mentioned interdictions of hunting and others traditional subsistence practices in all national parks. According to the information received, the Development Conservation and Utilization of Wildlife Proclamation No 541/2007 created different categories of "wildlife conservation area". One category is "wildlife reserves" "designated to conserve wildlife where indigenous local

communities are allowed “to live together with and conserve wildlife”. Another category created by this Proclamation is called “national parks” where local communities are not allowed to “live together with and conserve wildlife”. According to the information received, hunting, fishing, clearing of land, tree felling in the Omo, Mago and Nech Sar National Parks without specific authorizations are proscribed. Article 8 of the Proclamation No 541/2007 states that, “No person, other than the Ministry or the concerned regional organ in the discharge of their duties, may hunt any game animal unless he is in possession of a hunting permit.” Further, according to Article 15 of the Proclamation states that “a wildlife anti-poaching officer shall have the following powers: 1. to require any person who is in possession of wildlife or wildlife products to show the permit authorizing such possession; 2. to enter and search any private landholding, building, tent, (...) as well as search bags or sealed items, without court order, where there are sufficient grounds to believe that wildlife or wildlife products are kept illegally; 4. where a person is found committing an offence in violation of Article 16 of this Proclamation, to detain, without any court order, and handover him to the appropriate law enforcing body.” In addition, and concerning the penalties in case of violations of the provisions of this Proclamation, Article 16 states that “(1) Unless it entails higher penalty under the criminal law: (a) any person who (i) commits an act of illegal wildlife hunting or trade; (ii) carries out unauthorized activities within wildlife conservation areas or causes, in whatever way damage therefore, or; (iii) is found in possession of wildlife or wildlife products without having a permit, shall be punished with fine not less than Birr 5,000 and not exceeding Birr 30,000 or with imprisonment not less than one year and not exceeding five years or with both such fine and imprisonment”; (b) any person who commits other offences in violation of the provisions of the Proclamation or regulations or directives issued hereunder shall be punished with fine not less than Birr 500 and not exceeding Birr 3 000 or with imprisonment not less than one month and not exceeding six months or with both such fine and imprisonment.” According to the provisions of the Proclamation, occupation and use of land for flood retreat or rain fed cultivation by the Mursi, Suri, Dizi, Me’en, Nyangatom, Guji, Core, Chai, Tirma, Bodi, Kwegu, Hamar, Banna, Aari peoples, in and around the boundaries of the Omo, Mago, and Nech Sar National Parks, may constitute an “unauthorized activity which could lead to imprisonment or imposition of a fine. Such interdictions may have a negative impact on the ability of the Mursi and others affected communities to maintain their usual access to sufficient and adequate food and threaten their physical and food security. In addition the “no tree felling” policy may especially affect those groups that practice shifting cultivation such as the Suri, Dizi, and Me’en as it may be more difficult for these groups to clear new river bank sites for cultivation. Hunting is a very significant part of the economies of these communities, and as a result, the restrictions on hunting may also contribute to reduce their usual access to food. The Special Rapporteur also referred to limitations imposed on the communities’ freedom of movement Freedom of movement of Mursi, Suri, Dizi, Me’en, Nyangatom, Guji, Core, Chai, Tirma, Bodi, Kwegu, Hamar, Banna, Aari communities living in and out the Omo, Mago, Nech Sar National Parks, is allegedly threatened by the provisions of this Proclamation which allow African Parks to charge entrance fees, without making any exception for indigenous people, and grant the company authority to construct a fence in and around the parks. Reports indicate that there are plans to build a fence around Nech Sar National Park and employ other measures to strictly limit the communities’ ability to move, hunt and cultivate land freely in and out of the area. The restrictions of movement may have a negative impact on these communities because their subsistence food and their social organization depend on their ability to move on their ancestral lands. These groups combine cattle herding with both flood-retreat and rain-fed cultivation.

Because of the spatial distribution of agricultural and grazing land, and because of the unreliability of rainfall in this semi-arid environment, the successful utilization of these resources requires regular seasonal movements, over relatively short distances, by most members of these groups. In regard to the situation described above, the Special Rapporteurs draw the Government's attention on the elements contained in the Basic principles and guidelines on development-based evictions and displacement contained in the most recent report of the Special Rapporteur on adequate housing (A/HRC/4/18), aiming to clarify certain State obligations in this context. He also referred to the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on 13 September 2007, and on the Committee on the Elimination of Racial Discrimination General Comment XXIII on the Rights of indigenous peoples. The Committee calls upon States parties "to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources" (51<sup>st</sup> period of session, 1997, HRI/GEN/1/Rev.7, paragraph 5). The Special Rapporteur mentioned the Committee on Economic, Social and Cultural rights and particularly the General Comment 14 concerning the right to the highest attainable standard of health, and added that the right to food and water is protected by international human rights law, referring to the report of the Special Rapporteur on the right to food following his visit to Ethiopia in February 2004 (E/CN.4/2005/47/Add.1, 8 February 2005) which recommended, inter alia, that land tenure must be secured to ensure that people have secure rights over their own land and that all government programme and policy designs should ensure appropriate levels of participation, non-discrimination, transparency and accountability. In addition to comments on the accuracy of the facts of the allegations, the Special Rapporteurs requested further information on the extent to which provisions of the Development Conservation and Utilization of Wildlife Proclamation No 541/200 have already been applied to individuals belonging to the Mursi Suri, Dizi, Me'en, Nyangatom, Guji, Core, Chai, Tirma, Bodi, Kwegu, Hamar, Banna, Aari communities since its entry into force; the short and long-term measures planned and/or taken by the relevant authorities to ensure that the Mursi Suri, Dizi, Me'en, Nyangatom, Guji, Core, Chai, Tirma, Bodi, Kwegu, Hamar, Banna, Aari communities are able to maintain their usual access to traditional livelihoods and their freedom of movement in and around the Omo, Mago and Nech Sar National Parks.

### **Observation**

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

### **Greece**

### **Response received**

45. On 26 August 2008, the Government of Greece sent a reply in response to a joint communication dated 20 July 2007 sent by the Special Rapporteur on adequate housing, the Independent Expert on Minority Issues and the Special Rapporteur on contemporary forms of racism, concerning alleged forced evictions of Roma in Patras and other locations in Greece. The summary of this joint communication is contained in the communication report A/HRC/7/16/Add.1 paragraph 50. The Government's reply contains the following information: "The integration of Roma into the society is a very complex, multi-faceted social problem which all European countries with a Roma population face. It can only be solved through the



application of consistent efforts, financial support and a constructive attitude from all sides involved, including local societies and the Roma. Greek Roma, or Greek Gypsies, which is the term used in Greece by themselves in most cases are not registered separately from other Greek citizens, either during the national census, or in the municipal rolls. As a result, there is no precise official number of Roma populations as such. Some studies drawn up with a view to designing and implementing social actions and programs for the Roma indicate a population of approximately 250,000 to 300,000 persons all over Greece. Roma living in Greece are largely an integral part of the Greek population and they are protected against all forms of discrimination, by the Greek laws and the Constitution. They enjoy the same civil and political rights, they participate in Greek society, they organize themselves in associations, political parties, etc. Regarding the questions raised by the above-mentioned joint letter please be informed of the following:

#### **A. Facts regarding the alleged forced evictions in Patras**

46. According to recent data (field visit held on 14/04/2008 by the Public Health Directorate of the Region of Western Greece), the Municipality of Patras has one Roma settlement at the Riganokampos area, where 20 shacks and one prefabricated house exist. The members of the field visit team met with the people of the settlement who stated that those who have been granted a housing loan are already looking for a proper house to buy in order to move from the settlement. Based on the statistical data of the housing loans program (operated by the Ministry of the Interior) and the terms of the identification documents submitted (i.e. identity card, certificate of marital status, etc.) from 2002-2006, a total of 50 loans have been granted to an equal number of families residing permanently at or being registered with the Municipality of Patras. In 2007-2008, (second operation phase of the program), another 34 loans were also processed. Therefore, the number of families to have been granted a housing loan through the Municipality of Patras runs, to date, to a total of 84 families. It is necessary to note that the Ministry has issued and maintains a database with all necessary individual administrative documents for the qualification of the above-mentioned beneficiary families. We should take into consideration the fact that each application doesn't always stand for one independent family. It should be pointed out that, for various reasons, many Roma/Gypsy families submitted more than one applications for housing loans per family (e.g. one application by the husband and another by the wife), not always to the same authorities, sometimes in spite of the fact that they have already been granted a housing loan (from the same project) in the past. Furthermore, in view of presenting quantity data on the number of the loans granted to Greek Gypsies, since the beginning of the program (2002-2008) and bearing in mind that the reference to the Roma "living in the greater area of Patras" lacks a precise geographical definition necessary for the retrieval of any such data, we herewith present the following statistical analysis based on research criteria related to "Patras greater area" and in particular:

47. Greek Gypsies with an affiliation to Patras (residing in or registered in) who applied for a loan at the Municipality of Patras or other municipalities, whether at the time of the submission of their application they were registered with the municipal rolls of Patras or other municipalities (ref. table 1).

48. Greek Gypsies who submitted their application to a Municipality belonging to the greater area of Western Greece, bearing in mind that neither the loan nomination, nor any other provision restricts the settlement or even the use of the loan to the settling down to a particular

region of the Greek territory. This has also been apparent from table 1, where it is shown that citizens of non-neighboring or adjacent municipalities to the Municipality of Patras submitted, however, their applications to the latter.

- According to the relevant figures it is noted that:
- 881 families registered in the municipal rolls of a municipality in the Region of Western Greece applied successfully for a loan to a number of municipalities within or out of that region (45 municipalities, including Patras).
- 866 families applied and got nominated for a loan through 33 different municipalities of Western Greece Region (including the Municipality of Patras).
- In Achaia Prefecture alone to which the Municipality of Patras belongs, 285 beneficiary families submitted an application to a Municipality falling within that territory.
- Finally, it is stated that the above-mentioned Housing Loans Program addresses housing needs of all Greek Gypsies residing in the Greek territory, regardless of their religion or beliefs, and, to date, has granted a total of 6.984 loans to an equal number of gypsy families (beneficiaries). Among them, a total of 5.689 beneficiaries have disbursed their loans from the banks cooperating with the Program. The disparity between the loans granted and the disbursements is explained by the fact that the disbursement is processed upon the beneficiaries' responsibility and initiative. Practically, this means that the disbursement of the loan depends on the submission of the proper documentation for the house to be purchased/built/completed, by the interested persons to the bank.

#### **B. Facts regarding alleged pattern of forced evictions of Roma in Greece**

49. In the case of the Roma/Gypsies that used to live in shacks at the banks of Gallikos river, the solution has been given, as already pointed out in the Special Procedures' mandate holders' letter, by relocating them to a former military barracks (Gonos military camp). The municipal authorities have been improving the living conditions both in the camp and in the wider area outside the camp by performing infrastructure works (roads, electricity, medical - social services, playgrounds, etc.) In the case of the 200 Roma/Gypsies that used to live in shacks at the Olympic complex in Maroussi, Athens, they were relocated to rented homes where the rent was paid by the Municipality of Maroussi for an initial period of time and not indefinitely since lifetime payment of financial rental benefits to the Roma (in addition to those provided as social benefits for the whole population and, therefore, to the Roma too) only leads to a dangerous distortion of the State's obligation toward the fighting against social exclusion and the equal treatment for all. Let alone that, in parallel, a housing loan program, guaranteed by the State budget, was offered to those interested; as a result, 21 out of the 34 applications submitted, were approved by the banks, that is, to all interested individuals that submitted the relevant documentation. As regards the case of the area of Votanikos, central Athens, where Albanian speaking Roma have settled arbitrarily on private property, a special Committee has been set up, by decision of the Secretary General for the District of Attica, due to the seriousness of the said case (the Roma/Gypsies being recognized as a socially vulnerable group). The Committee was set up under article 2 of the Amendment CP/23641 of the Sanitary Provision A5/696/25.4.83 on the organized settlement of itinerant populations (Official Gazette of the Hellenic Republic 973/B/15.7.03). The

Committee, in its meeting of 5.3.08 expressed the view that the importance of the matter calls for the preparation of a study which, upon consideration of the specifications of the relevant ministerial decree as well as other sanitary parameters, shall recommend appropriate areas for the relocation of the Roma in question. Furthermore, the Municipality of Athens undertook to cooperate with the Union of Municipalities of the Wider District of Attica to prepare a draft recommendation for finding areas for the rehabilitation of the Roma. On a more general note, the case of Patras served as a priority and at the same time as a case study. In this context, with regard to the funds allocated for the establishment of a settlement for itinerant populations (regardless of nationality and thus for Albanian Roma too), bearing in mind that, to date, the effort made by the local and regional administration in western Greece didn't achieve the desirable results, the Secretary General of the Ministry of Interior called for a [second] meeting in January 2008 (the first one took place in Nov. 2007) among the local relevant authorities (Region of Western Greece, Municipality of Patras) in order to speed up the process for the rehabilitation of the Romas in the wider area of Western Greece. The meeting's scope was to renew the commitment undertaken by the local authorities in the past towards permanently addressing the situation. To this end, it was made clear that cooperation among all parties involved is necessary for maintaining as well as enhancing the efforts and measures of a temporary nature undertaken already (e.g. subsidy of rent, provision of school and social aid, etc.) It was also stressed that central administration remains supportive to the proposals the parties are going to come up with, on the condition that there will be full consensus by all parties concerned (i.e. the local authorities and the gypsies residing in the area.) In this context, the Ministry of Interior reiterated its commitment to grant the amount of 320.000€ for the construction of the necessary infrastructures for the establishment of the above-mentioned settlement for temporary residing of itinerant populations. It is also worth noting that the Committee established to this end at regional level did not yield the results expected, since the proposals put forth by local authorities were not met with consensus by the parties concerned. Another meeting with similar objectives took place, late 2007, upon the initiative of the National Committee of Human Rights, where all parties concerned participated, such as Roma representatives, NGOs and representatives from central and local government. The local government bears the responsibility for addressing its local issues, based on the principles of subsidiarity and citizen's proximity. To this end, we note the recent legislative reform on local government responsibilities (article 75, Law 3463/2006) with regard to the living conditions of their citizens. In this context, the central government undertakes all necessary financial and legislative measures for the proper support of the proposals made by local authorities. It should be made clear that the Ministry of the Interior stands ready to support with the necessary funds the commitments undertaken already by the local authorities, as well as their proposals aiming at the improvement of the existing living conditions in the area and at permanently addressing the rehabilitation issue in question.

50. In any case, as regards the implied alleged systematic infringement of the right to adequate housing and the existence of discriminatory acts or even failure to act due to discrimination, we would like to emphasize the following:

(a) Article 21§4 of the Greek Constitution stipulates that [obtaining a house for those who lack of or who are inadequately housed is under the special care from the State." However, this doesn't imply "neither that everyone may demand from the State to provide him a house, nor that if someone doesn't possess a house may by right occupy a private or public land" (see *Chapman v. United Kingdom* (2001) of the European Court of Human Rights). In other words,

the obligation of the State should not be confused with the alleged right to encroach on other parties' rights whether these parties are individuals or the public sector. The Court goes on to say that "...even if [it involves people] of a particular racial origin or of other special characteristics, any such rights couldn't be legally recognized. Claiming the right to housing, state subsidy or to encroach on foreign property on the pure basis that the claimant is for example of Rom origin constitutes a mere infringement of the principle of equal treatment for all at the expense of all the others."

(b) Detailed data on the projects implemented by the state to the benefit of the socially vulnerable group of Greek Gypsies have been supplied by previous communication (our Note Verbale ref. 6171.13/45/A5 1586 dated 28 July 2006). Nevertheless, selective reference to specific problematic situations by some seems to be part of an effort to try to establish an overall, deliberate, discriminatory attitude toward the group in question. For instance, the decrease of the number of homeless people in particular settlements, such as the one in Patras, is often leading one to the hasty conclusion that this is the result of a racist policy and not the possible effect of the improvement of their living conditions (e.g. through the use of the housing loans offered and the transition to a different living status).

(c) Further on, while talking about insufficient state measures, it is worth mentioning the implied request for multiple parallel settlements for those deciding to be travelling within the territory (itinerant populations) due to temporary work as well as the selective reference to people who although already qualifying for a loan, they are presented as abandoned (by the state) to reside in settlements. Yet, the picture is slightly different if one takes into account, as an indication, the fact that names of representatives [and residents] of Riganokampos settlement (in Patras, Prefecture of Achaia), Ms. Maria Vasilari and Ms. Eleftheria Georgopoulou seem to be identical with particular name data of beneficiaries qualified for housing loans in neighboring municipalities also, both in the Prefectures of Achaia and Ilia.

(d) With regard to "forced evictions" in Greece, it is worth mentioning that eviction is closely related to the title-right to property. In that sense according to article 17§2 of the Greek Constitution, and article 1§2 of the International Covenant on Civil and Political Rights and article 1 of the first Optional Protocol of the European Convention on the Protection of Human Rights and Fundamental Freedoms "...nobody may be deprived from his property unless for reasons of public interest which has been adequately proved as provided by law and on the precondition of former adequate compensation."

(e) In this context, it is inaccurate to use the term "unlawful eviction" when the relevant administrative act of expulsion comes in response to the unlawful occupancy of land and to the arbitrary and illegal settlement in tracts of land that are not owned by the occupants. Eviction, in the sense of the law, may be lawful in cases of: a. lack of property titles, b. illegal settlement in an area or c. of works of public interest concerning the property in question. In any case, the same legal framework applies to all citizens residing in the Greek territory, including Greek gypsies. It is evident that all citizens, including Greek Gypsies, have the right to appeal against administrative decisions before the courts. The cases in question refer to situations of lawful eviction or administrative removal from private or public lands. In such cases, anyhow, the Ministry of Interior tries to properly relocate the persons concerned, if possible in prior agreement with local authorities and those concerned, with a view to their permanent relocation.

(f) With regard to police behavior, it is to be noted that standard orders from the Hellenic Police Headquarters to all regional police departments are for absolute respect of one's personality and their human rights and of equal treatment of all regardless of racial or ethnic origin, religious beliefs, disabilities, age or sexual orientation. Those orders are based on article 4 of the Greek Constitution, they are within the framework of Law 3303/2005 on "equal treatment regardless of racial or ethnic origin, religious beliefs, disabilities, age or sexual orientation" and article 5§3,4 of the Presidential Degree 254/2004 on "Policemen Professional Ethics Code."

51. In conclusion, the success of the measures undertaken by the State should not be reduced to mere budget allocations or to participation in decision-making bodies; it necessitates the political will of all parties concerned, as well as the unanimous action from a wide range of Roma collective bodies. In light of those mentioned above, the state does not wish to deny its own obligations and responsibilities and does not consider that all measures taken so far have yielded the anticipated results. It fully recognizes the need for combating any form of social exclusion and it deploys considerable efforts to this end. However, a number of positive measures and actions have been implemented (see annexes to original letter for further information). The attached Integrated Action Plan has entered, since 2005, its second phase of the implementation process. The overall aim is to encourage and promote Romas/Gypsies; inclusion in the Greek society, in terms of equity and active participation in all aspects and spheres of daily life."

### **India**

52. On 29 February 2008, the Special Rapporteur together with the special Rapporteur on violence against women, its causes and consequences sent a joint allegation letter to the Government of India concerning reports they have received regarding violence against Dalit women. Dalit women and men suffer descent based discrimination in various aspects of their lives and are also victims of violence and untouchability practices arising out of the caste system. Despite the formal abolition of "Untouchability" by article 17 of the Indian Constitution, de facto discrimination and segregation of Dalits persists, in particular in rural areas, in access to places of worship, housing, hospitals, education, water sources, markets and other public places. Dalit women are confronted with discrimination, exclusion and violence to a larger extent than men. Lands and properties in particular are issues of conflicts over which Dalit women have faced evictions, harassment, physical abuses and assaults. Dalits women are often denied access to and are evicted from their land by dominant castes, especially if it borders land belonging to such castes. They are therefore forced to live on the outskirts of villages, often on barren land. Violence against Dalits is also caused due to land or property disputes. Reportedly, on many occasions, cases of violence against Dalit women are not registered. Adequate procedures are not taken by the police. The following specific cases have been brought to the attention of the Special Rapporteurs. They outline the impunity that seems to prevail with respect to ensuring protection and redress for Dalit women victims of violence linked to their rights to adequate housing and property:

- On 25 August 2005, Mrs. Karamjeet Kaur, wife of Rashpal Singh, and her family bought a plot on Muktasar road. They built a house and started to live there. On 28 August 2005, Amrik Singh (Police official), Davinder Singh (police official), Kuldeep Singh, Darshan Singh and Rachal, Singh abused the victims with filthy words and Caste names. They accused the family of illegally inhabiting the plot. They broke

the walls of the house and took all the goods from the family. Mrs. Karamjeet Kaur was beaten and hospitalised. The victim tried to file a complaint at the police station, but the police refused to file a complaint and to take any other action.

53. Mrs. Fulwa Dewi, wife of Hardev Paswan, owns a field where she was growing crops. On 16 November 2005, Rajdev Yadav, Lalder Yadav, Urmila Devi, Siyamani Devi and Saguni Yadav beat her up and stole her crops. On 13 December 2005, Mrs. Fulwa Dewi filed a complaint with the local police. The accused were arrested but were immediately released on bail. The Special Rapporteur recalls Article 4 (b) of the United Nations Declaration on the Elimination of Violence against Women, as well as the Concluding Observations of The Committee on Racial Discrimination (CERD), in 2007, paragraph 20, which recommended that the Government of India “ensure that Dalits, including Dalit women, have access to adequate and affordable land and that acts of violence against Dalits due to land disputes are punished under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989).” In addition to comments on the accuracy of the facts of the allegations, the Special Rapporteurs requested further information on the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the individual cases mentioned; details of any prosecutions against the perpetrators which have been undertaken and if any sanctions have been imposed on the alleged perpetrators; and whether the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989) has been used to ensure remedies to the alleged victims.

54. On 5 March 2008, the Special Rapporteur together with the Special Rapporteur on violence against women, its causes and consequences sent a joint allegation letter to the Government of India regarding information they received concerning Mrs. Shobhavati Devi in Baulia village, Shivdaspur, Post Manduvadih, Varanasi, and Mrs. Ramashree, in Tahirpur village, Shahabad, Hardoi, Uttar Pradesh, two members of the Dalit caste.

- On 8 December 2005, around 11 a.m., approximately 30 persons, including 6 police officers in uniform (3 police women, 2 police men and the sub inspector), reached Mrs. Shobhavati Devi’s house, in Baulia village, Shivdaspur, Post Manduvadih, Varanasi. The assailants started abusing and assaulting the Dalit women and children, and demolishing Ms. Devi’s house. The reason seems to have been a land dispute. In reaction, the victims, their family members, and friends demonstrated and blocked the road at the Balia Chauraha. They were nearly 100-150 people. The Station Officer (Police station-Manduadih) and other police personnel came to the spot, but no action was taken. On 25 December 2005, Ms. Devi tried to lodge a complaint against three of the perpetrators, who were identified: Ramesh Gupta, Sontosh Gupta and Rajesh Gupta. The police neither registered it nor took any further action. The complaint was finally registered on 25 February 2006, only after the intervention of the District Court Varanasi where Ms Shobhavati Devi filed a case. While registering the complaint factual details of the case were contorted and the gravity of the incident was allegedly diminished. The victim was reportedly threatened to make her withdraw her complaint. The perpetrators were arrested, and on 20 April 2007 Ms Shobhavati Devi was given 6250 Rupees as compensation.
- On 15 November 2006, around 7 a.m., five policemen raided Mrs. Ramashree’s house, in Tahirpur village, Shahabad, Hardoi, Uttar Pradesh. One of them beat Mahendra, the

victim's husband. When Mrs. Ramashree asked for the reason, the policeman immediately hit her in her womb (she was pregnant at that time) and verbally abused her with caste names. The victim sustained many injuries on her back, cheeks, stomach and vagina, and she lost her child as a result of the beating. Two of the perpetrators were reportedly identified as Shyam Sharani Tiwari and Upadhya, who were both wearing uniforms. On 18 November 2006, the incident was reported to the local police station. One of the assailants was working there and refused to file a complaint. The assailant tried to persuade Mrs. Ramashree to withdraw her statement. He threatened to use his powers as a police officer against her. A suit was also filed against Mrs. Ramashree by the police officer Shyam Sharani Tiwari, who accused her of making wine and to own tools to produce alcohol. Mrs. Ramashree was sent to jail and brutally beaten. Allegedly, the above-mentioned women were not offered proper judicial remedies due to the fact that they belong to the Dalit caste. It was reported that on many occasions, cases of violence against Dalit women are not registered by the police. Even if the cases are reported to the police, and the perpetrators arrested, they are usually released on bail and women's access to justice is thus limited. It was also reported that the Indian government adopted the "Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act" in 1989, to prevent atrocities against Scheduled Castes and Tribes. According to this act, in cases of violence against Dalits, including violence against women, the police are obliged to register the case. However, the police often refuse to register the case under this act, as it imposes high prison sentences and fines. It was alleged that the police may not agree with the purpose of the act and may try to protect the perpetrators (as their fellow caste members) by not registering cases at all, or registering them under a different act. The Special Rapporteurs reminded the Government of India of Article 4 (c and d) of the United Nations Declaration on the Elimination of Violence against Women. In addition to comments on the accuracy of the facts of the allegations, the Special Rapporteurs requested further information on details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to all individual cases mentioned; on any prosecutions which have been undertaken or any sanctions imposed on the alleged perpetrators that have been identified in the two cases; whether reparation, including compensation, has been provided to the victims or the family of the victims, when not specified in the above summary; on additional information as to how the implementation of the SC/ST (Prevention of Atrocities) Act, as well as the Supreme Court judgment highlighted above, serve to prevent and redress violence against Dalit women, and ensure that acts of violence are thoroughly investigated, prosecuted and punished.

### **Response received**

55. On 29 April 2008, the government of India sent a response to the joint communication dated 29 February 2008, concerning cases of alleged violence against Dalit women in India. In this regard, the Government of India noted that the said communication did not include any information on the places of occurrence of these cases. The government of India requested that details pertaining to the place of occurrence (village/district/State) concerning each case be provided to facilitate investigations by Indian authorities.

## Observations

56. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted any reply to his communications dated 5 March 2008.

### Iraq

#### Communication sent

57. On 20 November 2008, the Special Rapporteur sent an allegation letter to the Government of Iraq regarding information received concerning the danger of collapse of the Mosul Dam on the Tigris River in Ninawa Province and the potential loss of lives and property, including housing, of a large number of Iraqi citizens. According to the information received, the integrity and structure of the Mosul Dam is threatened by its weak foundation. This is allegedly because of the continuous deterioration of materials, including Gypsum and Anhydrite. The information received stated that this has resulted in cracks and leaks which constantly reappear and must be repaired to strengthen the foundations. The information also stated that persistent digging of trenches nearby has also threatened the integrity of the dam. The Special Rapporteur received information stating that measures had been taken by the Government to address the threat presented by the possible collapse of the Mosul Dam, including the injection of concrete and cement at the base. Nevertheless, on the basis of the information provided, she understood that these measures were remedial only. Allegedly, the Mosul Dam still remained in a critical state and close to collapse. Furthermore, according to the information received, the Governor of Ninawa had requested that all water be immediately drained from the Mosul Dam in order to prevent a humanitarian catastrophe. It was alleged that this measure was refused by dam manager Abdul Khalik Thanoon Ayoub and Iraqi Minister of Water Resource Abdul Latif Rashid. Reportedly, the threatened collapse of the Mosul Dam would be a humanitarian disaster of epic proportions. The collapse of the Mosul Dam would allegedly trigger a 20 metre wave upon the city of Mosul that would flood much of the lands and roads from Mosul to the city of Baghdad. Also, the collapse of the Mosul Dam would allegedly endanger around the lives of about 500,000 residents and destroy villages and livelihoods. The Special Rapporteur noted concern on the basis of the facts provided, failing to take sufficient measures to prevent the collapse of the Mosul Dam would lead to a fundamental breach of these obligations under international law, particularly in relation to the massive loss of life and the associated loss of property, including shelter, as alleged by the facts provided. According to the information provided, an emergency plan had been prepared in the context of a disaster in respect of the Mosul Dam. In the context of the alleged emergency plan, adequate consultation should be carried out with the affected residents with respect to the emergency plan. Furthermore, if the allegations have any basis, all residents who are affected by the developments regarding the Mosul Dam should be kept fully informed as long as their interests are affected. The importance of respecting human rights obligations in international law during all stages of disaster management, including prevention, was stated by the former Special Rapporteur on adequate housing, for instance at the 7<sup>th</sup> session of the Human Rights Council (A/HRC/7/16 at 106). In addition to comments on the accuracy of the facts of the allegations, the Special Rapporteur requested further information whether any complaint been lodged by residents affected by the alleged insecurity of the Mosul Dam; if information was provided on the situation of the dam to the population; and if the population received any instruction or training in the event of a



catastrophe. She also requested the Government to outline the measures which have been taken, at this stage and in the future, to ensure the integrity of the Mosul Dam and the safety of the neighbouring residents.

### **Response received**

58. On 23 December 2008, the Government of Iraq replied to the joint allegation letter sent by the Special Rapporteurs on 20 November 2008. At the time of the finalization of this report, the reply was still under translation. A complete summary will be provided in the Special Rapporteur's next communication report.

## **Israel**

### **Communication sent**

59. On 16 April 2008, the Special Rapporteur sent an allegation letter to the Government of Israel regarding information received concerning ongoing demolitions of houses and forced evictions carried out by the Israeli Defense Forces (IDF) in several villages of the West Bank. According to the information, the IDF carried out house demolitions in the West Bank in the following locations:

- Al-Haddidiya, near Ro'i settlement, Jordan valley: Reports received claim that on 23 August 2007, the Israeli military forces demolished three barns and destroyed one house along with two sheds. It is also reported that on 6 February 2008 the IDF destroyed four residential structures housing 36 people, including some 20 children, and the adjacent animal sheds. It is reported that the families which were subsequently displaced have been living there for over 50 years. On 11 March 2008, four residential structures along with the adjacent animal pens were destroyed. A total of 34 persons were deprived of shelter, including 26 children.
- Furush Beit Dajan, near Hamra settlement, Jordan Valley: On 11 March 2008, five residential structures were demolished leaving 31 people without shelter, including at least 16 children.
- Al Jiftlik, Jericho: On 11 March 2008, one residential structure housing nine people including seven children was demolished.
- Arab ar-Ramadin, Qalqiliya: On 11 March 2008, two structures - the tent in which the family stored their fodder, and the living tent - were demolished leaving 10 persons including 6 children without shelter.
- Ad Deirat, near Karmel settlement, Hebron: On 19 March 2008, three residential structures sheltering at least 20 people including 14 children were demolished.
- Umm Lasafa, near Karmel settlement, Hebron: On 19 March 2008, a house of 6 people was demolished. It is alleged that settlers from the nearby Karmel settlement have taken over by force around 400 dunams of land from the indigenous Bedouin villagers.

- Qawawis and Imneizil, Hebron: On 19 March 2008, three structures and an animal pen were destroyed affecting 13 persons including 9 children.
- Hizma, surrounded by the settlements Pisgat Ze'ev, Geva Binyamin and Almon, Jerusalem: On 20 March 2008, two houses, one of which was an incomplete structure, were destroyed affecting at least 5 persons. It is further reported that in January 2008 land was confiscated from Hizma and neighboring Beit Hanina to build 1,200 housing units for the Pisgat Ze'ev settlement.
- Al Jib, west of Bir Nabala settlement and east of Giv'at Ze'ev settlement, Jerusalem: On 20 March 2008, two residential structures were destroyed leaving 22 persons without shelter.
- Anata, Jerusalem: On 2 April 2008, one house sheltering 15 persons was destroyed.

60. In the above-mentioned cases, the affected persons reportedly received eviction and demolition orders which failed to specify the date when demolitions were to be carried out. It is further reported that the families were allegedly given no time to remove their belongings as the IDF came to demolish their homes without prior warning. They were allegedly not provided alternative housing and are actually homeless. In addition to comments on the accuracy of the facts of the allegations, the Special Rapporteur requested further information on the grounds to conduct such demolitions; on the legal framework governing decisions in this regard; whether the communities and affected persons were given adequate and reasonable prior notice before the eviction; whether the communities and affected persons were given adequate and reasonable time to withdraw their belongings before the destruction of their residences; on the measures that have been foreseen by the authorities to ensure that the evictions do not result in homelessness of the affected persons and the relocation of the affected people.

### **Response received**

61. On 24 April 2008, the Permanent Mission of Israel in Geneva acknowledged receipt of the letter dated 16 April 2008 and channeling it to the capital. However, the Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted any reply to his communication.

## **Japan**

### **Communication sent**

62. On 21 August 2008, the Special Rapporteur sent an allegation letter to the Government of Japan regarding the planned privatization of Miyashita Public Park and the plight of 34 homeless people living in the park in tents. Miyashita Park is a public park in the centre of Tokyo (Shibuya Ward). At the present moment, the City of Shibuya-ku is moving ahead with plans to fully renovate Miyashita Park and make it a park for the Nike Corporation. The Nike Corporation has been granted permission by the City to renovate the park at its own cost at 450 million yen with a naming right fee of approximately 150 million yen per year. The Nike Corporation plans to convert the park into a space expressly for sports enthusiasts and to charge a fee for each future user of the park. Local residents and park frequenters have not been informed or consulted on the

plans for the privatisation of Miyashita Park, a public space which has been for many years a focal point for citizen activities and gatherings. Neither the ward assembly nor the city planning council has been consulted regarding the park and almost no information about the changes can be found in the materials provided to the public. Moreover, 34 homeless peoples are currently living in tents in Miyashita Park. The proposed renovation of the park means that the homeless people will no longer be allowed to make their sleeping arrangements in the park. There has allegedly been no effort by authorities to find any alternative accommodation to this date. The Special Rapporteur reminds the Government of Japan that consultation is an essential part of the right to adequate housing, and, in this context, consultation of the users and neighbors of the park by urban planners and governing authorities is important. Public spaces such as Miyashita Park play an important role in the adequacy of housing as providing a free and open space for recreation and cohabitation in urban society. Moreover, the Special Rapporteur emphasized that homelessness frequently results in the denial also of a number of other congruent rights linked to adequate housing, such as the right to food, right to water, right to health, right to education and the right to an adequate standard of living. These are enshrined in the Covenant as well as expressed in the fundamental principles set forth in the Universal Declaration of Human Rights. In addition to comments on the accuracy of the facts of the allegations, the Special Rapporteurs requested further information on consultations carried out in relation to the planned privatization and development of Miyashita Park; if any objection has been raised - in writing or otherwise - in relation to the privatisation of Miyashita Park; on the situation of the homeless people living in Miyashita Park, including information on any planned resettlement.

### **Response received**

63. On 20 December 2008, the Government of Japan sent a reply to the Special Rapporteur in response to the communication dated 21 August 2008, in which he replied to all questions as follows:

*“1. Are the facts alleged in the above summary of the case accurate?”*

With regard to the alleged facts in your inquiry, they are incorrect on all counts except that “Miyashita Park is a public park in the centre of Tokyo (Shibuya Ward),” for the following reasons:

- The repairs of Miyashita Park currently proposed by a private enterprise are repairs to a municipal park meant for the improvement of its accessibility to park users and its environment.
- There has been no proposal for naming rights for the park to the amount of 150 million yen per year, nor has any decision been made about leasing naming rights.
- It is beyond the purview of the ward to be aware of the expenses of repair to a park undertaken by a private enterprise, and the ward has not given permission for repairs to be made to the park.
- Even if this repair plan is put into practice, park users will not be required to pay an admission fee. Regarding the use of its facilities, it will be examined in detail in the future.

- After formulating a repair proposal plan for the facilities of Miyashita Park, Shibuya Ward will explain the proposed plan to the Ward Assembly, its residents and park users immediately to gain their understanding and move forward.
- As to the provision of housing to homeless people in Miyashita Park, please refer to the answer to Question 4 below.
- Concerning Miyashita Park serving as “adequate housing” for homeless people, let us refer to the decision by the Supreme Court of Japan that a public park cannot be used for an address (Sup. Ct. Oct. 3 2008) and point out that Shibuya Ward is of the view that the park is illegally occupied. However, due to humanitarian considerations, Shibuya Ward has not carried out forceful removals and instead, as outlined in the answer to Question 4, has been encouraging transition by the homeless to apartment living.

*Please indicate what consultation, if any, has taken or will take place in relation to the planned privatization and development of Miyashita Park.*

Please refer to (e) of the previous answer.

2. *Has there been any objection raised - in writing or otherwise - in relation to the privatization of Miyashita Park?*

A written petition of objection dated August 11 2008 was received from “The Coalition to Protect Miyashita Park from Becoming Nike Park.” Also, from July 3 to September 12, ten individuals, including residents from outside Shibuya, expressed their respective views in the form of eight e-mails, one letter and one fax.

3. *Please provide information on the situation of the homeless people living in Miyashita Park, including information on any planned resettlement.*

As of October 1 2008, about 25 homeless people live in the municipal Miyashita Park. Since 2006, the Tokyo Metropolitan Government and local wards have carried out the cooperative “Assistance Project for Transition to Community Life,” helping homeless people to find apartments and employment. Moreover, for those who have remained in streets and parks, the municipalities have carried out onsite counseling three times a month, explaining the welfare system and encouraging moves into “Emergency Interim Protection Centers.” Through such approaches, the number of homeless people in Miyashita Park, which totaled 101 at the project’s inception, has largely decreased.”

## **Kyrgyzstan**

### **Communication sent**

64. On 21 February 2008 the Special Rapporteur sent an allegation letter to the Government of Kyrgyzstan concerning information about alleged deaths due to severe cold weather in Kyrgyzstan. During the 2007-2008 winter period, it has been alleged that more than 120 persons, most of them homeless, have died from cold across the country. The situation has been reported to be particularly critical in Bishkek where more than 50 people have allegedly died. The

information received indicates that the number of homeless persons in Bishkek is growing and exceeds the capacity of emergency centers currently operating in the capital. It was reported that until the beginning of February 2008, only one government supported emergency centre (“Kolomto”) was functioning in the Pervomaysky district of Bishkek. While the normal capacity of this center is for 50 persons, it is reported that it currently accommodates 78 people.

According to information received, the Bishkek Mayor’s office announced that an additional facility in Leninsky district (near Fuchik Park) would be opened at the beginning of February to provide food to homeless people. Further information indicates that at least one further shelter provides accommodation in the Bishkek area for homeless people. Yet, it is reported that these additional centers could not accommodate the housing needs of the homeless population living in Bishkek. Concerns have also been expressed that because of the weather and the lack of a sufficient number of equipped shelters, the life of more people may be at stake in Bishkek as well as in other regions of the country. In addition to comments on the accuracy of the facts of the allegations, the Special Rapporteur requested further information on the number of persons that have died due to the cold and weather conditions in the past 4 months in Bishkek and in the rest of the country; on the measures taken by the authorities to address this issue, including preventive measures to avoid such deaths; on the manner that the authorities assess the needs of homeless and inadequately housed persons throughout the country; on statistics, indicators and other available figures used to determine the number of homeless people and the number of people that are living in inadequate housing, in particular in regard to heating, in Kyrgyzstan; and on the type and number of shelters for the homeless that are in use in Bishkek and the rest of the country, and whether these shelters are accessible to women and children.

### **Observation**

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

## **México**

### **Comunicación enviada**

66. El 18 de Julio de 2008, el Relator Especial junto con el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas envió una acción urgente al gobierno de México con referencia a las alegaciones recibidas durante las últimas semanas en relación al desalojo forzado de 86 habitantes de los Bienes Comunes de Chalcatongo y La Paz, Oaxaca, México. Según las alegaciones recibidas, el día 25, 26 y 27 de diciembre de 2007, un grupo de personas entraron en la comunidad y desalojaron a la totalidad de los habitantes. Según reportes recibidos, con dos tractores un grupo de personas derribaron y quemaron 44 casas de la comunidad, y procedieron a robar a los habitantes. La información recibida indica adicionalmente que el 9, 10 y 11 de mayo de 2008 un grupo de personas quemaron otras 15 casas en la comunidad de la Paz y que dichos actos han afectado a 86 personas. Además, las alegaciones recibidas expresan temor que estos actos pueden repetirse en las otras comunidades ubicadas dentro del territorio en cuestión, específicamente las comunidades de Allende y Reforma. La información recibida indica que esta situación se recrudeció a partir de que el Tribunal Unitario Agrario No. 46 de la Ciudad de Huajuapán de León, Oaxaca, emitiera un fallo favorable a Santo Domingo Ixcatlán del 3 de agosto de 1998. Según la información recibida, el fallo establece que las 1.356 hectáreas que se encontraban el

litigio correspondían al Municipio de Santo Domingo Ixcatlán. Sin embargo, las alegaciones recibidas señalan que los pobladores de Chalcatongo han estado en posesión de las tierras desde tiempos inmemoriales y están en posesión actual de las tierras. Además, según la información recibida, la Resolución del Tribunal Unitario Agrario No. 46 no se especifica la manera de su ejecución y no establece ninguna medida para desalojar a los habitantes de otras tres comunidades que están asentadas dentro de las tierras en disputa (La Paz, Allende y Reforma). Las alegaciones indican que las autoridades del Estado de Oaxaca no han querido ejecutar la sentencia debido a esta problemática y es por ello que algunos de los habitantes de Santo Domingo Ixcatlán actuaron por su propia mano. Según la información recibida, las autoridades municipales y el Estado de Oaxaca no han intervenido en la investigación de los hechos y la sanción de los responsables. Por el contrario, la información recibida indica que las autoridades municipales de Santo Domingo Ixcatlán conocían del operativo y permitieron que las actividades se llevaran a cabo. Además, supuestamente las autoridades de Procuración de Justicia del Estado de Oaxaca no han actuado frente a las denuncias penales presentadas por los pobladores de Chalcatongo por el desalojo, el robo, y la quema de sus viviendas. Supuestamente las víctimas han acudido a la Comisión de Derechos Humanos de Oaxaca a levantar quejas por los hechos, pero no han tenido ninguna respuesta de la Comisión hasta el momento. Además de los comentarios sobre la veracidad y exactitud de las alegaciones presentadas, Los Relatores Especiales solicitaron mayor información sobre cualquier investigación iniciada en relación con el caso; sobre las diligencias judiciales y administrativas practicadas y si se han adoptado sanciones de carácter penal o disciplinario contra los presuntos culpables; si las víctimas han obtenido algún tipo de compensación a modo de indemnización; sobre las medidas que se ha tomado, o intenta tomar, para evitar que se repitan los presuntos actos en las comunidades ya afectadas u otras comunidades en la región; sobre la legislación y prácticas administrativas y judiciales pertinentes a la protección de los derechos territoriales de los pueblos y comunidades indígenas, sobre la manera en que han sido aplicados en el presente caso y si estas protecciones son adecuadas y de conformidad con las disposiciones señaladas de la Declaración sobre los derechos de los pueblos indígenas; e información acerca de la legislación concerniente a los desalojos y su relevancia en este contexto.

### **Comunicación recibida**

67. En una carta de 5 de noviembre de 2008, el Gobierno de México informó que las comunidades de Chalcatongo de Hidalgo y de Santo Domingo Ixcatlán, perteneciente al distrito de Tlaxiaco, Oaxaca, confrontan antiguos problemas por la posesión y reconocimiento de una superficie de 1,356-93-70 hectáreas, conflicto que jurídicamente ya fue resuelto a favor de la comunidad de Santo Domingo Ixcatlán por una sentencia del Tribunal Unitario Agrario del Distrito 46, dictada el 8 de agosto de 1998, dentro del expediente de conflicto por límites número 03/95. Sin embargo, la sentencia se encuentra pendiente de ejecutar debido a la oposición que presentan los habitantes de la comunidad de Chalcatongo de Hidalgo, quienes nunca han estado de acuerdo con el fallo. Pese a que dicho conflicto ha sido ya objeto de una solución jurídica, el intento de ejecución de la sentencia ha contribuido al resurgimiento de confrontaciones entre pobladores de ambas comunidades. Con respecto a la pregunta de si son exactas las alegaciones, el Gobierno respondió que en relación a los hechos suscitados los días 9, 10 y 11 de mayo de 2008, si hubo una quema de 14 casas en la comunidad de Chalcatongo, Oaxaca, afectando con ello a 86 personas. Estos hechos fueron ocasionados con motivo de las mismas disputas entre las comunidades por la superficie de 1,356-93-70 hectáreas. En cuanto a información sobre investigaciones iniciadas, el Gobierno informó que, con motivo de estos hechos, la Procuraduría

de Justicia del estado de Oaxaca (PGJ Oax) inició el 15 de mayo de 2008 la averiguación previa 161(I)2008, por los delitos de daños en la propiedad y los que resulten, en contra de quien resulte responsable, con motivo de una denuncia presentada por los señores Alejandro Ramírez Quiroz, Avelino Ruiz López, Leonardo Casillas García, Efraín Quiroz heras, Anacleto Soria Cortés, Gabriel Ramírez Nicolás y Zenón Montesinos Heras, integrantes del comisariato de bienes comunales de Chalcatongo de Hidalgo. Después de 4 requerimientos por parte de la autoridad ministerial para solicitar a los ofendidos se presentaran para tomar su declaración sobre esos hechos, el 16 de septiembre de 2008, comparecieron los señores Hipólito Mendoza Cortes, Arcadio Santiago Mendoza, Avelino Mendoza, Tolentino Mendoza Ruiz y Evaristo Sánchez Cortes, quienes fueron coincidentes en declarar que el 9 de mayo de 2008, un grupo de personas pertenecientes a la comunidad de Santo Domingo Ixcatlán, liderados por el señor Artemio Jiménez Martínez, síndico municipal y Pedro Castro Hernández, integrante del Ayuntamiento, se introdujeron en los domicilios y después de robar sus pertenencias, prendieron fuego a sus casas. Debido al temor que las agresiones continuaran, los señores Mendoza Cortes, Santiago Mendoza, Mendoza Ruiz y Sánchez Cortés, ese mismo día con sus familias decidieron trasladarse al paraje Las Tinajas de la Paz, Chalcatongo, Oaxaca, improvisando casas para su refugio. También señalaron que los días 10 y 11 de mayo de 2008, nuevamente el grupo de personas pertenecientes a la comunidad de Santo Domingo Ixcatlán acudieron al paraje Las Tinajas de la Paz, Chalcatongo, Oaxaca, para saquear y posteriormente quemar las viviendas de Florentina Ruiz Nicolás, Maura Ramírez Santiago, Fructuoso Román Mendoza Cortés, Refugio Sánchez Ruiz, Jorge Sánchez Ruiz y Oscar Ruiz Jiménez. El Ministerio Público practicó la inspección ocular con la intervención de peritos técnicos especialistas y giró oficio a la agencia estatal de investigación a fin de avocarse a la investigación de los hechos. La averiguación previa aún se encuentra en la etapa de análisis para emitir la determinación que conforme a derecho proceda. Con respecto a si las víctimas han obtenido algún tipo de compensación a modo de indemnización, el Gobierno informó que hasta el momento no se ha determinado responsabilidad penal de ninguna persona, debido a que las investigaciones continúan su curso. Sobre las medidas tomadas para evitar que se repitan los hechos, el Gobierno mencionó que con la finalidad de atender y resolver el conflicto agrario que confrontan las comunidades, representantes la Secretaría General de Gobierno, la Junta de Conciliación Agraria y la Comisión Interinstitucional del Sector Agrario del estado de Oaxaca, se reunieron después de sucedidos los hechos, a efecto de implementar un proceso conciliatorio dentro del cual se han realizado reuniones, asambleas y pláticas de sensibilización tanto en las oficinas de las dependencias como en las comunidades. El proceso conciliatorio consiste en llevar a cabo trabajos técnicos por personal de la Junta de Conciliación Agraria en base a las diferentes propuestas que se han formulado en las reuniones para resolver el conflicto, en donde se ha propuesto compartir o dividir la superficie, asó como reubicar algunos asentamientos humanos en que ella existen o reconocer sus derechos agrarios como comuneros de la comunidad en donde estén ubicados y otras propuestas más que se encuentren considerando. También las autoridades han intervenido en las ocasiones en las cuales se han suscitado enfrentamientos por problemas agrarios, en donde se ha logrado que ambas comunidades acuerden un pacto de civilidad y se comprometan a mantener un clima de respeto, paz y tranquilidad en la zona, así como de continuar con las negociaciones hasta resolver pacíficamente este conflicto agrario, situación que en la actualidad se encuentra dentro de este proceso conciliatorio. Con respecto a la situación actual, el Gobierno informó que después del cambio de los órganos de representación de la comunidad de Chalcatongo de Hidalgo, ocurrido el 25 de mayo de 2008, las mesas de negociaciones sen han intensificado obteniéndose resultados muy significativos y positivos para la solucionar en forma

concertada y definitiva este problema, pues se está en espera de que sea resuelto el juicio de amparo número 233/2008, promovido a nombre de la comunidad de Chalcatongo de Hidalgo, ante el Juez Segundo de Distrito en el Estado de Oaxaca. Una vez resuelto el amparo permitirá continuar con el cumplimiento de los acuerdos obtenidos entre las comunidades para solucionar la controversia agraria.

## **Nigeria**

### **Communication sent**

68. On 8 September 2008, the Special Rapporteur together with the Special Rapporteur on extrajudicial, summary or arbitrary executions sent a joint allegation letter regarding allegations received about forced evictions and demolitions of houses in Gosa Sariki and Toge between May and June 2008, as well as threats of further evictions and demolitions in Abuja. They also called attention to allegations received regarding lethal use of force by the police in confronting protests related to these forced evictions. Reports indicate that in May 2008, a number of homes in the Gosa Sariki village alongside the Nnamdi Azikiwe airport road in the Federal Capital Territory (FCT) of Abuja were demolished by bulldozers and residents were made homeless. According to the information received, forced evictions and demolitions were conducted with inappropriate or no prior notice. It is alleged that officials from the Department of Development Control and the Federal Capital Development Authority (FCDA) visited residents of the Gosa Sariki village on 5 May 2008. They informed them that homes up to 150 metres from the airport road in the village were to be demolished the next day. However, it is further alleged that on 6 May 2008, bulldozers demolished homes in the Gosa Sariki village up to 300 metres from the airport road, thus a significant proportion of residents who had received no information were faced with the destruction of their homes. It is also alleged that many residents in the Gosa Sariki village lost their personal belongings as they were not given adequate time by FCDA officials to recover their possessions before their houses were bulldozed. Reportedly the same situation occurred in Toge in June 2008, where houses and personal belongings were destroyed by bulldozers with insufficient or no prior notice. Reports indicate that, as a consequence of these forced evictions, many families and individuals are now homeless, without shelter and living in the open air. In both cases, no adequate consultations had previously taken place with the affected communities and individuals. The absence of adequate relocation, accommodation or compensation has allegedly further impoverished inhabitants of these areas that were already living in poverty. The majority of the constructions that were demolished in Gosa and Toge were reportedly housing structures of 1 to 3 rooms, stalls and shops where some community members sold their wares. It is alleged that many residents consequently lost their livelihoods, including those who operated small businesses from houses or in shops that were demolished. In the case of Toge, residents allegedly obtained a court injunction in early June 2008 preventing the demolition of their homes, which was served on the FCDA. A hearing was allegedly scheduled at the High Court of the Federal Capital Territory to decide on the issue of the demolitions. However, the information states that this injunction was ignored by the FCDA, which carried out the demolition of homes on 13 June 2008 regardless of the court injunction. In addition, the information received alleges that the forced evictions and demolitions were carried out with disproportionate use of force, including the use of violence. The allegations state that a large police presence was brought into the community during the demolition process which targeted protestors against the demolitions with violence. It is alleged that four protestors (Issa Buruku, Kabiru Abubakar, Dan Asebe and Ismaila Abdullahi) were shot, with three being injured and one



killed. Two of the injured are still allegedly in a critical condition. According to the reports received, the police allegedly denied culpability during a police investigation. Reportedly, these evictions are justified by the FCDA as being part of the belated implementation of the 1979 Abuja Master Plan. Allegedly, the implementation of this plan has led to a pattern of forced evictions and demolitions of informal settlements without consultation or compensation since 2003. Evictions and demolitions in Abuja communities and other informal settlements, including in the Municipality of Gwagwalada, have reportedly taken place since 2003/2004, by the Federal Capital Development Authority. Excluding the most recent wave of evictions and demolitions, it is alleged that the total number of dispossessed and homeless people amounts to an estimated 800,000 persons. The Special Rapporteurs reminded the Government of Nigeria that this situation was already the subject of a communication by the previous Special Rapporteur on adequate housing on 9 June 2006. Regretfully, no response to this communication had been received, at the date of this current communication. It has been alleged that a number of the residents in Gosa Sariki and Toge forfeited their rights to alternative measures such as compensation because they were squatting in houses that were not built legally. Regardless of the truth of the allegation, in General Comment No.7 it is recognized that “where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality” (Paragraph 14). General Comment No.7 also indicates that “state parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Legal remedies or procedures should be provided to those who are affected by eviction orders” (Paragraph 13). With particular concern for the rights of all residents of Abuja, the Special Rapporteurs urged the government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned persons are respected at the present and in the future. They also requested that the government, upon consideration of the legality of these actions, adopt effective measures to prevent the recurrence of acts found to be in contradictions of obligations under international human rights law to which Nigeria is a party. This includes taking all necessary measures to guarantee that rights and freedoms are protected and accountability of any persons guilty of any alleged violations are ensured. In addition to comments on the accuracy of the facts of the allegations, the Special Rapporteurs requested further information on any notice provided to residents of the alleged evictions and demolitions of houses in the Gosa Sariki or Toge communities and to the alleged evictions and demolitions scheduled for Abuja in August and September 2008; on any consultation of residents in relation to the alleged evictions and demolitions in the Gosa Sariki or Toge communities and on the proposed consultation of residents in relation to the alleged evictions and demolitions scheduled for Abuja in August and September 2008; on any arrangements for the present or future resettlement of residents affected by alleged evictions and demolitions in the Gosa Sariki or Toge communities and on the proposed arrangements for the future resettlement of residents in relation to the alleged evictions and demolitions scheduled for Abuja in August and September 2008; on any compensation provided to residents affected by alleged evictions and demolitions in the Gosa Sariki or Toge communities and on the compensation planned in respect of the future resettlement of residents in relation to the alleged evictions and demolitions scheduled for Abuja in August and September 2008; on any legal or other remedies available to those residents allegedly affected by evictions and demolitions in the Gosa Sariki or Toge communities and whether or not use has been made of these remedies; on court proceedings in relation to the alleged forced evictions and

demolitions in Toge or any related proceedings (in the event that an order/verdict has been announced, whether it has been implemented) and on the implementation of the High Court injunction of June 2003; and detailed information of, and where available the results, any investigation, medical examination and judicial or other inquiries which may have been carried out in relation to the four alleged protestors Issa Buruku, Kabiru Abubakar, Dan Asebe and Ismaila Abdullahi during the forced evictions and demolitions affecting the Toge community.

### **Observation**

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

## **Panamá**

### **Comunicación enviada**

70. El 8 de abril de 2008, el Relator Especial, junto con el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas y el Relator Especial sobre una vivienda adecuada como elemento integrante del derecho a un nivel de vida adecuado y sobre el derecho de no discriminación enviaron una Acción Urgente al Gobierno de Panamá con relación a los supuestos desalojos forzosos y otros abusos sufridos por los miembros de la comunidad Charco La Pava, del pueblo ngöbe, en el Distrito de Changuinola (Provincia Bocas del Toro). Hicieron referencia a las diversas alegaciones recibidas por los Relatores Especiales durante los últimos meses en relación con el impacto de la construcción de represas en el área del Bosque Protector Palo Seco sobre la vida de las comunidades ngöbe y naso. Explicaron que dichas alegaciones estaban siendo analizadas actualmente por los Relatores Especiales y serán transmitidas próximamente al Gobierno de Panamá para su consideración. Con relación a dichas alegaciones, solicitaron al gobierno la atención urgente las informaciones que hayan recibido con relación a los supuestos desalojos forzosos y otros abusos sufridos por los miembros de la comunidad Charco La Pava, del pueblo ngöbe, en el Distrito de Changuinola, en relación con los trabajos de construcción del Proyecto Hidroeléctrico CHAN 75. A finales de 2007, la empresa EAS-Changuinola dio inicio a las obras de construcción del Proyecto Hidroeléctrico CHAN 75, las cuales implicarán las inundaciones completas de la Comunidad Charco La Pava y otras comunidades ngöbe aledañas, sin contar con el consentimiento de dichas comunidades. El 3 de enero de 2008, comenzaron las primeras detonaciones para el desmonte de los terrenos, así como la entrada del personal de la empresa en las tierras de la comunidad Charco La Pava. Dichos trabajos generaron las protestas de los miembros de la Comunidad, que habrían sido reprimidas por efectivos de la Policía Nacional. Se denuncia el uso excesivo de la fuerza en contra de la población civil desarmada, incluyendo en contra de mujeres y niños, así como la detención de un alto número de personas. Desde mediados de febrero de 2008, la Policía Nacional habría establecido dos retenes a la entrada de la Comunidad Charco la Pava, impidiendo la libre circulación de los miembros de la Comunidad, así como la entrada de personas ajenas a la misma, incluyendo periodistas y observadores de organizaciones no gubernamentales. En uno de los retenes, la Policía habría asimismo instalado un faro de luz, encendido las 24 horas del día, para controlar en todo momento las actividades de los miembros de la Comunidad. El día 28 de marzo de 2008, la Gobernadora de la Provincia Bocas del Toro, Sra. Ester Mena Chiu, acompañada del Representante Regional de la Autoridad Nacional del Ambiente (ANAN), Sr. Valentín Pineda, de la Ing. Thais Mejía, empleada de AES, y de dos miembros de la Policía

Nacional, se habría personado en Charco La Pava y convocado a una reunión con los miembros de la Comunidad. En dicha reunión, la Gobernadora habría supuestamente conminado a dichos miembros a que abandonaran voluntariamente sus hogares para permitir la continuidad de los trabajos de construcción de la represa, y que de lo contrario se emplearía la fuerza policial para desalojarlos. En este contexto, los Relatores Especiales han recibido una serie de alegaciones específicas relativas a los supuestos desalojos y otros abusos sufridos por miembros de la Comunidad Charco La Pava que se han opuesto a la construcción del proyecto. Se denuncian el uso excesivo de la fuerza en contra de estas personas; amenazas e insultos; irregularidades administrativas en la tramitación de los desalojos, así como la destrucción de vivienda y de cultivos. En algunos de los casos reportados, se denuncia asimismo que las personas en cuestión se han encontrado en situación de indefensión debido a su limitada comprensión del idioma castellano. En ninguno de los casos reportados las supuestas víctimas habrían recibido compensación o indemnización alguna. El caso de la Sra. Ana Castillo: El 3 de enero de 2008, los cultivos existentes en la finca de la Sra. Ana Castillo habrían sido destruidos por excavadoras manejadas por personal de la empresa AES-Changuinola, bajo las órdenes de los Ingenieros Rodolfo Ayarza y Lidami Morales, custodiadas por efectivos de la Policía Nacional. Al acercarse al personal de la empresa para solicitarles que detuvieran la destrucción de los cultivos, la Policía, sin mediar aviso, habría comenzado a golpearla. Según las alegaciones, la Sra. Castillo habría sido desnudada y arrastrada en dicho estado hasta el vehículo que la condujo al Cuartel de la Policía de Changuinola. En dicho cuartel, a cargo del Jefe de Policía José Manuel Ríos, la Sra. Castillo habría sido objeto de insultos y amenazas para que firmara un acuerdo con la empresa constructora y abandonara su vivienda. Los hijos de la Sra. Castillo, Anselmo Santos, Didier Santos, e Irene Santos, todos ellos menores de edad, habrían sido también supuestamente trasladados al cuartel, insultados y golpeados. El 28 de marzo de 2008, la Sra. Ana Castillo habría participado en la reunión con la Gobernadora de Bocas del Toro, donde se le demandó expresamente que abandonara su casa y aceptara negociar con la empresa. Durante dicha reunión, agentes de la Policía Nacional pistola en mano habrían conminando a la Sra. Castillo a que firmara un documento de acuerdo y a que abandonara su hogar. El 30 de marzo de 2008, se habrían reanudado los trabajos en los terrenos propiedad de la Sra. Castillo, comunicándosele verbalmente que iba a ser desalojada de su casa. El caso del Sr. Francisco Santos: El 3 de enero de 2008, empleados de la empresa AES, acompañados de efectivos de la Policía Nacional, habrían comenzado a detonar explosivos en la finca privada del Sr. Francisco Santos. Al descubrirlo, el Sr. Santos se habría dirigido a los empleados de la empresa para solicitarles que no destruyeran sus cultivos. En dicho momento, y sin mediar palabra, el Sr. Santos habría comenzado a ser golpeado e insultado por la Policía. El Sr. Santos habría caído al suelo, donde habría continuado a recibir golpes, y posteriormente trasladado al cuartel de Policía de Changuinola. Los hijos del Sr. Santos, Venero Santos y Abel Santos, que también habrían conminado a los empleados de la empresa a detener los trabajos, habrían sido también golpeados y detenidos por la Policía. El 13 febrero de 2008, empleados de la empresa AES Changuinola, acompañados de efectivos de la Policía Nacional se habrían vuelto a personar en la finca del Sr. Santos para dar comienzo a los trabajos de remoción y excavación de tierras, destruyendo todos los cultivos de su propiedad y presentando una orden de desalojo. El Sr. Santos habría sido forzado por la Policía a firmar un documento del que desconocía el contenido, debido a que no sabe leer ni escribir. El 28 de marzo de 2008, la Gobernadora de la Provincia de Bocas del Toro, acompañada de personal de la empresa AES y de dos miembros de la Policía Nacional, se habría personado en la residencia del Sr. Santos, ordenándole que desalojara su vivienda. Al día siguiente, los cultivos de la propiedad del Sr. Santos habrían sido completamente destruidos por

efectivos de la empresa. El caso de la Sra. Amalia Abrego: El 3 de enero de 2008, la Sra. Abrego se encontraba observando los trabajos de detonación junto con otros miembros de la comunidad cuando fue insultada y golpeada por la Policía, desnudada y arrastrada en ese estado. La Sra. Abrego habría sido posteriormente detenida y trasladada, junto con sus tres hijos menores, al Cuartel de Policía, donde habría sido objeto de insultos. El 29 de marzo de 2008, en el curso de la reunión con la Gobernadora de la Provincia de Bocas del Toro, la Sra. Amalia Abrego habría sido informada que debía abandonar su residencia. El caso del menor Iván Miranda: El menor Iván Miranda, de 10 años de edad, habría sido golpeado en la nariz el 3 de enero de 2008, cuando trataba de levantar a su madre y a su hermana de 8 años del suelo. El menor habría sido trasladado, junto con el resto de su familia, a un cuartel de la Policía Nacional, donde habría sido objeto de golpes, insultos y amenazas, sin haber recibido atención médica. El menor Iván Miranda sufriría todavía las secuelas del golpe recibido y, en la medida en que la Policía impediría su salida de la Comunidad, no habría recibido todavía una atención médica adecuada. El caso del Sr. Ernesto López: El Sr. Ernesto López habría recibido en enero de 2008 la orden verbal de desalojo de su vivienda por parte de la Policía. Los cultivos de la finca del Sr. López habrían sido destruidos, careciendo de medios de subsistencia y temiendo por su desalojo inminente. El caso del Sr. Manuel López: El 3 de enero de 2008, cuando intentaba levantar a un niño que había caído al suelo en el curso de los enfrentamientos con las fuerzas del orden, el Sr. Manuel López habría sido arrastrado por efectivos de la Policía Nacional, quienes habrían comenzado a golpearlo mientras se encontraba en el suelo. El Sr. López habría sido trasladado al Cuartel de Changuinola y de ahí al centro médico más cercano, donde le habrían hecho firmar un documento sin haber recibido atención alguna. En la estación policial, el Sr. López habría sido objeto de insultos y golpes. El viernes 28 de marzo, el Sr. López habría sido notificado verbalmente por la Policía de la necesidad de que desalojara su residencia. El caso de la Sra. Isabel Becker: En octubre de 2007, la Sra. Becker habría sido supuestamente presionada para firmar un contrato redactado en español tras haber pasado más de 10 horas contra su voluntad en la oficina de la empresa, por el que cedía la propiedad de sus tierras en la Comunidad Charco La Pava. En octubre de 2007, funcionarios de la alcaldía de Changuinola y de la Provincia de Bocas del Toro se habrían personado en la residencia de la Sra. Isabel Becker, acompañados de efectivos de la Policía Nacional. Tras meses de supuestas presiones, en 19 de octubre de 2007 la empresa habría logrado que la Sra. Becker firmara un segundo acuerdo por su finca. En enero de 2008, personal perteneciente a la empresa habría procedido a derrumbar su casa con el auxilio de unos 15 miembros armados de la Policía. Según las alegaciones, los miembros de la Comunidad desconocían dónde fue trasladada y se quejaron de que no la dejaron recoger sus pertenencias. Además de los comentarios sobre la veracidad y exactitud de las alegaciones presentadas, el Relator Especial solicitará mayor información sobre cualquier queja presentada; sobre si ha iniciado una investigación en relación con el caso, incluyendo los resultados de los exámenes médicos llevados a cabo; sobre las diligencias judiciales y administrativas practicadas y si se ha adoptado sanciones de carácter penal o disciplinario contra los presuntos culpables; y si la víctima o sus familiares obtuvieron algún tipo de compensación a modo de indemnización.

### **Comunicación recibida**

71. El 9 de April 2008, la Misión Permanente de Panamá en Ginebra acusó el recibo de la comunicación enviada el 8 de abril de 2008, y informó que esta comunicación había sido

transmitida a las Autoridades del Gobierno de la República de Panamá. No obstante, la Relatora especial lamenta que en el momento de realizarse este informe no haya recibido ninguna respuesta adicional del Gobierno.

## **Russian Federation**

### **Communications sent**

72. On 29 January 2008, the Special Rapporteur together with the Representative of the Secretary-General on internally displaced persons and the Special Rapporteur on contemporary forms of racism sent a joint urgent appeal to the Government of the Russian Federation, concerning reports received regarding 147 Chechen families who have been displaced to Ingushetia and Dagestan returned to the Chechen capital of Grozny. At the time of this communication, they reportedly had not yet found a durable solution and were at risk of being forcefully evicted from their place of living. On 10 January 2008, these 147 families who were living in a temporary accommodation centre at 4 Vyborgskaia Street in Grozny were reportedly told by officials that they had to leave their accommodation at short notice. According to the information received, some inhabitants have been told they should leave before the end of the month, and officials allegedly threatened to cut off the electricity and gas if they do not leave. It was reported that inhabitants of many other temporary accommodation centers in Grozny were also being told to leave. Those affected have reportedly not been consulted and no adequate alternative accommodation has been foreseen for their relocation. Especially during wintertime, access to adequate housing is extremely important particularly for the vulnerable groups among the internally displaced such as young children, elderly and disabled people.

73. On 21 November 2008, the Special Rapporteur together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on human rights defenders sent a joint urgent appeal to the Government of the Russian Federation, concerning reports received regarding Ms Carine Clément, Mr. Mikhail Beketov and Mr. Sergei Fedotov. Ms Carine Clément is a Moscow-based French sociologist, and the director of the Institute of Collective Action. Ms Clément is very active on housing rights and trade unions. Mr. Mikhail Beketov is a journalist and editor-in-chief of the *Kimkinskaia Pravda* newspaper, and is involved in the protection of environmental rights. Mr. Serguei Fedotov is the leader of a group supporting disenfranchised small landowners in the suburbs of Moscow. On 13 November 2008 Ms Carine Clément was attacked near the Bilingua Club in downtown Moscow, on her way to a roundtable. Two unidentified man ran up to her from behind, and stabbed her in the thigh with a syringe containing an unidentified substance. On 12 November 2008, another assailant attacked Mrs. Carine Clément near her house. He insulted her and spat on her. Mrs. Clément filed a complaint with the police and went to the hospital for medical treatment. On 13 November 2008, Mr. Mikhail Beketov was found by a neighbour in his courtyard of his home in the Khimki district of Moscow. Mr. Beketov was severely beaten and was unconscious when he was taken to the hospital. He sustained a head injury, multiple broken bones, and other serious injuries. On 13 November 2008, Mr. Sergei Fedotov was attacked by two young men with baseball bats and pepper spray. Concern was expressed that the attacks on these human rights defenders working on economic and social rights, including on the right to adequate housing, in the Russian Federation may form part of a broader intimidation campaign. Further concern was expressed that the assaults on these defenders may be solely connected to their activities in the defense of human rights. In addition

to comments on the accuracy of the facts of the allegations, the Special Rapporteurs requested further information on whether any complaint has been lodged by or on behalf of the alleged victims; on details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case; and whether adequate housing and relocation has been provided to the victims or the family of the victims, and if not, what solution is foreseen for these families.

### **Response received**

74. On 31 December 2008 the Government of the Russian Federation sent a reply to the joint urgent appeal sent on 29 January 2008. At the time of the finalization of this report, the reply was still under translation. A complete summary will be provided in the Special Rapporteur's next communication report.

## **Sri Lanka**

### **Communications sent**

75. On 5 August 2008 the Special Rapporteur sent an urgent appeal to the Government of Sri Lanka, concerning reports of mass forced evictions and demolitions of houses in Kompannaweediya, Colombo on 18 July 2008 and the threat of further forced evictions and demolitions in Kompannaweediya as well as in the Mahawatha area in Colombo. Concerning the situation in Kompannaweediya area, according to the information received, on 18 July 2008, armed police carried out forced evictions, affecting around 1770 residents of the Kompannaweediya area, including many children. These people were reportedly legal and long-standing residents in the area and had paid rates and taxes to the relevant authorities. The information received indicates that 47 houses were demolished and that the police engaged in disproportionate force including violence and the use of tear gas, against residents who were resisting the evictions. It is also alleged that during these events, one man was arrested. In response to a notice received on 11 July to vacate the area, community representatives petitioned the Supreme Court to halt the planned evictions. The notice cited security concerns in advance of the upcoming South Asian Association for Regional Cooperation (SAARC) summit. Although the Supreme Court issued an order on 18 July to maintain the status quo until 22 July, the police still carried out the evictions on 18 July. Later, the police asserted that they were unaware of the order, and ceased the evictions once they were informed of the order. 900 houses remain intact pending the outcome of the court case. Many people did not have time to recover possessions before the evictions took place. The affected residents have been assigned temporary alternative housing which is inadequate, as it reportedly lacks water, sanitation and electricity, and some of the housing was not even finished before the evictions were carried out. The information received alleges that there was no meaningful consultation about alternatives. The residents, who are reported to live in a situation of extreme poverty, are now in a heightened state of vulnerability and insecurity and many continue to live under the threat of eviction. Concerning the situation in the Mahawatha area, Colombo according to the information received: 400 families living along the railway line in the Mahawatha area of Colombo were ordered to vacate their houses by 28 July or 4 August (depending on when they received the letter of notice). In total, around 2,000 people would be affected by such evictions, including about 1,200 children. It is reported that the authorities did not consult the residents prior to delivering the eviction notices, and no alternative accommodation or compensation was offered. The residents have

lived in the area for several decades and there is concern that these residents, who already live in a situation of extreme poverty, will be rendered homeless if these evictions take place. Furthermore, it is alleged that a community leader who was organizing the community to oppose the evictions was abducted on 21 July. He was subsequently released but reportedly coerced to drop charges he had planned to bring before the court. Additionally, a court case has been lodged with the Supreme Court on 31 July concerning these evictions. Although 14 petitioners originally joined in this case, they reportedly received threats, which led the majority of them to withdraw their names. Serious concern is expressed for the safety of persons attempting to claim their rights. It has since been reported that the Supreme Court found no violation of international law and it considered that the residents had been given enough notice according to national law. On humanitarian grounds, it ordered the Attorney General to inform the railway authority to give the residents more time before imposing the evictions, but it is unclear how much time will be allowed. Additionally, alternative accommodation has still not been organized, and no compensation has been offered, according to the information received. In the context of the allegations, the Special Rapporteur emphasized that forced evictions without adequate resettlement and without compensation make it impossible for impoverished citizens to have access to the basic necessities of life such as the right to food, the right to housing, the right to education and the right to an adequate standard of living. In the case of the forced evictions in Kompannaweediya, it has been alleged that the resettlement of affected residents in the Mutwal area is inadequate, lacking basic facilities such as water and sanitation. In the case of the proposed forced evictions in Mahawatha, it has been alleged that the affected families will be rendered homeless, as no resettlement plan has been prepared. It has also been alleged that neither group of residents have received adequate compensation, nor are plans in place to compensate them. In addition to comments on the accuracy of the facts of the allegations, the Special Rapporteur requested further information on the grounds on which such forced evictions and demolitions were conducted, on the legal framework governing decisions in this regard; if there was any impact assessment carried out prior to the evictions; if the affected individuals and communities were consulted before the evictions were planned; if the communities and affected persons, in the view of the Government, were given adequate and reasonable prior notice before the eviction; if the communities and affected persons were given adequate and reasonable time to withdraw their belongings before the destruction of their residences; on the measures that have been foreseen by the authorities to ensure that the evictions do not result in homelessness of the affected persons and to relocate of the affected people. The Special Rapporteur also requested clarification on whether force was used during the evictions that took place on 18 July in Kompannaweediya, including details about any arrests of individuals, and charges against them; if there has been any investigation, medical examination, judicial or other inquiry into the allegations mentioned above; details about the case before the Supreme Court concerning the evictions in Kompannaweediya, including any subsequent decision about the 900 remaining houses and about the court case concerning the evictions at Mahawatha, and to what extent the verdict has been implemented; on the steps taken to ensure that persons attempting to claim their rights are not threatened or harassed in any way, and that their rights are protected; and in the event that any alleged perpetrator(s) were identified, the full details of any prosecutions which have been undertaken; any sanctions that have been imposed on the alleged perpetrator.

76. On 13 November 2008 the Special Rapporteur sent an allegation letter to the government of Sri Lanka concerning information received regarding the planned eviction of families from at least 11 tsunami transitional shelter sites in Moratuwa and Ratmalana Divisions: “The affected

tsunami transitional shelter sites are Sunandopananda Vidyalaya, Roman Catholic School, Lunawa Rest House, Koralawella Playground, Sugatha Dharmadara Vidyalaya, Salu Sala, Molpe Sobitha School, Jagapura in the Moratuwa DS Division (Common Building) and Karmantha Pura and Kotalawala (Common Building) in the Ratmalana DS Division. Reports received indicate that the transitional shelter scheme under the Tsunami Housing Policy has been an effective and widely used means of temporarily providing shelter and other basic services to families affected by the devastating effects of the Tsunami in Sri Lanka in December 2004. It is reported that, since early 2008, many families have been able gain access to adequate housing through grants from the Government of Sri Lanka. The information received indicates that the Tsunami Housing Policy allegedly entitles everyone who lost a house in the disaster to receive a ready built house or a cash grant to build a house, regardless of the shelter they had in the past. It is alleged that the Tsunami Housing Policy awards a single grant to a household without considering the number of people constituting the household. Therefore, according to the information provided, the assistance given to large households has been insufficient and extended families were allegedly forced to remain in the transitional shelters. Additionally, the Tsunami Housing Policy allegedly states that tenants are not eligible to receive housing assistance. The Tsunami (Special Provisions) Act (2005) allegedly states that rent agreements between landlord and tenant remain valid even if that house was completely destroyed during the Tsunami. The information provided indicates that tenants are disqualified from housing assistance because of their old agreements yet are often unaware of their rights or unable to enforce them in respect of their agreements with their old landlord. Reports received also indicate that no adequate consultation was conducted with the affected families at any stage. Additionally, these groups of people were reportedly not provided with any arrangements for relocation or assistance and are consequently facing loss of shelter and destitution. Reportedly, extended families and tenants form the majority of the residents who have been served notice of eviction for 10 October 2008 from the above listed transitional shelters. Additionally, some groups of people were subject to a de facto eviction when basic services such as the electricity supply and sanitation facilities in some of the shelters were discontinued on 10 September 2008. According to the information provided, the planned evictions will impact upon around 499 families in 10 of these shelter sites (excluding the Kotalawala (Common Building)). It is reported that a directive stating that members of extended families and former tenants are eligible for assistance that was issued by your Excellency's Government to all Divisional Secretaries has not been followed in this respect. It is reported that the Salu Sala Shelter is one of the transitional shelters in Moratuwa which is affected by the eviction notice awarded by the Divisional Secretary of Moratuwa. Allegedly, around 90 families of those remaining in Salu Sala Transitional Shelter were tenants or members of extended families and have not received any assistance or offer of relocation from the government. It is alleged that the only group in the Salu Sala transitional shelter site who had received an offer of relocation were another 11 families also occupying the shelter because the alternative housing already provided to them was inadequate and lacked basic facilities such as water and sanitation; however, it is alleged that there have been long delays with these grants. As referred to above, the Government Agent of Colombo has allegedly issued a directive to all Divisional Secretaries under his authority, stating that all renters and extended families affected by the Tsunami are eligible to receive grants from the Government of Sri Lanka in order to buy land and build houses. However, it seems that the directive has not been followed by the Divisional Secretary of Moratuwa. Additionally, some community representatives who allegedly met with the Divisional Secretary were arrested and now allegedly face court proceedings and possible criminal charges because of their attempt to



advocate on behalf of their community on these issues. While the action of the authorities to address the plight of victims of the Tsunami is commendable, the alleged facts of the “de facto” eviction of families through the discontinuing of basic services in some transitional shelters in the Moratuwa and Ratmalana divisions and the proposed eviction of the others remaining in these transitional shelters may be a matter of concern regarding the obligations of Sri Lanka to the right to adequate housing. In addition to comments on the accuracy of the facts of the allegations, the Special Rapporteur requested further information if any complaint has been lodged; on details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case; in the event that the alleged perpetrators were identified, full details of any prosecutions that have been undertaken and sanctions that have been imposed on the alleged perpetrators; and whether compensation has been provided to the victim or the family of the victim.”

### **Response received**

77. On 4 September 2008 the Government of Sri Lanka sent a response to the communication dated 5 August 2008. The Government provided information on the alleged mass forced evictions and demolitions of houses in Kompannaweediya (Slave Island) as well as in the Mahawatha area in Colombo. According to this information: “Some families have been living in unauthorized structures built on government owned reservation lands in Glenic Street and houses in Kompannaweediya (Slave Island) as well as in the Mahawatha area in Colombo. The Urban Development Authority, the Government body authorized to deal with such issues, issued advance notice on them to vacate the areas. The areas under reference are situated within the High Security Zone in Colombo and the Government has already initiated a project to construct 1,000 houses in Dematagoda, a suburb in Colombo at a cost of Rs 1 million for each dweller of Slave Island and the work is due to be completed by the end of March next year. When these dwellers did not comply with the notice, the Urban Development Authority using the powers vested on it by statute, started to demolish the unauthorized structures, the Urban Development Authority had informed the dwellers of the demolition of their unauthorized constructions well in advance. According to the Urban Development Authority, these people had given their consent in writing to move to a new place provided by the Government. However, a tense situation occurred when the demolitions began and the Police were compelled to use minimum force to manage the unruly crowds in order to maintain law and order. The dwellers had also petitioned the Supreme Court in a fundamental rights case against their eviction from unauthorized lands. The Supreme Court dismissed the petition on 19 August 2008. By this time, all but 21 families had moved into the new place provided by the Government. Following the dismissal of the Fundamental Rights case, the balance occupants in Glennic Street agreed either to accept temporary houses in Totalanga area in Colombo, or receive one year rental fees until the Dematagoda housing complex is ready for occupation. The Urban Development Authority gave more time to the occupants to vacate in view of the forthcoming Ramazan festival. Already 154 families had moved to the temporary shelters at Thotalanga, while 155 families obtained a sum of Rs. 101,000 each including one year’s rental of Rs 96,000 plus an allowance of Rs 5,000 provided to transport their belongings.”

### **Observations**

78. 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 13 November 2008.

## Sudan

### Communication sent

79. On 8 October 2008, the Special Rapporteur together with the special Rapporteur on violence against women, its causes and consequences, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on Torture sent a joint allegation letter to the Government of Sudan concerning reports received regarding attacks against the civilian population of the villages Logurony and Ioli in Eastern Equatoria State by the Sudan People's Liberation Army, which resulted in the killing and beating of civilians and destruction of dwellings and livelihoods on 4 June 2008 and in the following days. The villages of Logurony and Ioli, located near Hiyala, in Torit county, Eastern Equatoria State, Southern Sudan, have a history of occasionally tense relationships, due primarily to cattle raiding incidents. At the beginning of June 2008, the Governor of Eastern Equatoria State dispatched the Sudan People's Liberation Army (SPLA) to the two villages, apparently with orders to carry out arrests and disarm the population. On 4 June 2008 at around 4 a.m. in the morning, SPLA forces surrounded Logurony. While it was still completely dark, they started shooting, at first aiming in the air. The villagers, who were on high alert due to an expected attack from Ioli, returned fire. Only when it became light, they realized that they had killed SPLA soldiers. Fearing retaliation by the SPLA, they fled into the bush. SPLA soldiers shot at Logurony villagers, reportedly killing four: Tome Marcello, the headmaster of the primary school; Ogesa Orlando, a police officer; Oreste Ogubung, and Origo Agala. They also started burning down the village. Two elderly people, Ojeno Itak and his wife Amisia Itak, died in their dwelling during the fire. On 21 June 2008, another elderly woman, Anisa Anohira Oteng, succumbed to the burn injuries sustained at the hospital to which she had been taken by SPLA soldiers. Also on 4 June 2008, SPLA forces (reportedly counting 300 men) surrounded Ioli. The soldiers took the inhabitants outside the village and then started burning down the village, which killed one woman, Abung Elizabeth. The SPLA also arrested five men and tied their hands behind their backs. When news of the SPLA members killed in Logurony reached Ioli, the SPLA Operational Commander came to Ioli and allegedly ordered the soldiers to execute those arrested. The five men were led back to Ioli. Three men, named Bertino Odiongo, Angelo Otuno Ogede and Francesco Asai Omudek, were executed on the spot in front of the remaining village community. One of those arrested was injured but managed to escape. The fifth man was beaten by the soldiers and chased away. The population started running towards the bush. The SPLA opened fire on them, injuring another man. The bodies of two children, aged 5 and 6 (Ramonok Joseph and Omode Leone), were found in the bush surrounding the village on 9 June 2008, as were the mortal remains of a woman suffering from epilepsy (Kelenga Obong), who probably did not survive the stress resulting from her flight. Ioli village was burned to the ground. Soldiers gathered the remaining Ioli and Logurony villagers, approximately one thousand persons, and brought them to the SPLA barracks in Ramshel. There they spent the remainder of the day under the trees. Women were reportedly beaten with sticks. In the evening of 4 June 2008 they were released, apparently on orders of the Torit County Commissioner. Twelve male villagers, five from Logurony and seven from Ioli, however remained in SPLA detention until 7 June 2008 (one of them seven days longer). Some were allegedly held in a tukul, while others were kept in a hole in the ground. All were beaten on their head and stomach with gun barrels and other wooden and iron objects. Two Logurony detainees sustained severe head injuries, while another had whipping marks on his buttocks. These men did not report the ill-treatment to the police as they feared rearrest by the SPLA. On 10 June 2008, a young man from Hiyala was arrested on

suspicion of involvement in the shooting that led to the death of SPLA soldiers. He was taken to the SPLA barracks and severely beaten. He was released following a meetings between the Hiyala Head Chief and the SPLA, and had to be taken to Hiyala Hospital for medical treatment. SPLA retaliation against the civilian population of Logurony, Ioli and Hiyala continued in the days following 4 June 2008. On 6 June 2008, SPLA men shot at Hiyala villagers who were working in the field. A man and a woman were killed (Oronjo Safarino and Odiongo Salvatore), another woman injured. On 7 June 2008, Omudek Alajut, a man from Ioli, returned to the village, was apprehended by SPLA soldiers, tied up and executed on the spot. On 10 June 2008, Omunong Ohisa Ernaldo and Oreste Ohuro, two Logurony villagers, were found shot dead near Hiyala village square. These events resulted in major displacement from Ioli and Logurony villages. Approximately 2,800 inhabitants of Logurony and approximately 1,500 of Ioli were displaced. Their dwellings were destroyed and they lacked the materials to rebuild them. Moreover, on 4 June 2008, the SPLA seized the cattle belonging to the Ioli and Logurony villages, on which the population relied for their livelihood. Additionally, SPLA soldiers destroyed or took away the solar panels operating the Ioli water boreholes. Government representatives from Eastern Equatoria State have visited the area and submitted reports to both the President and Vice-President of the Government of Southern Sudan. The Eastern Equatoria State authorities and the Ministry of SPLA Affairs have announced that a high-level Committee will be investigating the incidents. In addition to comments on the accuracy of the facts of the allegations, the Special Rapporteurs requested further information on the authority that decided to entrust the SPLA (instead of the Southern Sudan Police Service) with an operation aimed at ending cattle rustling and other disputes between two villages, and the grounds for doing so; information on the orders of engagement of the SPLA units dispatched to Loguronyi and Ioli; details on the proceedings and results of the investigation by the high-level committee reportedly announced by the Ministry of SPLA Affairs; details of any disciplinary measures imposed on, and criminal prosecutions against persons found to be responsible, as perpetrators or as responsible commanders, for the alleged extrajudicial executions and rapes of women; details of any measures taken to ensure that complainants, witnesses and family members of the victims are not subject to any intimidation or retaliation; information on measures adopted to ensure that law enforcement forces in Southern Sudan comply with the UN Basic Principles on the Use of Firearms by Law Enforcement Officials; whether any compensation was, or is intended to be, provided to the rape victims and the families of the victims of killings by SPLA forces; and information on the steps taken by your Government to restore adequate housing and access to adequate food and water to the populations of Logurony and Ioli and whether any compensation was intended to be provided to the families whose housing was destroyed by the SPLA forces and whose cattle has not been returned.

### **Response received**

80. On 12 March 2008, the following information was provided by the authorities of the Sudan to the Special Rapporteur in regard to a number of communications, the last one dated 21 August 2007 related to hydroelectric constructions in the area of Merowe and Kajbar: "I should like to thank the Special Rapporteur on adequate housing for his report and we should like to affirm that the Government of the Sudan respects and earnestly endeavors to ensure the right of every citizen to adequate housing. With regard to the comments on the Merowe Dam and its impact on the inhabitants of the Amri and Manasir districts, clearly, the Government of the Sudan has done everything to pay adequate compensation to the affected persons, to create alternative agricultural projects for them and to provide them with suitable housing. In this

connection, the State carried out a general census of the two areas in order to verify the number of families and family members and assess the potential damage to property, such as trees, agricultural harvests and homes. The census was carried out in 1999, before the preparatory work on construction of the dams began. On the basis of the results, two zones were identified that were not very far from the areas that would be affected by the construction of the dam basin. Suitable housing was built in specially constructed villages and supplied with electricity and water services. Moreover, an agricultural project was set up and all related project works were completed. In addition, roads, schools, a hospital and health centers were constructed in the villages. In 2006, a second census was carried out to quantify all the additions that citizens had made to their existing property. Lists were issued of persons entitled to compensation and of the compensation amounts, and appeal boards were set up by the Ministry of Justice to hear challenges against compensation decisions. By law, the appeal boards' decisions can be challenged before an arbitration body presided over by a judge with a member representing the Department of Dams and another representing the aggrieved party. After all these procedures were carried out and compensation was paid to the rightful beneficiaries, the persons were transferred to the new areas, where they settled and began to cultivate their new land. The State bears the cost of all agricultural inputs and facilities for the land for a period of two years. The State has taken all possible measures to enable the affected individuals to receive compensation and to provide them with housing and agricultural land. The situation has stabilized and life continues as normal in these villages. As for Manasir, an agreement was reached with representatives of the affected population granting the latter the right to choose whether to take up the projects prepared by the Department of Dams or to take the local option requested by some of the affected persons. This is how things stand at present. With regard to the Kajbar Dam, preliminary feasibility studies on the technical and economic aspects of the project are being carried out at present. At the same time, the authorities are endeavoring to devise satisfactory solutions in consultation with the inhabitants of the affected area. The distinguish council cannot be unaware of the considerable importance of the construction of dams for the energy supply and expansion of agriculture and the impact that this will have on economic and social conditions throughout the country. On the other hand, those adversely affected by construction of these dams will not under any circumstances be sacrificed to the public interest. The State will consult the affected populations on the amounts of compensation to be awarded and on the areas to which there may be moves. The role of the State is to supply all necessary facilities for these areas so that these populations can have access to adequate housing and high-quality health, educational and agricultural services."

### **Observation**

81. 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 8 October 2008.

### **Suisse**

### **Communication envoyée**

82. Le 28 décembre 2007, le Rapporteur Spécial a adressé une lettre d'allégation concernant la situation du logement à Genève ainsi que des cas d'expulsion passés ou à venir. Le Rapporteur Spécial a remercié les Autorités Suisses pour leur lettre datée du 9 novembre 2007 en réponse à sa communication du 24 août 2007 concernant cette question. Il a ajouté que durant cette

période, des rapports et témoignages additionnels de différentes sources non-gouvernementales lui sont parvenus. Au vu des informations reçues, le Rapporteur Spécial requiert des précisions concernant les allégations reçues. En premier lieu le Rapporteur Spécial a demandé des précisions sur les notifications et avis d'expulsion qui lui ont été rapportées. Selon les allégations reçues, les résidents du Rhino auraient à plusieurs reprises demandé aux autorités de la Ville et du Canton de confirmer ou d'infirmer les rumeurs selon lesquelles l'évacuation du bâtiment serait imminente. Les autorités auraient refusé de répondre à cette requête. Il semble que ce manquement ait été admis publiquement par le magistrat en charge du logement suite à ces événements. De plus, il a été allégué que le déni du droit à un avis d'expulsion avait pour but d'empêcher un recours des résidents du Rhino devant un tribunal qui aurait pu aboutir à ordonner une suspension de l'expulsion jusqu'à la fin des procédures en cours devant le tribunal des baux et loyers. Comme les autorités genevoises le décrivent, un avis de la police cantonale a été placardé le 19 octobre 2005. Mais suite à cela, des recours devant plusieurs juridictions ont été ouvertes. L'expulsion aurait ainsi eu lieu deux ans plus tard, sans préavis suite à la décision administrative, et alors qu'une procédure judiciaire était encore en cours. La décision du Tribunal des baux et loyers ne serait intervenue que le 3 septembre 2007, soit environ 6 semaines après l'évacuation. Durant l'opération d'évacuation, le chef de police présent sur les lieux aurait déclaré aux résidents et observateurs qu'il ne s'agissait pas d'une évacuation mais d'un contrôle d'identité (cette même méthode aurait été utilisée durant l'évacuation du squat de la Tour). Il semblerait que, simultanément à cette opération, le procureur général tenait une conférence de presse dans laquelle il indiquait que l'évacuation des résidents du Rhino était en cours. Aucun représentant ou observateur des autorités, à part les forces de police, n'aurait été présent sur les lieux durant l'opération. Je vous serai reconnaissant de bien vouloir m'indiquer si les faits ci-dessus sont avérés, et si oui, les raisons d'une telle décision. Sur cette question de la notification d'une expulsion, le Rapporteur Spécial a relevé la réponse du Conseil d'Etat à une interpellation urgente (IUE 464-A), qui reconnaît en substance que l'évacuation du squat de la Tour avait été effectuée sans avertissement préalable. Elle a également constaté comme positive l'attitude du Conseil d'Etat qui juge ce genre de notification « non-obligatoire » mais souhaitable à l'avenir. Comme décrit par le Comité des droits économiques, sociaux et culturels dans son commentaire général n°7 (paragraphe 15) ou dans les Principes de base et directives concernant les expulsions et les déplacements liés au développement (ci-après les Principes concernant les expulsions), toute décision liée à une expulsion doit être annoncée par écrit, dans la langue locale, à toutes les personnes concernées, suffisamment à l'avance. L'avis d'expulsion doit contenir une justification détaillée de la décision, concernant notamment: a) l'absence de solution de remplacement raisonnable; b) tous les détails de la solution proposée; c) lorsque aucune autre solution n'existe, toutes les mesures prises et prévues pour minimiser l'impact négatif des expulsions. De plus, un avis d'expulsion en bonne et due forme devrait autoriser et aider les intéressés à dresser un inventaire pour évaluer leurs biens immeubles, leurs investissements et leurs autres biens matériels qui pourraient subir un dommage. Les personnes visées par l'expulsion devraient également avoir la possibilité d'évaluer et de signaler les pertes non monétaires à compenser. Le Rapporteur Spécial a également demandé des précisions sur le traitement des biens des personnes expulsées. Les informations reçues font état d'un manque de diligence envers les biens des personnes évacuées durant et après l'évacuation. Les rapports indiquent que certaines personnes ont reçu des factures téléphoniques internationales ayant été effectuées après l'évacuation et que des objets de valeur auraient été détruits ou auraient disparus. Les informations indiquent qu'aucune des plaintes adressées aux autorités à cet égard n'ont pour l'instant reçu de réponse, et que dans certains cas, la police a refusé d'enregistrer les

plaintes. Suite à l'expulsion, les effets personnels et les meubles des habitants de Rhino auraient été entreposés par des déménageurs mandatés par le propriétaire des immeubles à l'entreprise Swisslogistics SA, société administrée par un des avocats des propriétaires de l'immeuble. Selon des allégations reçues, les personnes expulsées et qui demeurent sans logement ont reçu une notification leur stipulant de retirer l'ensemble de leurs biens stockés suite aux expulsions, faute de quoi, les autorités procèderaient à une vente aux enchères de ces biens. Etant donné que ces personnes sont actuellement sans logement suite à l'expulsion, la rapporteuse spéciale a formulé la demande de ne pas procéder à la vente ou à la destruction de ces biens tant que le problème de relogement de ces personnes n'a pas été réglé. De plus, les informations reçues par les autorités concernant les biens des personnes expulsées du squat de la Tour restent vagues (« Selon les informations communiquées par le propriétaire de l'immeuble, ces personnes ont eu l'occasion de récupérer la plupart de leurs affaires »). Des éléments précis et vérifiables ont été demandés par le Rapporteur Spécial à ce sujet. Le Rapporteur Spécial a demandé des explications quant aux mesures de relogement des personnes expulsées. Selon les informations reçues, les personnes évacuées du squat du Rhino auraient été informées après leur détention qu'aucune mesure de relogement n'avait été prise. Les sources non-gouvernementales ont indiqué que seules les personnes avec enfants ont été relogées par la Ville de Genève (17 personnes dont 9 enfants - des chiffres plus précis que ce qui était contenu dans la réponse des autorités). Ainsi, une majorité des personnes évacuées demeurent provisoirement chez des amis ou parents et sont actuellement sans logement. A ce jour, une seule des personnes évacuée aurait réussi à louer un nouveau logement. Une cinquantaine de résidents aurait demandé un relogement collectif à la municipalité de Genève, qui malgré un accord de principe, a indiqué qu'il n'y avait actuellement pas d'immeuble disponible à cet effet. Les informations des autorités indiquent qu'au moment de l'intervention 22 personnes et une enfant en bas âge étaient présents sur les lieux, mais n'indiquent pas combien de personnes au total logeaient dans cet immeuble. Les sources non-gouvernementales indiquent que le nombre de personnes qui résidaient dans ce bâtiment était de 75 dont 9 enfants, ainsi que 6 personnes qui s'étaient retrouvées à la rue suite à l'évacuation du squat de la Tour. Sur ce sujet, le Rapporteur Spécial a demandé des indications précises quant aux personnes affectées par les expulsions mentionnées dans ma lettre du 24 août et leur état actuel de relogement. Les opérations policières d'expulsion ont également fait l'objet de l'attention du Rapporteur Spécial. Les informations reçues allèguent un recours excessif à la force durant les diverses opérations policières d'expulsion. Dans le cas de l'opération d'évacuation du squat dit du Rhino, peu avant que les habitants du 12 Boulevard des Philosophes aient été emmenés, plusieurs personnes et témoins des événements aux abords du premier immeuble évacué auraient été molestés par la police. Parmi elles, une conseillère administrative d'une commune genevoise qui a depuis lors été en contact avec la police et son commandant pour un suivi de ces faits. Les autorités lui auraient affirmé ouvrir une enquête sur les faits. Les observateurs, ainsi que certains représentants de l'autorité, indiqueraient que le moment de l'évacuation - par temps de forte pluie - aurait été également choisi de manière délibérée. A cet égard, le Rapporteur spécial a exprimé son souhait de recevoir des indications sur les raisons du maintien de l'opération d'expulsion dans ces conditions. Le Rapporteur Spécial a en outre demandé des informations complémentaires sur la sécurité d'occupation des personnes concernées par cette affaire. Dans sa réponse à une interpellation urgente (IUE 451-A), le Conseil d'Etat précise que la tolérance des autorités à l'égard d'occupation illicites de logements repose sur la « nécessité de préserver la paix sociale en tenant compte du manque de logements répondant aux besoins prépondérants de la population, qui représente un intérêt public supérieur à l'intérêt privé du propriétaire d'obtenir l'évacuation immédiate de son immeuble ». Comme

mentionné dans la communication précédente, et comme reconnu à plusieurs reprises par les autorités dans leur réponse, Genève semble subir actuellement une crise au moins aussi grave que dans les années 80, lorsque les autorités ont « décidé de tolérer une atteinte temporaire aux droits des propriétaires de logements que ceux-ci refusaient de mettre sur le marché, les laissant délibérément vides dans un contexte de pénurie aiguë » (lettre du conseil d'Etat). Les informations reçues indiquent que le squat dit du « Rhino » était listé comme hébergement d'urgence dans une brochure officielle et que le centre d'action sociale et de santé logeait des personnes dans ce lieu. Cette reconnaissance officielle se serait traduite dans d'autres brochures officielles et à d'autres occasions officielles. Les informations indiquent également que les résidents auraient fait des propositions de rachat de l'immeuble, ce qui aurait pu constituer une alternative à une expulsion. De plus, il a été rapporté que l'immeuble évacué va être reconverti en logement à loyer modéré pour une période limitée à cinq ans. Il a été néanmoins précisé que le propriétaire n'a pas d'obligation de mettre ces logements à disposition de familles à revenus modestes. Ceux-ci pourraient les mettre à disposition de leur famille ou ami et, une fois la période de cinq ans échue, les mettre sur le marché libre de la location avec de très fortes augmentations de loyers. Dans ce contexte, le Rapporteur Spécial a requis des informations supplémentaires quant aux points suivants : a) les raisons du changement de la tolérance des autorités dans une situation de crise similaire aux années 80 ; b) quelles mesures ont été entreprises pour contrer la spéculation et le fait de laisser des logements vacants dans un contexte de pénurie; et c) si les logements évacués ces dernières années ont été reconvertis en des logements abordables pour la population. Sur ce dernier point, je me réfère aux informations qui sont contenues dans ma lettre datée du 24 août 2007 et qui me sont parvenues depuis lors concernant les bâtiments évacués et qui demeurent vides après de nombreuses années malgré la crise du logement actuelle. Dans ce contexte, le Rapporteur Spécial a demandé des informations supplémentaires quant aux points suivants : a) les raisons du changement de la tolérance des autorités dans une situation de crise similaire aux années 80 ; b) quelles mesures ont été entreprises pour contrer la spéculation et le fait de laisser des logements vacants dans un contexte de pénuries; et c) si les logements évacués ces dernières années ont été reconvertis en des logements abordables pour la population. Sur ce dernier point, le Rapporteur Spécial s'est référé aux informations qui sont contenues dans sa lettre datée du 24 août 2007 et qui lui parvenues depuis lors concernant les bâtiments évacuées et qui demeurent vides après de nombreuses années malgré la crise du logement actuelle. Enfin, le Rapporteur Spécial a mentionné le statut légal du droit au logement, et s'est référé à différents instruments à cet égard. Selon les informations reçues, l'article 35 de la loi sur le tribunal fédéral indique que le selon le droit suisse, le recours peut être formé pour violation du droit international. Néanmoins, il semble que les tribunaux se refusent à prendre en compte le droit au logement tel qu'annoncé à l'article 10a de la Constitution Genevoise<sup>2</sup> ainsi qu'à tenir compte du droit international et des instruments

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<sup>2</sup> L'Article se lit comme suit :

Art. 10A Droit au logement

1. Le droit au logement est garanti.
2. L'Etat et les communes encouragent par des mesures appropriées la réalisation de logements - en location ou en propriété - répondant aux besoins reconnus de la population.

internationaux auxquels la Suisse est partie. A titre d'exemple, il est rapporté que dans une décision relative au squat Rhino, le tribunal administratif a clairement rejeté l'applicabilité du droit au logement tel qu'énoncé dans la Constitution genevoise et à l'article 11.1 du Pacte international relatif aux droits économiques, sociaux et culturels. Le tribunal aurait ainsi énoncé que ces articles seraient « des normes pragmatiques » qui ne confèrent aucun droit direct aux requérants. Dans ce contexte, le Rapporteur Spécial a demandé quel statut occupe le droit au logement dans la législation suisse et comment il peut être invoqué par les individus devant les tribunaux pour faire valoir leurs droits humains. Le Rapporteur Spécial a demandé des précisions concernant les différentes questions évoquées, et a ajouté qu'il serait présent à Genève à la session de mars 2008 du Conseil des droits de l'homme, souhaitant profiter de cette occasion pour s'entretenir des différents éléments du dossier avec les autorités genevoise compétentes, en particulier le Procureur général et le Conseil d'Etat.

### **Communication reçue**

83. Le 5 mars 2008, le Gouvernement Suisse a envoyé une réponse à la communication datée du 28 Décembre 2007, dans laquelle figure les informations suivantes, dont l'ordre suit celui des points soulevés par le Rapporteur Spécial dans sa lettre d'allégation:

« - Notification et avis d'expulsion : La procédure judiciaire initiée par les occupants illicites de Rhino devant le Tribunal des baux et loyers n'avait pas d'incidence sur la procédure d'évacuation. Au demeurant, dans sa décision du 3 décembre 2007, cette juridiction a considéré que l'action en justice des squatters tendant à faire constater qu'ils étaient au bénéfice d'un bail revêtait un caractère purement dilatoire, raison pour laquelle elle les a non seulement déboutés,

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3. A cette fin, dans les limites du droit fédéral, ils mènent une politique sociale du logement, notamment par :
- a) la lutte contre la spéculation foncière;
  - b) la construction et le subventionnement de logements avec priorité aux habitations à bas loyers;
  - c) une politique active d'acquisition de terrains;
  - d) l'octroi de droits de superficie à des organes désireux de construire des logements sociaux et ne poursuivant pas de but lucratif;
  - e) l'encouragement à la recherche de solutions économiques de construction;
  - f) des mesures propres à la remise sur le marché des logements laissés vides dans un but spéculatif;
  - g) des mesures propres à éviter que des personnes soient sans logement, notamment en cas d'évacuation forcée;
  - h) une politique active de concertation en cas de conflit en matière de logement.



mais encore condamnés à une amende pour abus de procédure. Pour sa part, la Commission cantonale de recours en matière de construction a déclaré irrecevable le recours déposé par les squatters contre la décision administrative, revêtue de la force exécutoire, ordonnant la réalisation des travaux de réhabilitation des immeubles en cause afin de remédier à l'état de dégradation desdits immeubles et de permettre la mise sur le marché locatif de logements répondant aux besoins prépondérants de la population au sens de la loi sur les démolitions, transformations et rénovations de maisons d'habitation, du 25 janvier 1996 (LDTR). Enfin, les occupants illicites ont également été interpellés sur ordre du Procureur général, au motif que leur comportement était constitutif de violation de domicile. Sur les 22 personnes interpellées lors de l'évacuation, seules 5 étaient déclarées comme résidentes du squat Rhino, les 17 autres étant des étrangers de passage (9) ou des personnes ayant une autre adresse, à Genève ou ailleurs (8). Après l'avis donné le 19 octobre 2005, la brigade des squats de la police cantonale a tenu informée les occupants illicites de Rhino de l'évolution de la situation ; les squatters étaient au courant de l'imminence de leur évacuation, à laquelle ils déclaraient vouloir s'opposer en utilisant « tous les moyens possibles », dans un communiqué publié le 5 juillet 2007. Par ailleurs, par avis du 29 juin 2007, il a été rappelé aux occupants illicites que les bâtiments avaient fait l'objet d'une autorisation de construire en force No. DD 98'008-5, portant sur la réhabilitation complétée desdits bâtiments en vue de la mise sur le marché de logements répondant aux besoins prépondérants de la population. Il a également été précisé que la réalisation des travaux autorisés était indispensable pour assurer la pérennité des immeubles et que pour d'évidents motifs de sécurité, cette réalisation impliquait que les bâtiments soient libres de tout occupant pendant toute la phase des travaux. L'évacuation ne requérait pas la présence de représentants de l'autorité autres que les forces de police engagées. Ces dernières ont agi en toute transparence, puisqu'elles ont-elles-mêmes informé l'ensemble des médias de cette opération dès son commencement.

- Bilan des personnes expulsées : Pour éviter une destruction par le propriétaire de l'immeuble, l'Etat a pris à sa charge, dès le 1<sup>er</sup> septembre 2007, le coût du stockage (quelque 600m<sup>2</sup>) et de la manutention des meubles des occupants de l'ancien squat Rhino entreposés dans les locaux d'une entreprise privée depuis l'évacuation dudit squat. A la fin février 2008, l'Etat a déjà payé près de Frs 60'000,- à l'entreprise considérée, les surfaces disponibles au garde-meuble de l'Etat ne permettant pas d'y stocker les meubles évacués. Malgré un premier délai fixé aux anciens occupants du squat à fin novembre et signifié à leur conseil, seul un nombre insignifiant d'objets ont été repris par leurs propriétaires. L'essentiel du volume occupé dans les locaux de l'entreprise l'est par du gros mobilier (bibliothèques, cuisinières, frigos, lits, vélos, etc...). La plupart des objets sont dans un état déplorable et sont probablement invendables. Après une prolongation du délai de retrait au 15 novembre 2007, le département cantonal des institutions a informé le conseil précité, par courrier du 11 décembre 2007, que des sommations allaient être publiées dans la Feuille d'avis officielle (FAO) à l'intention des occupants de l'ancien squat qui n'étaient pas venus prendre possession de leurs objets mobiliers et qu'une demande d'autorisation de vente aux enchères suivrait. Les sommations d'usage ont été faites aux propriétaires des meubles dans les éditions de la FAO des 7, 9, et 11 janvier 2008. Le délai de retrait avait été fixé au 25 janvier 2008. Par courrier du 28 janvier 2008, le département des institutions a demandé au Tribunal de première instance l'autorisation de vente aux enchères du matériel non repris, selon la procédure habituelle après des évacuations

d'immeubles. Le Tribunal de première instance a autorisé la vente aux enchères par ordonnance du 31 janvier 2008. S'agissant des biens des personnes évacuées du squat de la Tour, nous ne disposons pas d'autres informations que celles données dans notre précédent courrier.

- Relogement des personnes expulsées : selon une liste établie par Rhino en avril 2006, ce squat comptait 48 résidents. Parmi ces derniers, seuls 18 étaient annoncés comme tels à l'Office cantonal de la population. La police a par ailleurs constaté que durant l'année précédant l'évacuation, le nombre des occupants illicites de Rhino avait plutôt eu tendance à diminuer, ce que semble confirmer le faible nombre de personnes trouvées sur place le 23 juillet 2007. S'agissant du relogement des squatters évacués, nous ne disposons pas d'autres informations que celles données dans notre précédent courrier.
- Opération policière d'expulsion : en date du 10 octobre 2007, notre conseil a répondu à une interpellation parlementaire portant sur le comportement de la police lors des évacuations de l'été dernier (IUE 466-A). Nous vous transmettons en annexe une copie de cette réponse, dont il résulte que les policiers engagés dans ces opérations ont agi de manière proportionnée et ont dans l'ensemble, remarquablement rempli leur mission. Lors du déclenchement de l'évacuation, le 23 juillet 2007 à 14h00, le temps était couvert mais sec. La police n'a donc en aucune manière choisi d'effectuer sa mission par mauvais temps et le fait que les conditions se soient dégradées plus tard dans la journée ne justifiait aucunement l'interruption de cette opération.
- Sécurité d'occupation : Les principes, exposés dans notre précédente réponse, à la base de la politique des autorités cantonales en matière d'évacuation d'immeubles occupés illicitement restent valables, quand bien même on ne constate pas, malgré la pénurie, de comportement spéculatifs comparables à ceux que Genève avait connus lors de la crise de la fin de années 80, les instituts de crédit se montrant beaucoup plus circonspects dans l'octroi des prêts hypothécaires. Le nombre d'immeubles occupés est d'ailleurs passé de 151 (dont 20 sous « contrat de confiance ») en 1999 à 29 (dont 11 sous « contrat de confiance ») en 2008. Il va de soi cependant que ces principes ne trouvent pas application lorsque l'occupation illicite n'intervient qu'à des fins politiques ou dans le seul but de troubler l'ordre public, comme cela a été le cas à répétition reprises dans le prolongement des évacuations opérées en été 2007. L'autorisation de construire en cours d'exécution porte sur la rénovation de 16 logements existants totalisant 106 pièces et l'aménagement dans les combles de 3 logements supplémentaires. Les loyers après travaux ont effectivement été fixés par l'autorité compétente pour une période de 5 ans à dater de la remise en location, à un prix à la pièce par de CHF 3'225 s'agissant des logements existants et de CHF 6'000 pour les logements créés dans les combles, et de conformément aux dispositions de la LDTR. C'est par ailleurs le lieu de préciser que les conditions financières de cette autorisation de construire ont été confirmées par les autorités judiciaires cantonales. A l'issue de la période de contrôle, le loyer de ces logements sera régi exclusivement par le droit privé fédéral en matière de bail. Enfin, la LDTR a précisément pour but de lutter contre la pénurie et de garantir le maintien d'un habitat correspondant aux besoins prépondérants de la population. Pour le surplus, il n'existe dans le canton de Genève aucun immeuble d'habitation vacant, sous réserve des bâtiments faisant l'objet de travaux.

- Statut légal du droit au logement : Il est exact que dans un arrêt rendu en 2006 (ATA/ 21/2006) le Tribunal administratif genevois a jugé que les articles 10 A Cst. Gen. Et 11 du Pacte international relatif aux droits économiques, sociaux et culturels revêtaient le caractère de normes programmatiques, ne donnant aucun droit direct à ceux qui s'en réclament. La législation cantonale est toutefois riche en dispositions diverses permettant le relogement, encourageant la construction de logements d'utilité publique, protégeant les locataires et préservant l'habitat. »

84. Dans le même courrier, le gouvernement Suisse a donné des indications spécifiques sur le statut du droit au logement en Suisse : « - Au niveau international : La Suisse a adhéré au Pacte International relatif aux droits économiques, sociaux et culturels (ci-après le Pacte I) le 18 juin 1992 et s'emploie, en sa qualité d'Etat partie, à mettre en œuvre les droits qui y sont énoncés. Lors de l'examen du rapport initial présenté par la Suisse, le Comité des droits économiques, sociaux et culturels a d'ailleurs constaté qu'il n'y avait pas en suisse de difficulté ou de facteurs essentiels faisant obstacle à l'application effective du Pacte I (point 8). Le gouvernement suisse ainsi que le Tribunal fédéral admettent que les droits garantis par le Pacte I aux articles 6 à 15 sont en principe, de caractère programmatique. Les dispositions qui les consacrent ne sont en conséquence pas directement applicables. Le Tribunal fédéral n'exclut toutefois pas que certaines dispositions du Pacte I puissent être directement applicable. Tel pourrait notamment être le cas de l'art. 8, al. 1, let. A concernant certains aspects de la liberté de la liberté syndicale.

- Au niveau national : s'agissant de la Constitution fédérale (Cst.), elle ne prévoit pas, à proprement parler, de droit au logement. Dans son énoncé des buts sociaux, elle stipule toutefois que la Confédération et les cantons s'engagent, en complément de la responsabilité individuelle et de l'initiative privée, à ce que toute personne en quête d'un logement puisse trouver, pour elle-même et sa famille, un logement approprié à des conditions supportables (art. 41, al. 1, let e.). L'art. 41, qui formule un but social, constitue donc une disposition constitutionnelle dont aucune prétention directe à des prestations de l'Etat ne peut être réduite. La Constitution confie en outre des attributions à la Confédération en matière d'encouragement de la construction de logements et d'accession à la propriété (art. 108) ainsi que de bail à loyer (art. 109). Conformément aux art. 41, 108, 109 Cst., la Confédération s'engage, dans le cadre de la politique du logement, à ce que tous les groupes de population puissent trouver des logements appropriés à des conditions supportables. L'Office fédéral du logement (OFL) est l'autorité responsable de l'application de la politique du logement de la Confédération. Il est chargé de l'application des lois (énoncées ci-dessous) adoptées par le Parlement pour permettre à la Confédération d'assumer les tâches en matière de politique du logement mentionnées dans la constitution :
- Loi fédérale du 21 mars 2003 encourageant le logement à loyer ou à prix modérés 8loi sur le logement, LOG) ;
- Loi du 4 octobre 1974 encourageant la construction et l'accession à la propriété de logements (LCAP) ;
- Loi fédérale concernant l'amélioration du logement dans les régions de montagne du 20 mars 1970 (LALM) ;

- Code des Obligations (loyers) du 15 décembre 1989 ;
- Loi fédérale du 23 juin 1995 sur les contrats cadres de baux à loyer et leur déclaration de force obligatoire générale.

85. Depuis 1975, la Confédération a encouragé la construction et l'accèsion à la propriété de logements dans le cadre de la loi fédérale encourageant la construction et l'accèsion à la propriété de logements (LCAP). En décembre 2001, les dernières demandes d'aide fédérale en vertu de la LCAP ont été approuvées. Les aides accordées dans le cadre de la LCAP se poursuivront encore pendant 25 à 30 ans et la LCAP restera leur base légale. Le 21 mars 2003, le Parlement a adopté la nouvelle loi fédérale encourageant le logement à loyer ou à prix modérés (loi fédérale sur le logement ; LOG). Des aides directes et indirectes sont prévues pour l'encouragement, mais les prêts directs de la Confédération sont suspendus jusqu'à fin 2008 en fonction des décisions prises dans le cadre du programme d'allègement budgétaire 2003. L'encouragement est donc temporairement limité aux aides indirectes. La confédération et les cantons, et parfois des communes et des tiers, versent des aides financières sur la base de la loi fédérale du 20 mars 1970 concernant l'amélioration du logement dans les régions de montagne (LALM). Les aides financières accordées sur la base de la LALM ont été allouées jusqu'à l'entrée en vigueur de la réforme de la péréquation financière et de la répartition des tâches entre la Confédération et les cantons (RPT). Depuis début 2008, ce domaine est du ressort exclusif des cantons. Aucune nouvelle subvention n'est donc versée par la Confédération et seules les subventions en cours sont encore administrées pendant une période de 20 ans au maximum. La loi fédérale sur l'agriculture (LAgr) de 1998 donne à la confédération la possibilité d'accorder des prêts sans intérêts aux agriculteurs à titre principal pour la construction ou la transformation de leurs maisons d'habitation. En moyenne, les prêts sont remboursés dans un délai de 16 ans, durant les 10 dernières années, en moyenne CHF 38,7 millions ont été prêtés chaque année au titre de cette loi et ont permis la construction ou la transformation de 400 maisons d'habitation.

- Au niveau cantonal : La plupart des constitutions cantonales contiennent, à l'image de la Constitution fédérale, un certain nombre de droits économiques, sociaux et culturels, ainsi que des buts sociaux. Certaines prévoient les mêmes garanties que la constitution fédérale. D'autres sont plus loin, en garantissant des droits supplémentaires ou en étendant le champ d'application de droits figurant dans la Constitution fédérale. En ce qui concerne plus spécifiquement le statut du droit au logement dans le canton de Genève, je me permets de vous renvoyer à la réponse des autorités de la république et canton de Genève qui traite de cette question dans le dernier point de leur rapport. »

## Turkey

### Communication sent

86. On 29 April 2008, the Special Rapporteur sent an allegation letter to the Government of Turkey regarding the Romani community of the Sulukule neighborhood which allegedly faced the threat of being forcibly evicted due to the Municipality's urban rehabilitation project. The Special Rapporteur thanked the Government of Turkey for the letter sent on 20 October 2006 in response to his communication dated 31 July 2006, related to the situation of the Romani community of the Sulukule mahalles (Neslisah and Hatice Sultan) in the Municipality of Fatih, Istanbul. The Special Rapporteur requested precisions on forced evictions that had been alleged

in information he received. According to recent information received, the urban rehabilitation project entered its last phase at the end of 2007. The protocol on the restoration of the Neslisah and Hatice Sultan Districts (Sulukule) in the style of Ottoman architecture was signed on 8 June 2006 and revised on 13 June 2007 between the Metropolitan Municipality of Istanbul, the Municipality of Fatih and the Housing Development Administration based on the “Law on the Protection by Renewal and Use through Survival of Historical and Cultural Immoveable Objects Which are Eroded” No. 5366 which entered into force in 2005. Article 24 of the regulation introduced for the implementation of Law No. 5366 states that if mutual consent for the evacuation, demolition and nationalization of the buildings located within the renovation zone is not reached, real estate owned by an individual or legal entity can be nationalized by the decision of the authorized administration. Furthermore, the reports state that article 27 of the Nationalization Law No. 2942, provides that in the event of any delay in the renovation project due to the normal nationalization procedures, a speedy nationalization procedure may begin. Moreover, it is alleged that the Council of Ministers can issue a nationalization decision for “national defense purpose” and “in case of emergency”. Reportedly, on 13 December 2006, the Council of Ministers authorized the Fatih Municipality to proceed with the “immediate expropriation” of certain parts in Sulukule. This decision was allegedly taken even before the start of the regular nationalization procedures. Moreover, it is reported that neither the “national defense purpose” nor “emergency case” argument are applicable in this situation. Reportedly, a number of houses - among which several were officially registered as examples of cultural heritage - was already destroyed by the Municipality of Fatih since February 2007. For instance, while a prior notice for evacuation indicated the date of 31 March 2008, it is reported that on 13 March 2008, seven houses belonging to Romani families were demolished by the Municipality of Fatih. Two of these houses were allegedly still inhabited by the families and as a consequence of their destruction, three Romani families comprising approximately 15 people and seven children were made homeless. Additionally, it is alleged that the concerned persons were not allowed to collect most of their belongings before municipal officials proceeded to destroy their houses. Reportedly, none of these families received any form of compensation or were appropriately relocated. In the first part of the Government of Turkey’s response to the Special Rapporteur’s previous communication, it was stated that the district of Fatih was located in an earthquake zone which was one of the reasons for the implementation of the renewal project. The Special Rapporteur subsequently received information which states that on 18 December 2007, the Istanbul Chamber of Geology Engineers office delivered a report about the geological situation of Sulukule. Reportedly, the document states that the area of Sulukule is not particularly at a higher risk of earthquakes and that there is no need for specific prevention policies in this respect. Recent information also indicated that during the month of February 2008, Fatih Municipality sent notices to house owners in Sulukule, requesting them to evacuate the houses until the end of March 2008. It is alleged that the eviction notices did not make any reference to tenant’s rights and eventual ways to oppose the eviction. Additionally, it is reported that house owners were asked by the Municipality to evict the tenants from their houses otherwise they would lose their right to benefit from an apartment in the project. It is alleged that this situation has created tensions between owners and tenants in Sulukule. Moreover, some house owners have reportedly cut electricity and water to their tenant’s apartments in order to force them to move out. According to the latest reports, on 7 March 2008, the Municipality officials started placing “X” and “Y” signs meaning “to be demolished”, on houses which were still inhabited. Access to information, participation and consultation processes were also examined by the Special Rapporteur who requested further information.

Reports received subsequently to the response from the Government of Turkey to the Special Rapporteur's previous communication indicate that the project has continued to be developed without consultation and agreement of the affected population. The social and economic needs of the people living in the Sulukule neighborhood were not taken into consideration during the consultative meetings held between June and July 2006. It is alleged that the renewal project does not consider the economic situation of the Roma communities and that, contrary to the authorities' statement, no meaningful consultations with the local communities were carried out. It is also alleged that, the communities have not received substantive information about the renewal plans and neither written nor verbal explanation was given to the inhabitants about the project. Furthermore, it is reported that the metropolitan Municipality, the Municipality of Fatih and the Housing Development Administration did not keep the promises they made to the tenants during the public meetings in July 2006. The Special Rapporteur also mentioned housing affordability. Reports indicated that the "housing project for right holders and tenants living in Neslisah and Hatice Sultan neighbourhoods" was not adapted for the situation of the Romani community. Although the prices of the new houses and the payment conditions would be advantageous compared to the market situation, it seemed that they are still unaffordable for most of the original inhabitants, thus forcing them out of the area. According to recent information, 400 of the 620 houses in the project were sold to people who are not originally from Sulukule district. The remaining 220 homes would be under the threat of expropriation. It was alleged that the Municipality of Fatih puts pressure on people to sell their houses, and that those who do not do so, might be expropriated according to Nationalization Law No. 2942 and Law No. 5366. The Special Rapporteur received further information according to which the Housing Development Administration constructed public housing in Tasoluk for the tenants and owners of Sulukule in a location situated at 40 kilometers of Sulukule. According to the information received, in this project, tenants may become owners of their houses after a period of 15 years. A census was conducted in order to identify families who could benefit from this project, but reportedly, some 300 extremely poor families that are living without paying a rent and who receive the support from the neighborhood and the community, were left out. Thereby, it is alleged that those families would not have been counted by the Municipality as right holders for the newly constructed public housing. Additionally, it is reported that on 4 December 2007, Fatih Municipality organized a lottery in order to attribute some of the apartments which were built in Tasoluk. Some 200 tenants from Sulukule were reportedly attributed an apartment during this first lottery. It is further alleged that during the month of February 2008, those selected in the lottery were called to sign the contracts. Yet, the banks requested a stamp tax of 800 to 1,300 YTL, and because of financial inability of the tenants to pay the amount, no contracts could be finalized. Other lotteries had been planned but have reportedly not taken place at the time of this communication. According to the allegations received, the Special Rapporteur warned that it is likely that the Roma people will suffer from deterioration of their living conditions, their financial resources, and their access to adequate housing. Moreover, by their relocation and separation into remote apartment blocks, their traditional way of life could be affected and the Romani cultural identity of the Sulukule neighborhood could disappear, if the project is fully implemented. This situation would reportedly result in a historical and cultural loss for the entire Romani community given the fact that the area of Sulukule is considered as one of the oldest Roma community in the world. The Special Rapporteur emphasized two principles of particular importance for the situation that is reported above. The first one is the principle of access to information of affected people which implies that individuals and communities have access to appropriate data, documents and intellectual resources that impact

upon their right to obtain adequate housing. The second crucial principle is the effective participation which means that, at all levels of the decision-making process in respect of the right to adequate housing, individuals and communities must be able to express and share their views, they must be consulted and be able to contribute substantively to such processes that affect housing, including, inter alia, location, spatial dimensions, links to community, social capital and livelihood, housing configuration and other practical features. The state must ensure that building and housing laws and policies do not preclude free expression, including cultural and religious diversity. In addition to comments on the accuracy of the facts of the allegations, the Special Rapporteur requested further information on the “physical and social needs assessment analysis” as well as their conclusions; on the criteria used by the Council of Ministers and the basis of the decision taken on the 13 December 2007 which authorized the Fatih Municipality to proceed with the “immediate expropriation” of certain parts in Sulukule; on how international obligations, in particular on the right to adequate housing, have been considered throughout the legislation and decision process mentioned in this letter; on debates and conclusions of the consultative meetings held from June to July 2006 and also when and how the affected people were informed of the project, received the eviction notification and what was included in this notification; information about the alternative housing projects which, according to your letter, had to begin in October 2005 and whether the particular characteristics of the Roma communities were taken into account; regarding the case of the renewal project in Sulukule, information on how the specific economic, social and cultural situation of the Romani community is addressed by your Government; if the authorities have been informed of the reported dated 18 December 2007 of the Istanbul Chamber of Geology Engineers office; information on how did the census of the number of affected person by the project take place and if the census has taken into account all the inhabitants of Sulukule, including the poor families mentioned above; concerning the lotteries for the attribution of the apartments in Tasoluk, how are they carried out and what is the scheduling for the next attributions, if the number of construction is inferior to the number of people relocated, what has been foreseen for these people so that they do not fall into homelessness, furthermore, if any priority in these attributions have been given to people with particular need (such as single women with children, people with health problems and /or disabilities); concerning the public housing in Tasoluk, what arrangements are foreseen for people who cannot afford to pay the tax stamp or other related costs requested by the banks for the conclusion of the contract; information on has been foreseen for people who cannot financially afford the new houses either in Sulukule or in Tasoluk; and what is done to preserve the Romani historical and cultural heritage, more specifically, if the aspect of cultural adequacy is part of the renewal project in Sulukule and in the public housing in Tasoluk.

### **Response received**

87. On the 23 June 2008, the Government of Turkey sent a letter to the Special Rapporteur, in response to the allegation letter dated 29 April 2008. The Government enclosed an Information Note containing the following elements:

#### **“I. General Framework on non-discrimination:**

- The main philosophy of Turkey’s human rights policy can be summarized as “Human rights for all with no discrimination.”

- The Republic of Turkey adheres with great dedication to the legacy of tolerance.
- The constitutional system of Turkey is based on the equality of all individuals without discrimination before the law.
- Turkish nation is not a juxtaposition of communities or groups. It is composed of citizens, who are equal before the law irrespective of their origins in terms of language, race, colour, ethnicity, religion or any other such particularity, and whose fundamental rights and freedoms are enjoyed and exercised individually in accordance with the relevant law.
- Every Turkish citizen is considered an indispensable part of the Turkish national identity and culture. Their origins are the source of richness in Turkish society and they can be enjoyed and preserved through the exercise of individual liberties.
- The reforms conducted in transparency in Turkey are indeed testimony of our resolve to continue to improve standards of democracy and human rights for the benefit of all our citizens regardless of their origins.
- Acts of discrimination are prohibited and penalized by law.
- As in any other democratic country governed by the rule of law, the independence of judiciary is guaranteed by the Constitution in Turkey. Decisions ruled by first instance courts are open to appeal before, at the national level, the Court of Appeals or the Council of State, and, at the international level, the European court of human rights, the compulsory jurisdiction of which was recognized by Turkey in 1990.
- No violation has been found by the European Court of Human rights (ECtHR) on the complaints lodged against Turkey on the grounds of discrimination concerning individuals' origins.
- All remedies are available against violations of fundamental rights and freedoms including acts of discrimination.
- In addition to the judicial ones, there are governmental/administrative and parliamentary remedies.
- Administrative remedies are utilized through the Human Rights Presidency and Human Rights Boards established in all the 81 provinces and 850 sub-provinces throughout the country. The Human Rights Inquiry Commission of the Parliament acts as another remedy body at the parliamentary level.
- These bodies are tasked with investigating complaints and allegations of human rights abuses, and submitting their findings to relevant authorities for necessary action.



- Turkey believes that a successful fight against all forms and manifestations of discrimination and intolerance requires combined efforts at national and international levels.
- With this understanding, Turkey is party to all relevant international instruments both at global (UN) and regional (Council of Europe and OSCE) for a, and duly maintains a close and constructive cooperation with the special mechanisms of these organizations tasked with the fight against intolerance and discrimination.

## II. The Renewal Project in the District of Fatih

- Sulukule is a small part of Neslisah District. This area corresponds to only 20% of the whole renewal project area, which is approximately 90.000 m2 in total. All the right holders in the project area are treated in a fair, transparent and equal manner.
- On the 19 October 2005, the Municipality of Fatih declared Neslisah and Hatice Sultan Districts as “renewal area” pursuant to the “Law on the Protection by Renewal and Use through Survival of Historical and Cultural Immoveable Objects which are eroded” No. 5366. This decision was endorsed by the Metropolitan Municipality of Istanbul on 9 January 2006 (Decision No. 26) and was conveyed to the Council of Ministers for approval. The declaration of project renewal area subsequently came into effect following the approval by the Council of Ministers on 3 April 2006 (Decree No. 2006/10299 and the President, which was promulgated in the Official Gazette of 13 December 2006.
- On 13 July 2006 the “Protocol on the Project and Works for the 1<sup>st</sup> Group No. 2 Renewal Areas of Fatih District in Istanbul” was signed between the Housing Development Administration, the Municipality of Fatih and the Metropolitan Municipality of Istanbul. The purpose of the Protocol is to clear the slump areas formed due to the prevalence of ruined, broken-down and squatter settlements with low urban standards as well as slums within the jurisdiction of the Municipality of Fatih with a view to establishing a urban area with modern standards, while preserving its historical formation. The Protocol also envisages a consensual settlement of possible conflicts which may arise with the right holders in the renewal area.
- Mutual consent in the renewal area is the main principle. In the event that an agreement cannot be reached and the regular expropriation process would delay the implementation of the project, authorization may be granted for a “speedy expropriation” according to the domestic legislation. This procedure is not limited to situations of “national defence” and “case of emergency” under the Expropriation Act No. 2942. Indeed, Article 27 of the Act No. 2942 allows for speedy expropriation in “extraordinary circumstances foreseen in special laws”. Law No. 5366 is a special law which is applicable in the case of the renewal project for Nelisah and Hatice Sultan Districts. Paragraph 4 of Article 24 of the Regulation on the implementation of the Law No. 5366 states that “in cases which the regular expropriation process will delay the implementation of the project (and an agreement cannot be reached with the right holder), speedy expropriation may

be authorized under Article 27 of the Act No. 2942.” In this regard, such an expropriation procedure was authorized by the Council of Ministers on the 19 October 2006 (Decree No. 11296), which was promulgated in the Official Gazette dated 13 December 2006 following the approval of the President. However, this decision has not been enforced due to the suits of nullity initiated before the administrative courts. So far, it has been possible to reach a mutual agreement with 520 owners out of 620 and with all the tenants (340 persons in total) living in the renewal area. Whereas, verbal contracts have also been concluded with the rest of the owners due to the fact that settlements of inheritance and transfer claims are being awaited in order to proceed with the written contracts.

- The right holders who sign contracts submit a petition for demolition (Annex 1) after they evacuate the property so that it is not occupied by others. Such properties are checked (in situ) whether it is inhabited or not. If the property is inhabited by people, then their status is determined in order to find out whether they are occupiers or tenants. If they are tenants, who have previously claimed accommodation in the apartments being built in Tasoluk, then they are opportunity to live in the property until their evacuation. If the tenant has not claimed accommodation as such, then he or she is allowed to stay in the property until the schools are closed (Annex 2).
- Unfortunately, illegal occupiers have managed to move into some of the evacuated houses. Legal proceedings have been initiated against such occupiers and in some instances the demolition work has been carried out under article 3 of the Law No. 5366 as a priority. The local people have lodged complaints against such illegal occupiers. No registered, listed or qualified property has been demolished in the area; On the contrary, one of the purposes of the project is to preserve the registered and qualified historical and cultural properties in the area.
- The whole district of Fatih is under the earthquake risk of first degree. An earthquake map of Istanbul will be provided to the Special Rapporteur in due course. The region is particularly vulnerable since almost all the premises are old, ruined and shabby. Prior to the project, an assessment study was undertaken, as a result of which it was established that 439 buildings were heap, 75 reinforced concrete, 56 wooden and 4 other types of construction such as heap and wooden. 410 buildings were in very bad shape, 3 in good shape, 155 medium, 5 ruined and 1 torn down. Most of these constructions have completed their economic and durability like due to lack of proper care, carry a certain degree of risk.
- A notice for evacuation was sent to the right holders in the region. However, the evacuation period was extended until the schools were closed and the tenants were transferred to new houses. No complaint has been received during this process. The relationship between the property owners and tenant is beyond the authority of the Municipality of Fatih. If a complaint is lodged with the Municipality concerning disputes arising from the owner-tenant relationship, the authorities can only offer good offices for the resolution of such disputes. All the owners and tenants are entitled to housing within the framework of the project. In this vein,

conclusion of agreements with the right holders has entered into its last phase. Furthermore, the demolition work can only take place once the right holders submit their petitions for demolition to the municipal authorities.

- After the region was declared as “renewal area”, consultations with the right holders in the region were organized two times a week for a period of two months. During the process, the expectations, requests, suggestions and claims of the right holders were duly identified and the project was developed accordingly. Consultations with local people continued during the development phase of the project, thereby, allowing necessary adjustments and revisions to be made in the project. In June and July 2006, consultative meetings with the right holders were organized in the premises of the Municipality of Fatih. Furthermore, the Directorate of Research Project of the Municipality of Fatih continued to have regular briefings and exchanges with the right holders from September 2006 to September 2007. The owners are provided with new houses within the project area, whereas tenants are entitled to new apartment flats in other parts of Istanbul. Both the owners and tenants receive monthly financial aid until the project is completed. (The list of the beneficiaries can be provided to the Special Rapporteur, if needed.)
- The project does not reflect the needs and expectations of only one specific group. It was developed on the basis of the general expectations and preferences of the local people. The project houses are two-storey buildings with open internal courtyards paved with stones. This style of construction is based on the preference of the Romani community. The prices of the houses were paid to the owners in advance. As for the remaining debt, in cases which the price of the new houses exceed that of their old properties, the right holders have been provided with flexible payment conditions. They are expected to begin their monthly payment (for a period of 180 month term), once they move to their new houses. On the other hand, if the owner is credited then he or she receives full payment in advance.
- The prices of project houses were determined according to the price of the existing immovable property plus the cost price of the construction. For instance, the price of a 100m<sup>2</sup> house is 90,000 YTL (approximately 73,530 US Dollars). The price of the new project house, which the owner will be provided in return, would be 125,000 YTL (approximately 102,124 US Dollars). The remaining amount, which the owner is expected to begin paying once he or she moves to the new house, would be 35,000 YTL (approximately 28,594 US Dollars). Its monthly payment corresponds to 195 YTL (approximately 159 US Dollars). The rental income from the old house ranges from 250 to 300 YTL per month (204-245 US Dollars), while the project houses will produce a monthly income of 1000 to 1500 YTL (approximately 817 to 1225 US Dollars). Therefore, the right holders expect the project to be completed as soon as possible. The right to ownership is safeguarded in the Constitution. There is no obstacle for right holders to transfer their properties and to purchase new ones. So far, transfer of ownership within the framework of the project has not been on a large scale as

suggested in the communication of the Special Rapporteur. Indeed, the recent data from the Directorate for Registry of Title Deeds shows that the transfer of ownership in the area is only %30 to date. Most of them were indeed hereditary transmissions.

- Prior to the project, the Municipality of Fatih instructed the University of Istanbul to conduct a census in order to prepare a comprehensive assessment on the physical, social, cultural, demographic, economic and settlement conditions in the area. According to the findings of the census, the number of families living as tenants in the project area was established as 303. However, it was later found out that some of the tenants were not at home when the survey was conducted. In order not to exclude these people from the project, this process was extended until the end of 2007. The new deadline was repeatedly announced by the local authorities. Therefore, the number of tenants has risen to 340 according to the extended assessment. All of them had the opportunity to participate in the housing lotteries that were conducted in the presence of a notary public. The local families who had the status of tenants and occupiers when the project began in the renewal area, are entitled to housing attribution within the framework of the project. No family with such a status has been excluded from the project. It has been recently decided that those families who are able to prove that they were tenants when the project began are now recognized as having entitled to tenancy rights. The housing attribution contracts with the tenants are indeed free of charge. After the lotteries were organized, a total of 8 tenants applied to the bank instead of the Municipality of Fatih in order to sign contracts. They were requested to pay stamp tax by the banks for this transaction. The Municipality of Fatih immediately intervened after this situation was brought to its attention. Therefore, the Municipality once again announced to the local people that the contracts were to be signed with the municipal authorities and not with the banks. So far contracts have been concluded with almost all the tenants for the attribution of apartments in Tasoluk district. These apartment flats have been allocated to tenants without any prepayment. They are expected to begin their monthly payments (for a term of 180 months, corresponding to 15 years) once they move to their new flats.
- This project is designed to meet the expectations of the local people for better living standards and will contribute to their physical, socio-economic and cultural development. The project aims to preserve the historical street silhouette and is consistent with the local living traditions. The Romani community constitutes only a part of the population living as tenants in the renewal area. Most of the tenants come from different parts of the country to work in textile and service sectors with low income. However, the special situation of the Romani community has been given due attention at all stages of the project. The houses allocated to tenants are not in separate regions. They are in the same area and made up of 3 storey apartments with 6 flats each, constructed side by side with separately organized blocks. The total area is 7000,000 m<sup>2</sup>, 250,000 m<sup>2</sup> of which is allocated to buildings. The remaining part is composed of green area and social, educational, cultural and recreational common parts.

- The project was developed on the basis of physical and social needs assessments. Some of these assessment reports will be provided to the Special Rapporteur in due course.
- The decision of the council of Ministers for expropriation has never been implemented. As such, no expropriation work has been carried out to date. No family has been forced to evacuate their properties. So far, only the properties of those families who have submitted petition to the Municipality after their evacuation have been demolished. The project has been carried out pursuant to the decisions agreed upon during the consultative meetings held in June-July 2006. The public housing in Tasoluk district includes all tenants and occupant families in the renewal area. The attribution of the apartments to 340 families has been completed. The Municipality of Fatih has concluded an agreement with the Housing Development Administration for further the attribution of 100 houses in order to meet a possible accommodation deficit. The contracts signed between the right holders and the Municipality of Fatih are free of charge.
- The project is not only designed as a renewal project but also includes social empowerment programmes. For instance, 45 local women are provided with opportunity to attend an occupational certificate programme on clothing and tailoring, with business guarantees. Another certificate programme on wooden works for 20 young locals will begin shortly. All participants are insured and receive daily wages during their courses. A third initiative is a vocational course organized in cooperation with “Istanbul Ready-Made Clothing Business Union”. Efforts are being made to ensure employment opportunities after the completion of this course. Furthermore, an application for an employment grant programme has been submitted to the European Union and Turkish Employment Organization (ISKUR).”

### **United States of America**

#### **Communication sent**

88. On 17 December 2007 the Special Rapporteur together with the Independent Expert on Minority Issues sent a joint urgent appeal to the Government of the United States of America concerning information received regarding demolitions of public housing in New Orleans, Louisiana, which are scheduled to take place in Mid-December. Such demolitions would reportedly particularly affect African-Americans. According to the information received, approximately 5000 families who previous to Hurricane Katrina lived in public housing in New Orleans, were, as a result, internally displaced and were still waiting to be able to return to their homes in New Orleans. Reports indicated, however, that in their absence the U.S. Department of Housing and Urban Development (HUD) approved the demolition of thousands of public housing units, allowing only approximately 1,500 families to return to New Orleans public housing. Specifically, on 14 June 2006, HUD announced that it would demolish more than 5,000 public housing units and replace them with mixed-income developments. HUD has moreover shortened the 100-day review period for demolition to one day. Demolition mainly concerns St. Bernard, C.J. Peete, B.W. Cooper, and Lafitte estates. These demolitions were allegedly scheduled to take place despite the fact that an independent survey to assess the

number of displaced residents of New Orleans who wish to return had not yet been completed. In addition, expert testimony reportedly contradicted housing officials in declaring that the housing units are structurally unsound. It has moreover been indicated that the demolition plans did not consider a one for one replacement of housing, and residents of the public housing concerned were not allowed to meaningfully participate in the decisions affecting their housing.

Furthermore, the Gulf Coast Housing Recovery Act of 2007, which would provide all residents of the Gulf Coast the right to return and specifically identifies this right for previous public housing residents, was still pending before the Senate, and the above-mentioned demolitions were scheduled to take place before the Senate was able to vote on this legislation. Finally, in preparation for the demolition, reports described that contractors have begun clearing the properties concerned, discarding the personal property of the residents in the process, without their knowledge or consent. The position of those residents who are currently living in such housing was, at the time of this communication, unclear. These actions would reportedly contravene § 1437p of the United States Housing Act of 1937 (42 U.S.C. § 1437p) and the Administrative Procedure Act, which, among other things, prohibit approval of a public housing demolition application if the application was not developed in consultation with the residents who will be affected by the demolition and with each affected resident advisory board or resident council. These Acts further provide that, as a prerequisite to approval, the local housing authority must, inter alia, certify that the public housing development is: (1) obsolete and unsuitable for housing purposes and that no cost-effective plan can allow the buildings to be used for housing purposes; and (2) that each family will be notified of the demolition and offered comparable housing that meets housing quality standards and is allocated in an area that is generally not less desirable than the location of the displaced. Concern was expressed the demolition of over 5,000 units of public housing, if implemented, would effectively deny the right to return, the right to housing restitution of IDPs, and the right to adequate housing of thousands of, particularly, African-American residents of New Orleans. Further concern was expressed from the point of view of non-discrimination, particularly since reports indicate that efforts to respect, protect and fulfil these rights for predominantly White residents of New Orleans have been undertaken. In addition to comments on the accuracy of the facts of the allegations, the Special Rapporteurs requested further information on whether tenants are informed about their legal rights and any steps taken to ensure their protection including legal aid for those with low-incomes; if all alternative solutions to resettlement of the persons affected by the scheduled demolitions are envisaged; in cases where relocation is unavoidable, whether it is ensured that the scheduled demolitions do not result in homelessness and adequate and fair compensation and rehabilitation is provided; and information on the measures taken to avoid any form of discrimination towards the African-American residents of New Orleans in relation to this matter.

### **Observation**

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

## **Uzbekistan**

### **Communication sent**

90. On 13 March 2008, the Special Rapporteur together with the Special Representative of the Secretary-General on the situation of human rights defenders sent a joint allegation letter to the

Government of Uzbekistan in relation to Ms Saida Kurbanova, director of the Human Rights Society of Uzbekistan (HRSU), a non-governmental organization in the Pakhtakor district of the Jizak region. She is also a farmer and a campaigner for farmers' rights. Since 24 February 2008, Ms Saida Kurbanova had reportedly been under threat of eviction from her home as a result of her organization of, and participation in, a series of peaceful protests in the past two months to protest against the lack of domestic heating and electricity in the Jizak region. Reports indicated that Saida Kurbanova has been under pressure from local authorities to leave the region. The head of the Pahtakor District Administration, has reportedly threatened her relatives, Kabul Sattarov and Murad Hujamuradov, that they will lose their farms if she refuses to leave the Jizak region. Saida Kurbanova reportedly was also subject to constant surveillance by unidentified persons in plain clothes and on 22 February 2008, she was attacked by a young man who stole her bag. In May 2007, Saida Kurbanova was subject to a smear campaign by regional media as a result of her work and was called a "traitor of the motherland" by Ergash Soliyev, the head of the Pahtakor District Administration, for internationally publicizing the plight of Uzbek farmers. This winter, farmers and citizens in Uzbekistan have suffered gas shortages amidst freezing temperatures. Concern was expressed that the harassment and intimidation faced by Ms. Saida Kurbanova may be directly related to her activities in defense of human rights, in particular the work carried out by the HRSU in defense of the rights of farmers in Uzbekistan. Further concern was expressed for the physical and psychological integrity of Saida Kurbanova, that of her family and all members of the HRSU. In addition to comments on the accuracy of the facts of the allegations, the Special Rapporteurs requested further information if any complaint has been lodged; details, and where available the results, of any investigation and judicial or other inquiries carried out in relation to the harassment and intimidation of Ms. Saida Kurbanova; and information on the measures taken to ensure the safety of Ms. Saida Kurbanova.

### **Response received**

91. On 22 April 2008 the Government of Uzbekistan replied to the joint allegation letter dated 13 March 2008, and gave the following information on the case of S. Kurbanova: "In the course of the investigation carried out by Uzbekistan's competent authorities, it was established that neither Ms. Saida Kurbanova, born 31 December 1958 and residing at 7 Safarov Street, "Navbakhor" rural area, Pakhtakor municipal district of Dzhizak [Jizzax] province, nor members of her family, were threatened with expulsion from their homes. They did not appeal to the Office of the Procurator on that subject.

92. Nor did Ms. Kurbanova appeal to the local authorities concerning the lack of electric power and natural gas in Pakhtakor district during the winter of 2007-2008. However, the Dzhizak [Jizzax] municipal internal affairs office is carrying out a preliminary investigation into S. Kurbanova's report that she was attacked on 22 February 2008 and robbed of 49,200 Uzbek sum and other items, and on the basis of the findings, a decision will be taken in accordance with the law. There has likewise been no corroboration of the information concerning threats by local administrative and law enforcement officials to Ms. Kurbanova's relatives, Kabul Sattarov and Murad Khuzhamuradov, that they would lose their farms if Ms. Kurbanova refused to leave Dzhizak [Jizzax] province. In view of the foregoing, the information brought to the attention of the United Nations Special Rapporteurs concerning alleged violations of Ms. Kurbanova's rights

by local authorities and law enforcement agencies in connection with her participation in peaceful protests during which she spoke out against the lack of heating and electricity in the Dzhizak [Jizzax] province during the winter is groundless.”

## **Zimbabwe**

### **Communication sent**

93. On 22 April 2008 the Special Rapporteur together with the Special Rapporteur on violence against women, its causes and consequences, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on Torture sent a joint urgent appeal to the Government of Zimbabwe regarding reports of intimidation, violence and torture as a form of retribution or victimization in the aftermath of recent elections. Between 29 March and 14 April 2008, 160 cases of injury resulting from organized violence and torture were treated by various doctors with many of the patients still remaining in hospital. One third of the patients were women. A fifth of the victims were members of the opposition Movement for Democratic Change (MDC) and another 20% were involved in the elections for the Zimbabwe Electoral Commission (ZEC). Nine patients sustained fractures (broken bones), reportedly typical of “defense injuries”, resulting from the victim raising his or her hands and arms to protect the face and upper body from assault. At least two politically motivated murders, 15 abductions of women, 288 cases of homes destroyed through politically motivated arson subjecting 175 families and 14 persons to displacement, and 48 cases of assault took place during this period. The majority of persons displaced are said to be women and children. About 70 MDC members have been arrested in the days leading up to this communication. The above-described violence has been perpetrated by police officers, soldiers and members of the ruling Zanu PF party as part of a retributive and reprisal campaign mainly in rural areas, where people have voted for opposition candidates. In many instances victims were told that they were being victimized because they support the opposition; they were accused of “celebrating the MDC victory”, “of selling the country to the whites” and/or “of being responsible for the rigging of elections in favour of the MDC”. Reports also indicate that the authorities are targeting the independent local and foreign media, attempting to impede reporting on the current situation and the aftermath of the election, by resorting increasingly to police harassment and the arrest and detention of journalists; the deportation of one foreign journalist has been reported. In parallel, the State-controlled media is reportedly airing programmes and songs encouraging violence, such as “Mr. Government” by Man Soul Jah, which celebrates the Government’s land seizures and calls for the decimation of perceived political sell-outs (the song says: “We are living like squatters in the land of our heritage... give me my spear so that I can kill the many sell-outs in my forefathers’ country.”) and a well known song encouraging people to take up arms and fight for their freedom aired by ZTV. Moreover, reports have appeared that there are plans to entrust the distribution of food aid to the military in order to control the population through the politicization of food distribution. In addition to comments on the accuracy of the facts of the allegations, the Special Rapporteurs requested further information if any complaint has been lodged by or on behalf of the alleged victims; details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case; full details of any prosecutions which have been or will be undertaken and sanctions imposed on any of the alleged perpetrators; and whether compensation has been or will be provided to the alleged victims or their families.



## Response received

94. On 11 June 2008, the Government of Zimbabwe responded to the communication dated 22 April 2008, informing the Specials Rapporteurs that the President, Cabinet Ministers, Service Chiefs and various ruling party functionaries have all repeatedly before, during and after the 29th March Harmonised Elections, publicly declared their disapproval for violence and warned all would be perpetrators of the full consequences of the law. The government gave the following information in response to the Special Rapporteurs allegation letter:

95. “On the eve of the election, Police Commissioner General Augustine Chihuri, flanked by his fellow Service Chiefs, issued his most stern warning against violence. A copy of this statement is at Annexure D. This policy has been and continues to be enforced without discrimination, fear or favour. All cases that have been reported to the police are the subject of investigations as part of the due processes of the law. In Zimbabwe, a report by an aggrieved party or reasonable suspicion of a crime having been committed or about to be committed is a critical step in launching this due process of the law. Once reported, the ZRP would then exercise its mandate to docket, investigate and bring suspects before the courts of law for prosecution and, ultimately, judgment. Where no report has been made to the police, as appears to be the case regarding the 31 politically motivated murders claimed by the MDC-T as having occurred since 29th March 2008, the Police would find it impossible to take the initial steps to launch the due process described above, bearing in mind that at Zimbabwean law, a person is presumed innocent until proven guilty. The eight murders officially attributed to the two sides fall far below the 31 claimed by MDC-T. It is impossible to verify the MDC-T’s claims, particularly because it appears to be complaining to the press before reporting them to the police. Even then, of the six murders allegedly committed by ZANU-PF supporters, subject to ongoing investigations, at least two do not seem to have been politically motivated. One of these was the case of Clemence Dube, who MDC-T’s Antony Chamisa claimed to have been murdered in Shurugwi by a ZANU-PF supporter on 27 April 2008. According to established facts, however, Dube died of immunosuppression and tuberculosis at Mpilo Hospital, in Bulawayo, on 27 April 2008. Incidentally, on 11 April 2008, he had fought with a ZANU-PF supporter at a local township over money, but eye witnesses say the two later went their separate ways. In the other case, the alleged victim, a teacher in Muzarabani area, has turned out to be alive. He has actually denounced the MDC-T for using his name to justify ‘dubious statistics’. It seems, from these two cases alone, that the MDC-T is fabricating and exaggerating its tally of victims in order to give substance to its claims that there is a raging civil war in Zimbabwe. Some of the alleged crimes in the MDC-T’s tally, such as politically motivated rape, are completely alien and unheard of in Zimbabwe’s political culture. However, every complaint received will be investigated and pursued to its logical conclusion, with all perpetrators facing the full wrath of the law. It has never been Government’s policy to support or condone violence or impunity. It is unfortunate that, quite to the contrary of the objective reality on the ground, all the ‘evidence’ cited by the Rapporteurs paints the MDC-T as the victim and implicates ZANU-PF as the principal perpetrator of violence. During the ‘mass action’ called by the MDC-T on 15th March 2008, marauding gangs of MDC-T DRCs burnt to ashes one conventional 77-seater bus belonging to the Nyamweda Bus Company which was full of cross-border traders en route from Botswana, stoned another bus belonging to the state-owned Zimbabwe United Passenger Company (ZUPCO) and two private motor vehicles, and also committed a wide range of other crimes ranging from disrupting traffic through makeshift road blockades to attempted murder. Police arrested 76 activists who have all confessed to be hired members of the DRCs. As a result

of the ongoing investigations pertaining to Electoral Fraud, close to 100 arrests have been made. Five of these have already been convicted for Contravening Section 87 of the Electoral Act Chapter 2: 13 and sentenced to fines ranging between ZW\$12 billion and ZW\$30 billion. The remaining cases are either at various stages of investigation or before the courts. This is not victimization of ‘human rights defenders’ as the MDC-T claims. No one is above the law in Zimbabwe. Where a crime is suspected to have been committed, the perpetrator will be brought to justice regardless of his or her race, colour, religion or political affiliation. This principle demands that the law must be allowed to take its course. Much as some quarters may advocate the invocation of the ‘responsibility to protect’ principle against Zimbabwe on the basis of the MDC-T’s litany of fabrications and exaggerations, it is equally important to understand that the Constitution of Zimbabwe demarcates the sovereign boundaries of responsibility within which the Government must protect its citizens. Regarding questions of compensation for alleged victims which are also raised in the communication, victims are receiving the usual basic assistance from the Civil Protection Department and the resident humanitarian agencies in the country. However, contrary to the over 5 000 “IDPs” that the MDC-T claims to have registered, the Government, with the support of non-partisan civil society, are attending to no more than 100 households comprising 700 people. There are no new cases. Besides, it is still too early to start talking about long-term resettlement support at this stage when the problem is still being quantified, the victims screened and registered according to their needs.”

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