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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 freedom of religion or belief,
Asma Jahangir***

Addendum

MISSION TO INDIA**

* Late submission.

** The summary of the present report is circulated in all official languages. The report itself, contained in the annex to the summary, is circulated as received, in the language of submission only.

Summary

The Special Rapporteur on freedom of religion or belief undertook a country visit to India from 3 to 20 March 2008, upon the invitation of the Government.

The present report gives an overview of the international legal standards and the domestic legal framework on freedom of religion or belief. The Special Rapporteur refers to the religious demography and highlights selected aspects of the status of freedom of religion or belief in India. She focuses on the following issues of concern: the situation of religious or belief minorities; justice for victims and survivors of communal violence; freedom of religion or belief in Jammu and Kashmir; the negative impact of laws on religious conversion in several states; and implications of religion-based personal laws.

In the last part of the report, the Special Rapporteur presents her conclusions and recommendations. She notes the religious diversity of society in India and the positive impact of secularism as embodied in the Constitution, as well as the high degree of human rights activism in the country. Even though a comprehensive legal framework to protect freedom of religion or belief does exist, many of her interlocutors, especially from religious minorities, remain dissatisfied with its implementation. Owing to the federal nature of the political system, Indian states have wide powers, including in the field of law and order. While recognizing the efforts and achievements of the central Government, the Special Rapporteur focuses on issues of concern with regard to intolerance and discrimination based on religion or belief, especially in certain states. Organized groups claiming adherence to religious ideologies have unleashed an all-pervasive fear of mob violence in many parts of the country. Referring to her predecessor's report on his visit to India (E/CN.4/1997/91/Add.1), the Special Rapporteur stresses the need to prevent political exploitation of communal distinctions effectively and to address adequately advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence.

The Special Rapporteur appeals to the authorities to take quick and effective measures to protect members of religious minorities from any attacks and to step up efforts to prevent communal violence. Any specific legislation on communal violence should take into account the concerns of religious minorities and must not reinforce impunity of communalized police forces at the state level. While inquiries into large-scale communal violence should not be performed hastily, they should be accorded the highest priority and urgency by the investigation teams, the judiciary and any commission appointed to study the situation. Furthermore, the laws and bills on religious conversion in several Indian states should be reconsidered since they raise serious human rights concerns, in particular because of the use of vague or overbroad terminology and discriminatory provisions. In addition, the eligibility for affirmative action benefits should be restored to those members of scheduled castes and scheduled tribes who have converted to another religion. Finally, religion-based personal laws should be reviewed to prevent discrimination based on religion or belief and to ensure gender equality.

Annex

**REPORT OF THE SPECIAL RAPPORTEUR ON FREEDOM OF
RELIGION OR BELIEF, ASMA JAHANGIR, ON HER MISSION
TO INDIA (3-20 MARCH 2008)**

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I. INTRODUCTION

1. Following an invitation by the Government of India, the Special Rapporteur on freedom of religion or belief carried out a country visit to India from 3 to 20 March 2008. During her mission, the Special Rapporteur met with Government officials and political leaders as well as representatives of religious or belief communities, members of civil society and academics. She travelled to Amritsar, Delhi, Jammu, Srinagar, Ahmedabad, Mumbai, Thiruvananthapuram, Bhubaneswar and Lucknow.

2. During her country visit, the Special Rapporteur had the opportunity to meet with several Government officials, including the Ministers of External Affairs, of Minority Affairs and of Culture as well as with the Chief Ministers of Delhi, Jammu and Kashmir, Gujarat, Kerala and Orissa. She also met with the Solicitor General, several Supreme Court Justices and High Court Judges. In Delhi, the Special Rapporteur met with the chairperson and members of the National Commission for Minorities as well as of the National Human Rights Commission. Officials met in Jammu and Kashmir, Gujarat, Maharashtra, Kerala and Uttar Pradesh also included representatives of the states' human rights or minority commissions.

3. In addition, the Special Rapporteur was able to collect first hand information and documents on the state of freedom of religion or belief in India. During her visit, the Special Rapporteur spoke with representatives of various religious or belief communities, including Baha'is, Buddhists, Christians, Hindus, Humanists, Jains, Muslims, Sikhs and Zoroastrians (Parsis). Additional civil society meetings were held with academics, journalists, human rights activists, lawyers and professionals from the visual arts industry. The Special Rapporteur was impressed by the vigour with which many members of civil society organizations and artists, particularly by those affiliated with the film industry, are challenging discrimination based on religion or belief and are proposing concrete means how to overcome religious intolerance.

4. The Special Rapporteur also met with representatives of the United Nations Development Programme; the United Nations Population Fund; the United Nations Development Fund for Women; and the International Labour Organization. The Special Rapporteur is grateful for the logistical support provided by the office of the United Nations Resident Coordinator. She also would like to acknowledge the high level of cooperation received from both the Government and from the people of India.

5. Mr. Abdelfattah Amor, the second mandate-holder, undertook a mission to India in 1996. Therefore, the Special Rapporteur perceived her country visit and this report as an opportunity to follow-up on her predecessor's recommendations¹ and to analyze developments over the past twelve years. In the present report, the Special Rapporteur first outlines the relevant international legal standards and then gives an overview of the domestic legal framework on freedom of religion or belief. The third part refers to the religious demography and highlights selected aspects of the status of freedom of religion or belief in India. Finally, the Special Rapporteur presents her conclusions and recommendations.

¹ See Mr. Amor's report (E/CN.4/1997/91/Add.1) and the reply by the Government of India (A/53/279, annex).

II. INTERNATIONAL LEGAL STANDARDS

6. The right to freedom of religion or belief are enshrined in various international legal instruments.² These include articles 2, 18-20 and 26-27 of the International Covenant on Civil and Political Rights; article 13 of the International Covenant on Economic, Social and Cultural Rights; article 2 of the Convention on the Elimination of All Forms of Discrimination against Women;³ article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination; articles 2, 14 and 30 of the Convention on the Rights of the Child and article 12 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Apart from the latter, India has ratified all of the other above-mentioned human rights treaties.

7. Furthermore, the Special Rapporteur is guided in her mandate by other relevant declarations, resolutions and guidelines of various United Nations bodies, including those issued by the General Assembly, the Human Rights Committee, the former Commission on Human Rights and the Human Rights Council. Of these instruments, of particular relevance for the mandate are articles 2, 18 and 26 of the Universal Declaration of Human Rights as well as the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

III. DOMESTIC LEGAL FRAMEWORK ON FREEDOM OF RELIGION OR BELIEF

8. The Special Rapporteur would like to refer to her predecessor's country report concerning India's legislation in the field of tolerance and non-discrimination based on religion or belief (E/CN.4/1997/91/Add.1, paras. 5-16). In his report, Mr. Amor discussed various provisions of the Constitution of India; the Penal Code; the Unlawful Activities (Prevention) Act 1967; the Religious Institutions (Prevention of Misuse) Act 1988; the Places of Worship (Special Provisions) Act 1991; and the Representation of the People Act 1951.

9. Since 1996, a number of laws pertaining to freedom of religion or belief have been amended and new ones adopted, both at the central and state levels. According to the Unlawful Activities (Prevention) Amendment Act 2004, members of an "unlawful association", which for

² For an overview of the Special Rapporteur's legal framework, see her reports to the Commission on Human Rights (E/CN.4/2005/61, paras. 15-20 and E/CN.4/2006/5, annex) as well as the online digest of her framework for communications (www2.ohchr.org/english/issues/religion/standards.htm).

³ Upon ratification of the Convention on the Elimination of All Forms of Discrimination against Women, the Government of India declared that it shall abide by and ensure the provision on marriage and family relations (article 16 (1) of the Convention) "in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent". With regard to the principle of compulsory registration of marriages according to article 16 (2) of the Convention, the Government declared that this is "not practical in a vast country like India with its variety of customs, religions and level of literacy".

example has for its object the promotion of enmity between different groups on grounds of religion, can be punished with up to two years' imprisonment. Under specific circumstances, the punishment can be death or imprisonment for life, for example if a member of an unlawful association was in possession of any unlicensed firearms, ammunition or explosive and committed an act that resulted in the death of any person.

10. According to article 26 of the Indian Constitution, every religious denomination or any section thereof shall have the right to manage its own affairs in matters of religion, subject to public order, morality and health. Diverse personal status laws exist governing all family relationships such as marriage and divorce, maintenance, custody of children, guardianship of children, inheritance and succession, adoption etc. There are five broad sets of personal status laws: one for Hindus, Buddhists, Jains and Sikhs as well as separate laws for Christians, Jews, Muslims and Zoroastrians (Parsis). Hindu and Muslim personal status laws also cater to different schools of thoughts within each community. Family law is a concurrent subject in the Constitution allowing each state as well as the Centre to legislate on it. For example, people residing in the Indian state of Goa are governed by the Portuguese Civil Code of 1867. Furthermore, the school of law applicable to Hindus can also depend on the region from which the person comes. In addition, there is an over-arching secular civil law, the Special Marriage Act 1954, which a person may opt for. All legal norms, like succession etc., will apply according to the law under which a couple marries and all personal status laws based on religion have different sets of rights. For example, Muslim marriages can be polygamous, however, those who convert to Islam after having married under another personal status law cannot avail themselves of the principles of Muslim personal law. There is rich jurisprudence in India, resolving inequalities within and amongst personal status laws of different communities, especially with regard to women's rights. One of the Directive Principles of State Policy (article 44 of the Constitution of India) stipulates that the "State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India". However, this has not been implemented as a uniform civil code raises controversy amongst various religious leaders and faith groups.

11. A number of Indian states have adopted specific laws which seek to govern religious conversion and renunciation. Five states have passed and implemented the so-called Freedom of Religion Acts (Orissa, Madhya Pradesh, Chhattisgarh, Gujarat and Himachal Pradesh). Similar laws have been passed but not yet implemented in two other states (Arunachal Pradesh and Rajasthan). All of these laws stipulate that "no person shall convert or attempt to convert, either directly or otherwise, any person from one religious faith to another by the use of force or by inducement or by any fraudulent means nor shall any person abet any such conversion". The term "force" is defined to "include a show of force or a threat for injury of any kind including threat of divine displeasure or social excommunication". These laws carry penalties of imprisonment and fines with harsher penalties in case children, women or persons belonging to the Scheduled Castes or Scheduled Tribes are forcibly converted. Furthermore, in some states anyone converting another person from one religion to another is required to obtain prior permission from state authorities thirty days before the date of such intended

conversion⁴ or submit a related intimation.⁵ In other states with such laws, anyone intending to change his or her religion needs to give prior notice⁶ or intimation after the conversion ceremony.⁷

12. The Constitution (Eighty-Ninth) Amendment Act 2003 established a National Commission for the Scheduled Tribes and a separate National Commission for Scheduled Castes. The latter's duties include investigating and monitoring all matters relating to the safeguards provided for the Scheduled Castes under the Constitution or under any other law or order of the government. For example, article 17 of the Constitution states that "untouchability" is abolished and that its practice in any form is forbidden and punishable in accordance with the law. Furthermore, the Protection of Civil Rights Act 1955 specifically provides for the punishment of anyone who, on the ground of "untouchability", prevents any person from entering a place of public worship which is open to other persons professing the same religion or any section thereof.

13. A new Ministry of Minority Affairs was created on 29 January 2006 to ensure a more focused approach towards issues relating to the minorities and to facilitate the formulation of overall policy and planning, coordination, evaluation and review of the regulatory framework and development programmes for the benefit of the minority communities, including religious ones. The Ministry of Minority Affairs is responsible for the administration and implementation of the National Commission for Minorities Act 1992, the Wakf Act 1995 and the Durgah Khwaja Saheb Act 1955.

IV. RESPECT FOR FREEDOM OF RELIGION OR BELIEF IN INDIA

A. Religious demography

14. India is the second most populous country in the world with more than 1.1 billion inhabitants estimated in 2008. According to the latest official census of 2001, the population of India comprised about 80.5 per cent Hindus, 13.4 per cent Muslims, 2.3 per cent Christians, 1.9 per cent Sikhs, 0.8 per cent Buddhists and 0.4 per cent Jains. About 0.7 per cent either did

⁴ See section 5 of the Gujarat Freedom of Religion Act 2003; sections 3 and 4 of the Gujarat Freedom of Religion Rules 2008; section 5 of the Chhattisgarh Freedom of Religion (Amendment) Act 2006.

⁵ See section 5 of the Arunachal Pradesh Freedom of Religion Act 1978; section 5 of the Orissa Freedom of Religion Rules 1989.

⁶ See section 4 of the Himachal Pradesh Freedom of Religion Act 2006; section 3 of the Himachal Pradesh Freedom of Religion Rules 2007.

⁷ See section 5 of the Madhya Pradesh Freedom of Religion Act 1968; section 3 of the Madhya Pradesh Freedom of Religion Rules 1969 ("within seven days after the date of such ceremony"); section 5 of the Gujarat Freedom of Religion Rules 2008 ("within ten days from the date of such conversion ceremony").

not state their religious affiliation or belonged to other religions or beliefs, including Bahai's, Jews and Zoroastrians (Parsis).⁸ The next official census, which will again include disaggregated data on religious demography, is scheduled to take place in 2011.

15. In 1993, the Indian Central Government notified Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis) as “minority” communities under section 2(c) of the National Commission for Minorities Act 1992. The National Commission for Minorities is mandated to make recommendations for the effective implementation of safeguards for the protection of the interests of “minorities” by the Central Government or the State Governments as well as to look into specific complaints regarding deprivation of rights and safeguards of the “minorities” and take up such matters with the appropriate authorities. In 1997, an organization representing a section of the Jain community sought issuance of a direction to the Central Government to also notify Jains as a “minority” community under this provision. However, the Supreme Court in 2005 emphasized that before the Central Government can take decision on claims of Jains as a “minority” community, the identification has to be done on a state basis, also considering the social, cultural and religious conditions of the community in each state.⁹

B. Issues of concern

16. The Special Rapporteur would like to highlight selected aspects of the status of freedom of religion or belief in India. She will focus on the following issues of concern: (1) the situation of religious or belief minorities; (2) justice for victims and survivors of communal violence; (3) freedom of religion or belief in Jammu and Kashmir; (4) the negative impact of laws on religious conversion in several states; and (5) implications of religion-based personal laws.

1. Situation of religious or belief minorities

17. Before and during her mission, the Special Rapporteur received numerous reports of attacks on religious minorities and their places of worship as well as of discrimination against the disempowered sections of the Hindu community. Organised groups claiming adherence to religious ideologies have unleashed an all-pervasive fear of mob violence. Furthermore, concerns have been raised with regard to the social, economic and educational status of minority communities. In order to illustrate the situation of religious minorities, the Special Rapporteur wishes to briefly give some examples.

⁸ It is not possible to compare these 2001 figures directly with the data provided in Mr. Amor's report (E/CN.4/1997/97/Add.1, paras. 18-20) since the 1981 official census was not conducted in Assam and the 1991 official census was not conducted in Jammu and Kashmir. The Special Rapporteur would also caution against improper utilization and communal interpretations of the respective communities' growth rates which may ultimately lead to a more polarized and intolerant society.

⁹ Supreme Court of India, *Bal Patil and Another v. Union of India and Others*, judgement of 8 August 2005.

(a) Christians

18. Widespread violence in the Kandhamal district of Orissa in December 2007 primarily targeted Christians in Dalit and tribal communities. The Special Rapporteur received credible reports that members of the Christian community alerted the authorities and politicians in advance of the planned attacks of 24-27 December 2007. The police, too, had warned Christian leaders about anticipated violence. In its report on the events of December 2007, the National Commission for Minorities confirmed that “destruction on such a large scale in places which are difficult to access could not have taken place without advance preparation and planning”.

19. The situation in Orissa has reportedly deteriorated again after 23 August 2008, when Swami Lakhmananda Saraswati, a local leader of the Vishwa Hindu Parishad (VHP), and four other VHP members were killed. Although a Maoist leader had claimed responsibility and the Christian leadership had condemned the killings, organized mobs subsequently attacked Christians in Dalit and tribal communities. By the end of September 2008, more than 40 people had allegedly been killed in Orissa, over 4,000 Christian homes destroyed and around 50 churches demolished. Around 20,000 people were living in relief camps and more than 40,000 people hiding in forests and others places. The Special Rapporteur was profoundly alarmed by the humanitarian situation in relief camps where access to food, safe drinking water, medical care, proper sanitary arrangements and adequate clothing were reportedly lacking.

(b) Muslims

20. Members of the Muslim community in India shared their concerns about the ongoing repercussions of communal violence, for example after the Gujarat massacre in 2002 (below, paras. 34-36). Many of the Muslim interlocutors informed the Special Rapporteur during her mission that a number of them have been arrested on ill-founded suspicion of terrorism. Some of them even encountered problems in finding a lawyer who would be prepared to defend a terrorist suspect. For example, the Lucknow Bar Association reportedly passed a resolution that none of its members should represent the accused of a terrorist act carried out in the state, but the Lucknow Bar Association subsequently reflected on its position. Moreover, many Muslims were disturbed that terrorism was associated with their religion despite various public statements from Muslim leadership denouncing terrorism. There have been complaints about a continuing bias among security forces against Muslims in Jammu and Kashmir who also seem to face difficulties with regard to the issuance of passports and security clearances for employment purposes.

21. However, a large number of her interlocutors, including Muslims, also expressed their concerns about continued radicalization and cross-border terrorism. They lamented that the radicalisation of certain Muslims had an adverse impact on the entire community because communal relations hardened after every act of terrorism carried out by a militant group of Muslims. Some Muslim interlocutors regretted that after such events they were expected to “prove their loyalty to the State of India”, which constituted an indignity towards them as Indian citizens.

22. Mr. Amor in his country report had already highlighted the “exploitation of religion for political purposes, which is an alien practice and detrimental to Indian Muslims and to Islam” (E/CN.4/1997/91/Add.1, para. 52). In addition, a large number of official and non-official interlocutors from all communities expressed anguish at the continued operation of militant

groups of Muslims carrying out acts of terrorism. A number of people interviewed by the Special Rapporteur were deeply concerned that effective measures were not being taken by the central Government against such militant groups whom they accused of maintaining links with foreign elements. Others were concerned that militancy itself as well as the counter-terrorism measures adopted by the Government would undermine the enjoyment of human rights.

23. With regard to the social, economic and educational status of the Muslim community of India, a recent report¹⁰ analysed issues relating to demography, education, health, employment, credit, infrastructure and public programmes. The report for example highlights problems with regard to access to good quality schools in Muslim localities and “communal” content of school textbooks. Furthermore, the share of Muslims in employment in various government departments is abysmally low at all levels. A relatively high number of Muslim workers are engaged in self-employment activity, particularly in urban areas. Some banks have reportedly designated a number of Muslim concentration areas as zones where bank credit and other facilities are not easily provided. The health of Muslims, especially women, is directly linked to poverty and the absence of basic services like clean drinking water and sanitation. The Special Rapporteur would also like to refer to her latest report to the Human Rights Council (A/HRC/10/8, paras. 29-62) in which she analyses the international legal framework and provides some examples of discrimination based on religion or belief and its impact on the enjoyment of economic, social and cultural rights.

(c) Sikhs, Jains and Buddhists

24. Several Sikhs, Jains and Buddhists expressed concerns that they were not treated as distinct religious communities but rather as belonging to Hindu religion. Article 25 of the Constitution contains an explanation that “reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly”. Jurisprudence confirms that since the Constitution was framed, Sikhs and Jains have been treated as part of the wider Hindu community with its different sects, sub-sects, faiths, modes of worship and religious philosophies. In various codified customary laws,¹¹ the definition of ‘Hindu’ includes Buddhists, Jains and Sikhs.

25. The Supreme Court also stated¹² that “‘Hinduism’ can be called a general religion and common faith of India whereas ‘Jainism’ is a special religion formed on the basis of quintessence of Hindu religion.” When dealing with the claim of Jains to be considered a

¹⁰ Prime Minister’s High Level Committee (Chairperson: Justice Rajindar Sachar), *Social, Economic and Educational Status of the Muslim Community of India - A Report*, November 2006 (available online at http://minorityaffairs.gov.in/newsite/sachar/sachar_comm.pdf).

¹¹ See for example the Hindu Marriage Act 1955; the Hindu Succession Act 1956; the Hindu Adoption and Maintenance Act 1956; and the Hindu Minority and Guardianship Act 1956.

¹² Supreme Court of India, *Bal Patil and Another v. Union of India and Others*, judgement of 8 August 2005.

‘minority’ community, the Supreme Court indicated that [m]inority as understood from constitutional scheme signifies an identifiable group of people or community who were seen as deserving protection from likely deprivation of their religious, cultural and educational rights by other communities who happen to be in majority and likely to gain political power in a democratic form of Government based on election. [...] Statistical data produced to show that a community is numerically a minority cannot be the sole criterion. If it is found that a majority of the members of the community belong to the affluent class of industrialists, businessmen, professionals and propertied class, it may not be necessary to notify them under the Act as such and extend any special treatment or protection to them as minority”.

26. Since the identification of minority status has to be done on a state basis, Sikhs also voiced their concerns with regard to their minority rights. While Sikhs represent about 1.9 per cent of India’s population according to the 2001 census, the share of Sikhs in the state of Punjab is about 59.2 per cent. The state government granted minority status to the Sikh community and issued a notification in 2001 which permitted the Shiromani Gurdwara Parbandhak Committee (SGPC) to give a 50 per cent quota to Sikh students in colleges run by it. This notification, however, was struck down by the High Court on a petition filed by students who had failed to secure admission to colleges run by SGPC. The High Court decided that “in the State of Punjab, it cannot be held that Sikhs were such a group of persons who apprehended deprivation of their religious, cultural and educational rights by other communities, who were in majority and who were likely to gain political power”¹³. On 15 February 2008, the Supreme Court upheld the High Court’s order.

27. Further problems can arise for members of the Scheduled Castes, especially when they want to convert to a different religion, since government benefits for Scheduled Castes are by law limited to Hindus, Sikhs and Buddhists. The Constitution (Scheduled Castes) Order 1950 provided that no person who professes a religion different from the Hindu religion shall be deemed to be a member of a Scheduled Caste. This provision was subsequently amended in 1956 and 1990 to also include Sikhs and Buddhists.¹⁴ However, the Special Rapporteur’s interlocutors pointed out for example that Sikhism and Buddhism did not recognise the caste-system. She was also informed that when a member of a Scheduled Caste left Hinduism and converted to Christianity or Islam, the previous caste status and related social bias would often remain at the social level while the person would legally no longer be eligible to government benefits for Scheduled Castes. In some cases, there are separate churches and cemeteries for members of the Scheduled Castes who converted to Christianity.

28. The legal link between Scheduled Caste status and affiliation to specific religions seems problematic in terms of human rights standards. The Special Rapporteur would like to recall that the Committee on the Elimination of Racial Discrimination noted with concern that Dalits who convert to Islam or to Christianity to escape caste discrimination reportedly lose their entitlement under affirmative action programmes, unlike converts who become Buddhists or Sikhs (A/62/18,

¹³ High Court of Punjab and Haryana, *Sahil Mittal v. State of Punjab and Other*, judgement of 17 December 2007.

¹⁴ See Scheduled Castes and Scheduled Tribes Orders (Amendment) Act 1956; Constitution (Scheduled Castes) Order (Amendment) Act 1990.

para. 179). In 2008, an independent research study commissioned by the National Commission for Minorities found that there is a strong case for offering Muslims and Christians of Dalit origin the same constitutional safeguards already available to Hindu, Sikh and Buddhist Dalits. The report by the National Commission for Religious and Linguistic Minorities, headed by Justice Renganath Misra, recommended to delete paragraph 3 of the Constitution (Scheduled Castes) Order 1950 - which originally restricted the Scheduled Caste net to the Hindus and later opened it to Sikhs and Buddhists - and to make the Scheduled Castes net fully religion-neutral like that of the Scheduled Tribes.

(d) Atheistic and non-theistic believers

29. Humanists, rationalists and other atheistic or non-theistic believers voiced their concerns about the stifling effect of criminal provisions on offences related to religion. Especially the provision against deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious belief (section 295A of the Indian Penal Code) had allegedly been invoked by the administration to harass writers and activists who were criticizing religious bigotry and superstition or who were trying to expose cheating of the gullible. In this regard, the Special Rapporteur would like to refer to her report to the 62nd session of the General Assembly, where she discussed the situation of persons with atheistic or non-theistic beliefs in greater detail (A/62/280, paras. 64-79).

2. Justice for victims and survivors of communal violence

30. The Special Rapporteur is seriously concerned at the extended timeframe of investigations in cases involving communal riots, violence and massacres such as those which occurred after “Operation Blue Star” in 1984, after the destruction of Babri Masjid in 1992 and after the Godhra train burning incident in 2002. All of these incidents continue to haunt the people affected by them and the system of impunity emboldens forces of intolerance. It is important to draw appropriate lessons from these events in order to prevent the recurrence communal violence.

31. The Special Rapporteur fully agrees with the analysis by the National Commission for Minorities that communal violence is not merely a “law and order” problem but has a serious socio-economic basis and ramifications. Sectarian riots are most likely to occur when the following elements are present: (i) severe long-standing antagonism on religious lines in particular villages and urban localities; (ii) an emotional response of members of religious communities to a precipitating event; (iii) a feeling in the minds of rioters and the larger religious group to which they belong that sectarian violence is justifiable; and (iv) the assessment by the rioters that the reaction from the police to sectarian violence will be either absent or partisan or ineffective.

(a) Communal violence after “Operation Blue Star” (1984)

32. Many of the Special Rapporteur’s interlocutors referred to the anti-Sikh riots after the attack by the Indian army on the Golden Temple in Amritsar (“Operation Blue Star”) in June 1984 and subsequent to the tragic assassination of Ms. Indira Gandhi on 31 October 1984. During the following four days, nearly 3,000 Sikhs were reported to have been killed. Two commissions and eight committees were set up from 1984 to 2005 in order to identify those

responsible for the anti-Sikh riots. However, many families of the victims or survivors voiced their concerns that the main accused were either not charged or were acquitted and that compensation was inadequate. Furthermore, despite a 2004 court judgement in favour of the return of the Sikh religious scriptures, reference material and artefacts, which had been removed from the Sikh reference library in Amritsar by the Indian army in 1984, had reportedly not been returned yet.

33. Further concerns refer to the issue of unidentified bodies. Punjab security forces had secretly cremated thousands of bodies that they had labelled as “unidentified/unclaimed”. A report by the Central Bureau of Investigation documented more than 2,000 cases of illegal cremations at crematoria in the Amritsar district. Subsequent claims for compensation filed with the National Human Rights Commission have been limited to these cases in the Amritsar district, excluding the other twelve districts of Punjab.

(b) Communal violence after the destruction of Babri Masjid (1992)

34. Another example of communal violence and its continuing impact on community relations are the violent clashes in 1992 between Hindus and Muslims after the destruction of Babri Masjid in Ayodhya. Subsequently, riots broke out in several Indian cities and reportedly more than 2,000 people, mainly Muslims, were killed. The Special Rapporteur would like to refer to her predecessor’s communications and reports about the background of this issue as well as to the responses sent by the Government of India to the mandate (E/CN.4/1994/79; E/CN.4/1995/91; E/CN.4/1997/91/Add.1; and A/53/279).

35. The Special Rapporteur notes that less than two weeks after the destruction of Babri Masjid, the Central Government appointed a Commission of Inquiry to probe the sequence of events leading to, and all the facts and circumstances relating to, the occurrences in Ayodhya on 6 December 1992. However, this Commission has not yet submitted its final report and its mandate so far has been extended 47 times. Now it is required to conclude its inquiry by 31 March 2009. Many of the Special Rapporteur’s interlocutors referred to the tradition of long-standing commissions of inquiry as an example of devaluing justice and keeping tensions simmering.

(c) Communal violence after the Godhra train burning incident (2002)

36. With regard to the Gujarat massacre in 2002, the Special Rapporteur met a large number of eyewitnesses as well as people who visited Gujarat during the communal violence and she also received numerous reports, from both official bodies and civil society organisations. The Special Rapporteur also met a former Prime Minister of India and Members of Parliament who visited Gujarat soon after the riots in 2002. The state government reported that, prior to the Godhra train burning incident, Gujarat had witnessed 443 major communal incidents between 1970 and 2002. However, the massacre that took place after the tragic deaths in the Godhra train burning incident on 27 February 2002, is all the more horrifying since at least a thousand people¹⁵ were

¹⁵ The state Government of Gujarat indicated that 790 Muslims and 254 Hindus were killed during the communal violence in Gujarat in 2002; however, other sources estimate that more than 2,000 people were killed.

systematically killed. While the Special Rapporteur notes the controversy about the different conclusions of various public enquiries concerning the question whether the Godhra train burning incident was an accident or a deliberate criminal act, she would like to emphasize that there can be no justification for the large-scale killings and violence after 27 February 2002. In addition, there are credible reports that inaction by the authorities was evident and most of the Special Rapporteur's interlocutors, including politicians, alleged complicity by the state government.

37. While discussing the events with victims, the Special Rapporteur could see their continuing fear which was exacerbated by the distress that justice continues to evade most victims and survivors. A large number of criminal cases relating to the communal violence in 2002 remain un-investigated or have been closed by the Gujarat police and the plight of those internally displaced from their home continues. In addition, there is increasing ghettoization and isolation of Muslims in certain areas of Gujarat, for example in one part of Ahmedabad which is colloquially called "little Pakistan". The assertion of the state government that development by itself will heal the wounds does not seem to be realistic. The Special Rapporteur believes that it is crucial to recognise that development without a policy of inclusiveness of all communities will only aggravate resentments.

38. During her visit to Gujarat, the Special Rapporteur was also disturbed that at various meetings with members of civil society, plain-clothed government agents took names of her interlocutors and also made their presence felt afterwards. On several occasions, the Special Rapporteur had to insist that police officers left the room during her non-governmental meetings. The terms of reference for fact-finding missions by Special Rapporteurs (E/CN.4/1998/45, appendix V) guarantee confidential and unsupervised contact of the Special Rapporteur with witnesses and other private persons. Furthermore, she would like to remind the authorities in Gujarat of the Government's assurance according to these terms of reference "that no persons, official or private individuals who have been in contact with the special rapporteur/representative in relation to the mandate will for this reason suffer threats, harassment or punishment or be subjected to judicial proceedings".

(d) The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill 2005

39. In December 2005, the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill was introduced in the Parliament but has not yet been adopted. The Bill provides for (a) prevention and control of communal violence; (b) speedy investigation and trials; and (c) rehabilitation of victims. Furthermore, the state government could declare an area as communally disturbed under certain conditions. The district magistrate or the competent authority appointed by the state government could take measures such as regulating assembly, directing persons to deposit their arms or searching premises to control communal violence.

40. However, various civil society organizations have criticized the Bill for its failure to dismantle impunity, state collusion or redress gender based crimes. They have also voiced their concern that the sweeping powers given by the Bill to state governments could be misused to intimidate members of the minority community. Furthermore, the National Commission for

Minorities made several suggestions¹⁶ for amendments to the Bill. For example it has proposed that those found guilty of involvement in communal violence and indicted by the special courts should be debarred permanently from government jobs and from contesting any public office. In addition, there should be a provision whereby the state government concerned should have to rebuild or cause to have rebuilt the religious property or place of worship damaged or destroyed during sectarian violence. The Bill should also provide for public recognition of non-governmental organizations and individuals who have helped in relief measures in the aftermath of sectarian violence.

(e) Prime Minister's New 15 Point Programme for Welfare of Minorities (2006)

41. The Special Rapporteur would like to acknowledge the Prime Minister's New 15 Point Programme for Welfare of Minorities, which unequivocally states that the prevention and control of communal riots is a basic duty of the State. This programme, as adopted by the cabinet of the central government on 22 June 2006, notes that minority communities have suffered loss of lives and property on account of communal violence in the past decades and that the welfare of minority communities is inextricably linked with the effectiveness of measures adopted to address this issue. It furthermore emphasizes that district and police officials of the highest known efficiency, impartiality and secular record must be posted in areas which have been identified as communally sensitive and riot prone (point 13). With regard to prosecution for communal offences, the programme indicates that special courts or courts specifically earmarked to try communal offences should be set up so that offenders are brought to justice speedily (point 14). Finally, the programme states that victims of communal riots should be given immediate relief and provided prompt and adequate financial assistance for their rehabilitation (point 15).

3. Freedom of religion or belief in Jammu and Kashmir

42. The Special Rapporteur would like to refer to her predecessor's report concerning freedom of religion or belief in Jammu and Kashmir, for example with regard to discrimination experienced by Muslims, the expulsion of Kashmiri Pandits (Hindus) in the 1990s and attacks against places of worship in the context of the armed conflict.¹⁷ Mr. Amor had urged all the parties concerned to act calmly and refrain from exacerbating religious problems so as to ensure that immutable religious principles are not affected by political considerations at the expense of the religious rights of the communities and, more generally, of tolerance and non-discrimination based on religion or belief.

43. The population of Jammu and Kashmir is still divided on religious lines. The Muslim community remains vulnerable to excesses of the security forces, while the entire population is a victim of violence perpetrated by militant groups of Muslims. The Special Rapporteur was told

¹⁶ National Commission for Minorities, *Suggestions of the NCM for amendments to "The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005"* (available online at <http://ncm.nic.in/suggestion.html>).

¹⁷ See E/CN.4/1997/91/Add.1, paras. 27, 34-36, 48-54, 90 and 98.

by many of her interlocutors during the mission that tensions in Jammu and Kashmir were decreasing as a result of the de-escalation of violence in recent years. However, there still remains deep bitterness among members of the Muslim and Hindu communities, both against each other and against the Government.

44. Muslims living in Srinagar provided information on several documented incidents relating to extrajudicial executions, torture, enforced disappearances and rape committed by the security forces against Muslims and they alleged that these acts were perpetrated against members of their community due to their religious background. Furthermore, they submitted that many of them had been denied entry into hotels while travelling to other parts of India simply because their passports indicated a Muslim name and Srinagar as their place of birth.

45. A number of Hindu leaders expressed their mistrust of Muslims living in Srinagar. They remain hurt at the use of violence and threats hurled at the Kashmiri Pandits, who were eventually left no option but to be evacuated from Srinagar in the 1990s. While many of the Kashmiri Pandits remain internally displaced,¹⁸ there have also been public statements inviting them to return to Kashmir.

46. Since June 2008, however, it is reported that tensions and violence in Jammu and Kashmir have increased subsequent to a controversy about a transfer of land to the Shri Amarnath Shrine Board, which was constituted in 2000 by the state legislature to oversee the pilgrimage to a Hindu shrine in the Himalayas. In a press statement of 27 August 2008, the Office of the High Commissioner for Human Rights voiced concerns about the violent protests that had reportedly led to civilian casualties as well as restrictions on the right to freedom of assembly and expression.

4. Negative impact of laws on religious conversion in several states

47. The Special Rapporteur is deeply concerned that laws and bills on religious conversion in several Indian states are being used to vilify Christians and Muslims. The so-called “Freedom of Religion Acts” have been adopted and implemented in the states of Orissa, Madhya Pradesh, Chhattisgarh, Gujarat and Himachal Pradesh. Similar laws have been passed but are yet to be implemented in the states of Arunachal Pradesh and Rajasthan.

48. While these laws appear to protect religious adherents only from attempts to induce conversion by improper means, they have been criticized on the ground that the failure to clearly define what makes a conversion improper bestows on the authorities unfettered discretion to accept or reject the legitimacy of religious conversions. All of these laws include in the definition of *use of force* any “threat of divine displeasure or social excommunication”. Moreover, the terms *inducement* or *allurement* are defined to include the offer of any gift or gratification, either in cash or in kind, as well as the grant of any benefit, either pecuniary or otherwise. These broad and vague terms might be interpreted to cover the expression of many

¹⁸ At the end of the year 2007, there were reportedly 55,456 Kashmiri migrant families, of whom 34,878 families were living in Jammu and 19,338 families in Delhi (Union Ministry of Home Affairs, Government of India, Annual Report 2007-08, p. 8).

religious beliefs. In addition, some provisions are discriminatory in giving preferential treatment to re-conversions, for example by stipulating that returning to the forefathers' original religion or to one's own original religion shall not be construed as conversion.¹⁹

49. Furthermore, the requirement of advance notice or prior permission seems to be unduly onerous for the individual who intends to convert. Any state inquiry into the substantive beliefs and motivation for conversion is highly problematic since it may lead to interference with the internal and private realm of the individual's belief (forum internum). This approach is aggravated if such a Freedom of Religion Act awards specific protection to the state government and its officers against prosecution or legal proceedings with regard to "anything done in good faith or intended to be done under the Act or any rule made thereunder".²⁰ Moreover, it seems unclear who may bring an action for, or lodge an appeal against, decisions with regard to the permissibility of a religious conversion. The Special Rapporteur would like to reiterate that any concern raised with regard to certain conversions or how they might be accomplished should primarily be raised by the alleged victim.

50. Even in the Indian states which have adopted laws on religious conversion there seem to be only few - if any - convictions for conversion by the use of force, inducement or fraudulent means. In Orissa, for example, not a single infringement over the past ten years of the Orissa Freedom of Religion Act 1967 could be cited or adduced by district officials and senior officials in the State Secretariat.²¹ However, such laws or even draft legislation have had adverse consequences for religious minorities and have reportedly fostered mob violence against them. There is a risk that "Freedom of Religion Acts" may become a tool in the hands of those who wish to use religion for vested interests or to persecute individuals on the ground of their religion or belief. While persecution, violence or discrimination based on religion or belief need to be sanctioned by law, the Special Rapporteur would like to caution against excessive or vague legislation on religious issues which could create tensions and problems instead of solving them.

51. The National Commission for Minorities also has expressed its profound concern over the attempt in such state laws on religious conversion to interfere with the basic right to freedom of religion or belief. Provisions relating to notice and selective enquiry will allow state functionaries to interfere in matters of personal life and religious beliefs, thus impinging on freedom of conscience and free profession, practice and propagation of religion guaranteed by article 25 of the Constitution. The Special Rapporteur would like to add that, according to universally accepted international standards, the right to freedom of religion or belief includes the right to adopt a religion of one's choice, the right to change religion and the right to maintain

¹⁹ Section 2 of the Chhattisgarh Freedom of Religion (Amendment) Act 2006. However, the state governor has withheld assent to this amendment Act. See also section 2 of the Gujarat Freedom of Religion (Amendment) Bill 2006, which was ultimately withdrawn by the state government on 10 March 2008.

²⁰ See section 5C of the Chhattisgarh Freedom of Religion (Amendment) Act 2006.

²¹ National Commission for Minorities, *Report of the Chhattisgarh Freedom of Religion (Amendment) Act 2006*, online at <http://ncm.nic.in/pdf/orissa%20report.pdf>.

a religion. She highlights the fact that these aspects of the right to freedom of religion or belief have an absolute character and are not subject to any limitation whatsoever. Mr. Amor already stressed in an annual report to the Commission on Human Rights (E/CN.4/1997/91, para. 99) that “it is not the business of the State or any other group or community to act as the guardian of people’s consciences and encourage, impose or censure any religious belief or conviction”.

52. The Special Rapporteur would also like to refer to her report to the 60th session of the General Assembly (A/60/399, paras. 40-68), in which she discussed the question of conversion in greater detail. She notes that international human rights law clearly prohibits coercion that would impair the right to have or adopt a religion or belief, including the use or threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert. Similarly, a general prohibition of conversion by a State necessarily enters into conflict with applicable international standards.

5. Religion-based personal laws

53. Conversions are also addressed in some religion-based personal laws and some provisions may lead to discrimination, for example in matters of succession. Conversion to another religion by one spouse is a ground for divorce in some areas of personal law.

54. There is concern amongst women’s rights activists regarding several discriminatory aspects, especially on the basis of gender, within personal laws governing each religious community. Women’s groups recognise that religious minorities, particularly members of the Muslim community, have been opposed to the enactment of a uniform civil code mainly because according to religious Muslim leaders this would infringe upon their religious freedom and might be biased in favour of the majority religion. Their arguments are nonetheless challenged by many Muslims as well. The debate on upholding personal laws became heated after the *Shah Bano* judgement, where the Supreme Court of India confirmed that Muslims were subject to the secular criminal law of maintenance in the Criminal Procedure Code 1973.²² The Supreme Court deprecated Muslim personal law for denying maintenance to a destitute woman by her former husband three months after their divorce. This judgement was not well-received by some Muslim groups and subsequently the Indian Parliament passed the Muslim Women (Protection of Rights on Divorce) Act 1986, thus diluting the effect of the Supreme Court judgement. This Act gives divorced Muslim women the right to “a reasonable and fair provision and maintenance to be made and paid to her within the *iddat*²³ period by her former husband”.

55. The All India Muslim Personal Law Board, constituted in 1972, led the agitation against the *Shah Bano* judgement and arguably arrogated to itself the authority to speak on behalf of all Muslims on matters of personal law. The Board also opposed a subsequent bill on compulsory

²² Supreme Court of India, *Mohammad Ahmed Khan v. Shah Bano Begum and others*, judgement of 23 April 1985.

²³ For a definition of “*iddat*” see section 2 (b) of the Muslim Women (Protection of Rights on Divorce) Act 1986.

registration of marriages, arguing that a large number of Muslims in India were illiterate and might not be able to abide by the law. Women activists, on the other hand, advanced the very same reason in favour of a compulsory registration of marriages in order to protect the legal status of women and they subsequently set up parallel Muslim women personal law boards. They pointed out that women within religious minorities suffered from multiple discrimination, both as a religious minority and due to their gender within their own community. They argued that the secular nature of the state must also apply to women, while still respecting religious rights of all individuals, and that the option of invoking alternative secular family laws was not sufficient since most women remain disempowered and the ultimate decision of selecting a legal system did not effectively lie with them. In addition, men mostly prefer to register their marriages under personal laws because of the preferential treatment they are entitled to under these laws especially in matters of inheritance.

56. Some Indian states have enacted laws to make the registration of marriages compulsory, yet there is no national legislation to this effect. In this regard, the Special Rapporteur would like to refer to the concluding comments of the Committee on the Elimination of Discrimination against Women, in which it expressed concern “that failure to register marriages may also prejudice the inheritance rights of women” (A/55/38, para. 62) and recommended that “the State party take proactive measures to speedily enact legislation to require compulsory registration of all marriages, work with states and union territories to effectively implement such legislation and to consider withdrawing its reservation to article 16 (2)” of the Convention on the Elimination of All Forms of Discrimination against Women (A/62/38, para. 196).

57. During her visit, the Special Rapporteur also received reports of violence and rape, for example in Uttar Pradesh, as a reaction to cases of intermarriage between believers of different religions or castes. Acts of violence continue to occur while perpetrators are dealt with some sympathy by the law enforcement agents. This bias is deep-rooted in certain sections of society and it makes the protection of the victims even more difficult. In this regard it seems important to apply a gender perspective and to protect women effectively against any forms of violence or discrimination.

58. The visual arts industry seems to face difficulties when producing films which deal with cases of intermarriage, especially when the movie’s story involves a Muslim woman who would like to marry a Hindu man. The Special Rapporteur was informed that some films are effectively censored or even banned by non-State actors due to intimidation and mob pressure. Regrettably, professionals of the visual arts industry seem to routinely seek the approval of self-appointed custodians of religious sentiments before finalising a film which touches upon communal issues. A number of film producers and directors confirmed to the Special Rapporteur that they felt compelled to get their scripts cleared by a Hindu leader in Mumbai in order to avoid subsequent mob violence. This shows how religious intolerance might adversely affect cultural and commercial activities. At the same time, culture and media may be used as powerful tools to foster mutual tolerance, respect and understanding. The Special Rapporteur would like to emphasize that there are a number of positive examples where Indian films contributed to public education with regard to religious tolerance and inter-communal harmony.

V. CONCLUSIONS AND RECOMMENDATIONS

59. Historically, India has been home to believers of a whole range of religions and beliefs and India's society is still characterized by a remarkable religious diversity. The Supreme Court has recently emphasized that "India is a country of people with the largest number of religions and languages living together and forming a Nation". The Special Rapporteur would like to acknowledge that such diversity poses particular challenges for the executive, legislative and judicial branches. There are democratic safeguards within the political system and the institutions have accumulated a vast experience in protecting human rights. Many of the Special Rapporteur's interlocutors have pointed to the positive impact of Indian secularism as embodied in the Constitution as well as to the high degree of human rights activism in India.

60. The central Government has developed a comprehensive policy pertaining to minorities, including religious ones. In this context, the Special Rapporteur would like to laud the Prime Minister's New 15 Point Programme for Welfare of Minorities as well as various reports on religious minorities, for example the reports issued by the committees headed by Justice Rajinder Sachar in 2006 and by Justice Renganath Misra in 2007. Such committees mandated by the Government are good examples of mechanisms put in place to analyse the situation and put forward recommendations for Government action. Concrete follow-up to such recommendations both at the national and at the state levels seems vital in order to address the problems identified in these reports.

61. The National Commission for Minorities, too, has taken up several challenges. Their members took prompt action and issued independent reports on incidents of communal violence with concrete recommendations. However, the performance of various state human rights commissions depends very much on the selection of their members and the importance various governments attach to their mandates. It is vital that members of such commissions have acute sensitivity to human rights issues and they must reflect the diversity of the state, particularly in terms of gender, since women are often subject to religious intolerance. The inclusion of women in such commissions would be welcomed by the Special Rapporteur as she noticed that women's groups across religious lines were the most active and effective human rights advocates in situations of communal tension in India.

62. All of the Special Rapporteur's interlocutors recognised that a comprehensive legal framework to protect freedom of religion or belief exists, yet many of them - especially from religious minorities - remained dissatisfied with its implementation. Since the political system of India is of a federal nature and states have wide powers, including in the field of law and order, the level of action of the Government to protect its citizens in terms of freedom of religion or belief varies from state to state. The Special Rapporteur would like to recognize the efforts and achievements of the central Government. However, several issues of concern with regard to intolerance and discrimination based on religion or belief remain pertinent, especially in the context of certain states.

63. Organised groups claiming roots in religious ideologies have unleashed an all-pervasive fear of mob violence in many parts of the country. Law enforcement machinery is often reluctant to take any action against individuals or groups that perpetrate violence in the name of religion or belief. This institutionalised impunity for those who exploit religion and impose their religious intolerance on others has made peaceful citizens, particularly the minorities, vulnerable and fearful.
64. In this report the Special Rapporteur would also like to follow-up on her predecessor's country visit to India in 1996 and on his pertinent recommendations. As the communal violence in Gujarat in 2002 evidences, Mr. Amor was unfortunately prophetic in his country report, in which he expressed his fears that "something in the nature of the Ayodhya incident will recur in the event of political exploitation of a situation" (E/CN.4/1997/91/Add.1, para. 46). She is also very much concerned about the degree of polarization in some pockets of different faith groups and about the danger of chain reactions that can be triggered by communal tensions. The Special Rapporteur would like to emphasize that there is at present a real risk that similar communal violence might happen again unless political exploitation of communal distinctions is effectively prevented and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence is adequately addressed.
65. It is a crucial - albeit difficult - task for the State and civil society to challenge the forces of intolerance. The Special Rapporteur would like to refer to encouraging examples where private individuals have come to each other's rescue during communal violence, crossing all religious boundaries. Indeed, a large number of victims in Gujarat recognised the positive role played by some national media channels and other courageous individuals who effectively saved lives during the communal violence in 2002.
66. The visual arts industry in India has played an important role in public education regarding religious tolerance and can contribute to the prevention of communal tensions. However, due to its visibility and potential impact on the population, the visual arts industry remains a target of mob pressure and intimidation by non-State actors. While any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence needs to be prosecuted, this subtle form of self-censorship begs the question how the State could prevent the build-up of an atmosphere of fear of repercussions and mob pressure.
67. The Special Rapporteur appeals to the Indian authorities to take quick and effective measures to protect members of religious minorities from any attacks and to step up efforts to prevent communal violence. Legal aid programmes should be made available to survivor groups and minority communities in order to effectively prosecute and document cases of communal violence. Furthermore, a central telephone hotline might be set up to accept complaints and to register allegations concerning police atrocities. Any specific legislation on communal violence should take into account the concerns of religious minorities and must not reinforce impunity of communalised police forces at the state level.

68. While inquiries into large-scale communal violence should not be done in indecent haste, they should be accorded the highest priority and urgency by the investigation teams, the judiciary and any commission appointed to study the situation. Furthermore, the State could envisage setting up of truth and reconciliation commissions to create a historical account, contribute to healing and encourage reconciliation in long-standing conflicts, such as the one in Jammu and Kashmir.

69. Concerning vote-bank politics and electoral focus on inter-communal conflicts, the Special Rapporteur would like to reiterate her predecessor's suggestion to debar political parties from the post-election use of religion for political ends. In addition, the Representation of the Peoples Act 1951 should be scrupulously implemented, including the provision on disqualification for membership of parliament and state legislatures of persons who promote feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community or language.

70. The laws and bills on religious conversion in several Indian states should be reconsidered since they raise serious human rights concerns, in particular due to the use of discriminatory provisions and vague or overbroad terminology. A public debate on the necessity of such laws, more information on their implementation and safeguards to avoid abuse of these laws seem vital to prevent further vilification of certain religious communities. The Special Rapporteur is concerned that such legislation might be perceived as giving some moral standing to those who wish to stir up mob violence. She would like to emphasize that the right to adopt a religion of one's choice, to change or to maintain a religion is a core element of the right to freedom of religion or belief and may not be limited in any way by the State. She also reiterates that peaceful missionary activities and other forms of propagation of religion are part of the right to manifest one's religion or belief, which may be limited only under restrictive conditions.

71. The Special Rapporteur would like to recall the recommendation by the Committee on the Elimination of Racial Discrimination (A/62/18, para. 179) to restore the eligibility for affirmative action benefits of all members of Scheduled Castes and Scheduled Tribes having converted to another religion. The Special Rapporteur recommends that the Scheduled Caste status be delinked from the individual's religious affiliation.

72. With regard to religion-based personal laws, the Special Rapporteur would like to recommend that such laws be reviewed to prevent discrimination based on religion or belief as well as to ensure gender equality. Legislation should specifically protect the rights of religious minorities and of women, including of those within the minority communities.

73. In order to protect and empower members of religious minorities, the State should be proactive and take appropriate measures against all forms of intolerance and discrimination based on religion or belief which manifest themselves in school curricula, textbooks and teaching methods as well as those disseminated by the media and the new information technologies, including Internet. Also in line with the Final Document of the International Consultative Conference on School Education in Relation to Freedom of Religion or Belief, Tolerance and Non-Discrimination (E/CN.4/2002/73, appendix), the

Government should favourably consider providing teachers and students with voluntary opportunities for meetings and exchanges with their counterparts of different religions or beliefs as well as facilitating educational study abroad. Furthermore, specific education components on mass media could be envisaged in order to help the students to select and analyse the information conveyed by the mass media concerning religions and beliefs.

74. Finally, the State, non-governmental organizations and all members of civil society are encouraged to join their efforts with a view to taking advantage of the media and cultural institutions to provide the individual with relevant knowledge in the field of freedom of religion or belief. In this regard, setting up educational institutions for the whole South Asian region or encouraging joint movie productions might contribute to strengthening peace, understanding and tolerance among individuals, groups and nations.



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

**Report of the Special Rapporteur on the right of everyone to the enjoyment of
the highest attainable standard of physical and mental health**

Preliminary note on the mission to India

Addendum^{*}

^{*} The present note was submitted later than the indicated deadline, in order to incorporate the latest available information on the subject matter. Due to late submission, it is circulated as received.

Introduction

1. At the invitation of the Government, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health ('right to the highest attainable standard of health' or 'right to health') visited India from 22 November to 3 December 2007.

2. The mission focused on the issue of maternal mortality with a view to understanding, in the context of the right to the highest attainable standard of health, the steps taken by India to reduce this phenomenon, and to make constructive recommendations. The Special Rapporteur visited the states of Rajasthan and Maharashtra to engage with the authorities on their approaches to the issue. The Special Rapporteur also discussed maternal mortality with India's central Government in Delhi.

3. During the mission, the Special Rapporteur met with the Minister of Health, Dr Anbumani Ramdoss, Minister of State for Women and Child Development, Ms Renuka Chowdhury, Minister of State for External Affairs, Mr Anand Sharma, Chairperson of the National Human Rights Commission, Mr Rajendra Babu, a number of senior officials in Rajasthan and Maharashtra as well as officials from the UN Country team.

4. The Special Rapporteur is grateful to the Government of India for the invitation to undertake a mission and for the support provided before, during and after the mission.

5. This Note provides some preliminary observations arising from the mission. The Special Rapporteur will submit his mission report to the Human Rights Council in September 2008, and will go beyond the brief observations presented in this Preliminary Note.

Maternal mortality

6. Globally, over 500,000 women die each year in childbirth or during pregnancy, leaving over a million motherless children. Crucially, the great majority of these maternal deaths are preventable.

7. The Special Rapporteur underlines that maternal death is not only a health issue. It is also a human rights issue, relating to - for example - women's rights to life, health, equality and non-discrimination.

8. In India, 100,000 women die yearly in India during childbirth or pregnancy. There is an average of 300 maternal deaths for every 100,000 live births in India, which is higher than in many other middle-income and some low-income countries¹. Furthermore, in some of the country's states, the situation is considerably worse – for

¹ Brazil – 110 deaths for every 100,000 live births; Chile - 16; China – 45; Cuba-45; Egypt - 130; Namibia – 210; Sri Lanka – 58 (WHO, UNICEF, UNFPA, World Bank 2005).

instance, in Uttar Pradesh there are over 510 - and in Rajasthan 445 - maternal deaths for every 100,000 live births.

9. Even though the Indian rate of maternal deaths is declining, at the present rate neither India, nor any of its states, will reach their maternal mortality targets for 2015 arising from the Millennium Development Goals (MDGs). Financial bottlenecks, often caused by insufficient absorptive capacity, obstruct India's progress towards achieving its MDGs. In some local authorities, over 50% of the health budget is unutilised.

10. The Special Rapporteur commends and supports the efforts of the Government for introducing policies designed to improve maternal health and reduce maternal deaths. He commends the Government's commitment to increase funds for the public health sector, as well as for establishing the National Rural Health Mission, an ambitious initiative that represents a very significant step in the right direction.

11. However, the Special Rapporteur was concerned about the uneven level of healthcare services in Rajasthan and Maharashtra. During the mission, the Special Rapporteur visited a number of public sector health facilities in both states, from very large hospitals to very small health posts in slums and rural areas. Regrettably, some of these facilities were clearly seriously inadequate: dilapidated, ill-equipped, understaffed, and offering very low-quality services. However, some other public sector facilities he visited were inspirational: community-supported, well-equipped and staffed by dedicated teams of health and other workers.

12. By adopting various measures, the central and state authorities have successfully managed to increase the number of women delivering babies in public health facilities. In other words, they have increased the demand for services in the public sector. But, in many cases, the range and quality of services offered in those facilities has been seriously neglected. In short, the supply-side has received too little attention. The focus has been on increasing institutional delivery – but institutional delivery does not always provide access to life-saving care, such as emergency obstetric care, and therefore cannot be regarded as a proxy for access to life saving care.

13. It is imperative that the sequencing of reforms ensures a balance between the demand-side and supply-side. Getting pregnant women to go to facilities that do not have the services that they need is not a satisfactory outcome.

14. The Special Rapporteur also found that the authorities are collecting data on the number of institutional deliveries. However, there is little or no data on the crucial issue: access to improved life-saving care which does not appear to be automatically accompanying institutional deliveries as could have been expected.

Registration system and maternal death audits

15. The Special Rapporteur noted with concern that there is no effective, reliable and comprehensive civil registration system for accurately reporting births and deaths in India. There is evidence that women are silently dying in childbirth and during

pregnancy. As many of these deaths are not registered, they remain uncounted and unreported.

16. The Special Rapporteur strongly recommends that all States introduce, as a matter of urgency, a comprehensive, effective registration system, as well as a system of maternal death audits, such as those already in existence in Tamil Nadu and on a pilot basis in Rajasthan. It is of the utmost importance that all the circumstances of maternal deaths are examined in order to find out why the death occurred. A maternal death audit should be a non-judicial review, one that goes beyond medical reasons to identify the social, economic and cultural reasons that led or contributed to the death.

17. The emphasis of the maternal death audits should be on fact-finding rather than fault-finding. In this way, they can help to identify the structural and systemic failures that are leading to women's preventable deaths.

Health workers

18. The Special Rapporteur was concerned about the massive, crippling crisis in India's health workforce. In many areas, life-saving care is unavailable to women giving birth. Rural and disadvantaged areas are those most likely to be without a provider in public facilities. This compels many women either to go without any care at all, or to go to the private sector for life-saving services that should be publicly available for free. Recourse to the private sector impoverishes many women and their families.

19. A human rights approach will call for all health practitioners to contribute to the provision of predictable and sustainable medical care in public facilities in rural and underserved areas. For example, for the life of the present National Rural Health Mission (2005-2012), private practitioners should provide their services to the public authorities for one day a month at governmental rates of pay. In turn, the governmental authorities have a corresponding duty to ensure that such contributions are supported by the necessary facilities and equipment, so that the contributions have maximum impact.

20. However, such arrangements do not provide a long-term solution to a complex, systemic, workforce problem. Therefore, the Special Rapporteur strongly recommends that the Government establish, as a matter of urgency, a high-level, high-profile independent committee to prepare a report on human resources in health, both the public and private sectors, with a particular focus on the needs of rural and underserved areas. The report should be wide-ranging and include the issue of posting and transfers of staff.

National and State Health Commissions

21. The Special Rapporteur notes that, under international human rights law, governments have a binding legal obligation to ensure that third parties, including the private sector, are respectful of individuals' and communities' human rights. Especially in the absence of adequate self-regulation, this requires a State to establish an appropriate, effective, regulatory framework.

22. There are about 1.4 million health practitioners in India. Only about 10% of them are in government service. In other words, the Indian private health sector is enormous. Crucially, it is largely unregulated. Also, to a large extent, the public health authorities act as both provider and regulator, whereas it is clear that these functions should be separated. In other words, the existing monitoring and regulation of both the private and public health sectors is inadequate.

23. Accordingly, the Special Rapporteur recommends that autonomous Health Commissions be established, at the federal and State levels, reporting to their legislatures, to monitor and regulate the private and public health sectors, to ensure that they deliver quality health services to all.

24. Such Commissions need not constrain the health sector but ensure that it operates in a fair and reasonable manner, thereby securing the public's confidence



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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The right to food

Report of the Special Rapporteur on the Right to Food, Jean Ziegler

Addendum

**MISSION TO INDIA* **
(20 August-2 September 2005)**

* The summary is being circulated in all languages. The report itself, which is annexed to the summary, is being circulated in the language of submission only.

** The reason for the late submission of this report is to reflect the latest information.

Summary

The Special Rapporteur has the honour to submit his report on the realization of the right to food in India following his visit there from 20 August to 2 September 2005. This visit was motivated by the fact that India has the largest number of undernourished people in the world, and one of the highest levels of child malnutrition. There are also recent signs that hunger and food insecurity are increasing despite strong economic growth.

This report reviews the situation of hunger, malnutrition and food insecurity in India and the current public debate on “hunger amidst plenty” in India. It then examines the legal framework governing the right to food in India and examines whether policies and programmes are in place to meet India’s obligations to respect, protect and fulfil the right to food. The report then examines the main findings and concerns regarding the realization of the right to food.

During his visit, the Special Rapporteur enjoyed frank and open discussions with the Government of India at both Union and state levels and was impressed by the Government’s commitment to a wide array of policies and programmes designed to fight hunger and malnutrition. He was impressed by the progress that has been made to eradicate famine and food shortages as a result of public investment in agriculture and rural infrastructure combined with programmes such as the Public Food Distribution Scheme (PDS) and the Integrated Child Development Services Programme. Recent recognition of the justiciability of the right to food under a landmark case before the Supreme Court also provides an example that the world should follow.

However, the key finding of the report is that, although famine has been overcome, millions of Indians still suffer from chronic undernourishment and severe micronutrient malnutrition, especially women and children and people of lower-caste scheduled castes and tribes. Starvation deaths have not been fully eradicated, nor has discrimination against women and against lower castes, corruption, impunity and a wide range of violations including forced labour, debt bondage and forced displacement (destroying people’s access to productive resources) remain serious obstacles to the realization of the right to food. In the current transition to a more liberalized, market-oriented economy, the poorest are disproportionately bearing the costs, with undernourishment rising as public spending on rural development and social programmes is being cut back. With falling agricultural wages, increasing landlessness and rising food prices, food insecurity is growing particularly in rural areas. Recent economic growth is generating employment mostly in high-tech sectors that will not be able to absorb the loss of livelihoods from the agriculture on which two thirds of Indians still depend. Public expenditure must therefore be directed towards smallholder agriculture to improve household food security, while also improving and maintaining effective safety net programmes, including the PDS, to prevent a further regression in the realization of the right to food during the economic transition.

While the Special Rapporteur found that poor rural and urban Indians appear to have benefited little from recent economic growth, under the previous Government of the Bharatiya Janata Party-led National Democratic Alliance coalition much new hope was evident with the election of the Congress-led United Progressive Alliance Government in 2004. The report concludes with a series of recommendations aimed to assist the Government to improve the realization of the right to food of all Indians.

Annex

**REPORT OF THE SPECIAL RAPPORTEUR ON THE RIGHT TO FOOD,
JEAN ZIEGLER, ON HIS MISSION TO INDIA
(20 August-2 September 2005)**

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Introduction

1. The Special Rapporteur visited India on an official mission from 20 August to 2 September 2005. The Special Rapporteur welcomed the invitation and the commitment of the Government of India to engage in open and frank discussions on the human right to food. For facilitating the mission he would like to thank Ambassador Hardeep Singh Puri and his adviser at the Permanent Mission of India to the United Nations in Geneva as well as Manjeev Singh Puri, Joint Secretary of the Ministry of External Affairs in India. He would also like to thank Dr. Maxine Olson, Resident Coordinator of the United Nations in India and Mr. GianPetro Bordinon, World Food Programme Representative in India, for their advice and support to his mission.

2. During his visit, the Special Rapporteur was honoured to be received in Delhi by Sharad Pawar, Minister of Agriculture; R.N. Das, Secretary of the Department of Food; and Anita Chaudhary, Joint Secretary of the Department of Food. He very much appreciated their organization of a comprehensive programme that allowed him to speak to Union, state and district officials in Delhi, Madhya Pradesh and Orissa. He was particularly honoured to be received by Abhijit Sen and the Planning Commission, and by M.S. Swaminathan of the National Commission on Farmers and a number of other leading Indian academics. He also appreciated being able to benefit from the experience of the United Nations system in India and particularly appreciated advice from the United Nations Development Programme, WFP and the Food and Agriculture Organization. He would also like to express his appreciation for the hospitality of the Chargé d'affaires of Switzerland, Olaf Kjelsen, and for the advice given by Denis von der Weid, director of the non-governmental organization, Antenna.

3. The Special Rapporteur benefited from meeting with a wide range of representatives from civil society organizations working on right to food issues, including members of the Right to Food Campaign, Supreme Court lawyer, Colin Gonsalves and economist Jean Dreze. The Special Rapporteur was honoured to participate in the national "Judicial colloquium on the right to food", held on 27-28 August 2005 in Delhi, an initiative of the Right to Food Campaign to bring together 70 senior judges from across India to discuss the human right to food. He appreciated meeting civil society organizations in Delhi, Bhopal and Shivpuri in Madhya Pradesh and in Bhubaneswar, Orissa, and would particularly like to thank the NGO, FoodFirst Information and Action Network, for collaborating in the organization of meetings. He was honoured to be received by communities in a large number of villages in the rural areas of Madhya Pradesh and Orissa as well as in urban areas and slums in these states and in Delhi.

4. India is an incredibly diverse and fascinating country, the birthplace of some of the world's most ancient cultures, with a population of more than 1 billion people, predominantly Hindu but also Muslim, Christian and Sikh, speaking 15 national languages and a myriad of local languages. It is a nation that has become a world power. Huge advances have been made since India's independence barely 60 years ago when non-violent resistance led by Mohandas Gandhi and Jawarlal Nehru brought the end of British rule. Today India has a solid democratic system, grounded in a complex federal State made up of 28 separate states and 7 union territories. The states are very different, socially but also ecologically, with the climate varying from tropical monsoon in the southern states to more temperate climates in the northern areas. The central parts of India are affected by drought (including Madhya Pradesh, Andhra Pradesh, Gujarat and

Rajasthan) and the Bay of Bengal is often affected by cyclones and flooding. Other natural disasters are common, including earthquakes such as the terrible quake that devastated India-administered Kashmir killing thousands of people in October 2005 and the tsunami of December 2004 that killed at least 11,000 people, injuring and displacing thousands more across the south-eastern coastal areas of the country.

5. The vast majority of Indian people (70 per cent) still live in rural areas and depend on agriculture for their livelihoods (65 per cent). The Indian economy is still largely based on agriculture, but industry (especially textiles, chemicals, mining and computer software) and services are becoming increasingly important. Although today the threat of famine has been conquered, hunger and poverty remain a chronic and pervasive problem, exacerbated by widespread discrimination under the caste system and against women. In recent years the issue of hunger has come back into the political spotlight, with debates about the paradox of mounting foodgrain stocks in the face of reported deaths from starvation and widespread undernourishment. This paradox of “hunger amidst plenty” and the fact that the poor may not have benefited from the recent economic growth of “India Shining”, may have contributed to the victory in 2004 of the new Congress-led coalition, the United Progressive Alliance. This new Government, with the release of its Common Minimum Programme, brings new hope for more concrete progress towards the realization of the right to food.

I. HUNGER AND FOOD INSECURITY IN INDIA

A. Hunger and food insecurity

6. India has made impressive progress in overcoming the threat of famine that plagued its history and overshadowed the early years of independence. The 1943 West Bengal famine, which killed more than 3 million people, was India’s last and largest famine although India also faced serious food shortages in the first few decades of independence.¹ Since independence in 1947, however, concentrated investment in agricultural production and rural infrastructure has quadrupled the production of rice and wheat, and India has become self-sufficient in basic food production. With rapid transport of foodgrains to areas facing shortages under the Public Food Distribution System (PDS), India has conquered the threat of large-scale famines even though many regions are regularly affected by drought, flooding, cyclones and other natural disasters. Although the growth in foodgrain production has slowed in recent years it has remained above population growth rates, so at the national level India has enough food to feed its population of well over 1 billion people.²

7. Nonetheless, despite these impressive gains household-level food security has not been achieved, levels of malnutrition, undernourishment and poverty remain very high and there are signs that hunger and food insecurity have increased since the second half of the 1990s. Nearly 2 million Indian children die every year as a result of serious malnutrition and preventable diseases.³ Nearly half suffer from moderate or severe malnutrition, with 47 per cent of children underweight and 46 per cent stunted in their growth. This is one of the highest levels of child malnutrition in the world, higher than most countries in Sub-Saharan Africa.⁴ Malnutrition is most severe amongst children in rural areas but is also high in urban areas.⁵ Nearly a third of children (30 per cent) are born underweight, which means that their mothers are themselves underweight and undernourished. Malnutrition also increases during early childhood,

particularly for girl children, reflecting persistent social discrimination against girl children who appear to be fed less than boy children. Micronutrient deficiencies are endemic and have a disastrous effect on physical and mental development. More than 80 per cent of women, infants and adolescent girls suffer from anaemia and iron intake is estimated to be below 50 per cent of the recommended daily allowance. Vitamin A deficiencies, particularly blindness, as well as iodine disorders have been recorded among children in hundreds of districts. Although the Tenth Five Year Plan 2002-2007 includes the prevention, detection and management of micronutrient programme, the Special Rapporteur was informed that the Indian Council of Medical Research's studies have shown that National Nutrition Goals have not been met.

8. The majority of the Indian population are still poor, with 25 per cent living below the national poverty line and 80 per cent living on less than US\$ 2 per day,⁶ which means that many people simply cannot afford adequate food to sustain a healthy and productive life. According to FAO, India is home to the largest share of the world's undernourished population, and more than 200 million Indian children, women and men eat less than the daily minimum calorie requirement.⁷ Official Indian statistics suggest that this situation may be even worse, with more than half (53 per cent) of the population estimated to be undernourished in the Government's own report on progress towards achieving the MDGs.⁸ It is estimated that the poorest 30 per cent of households eat less than 1,700 kilocalories per day per person (well below the international minimum standard of 2,100 kilocalories per day)⁹ even if they spend 70 per cent of their income on food.¹⁰ Average calorie consumption has been falling over recent decades - but while this is explained as a shift away from basic staple food amongst higher income families, it is also a sign of increasing food insecurity amongst the poorest. Over the last decade, in rural areas consumption of basic staple foods fell by 2.14 per cent but total calorie consumption fell by 1.53 per cent, which suggests that many people are eating less food rather than a more diversified diet,¹¹ especially with the price of basic foods increasing faster than real agricultural wages over the 1990s.

9. Although government statistics suggest that poverty fell across India from 36 to 26 per cent between 1993 and 2000, there is considerable debate about whether poverty has actually fallen or whether the drop in poverty is the result of changes in the data collected.¹² One explanation may be that the assumed cost of a minimum food basket no longer reflects the real cost of food in India.¹³ Poverty remains concentrated in the states of Bihar, Uttar Pradesh, Orissa, Madhya Pradesh, Maharashtra and Karnataka, especially in rural areas of eastern India (east Uttar Pradesh, North Bihar, North Bengal, coastal Orissa, Assam and Tripura) and central tribal India (Bundelkhand, Jharkhand, Vidarbha, Madhya Pradesh, Chattisgarh, Rajasthan, Western Orissa and Telangana).¹⁴ There are concerns about evidence of rising inequality since the beginning of the 1990s as it seems that under recent economic growth, the better off western and southern states have been doing better than the poorer northern and eastern states.

10. The hungry and malnourished are primarily children, women and men living in rural areas and are dependent on agriculture, working as casual workers but also as sharecroppers and tenant or marginal farmers with less than one hectare of land. Agricultural wages are very low and increasingly precarious, minimum wages not always enforced and many people lack work during the agricultural lean season. In some states, feudalistic patterns of land ownership persist, despite legal abolition and the official Land Ceilings Act that aimed to limit land concentration. In Madhya Pradesh, for example, the Special Rapporteur found large landholdings still belong

to the family of the former *Zamindari* king. Over the 1990s, the evidence suggests that concentration in land ownership is increasing, with many more households becoming landless and dependent on casual agricultural labour (45 per cent of households).¹⁵ The Special Rapporteur was also concerned to receive reports of the increasing “casualization” and insecurity of labour contracts, including serious concerns regarding workers on tea plantations across India.¹⁶ Since the late 1990s, it has been reported that at least 60,000 workers have lost their jobs as the international price of tea has fallen, and millions of others face wage cuts, more insecure contracts and rising malnutrition that include cases of starvation. ActionAid reports that more than 240 workers died from starvation and suicide between March 2002 and February 2003 in just four tea gardens in West Bengal.

11. Scheduled castes and tribes suffer most from hunger and malnutrition, making up 25 per cent of the rural population but 42 per cent of the poor.¹⁷ As a result of discrimination, many low-caste Dalits are expected to work as agricultural labourers without being paid, many held in debt bondage by their higher-caste employers. Although debt bondage is illegal, NGOs estimate that there are between 20 to 60 million bonded labourers in India, 85 per cent of them belonging to scheduled castes and scheduled tribes.¹⁸ Widespread discrimination prevents Dalits from owning land, as they are seen as the “worker class”, and even if they receive land (as a result of redistribution and agrarian reform programmes in some states), such land is frequently taken by force by higher-caste people in the area. Lower castes are also often restricted from using village wells, as observed by the Special Rapporteur in Shivpuri District. Tribal peoples, particularly those living in forest and hill areas, are extremely marginalized, many having lost access to traditional forest livelihoods and food resources through the creation of Forest Reserves, and many remain without food ration cards or access to government services. Tribal peoples also suffer disproportionately from displacement because of development projects such as dams, power plants, coal mines and mineral industries.¹⁹ There are no official statistics on the number of people displaced, but NGOs and academics estimate that dam projects alone have displaced up to 33 million people who have lost their lands and livelihoods.²⁰ Around 40-50 per cent of the displaced are tribal people even though they make up only 8 per cent of the population, reflecting the serious discrimination against tribal peoples.

12. Women and children, particularly girl children also, tend to suffer disproportionately from hunger and malnutrition as a result of discrimination. Women are particularly vulnerable as a result of social customs that women should eat last and eat least. Women are paid less than men for the same work, with the average agricultural wage rate per day for women about 16.4 rupees, while it is 23.4 rupees for men.²¹ Traditionally, women cannot inherit formal title to land (except in regions that practice matrilineal inheritance), which is increasingly problematic in the context of the feminization of agriculture. Child labour persists and the Special Rapporteur was particularly concerned to receive reports of child labour on farms contracted to transnational corporations, such as cottonseed production in Andhra Pradesh, where young girls have been employed instead of men to reduce the cost of labour.²²

13. In urban areas the hungry and malnourished are predominantly people surviving in the informal sector as well as vulnerable groups that are excluded from access to public services and food ration cards such as migrants, refugees, the homeless, the displaced, informal slum dwellers and street children.²³ The sick and elderly, who have no family members to support them, are also extremely vulnerable. Increasing urbanization is closely linked to poverty and food

insecurity in rural areas and shrinking rural wages is contributing to distress-induced migration to urban areas, seen in the rapid development of slum and squatter settlements in India's towns and cities.²⁴ More than 21 per cent of India's urban population now lives in slums with inadequate sanitation, housing and access to safe drinking water, severely affecting food consumption and absorption.

B. Recent developments

14. Today it is widely recognized within India that, although the 1990s saw a period of sustained economic growth as India moved towards a more market-oriented economy, this growth did not benefit all Indians equally.²⁵ Middle and upper classes in urban areas have benefited under India Shining but the poorest have suffered a decline in living standards and rising food insecurity. With the liberalization of the agricultural sector and ongoing withdrawal of the State from agriculture there have been deep cuts in public investment in agriculture that have not been made up by private investment. The shift towards a more export-oriented economy has seen a shift from subsistence to cash crops, reducing the cultivation of grains, pulses and millet for household food consumption.²⁶ With cash crops requiring increasingly expensive inputs such as seeds and fertilizer, many farmers have been pushed heavily into debt, which seems to explain the crisis of farmer suicides (reported to have reached 10,000 cases by the end of 2004). It has also brought greater pressure to consolidate landholdings for more capital-intensive commercial farming, with landless households increasing dramatically over the 1990s to around 45 per cent of rural households. Along with falling agricultural wages and rising food prices, these trends seem to have contributed to growing food insecurity amongst the poorest, especially in rural areas.

15. Unlike many other countries that have been subjected to the shock therapy of structural adjustment programmes, India has taken a measured approach to withdrawing the State from the economy and has long maintained the world's largest food-based safety net, the Public Food Distribution System. The 1990s, however, saw a shift in the PDS away from a universal system to a targeted system in 1997, with the central aim of reducing the overall size and cost of the food distribution system. However, this did not work well, given that reduced sales of subsidized food under the Targeted PDS,²⁷ combined with increased procurement by the Government,²⁸ swelled national foodstocks, and led to huge increases in the costs of stocking food.²⁹ This "created the appalling paradox of huge excess stocks of foodgrain held with the FCI, adding to costs and therefore to the losses, and therefore leading to a substantially higher food subsidy, even as problems of hunger and malnutrition among the poor became more acute".³⁰

16. In the year 2000 the press reported on people dying from starvation, especially in the drought-stricken regions of Rajasthan, while food rotted in the government storage facilities. Reports suggested that food was being thrown into the sea or exported internationally at highly subsidized prices to reduce storage costs rather than being distributed to the hungry and starving. With growing public outrage at the paradox of starvation amidst overflowing foodstocks, this led to a ground-breaking public interest litigation being launched by People's Union for Civil Liberties (PUCI) against the Government before India's Supreme Court. PUCI petition argued that the right to food was part of the right to life of all Indian citizens and demanded that the country's food stocks be used without delay to prevent hunger and starvation. Interim orders

of the Supreme Court ordered assistance be extended to those at risk of starvation. It ordered the full implementation of all the food-based schemes across India (see details below). This landmark case has brought the issue of the right to food as a human right back into public debate.

II. LEGAL FRAMEWORK FOR THE RIGHT TO FOOD IN INDIA

A. International obligations

17. India is party to the International Covenant on Economic, Social and Cultural Rights, the main international instrument protecting the right to food, although it has still to submit a report to the Committee on Economic, Social and Cultural Rights (overdue by 15 years). India has ratified all international treaties relevant to the right to food, including the International Covenant on Civil and Political Rights (art. 6), the Convention on the Rights of the Child (arts. 24 and 27) and the Convention on the Elimination of All Forms of Discrimination against Women (arts. 12 and 14). This means that, under its international commitments, the Government of India is obliged to ensure the right to food of all Indians.

18. The right to food is the right to be able to feed oneself through physical and economic access to food.³¹ Participation, accountability, access to information and access to effective remedies must be ensured at all levels of the implementation of the right to food. The Government of India has the obligation to respect, protect and fulfil the right to food without any discrimination.³² The obligation to respect means that the Government should not take actions that arbitrarily deprive people of their right to food. The obligation to protect means that the Government should enforce appropriate laws to prevent third parties, including powerful people and corporations, from violating the right to food of others. Finally, the obligation to fulfil (facilitate and provide) means that the Government should take positive steps to identify vulnerable groups and implement appropriate policies/programmes to ensure their access to adequate food and water by facilitating their ability to feed themselves. As a last resort, the Government is required to provide adequate food and water to those who cannot feed themselves for reasons beyond their own control. To fulfil the right to food, the Government must use the maximum of its available resources and in every circumstance it must ensure the minimum essential level required to be free from hunger.

B. Domestic constitutional and legislative framework

19. In 1950, three years after independence, India adopted a progressive Constitution aimed at securing all its citizens social, economic and political justice, equality and dignity. The Constitution prohibits discrimination and recognizes all human rights. Civil and political rights are recognized as directly justiciable fundamental rights, and economic, social and cultural rights are defined as directive principles of State policy. Article 47 of the Constitution states that: "The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties."

20. Although the right to food is not directly justiciable, its inclusion in the directive principles of State policy serves to guide interpretation of fundamental rights, including the right to life protected by article 21.³³ For the Supreme Court, "(the) right to life guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care

and shelter”³⁴ and the right to life protected by article 21 includes the right to water³⁵ and “the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head (...)”.³⁶ The State has a constitutional obligation to take steps to ensure a dignified life to all individuals.

21. The Constitution provides special protection for women and children (art. 39 (f)) as well as for scheduled castes and scheduled tribes (art. 46), prohibits discrimination, including in the use of public sources of water (art. 15.2 (b)), and abolishes untouchability (art. 17). Many laws protect access to resources, including the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which prohibits wrongful occupation, cultivation or transfer of any land owned by or allotted to a member of a Scheduled Caste or a Scheduled Tribe (3.1.iv) and any wrongful dispossession of land or interference with the enjoyment of rights over any land, premises or water (3.1.v). The new amendments to the Hindu Succession Act, 1956, increase the protection of women’s right to ownership and inheritance. Various State laws have also been adopted to abolish the feudal system and provide land for the most vulnerable (notably Land Ceiling Acts). However, *de facto* discrimination remains widespread in India.

22. In 2005, two important new laws regarding the right to food were adopted by the Indian Parliament. The Right to Information Bill guarantees the right to information to all citizens and recognizes many correlative obligations at all levels of government, which should improve transparency and accountability. The passing of the National Rural Employment Guarantee Act recognizes employment as a matter of right for the first time. It entitles anyone to be employed on public works within 15 days as unskilled manual labour at the statutory minimum wage, although this is restricted to rural areas and to a maximum of 100 days of work per household per year.

23. Under India’s complex federal system, both the Union and state governments have responsibilities regarding the right to food. In general the Union Government is responsible for elaborating, monitoring and financing programmes to ensure access to food and water, while state governments are responsible for implementation. State governments also legislate on irrigation, agricultural land tenure, ceiling, transfer and on the minimum wage. In some areas, independent tribal authorities have important powers. In Scheduled Areas, tribal advisory councils must be consulted on any issue related to the Scheduled Tribes, and in Tribal Areas, tribal district councils have important autonomy in the allotment, occupation or use of the land, the management of forests (other than reserved forests) and the inheritance of property. At the local level, municipalities and *panchayats* (self-governments) are responsible for the supply of drinking water. *Panchayats*, in which seats are reserved for the Scheduled Castes, Scheduled Tribes and for women, have increasing power over land acquisition since the Panchayats (Scheduled Areas) Act, 1996, and in the management of the food-based schemes since recent directions were delivered by the Supreme Court.³⁷

C. Access to justice and human rights institutions

24. All victims of violations of the right to food should have access to effective remedies, including access to justice to claim their right. India provides one of the best examples in the world in terms of the justiciability of economic, social and cultural rights, with the right to life interpreted extensively by the Supreme Court to include the right to food. Under the

Constitution, public-interest litigation is permitted to protect the basic human rights of the most vulnerable, which explains why so many social movements have sought appropriate remedies before the Supreme Court. In 2001, the PUCL approached the Supreme Court on behalf of starving people. Their original petition addressed the situation in six states, but the Supreme Court broadened its scope to cover the entire country. For the Supreme Court, the Government has a direct responsibility to prevent starvation:

The anxiety of the Court is to see that the poor and the destitute and the weaker sections of the society do not suffer from hunger and starvation. The prevention of the same is one of the prime responsibilities of the Government - whether Central or the State. Mere schemes without any implementation are of no use. What is important is that the food must reach the hungry.³⁸

25. To ensure the fulfilment of the right to food, the Supreme Court directed that all destitute people be identified and included in existing food-based schemes and directed state governments to implement fully all these schemes, including the Targeted Public Distribution Scheme (TPDS), the Antyodaya Anna Yojana (AAY), the Integrated Child Development Scheme (ICDS), the Mid-Day Meals Scheme (MDMS). The Supreme Court also directed the most vulnerable, including the primitive tribes, to be placed in the AAY lists to ensure their access to food at a highly subsidized price. To increase access to information, it directed that all its orders and the lists of beneficiaries be made publicly available. The Supreme Court also directed that Chief Secretaries/Administrations of the states/Union territories should be held responsible in case of starvation or malnutrition deaths or persistent default in compliance with the orders. These directions have significantly improved the implementation of many food security schemes in many states, particularly since the Court has also appointed two Commissioners to monitor the implementation of its orders.

26. The PUCL case represents a great advance in the justiciability of the right to food as a human right, as the orders of the Supreme Court in this case have transformed the policy choices of the Government into enforceable, justiciable rights of the people. Although this relates primarily to the obligation to fulfil the right to food, the Court has also made judgements that are related to the obligations to respect and to protect the right to food. It has, for example, protected the right to water of Dalits against discrimination by the upper castes,³⁹ the right to livelihood of traditional fisherpeople against the shrimp industry (*Aquaculture case*),⁴⁰ and the right to livelihood of scheduled tribes against the acquisition of land by a private company (*Samatha case*).⁴¹ For the Supreme Court, “any person who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by article 21”.⁴² It is now essential that small farmers who are arbitrarily evicted from their land, or women or members of the Scheduled Castes or Scheduled Tribes who are deprived of their access to productive resources, should have the same access to justice before the Supreme Court.

27. Despite these advances in the justiciability of the right to food, there remain difficulties in enforcing existing legislation, in ensuring the implementation of court decisions and in ensuring access to justice for the poor. The decisions of the Supreme Court in the *Aquaculture case* and *Samatha case* have, for example, never been fully implemented. Article 39A of the Constitution requires the State to provide free legal aid to ensure that the most vulnerable will have access to

justice. Lack of implementation, high costs, long delays in court proceedings and the lack of full independence of the judiciary at the local level have made the judicial system virtually inaccessible. One way of improving this situation would be for all states to set up the human rights courts and a special court as required under the Protection of Human Rights Act, 1993, and the Scheduled Castes and Scheduled Tribes Act, 1989.

28. The need to establish independent monitoring mechanisms is essential. In India, the National Human Rights Commission (NHRC) has been established under the Protection of Human Rights Act, 1993, in accordance with the Paris Principles⁴³ and 15 States have their own human rights commission. Their mandate includes the promotion and protection of all human rights, including the right to food. The National Commission for Minorities, the National Commission for Women and the Scheduled Castes and Scheduled Tribes Commission also address the specific needs of the most vulnerable. The Special Rapporteur welcomes the work of the NHRC on the right to food, particularly in one specific case, in Orissa in 1996, when a Commission's inquiry concluded that 17 deaths were attributable to malnutrition and hunger. The Commission continues to monitor the situation today. The Special Rapporteur strongly encourages the NHRC and the 15 state commissions to initiate other inquiries on complaints of alleged starvation or malnutrition deaths. The Special Rapporteur also recommends that a National Commission for Children be established to protect their specific needs.

III. POLICY FRAMEWORK FOR THE RIGHT TO FOOD

A. Government policies and institutions

29. A wide range of policies and programmes are in place to address food insecurity and malnutrition, mostly elaborated and financed by the central Government and implemented by state governments, although these programmes have not been explicitly articulated around India's obligations towards the right to food.

30. Since independence, India's policies and programmes have focused on increasing both the national *availability* of food as well as the physical and economic *access* to food, although the *adequacy* of food has been a less central focus. The drive for national food self-sufficiency in rice and wheat production aimed to increase national food availability, eliminate the risks of famine and chronic food shortages and reduce dependency on food imports and food aid (particularly after India suffered when food aid was slow in coming in the 1970s as punishment for India's critical stance on the war in Viet Nam).⁴⁴ Food self-sufficiency was achieved with public investment in agriculture and rural infrastructure and the introduction of Green Revolution technologies, quadrupling wheat and rice production from 50 million metric tonnes to well over 200 million tonnes in less than 50 years. Today, as India begins to liberalize the agricultural sector, there remains a strong preference for maintaining a certain level of food self-sufficiency, driven partly by the Government of India's awareness that national demand is so large that it could not be met by international markets along with the recognition that two thirds of the population still rely on agriculture for employment.⁴⁵ However, it is recognized that the drive for national food self-sufficiency has produced uneven progress, with production concentrated in irrigated, better quality lands of large farmers in the Punjab, Haryana and western Uttar Pradesh but bypassing small farmers in the rain-fed agricultural areas of central and eastern India.⁴⁶ Therefore, although food availability increased at the national level, this has

not translated into household food security. There is therefore a need for greater investment in smallholder production in less developed areas to promote simultaneously food availability and access to food.⁴⁷

31. Efforts to improve *access* to food at the household level have focused on generating economic growth and employment as well as on the provision of a food-based social safety net, including PDS, the largest food distribution programme in the world. In many respects, PDS is a colossal achievement: it has been successful in eliminating famine and in quadrupling foodgrain production. It involves the Food Corporation of India buying foodgrains in the surplus states (offering minimum support prices for rice and wheat), transporting it to 15,000 government *godowns* (storage facilities) in deficit states, and distributing the foodgrains through over half a million “fair-price shops”, where families are entitled to buy a fixed amount of rice and wheat at subsidized prices. Conceived as a universal scheme, the Government of India shifted to a Targeted Public Food Distribution System in 1997. Under the targeted system, the poorest families (below-poverty-line households) are entitled to buy a fixed amount of foodgrain at highly subsidized prices, whereas less poor (above-poverty-line households) can buy a specified amount at prices closer to the market price. State governments are responsible, with the participation of the local authorities, *Panchayati Raj*, for identifying the households that fall below the poverty line (rather than this being defined at the central level by the central Government). The Special Rapporteur found problems in practice with below-poverty-line lists still not finalized and not always listing the poorest in the villages. The very poorest households are also entitled to the Antyodaya Anna Yojana Scheme (AAY), under which they have access to 35 kg of foodgrain per month (since 2002) at highly subsidized prices.

32. Although PDS has been successful in averting famine, it is beset by pervasive corruption. Union Government officials estimated for the Special Rapporteur that approximately 36 per cent of the foodgrains distributed were diverted onto the black market. PDS works best in the states of Kerala and Tamil Nadu, where it is accepted that the transparency and accountability of local government officials were much higher. Nonetheless, there are many problems across India and the Special Rapporteur found problems of overcharging, irregular opening hours of fair price shops, many of the poorest people not having ration cards, as well as people being so poor that they could not even afford the subsidized prices.⁴⁸ More broadly, however, even though the PDS has been successful in averting famine it has not managed to address chronic undernourishment, largely because it simply does not distribute enough food. PDS entitlements meet only 10-30 per cent of individual food needs and in 1997, with the shift to a targeted system, the entitlement changed to a *family* entitlement of 10 kg of rice or wheat per household per month, equivalent to only 18 per cent of recommended daily intake (assuming a five-member family). This entitlement was increased to 35 kg in 2002. It is also widely recognized that PDS has not always reached the poorest people in the poorest states and has tended to be biased towards the better-off living in urban areas. However, the shift away from a universal scheme towards a targeted scheme appears to have made PDS less effective. Its impact in addressing chronic hunger, undernourishment and malnutrition has not been helped by the continued focus on production rather than consumption, including monitoring “off-take”, rather than human in-take. Speaking to local officials, the Special Rapporteur found a tendency to deny that any starvation deaths occurred, with reported deaths generally blamed on unrelated diseases such as measles.

33. Large-scale food-for-work programmes managed by central and state governments such as the Sampoorna Grameen Rozgar Yojana (SGRY) programme, focus on ensuring guaranteed

employment for a specified number of days during the lean agricultural season when work for agricultural labourers is scarce. The dual aim is to provide food security through employment (paid partly in foodgrains, partly in cash), and to build common assets such as roads. Although well designed, the Special Rapporteur found that there remain problems. The implementation of these programmes varies across states, as work is not always guaranteed for 100 days (studies show that most workers are only granted work for 7-21 days) and there have been reports of corruption and concerns that the schemes are not always well targeted towards people from scheduled castes and scheduled tribes.

34. The Integrated Child Development Services Programmes (ICDS) is one of the largest programmes in the world aiming to provide integrated nutrition, health and early child development services for children from 0-6 years, under the responsibility of the Department of Women and Child Development. The Special Rapporteur observed the operation of *Anganwadi* Centres in rural villages, where he saw how check-ups on children's nutritional status were carried out to monitor severe and acute malnourishment, with food and nutritional supplements given to mothers of children identified as malnourished. According to the State government officials with whom the Special Rapporteur spoke, the ICDS has contributed to enormous progress in improving child nutrition and reducing child mortality. However, he noted that there seemed to be a tendency to overstate progress in monitoring levels of malnutrition, as progress appeared to be extremely rapid but did not seem to accord with the national statistical surveys. Some other problems were drawn to his attention, including the lack of storage facilities for food, occasional diversion of supplies by staff and lack of availability of the right quantities of food at the centres at the appropriate time as well as the financial constraints of state governments that have limited the nutritional supplements available for the ICDS.⁴⁹ Predominantly distributing rice and wheat, even the ICDS does not sufficiently promote nutrition as well as food security.

35. The Mid-Day Meals Scheme aims to provide meals to schoolchildren under the responsibility of the Department of Education as well as the Ministry of Rural Development and the Ministry of Urban Affairs and Employment, and is implemented by the state governments. The dual aim is to ensure nourishment of children and encourage school attendance. Central government provides the foodgrains and state governments are expected to meet the costs of non-food expenses including cooking, transport and delivery of foodgrain to schools as well as arranging for cooking, serving and supplying micronutrients. Under a new order from the Supreme Court, schools were required to serve cooked rice and *dal* (lentils) or vegetables to primary school children from January 2002, although this order has not been equally implemented across the different states. The Special Rapporteur is also concerned by reports that, in the Mid-Day Meals Scheme, parents of upper-caste children have protested against women of scheduled castes or tribes being employed to cook or serve meals.

36. In terms of more broadly addressing the discrimination against tribal peoples and scheduled castes, a number of special programmes have been established by the Ministry of Social Justice and the Ministry of Empowerment and Tribal Affairs. These have included the Village Grain Bank Scheme, initiated in 1997, which aims to prevent starvation deaths of tribal people living in remote areas, especially those who are not reached by PDS. Affirmative action programmes have also aimed to increase access to education and employment for scheduled castes and scheduled tribes, although social discrimination persists. Although land reform

schemes have been carried out in a number of states to distribute government lands to scheduled castes and tribal peoples, lack of political will has brought many of these initiatives to a halt, and in some states, such as Madhya Pradesh, the feudalistic *zamindari* system persists. Many people that have been granted lands have been forcibly evicted by higher castes with impunity. Loss of access to productive resources, such as forest tribal peoples being excluded from forests or shrimp-farmers displacing smallholder farmers, means that there is a lack of judicial and administrative protection for access to productive resources for the poorest.

37. In relation to addressing food security problems arising from the loss of livelihoods from development-induced displacement, a National Policy on Relief and Rehabilitation of Project Affected Families was instituted in 2004, with the Tenth Plan making a commitment to ensure resettlement and rehabilitation, including gender-sensitive programmes that ensure that women have legal rights to land and that women's livelihood and food security activities are recognized in the context of rehabilitation. However, this does not seem to have been fully implemented in practice.

B. Non-governmental organizations and associations

38. India has a vibrant and strong civil society and the role of civil society action in addressing hunger and poverty has been well recognized. Numerous projects initiated by civil society have had important impacts on the fight against hunger and malnutrition and the fight for the rights of the most vulnerable in different regions across India. Over the last decade, the NGO FoodFirst Information and Action Network (FIAN) has been very involved in promoting the right to food and denouncing violations in different regions of India. Additionally, a wide range of national organizations are working on many issues related to food security and human rights. The NGO Antenna has worked to improve micronutrient deficiencies through low-cost investment in spirulina, which is used as a nutritional supplement. More recently the Right to Food Campaign, a coalition of different organizations, has started to work together after the success of the public-interest litigation brought by the PUCL, using legal strategies as well as broader social mobilization strategies to call for public action to fight starvation and chronic hunger. The Right to Food Campaign has held public hearings in Orissa, Madhya Pradesh, Jharkand, Maharashtra, Rajasthan as well as Delhi, bringing government officials to hear personal testimonies of people living in communities suffering from hunger, and has also served a monitoring role in trying to ensure the implementation of Supreme Court orders under the PUCL case. The Campaign also uses the 2005 Right to Information Act to challenge corruption, demanding that information on entitlements and ration cards be made publicly available. The Campaign also demands that employment and working conditions are seen as part of the right to food, and have had success with the passing of the national Employment Guarantee Act.

IV. MAIN FINDINGS AND CONCERNS

A. Progressive realization of the right to food

39. Despite the progress made in the progressive realization of the right to food in India since independence, the Special Rapporteur is concerned that there are signs of regression, particularly amongst the poorest. In monitoring progress towards the Millennium Development Goals (MDGs), the Planning Commission has noted that India was not currently on track to achieve the goals set in relation to malnutrition and undernourishment. According to government statistics,

levels of undernourishment fell from 62.2 to 53 per cent between 1990 and 2000, and the proportion of stunting in children fell from 54.8 per cent to 47 per cent, but this was not fast enough to reach the Goals. The Food and Agriculture Organization has also recorded that much of the progress made in the early 1990s was lost in the late 1990s, with the number of victims of hunger increasing by 18 million people in the second half of the decade.⁵⁰ The Special Rapporteur is also concerned by the fall of foodgrain availability to 152 kg per capita, 23 kg less than in the early 1990s,⁵¹ and by the decline in calorie consumption.⁵² As pointed out by Utsa Patnaik, burgeoning foodstocks do not necessarily reflect “overproduction”, but rather “underconsumption”. With real agricultural wages declining, food prices and unemployment rising, there are signs of increasing food insecurity.

40. The Government is required to spend the maximum of available resources on ensuring the right to food but spending is falling, given pressures to reduce simultaneously public investment in agriculture and public spending on safety-nets. Investment in rural development has already fallen from 14.5 per cent of GDP before 1990 to less than 6 per cent of GDP, but investment in rural development and smallholder is essential to fight poverty and improve the right to food.⁵³ Spending on the Public Food Distribution System averaged 0.5 per cent of GDP before 1997,⁵⁴ increasing to 1.1 per cent of GDP,⁵⁵ but this was a result of storage costs after the shift to the targeted system, which suggests that the universal system was more cost-efficient.

B. Violations of the right to food

41. The Special Rapporteur was concerned that he received a large number of reports of alleged violations of the right to food.

Starvation deaths

42. Reports of more than 250 starvation or malnutrition deaths in the last two years in the States of Rajasthan, Jharkhand, Bihar, Madhya Pradesh and West Bengal were presented to the Special Rapporteur at the Judicial Colloquium on the Right to Food.⁵⁶ In its fifth report to the Supreme Court, Commissioner Dr. Saxena reported on hundreds of alleged hunger-related deaths in the same states and in Chattisgarh, Uttar Pradesh, Orissa, Karnataka, Andhra Pradesh, Assam, Kerala and Maharashtra. The Special Rapporteur received many other reports on alleged starvation or malnutrition deaths, including by FIAN,⁵⁷ the Asian Human Rights Commission and Manabadhikar Suraksha Mancha.⁵⁸ In Orissa, when he visited villages, he received testimonies by women who had lost their children to hunger and malnutrition. As Chief Justice of the Uttar Pradesh High Court, A.W. Ray, said in his conclusion of the Judicial Colloquium on the Right to Food, “in a country where there is plenty of food, every child, woman and man dying from hunger is assassinated”.

Discrimination against the Scheduled Castes and the Scheduled Tribes

43. Most of the victims of starvation are women and children, members of the Scheduled Tribes and Scheduled Castes, with their deaths mainly due to discrimination in access to food or productive resources, evictions or the lack of implementation of the food-based schemes. Despite an extensive legal framework prohibiting discrimination and untouchability, discrimination persists, particularly in rural areas.⁵⁹ In Madhya Pradesh and Orissa, the Special Rapporteur observed that access to village water wells is still not allowed for Dalits and

that even if members of the Scheduled Castes or Scheduled Tribes were granted lands, higher castes often take the land away. Reports were also received that in Uttar Pradesh and Uttaranchal, Dalit families were forcibly evicted from their land by upper castes, and sometimes forced to work for them.⁶⁰ In Harinagar, Kashipur, it is reported that 154 Dalit families have been forcibly evicted from their land and remain landless to this day despite a decision by the Supreme Court in their favour in 1996.⁶¹ As former Chief Justice R. Mishra said in a meeting with the Special Rapporteur, “low-caste people receive the land, but the upper caste enjoys it”. These are crimes punishable by imprisonment and fine under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, but the law is not enforced.⁶²

Obligation to respect: displacements or evictions by the State, without adequate resettlement and rehabilitation

44. The Special Rapporteur received numerous complaints about forced displacements of communities as a consequence of State development projects without adequate resettlement and rehabilitation. The case of the Narmada Dam is of particular concern, as despite clear directions by the Supreme Court in 2000,⁶³ thousands of affected people are still not adequately resettled and rehabilitated. It is alleged that today 11,000 families in Madhya Pradesh, 1,500 families in Maharashtra and 200 families in Gujarat are still to be rehabilitated, although their villages have already been submerged.⁶⁴ In Hazaribagh, Jharkhand, a state coal-mining project allegedly led to involuntary resettlements of thousands of people and the destruction of their sources of livelihood without adequate rehabilitation and compensation.⁶⁵ As provided by law, national and State policies and Supreme Court orders, every affected family should be adequately resettled and rehabilitated and the “land for land” principle respected. The Special Rapporteur received many complaints from tribal communities who lost their means of livelihood when evicted from the forest as a consequence of the implementation of the Forest Act, 1980.

Obligation to protect: lack of protection against the activities of private companies

45. In Orissa, the Special Rapporteur received complaints about the alleged impact of mining activities on the right to food of tribal communities in Kashipur⁶⁶ and Lanjigarh.⁶⁷ It is reported that tribal communities have been forcibly evicted from their land to allow private mining activities, in violation of the Constitution and despite clear directions by the Supreme Court from 1997 that the lands in scheduled areas cannot be leased out to non-tribals or to companies.⁶⁸ In Bhopal, the Special Rapporteur met with the Government of Madhya Pradesh and representatives of the people affected by the Union Carbide gas disaster of 1984, in which 7,000 people died in the first days and 15,000 people died in the following years.⁶⁹ Today, 20 years after the tragedy, water wells in the area are contaminated and, despite clear directions by the Supreme Court in May 2004, the water requirements are still not met.⁷⁰ The Special Rapporteur has also received complaints alleging that the uncontrolled water extraction by Coca Cola in the states of Kerala and Tamil Nadu was causing a severe shortage of water for the local population.⁷¹ Impact assessment studies and prior consultation of the affected communities must always be conducted before any licence is granted to a private company, and in case of violations of the right to food, land or water, all victims must be adequately resettled, rehabilitated and compensated.

Obligation to fulfil: lack of implementation of the food-based schemes

46. In each of his reports, Commissioner Dr. Saxena points to the lack of implementation of the food-based schemes in most of the states. In May 2003 the Supreme Court concluded that the states of Bihar, Jharkhand and Uttar Pradesh had not even begun to implement its directions for supply of cooked Mid-Day Meals.⁷² Still today in Arunachal Pradesh, Assam, Manipur, severely malnourished children were not covered by the programme. In this district, many of the most vulnerable persons have not been granted ration cards. The Supreme Court recognized these schemes as legal entitlements to all beneficiaries, including those living in tribal villages or illegal slums, which means that their non-implementation amounts to a violation of the right to food.

V. CONCLUSIONS AND RECOMMENDATIONS

47. The Special Rapporteur is encouraged by the commitment of the Government of India and by the vision of the Indian State in ensuring food security. He welcomes the work of the Supreme Court, which is an example to the world in advancing understanding of the justiciability of the human right to food. He also welcomes the adoption by the Government of the Rural Employment Guarantee Act and the entitlements enshrined in food-based programmes. However, he is concerned that India still has the largest number of permanently and chronically undernourished people and one of the highest rates of child malnutrition in the world, and that hunger and malnutrition have been increasing since the second half of the 1990s.

48. The Special Rapporteur makes the following specific recommendations:

(a) The right to food is a human right and an essential part of the right to life. Even as substantial progress is being achieved in ensuring food security, monitoring of the severity of chronic undernourishment and malnutrition and accountability for starvation or malnutrition deaths must be instituted, including by the national and state human rights commissions and the local *panchayat* bodies. As suggested by the Supreme Court, independent Public Service Commissions could contribute to this monitoring. All public administration officers should be trained with respect to human rights and the right to food;⁷³

(b) A framework law with a national strategy for the implementation of the right to food should be instituted, in accordance with Committee on Economic, Social and Cultural Rights general comment No. 12 on the right to food. This should establish benchmarks and indicators for the investment of the right to food;

(c) All Union and state governments must follow and implement all orders and judgements of the Supreme Court. Non-implementation of the food-based schemes enshrined as entitlements amounts to a violation of the right to food. In the case of Bhopal, the state authorities should ensure a regular supply of adequate safe water for all affected communities. Access to justice, including to the Supreme Court for victims of violations of the obligations to respect, protect and fulfil the right to food must be ensured;

(d) The human rights courts and the special courts required under the Protection of Human Rights Act, 1993, and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, should be established in all states with a mandate that protects their independence and includes the right to food;

(e) All Indians should be treated equally before the law. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, should be fully implemented, and atrocities committed should be prosecuted and brought to justice;

(f) Land and agrarian reform should be implemented to strengthen smallholder agricultural livelihoods. Existing agrarian reform legislation should not be undermined to serve the interests of large landholdings of landlords and agribusiness;

(g) The Land Acquisition Act should be amended, or new legislation adopted, to recognize a justiciable right to resettlement and rehabilitation for all displaced or evicted persons, including those without formal land titles and including women;⁷⁴

(h) Minimum wage legislation and the Employment Guarantee Act should be fully enforced. Decisive action must be taken against widespread evasion, particularly for agricultural labour and the informal sector. The minimum wage should be indexed to the cost of a basic food basket, which must be sufficient to purchase the minimum daily calorie requirement;

(i) The Right to Information Act should be respected in relation to all programmes, including making publicly available all information on entitlements. This should include eligibility criteria under the Public Food Distribution System at the level of the fair price shops. Corruption must be challenged at all levels of the system and all public officials and shop licensees held accountable for any diversion of resources;

(j) Dams, mining and infrastructure projects must not be implemented if this entails displacement and irreversible destruction of people's livelihoods. Such projects should only be carried out with the consent of communities and on the condition that due legal process, proper resettlement, rehabilitation (under the "land for land" principle) and compensation to all victims is guaranteed;

(k) A national early-warning system should be established that records starvation deaths to generate emergency response and improve accountability. Proper methods of documenting starvation and malnutrition-related deaths should be developed with the participation of the civil society;

(l) PDS must be strengthened to ensure that it reaches all those in need and that the prices do not make it impossible for the poor to buy the subsidized rations. Cash transfers could also be introduced to improve access to food. In the context of a more market-oriented economy, programmes and social transfers must remain in place to prevent starvation deaths and continue investment in the right to food. Such programmes must be implemented as a matter of right and not as benevolence and must be subject to review by the courts;

(m) Implementation of all food-based schemes must be improved by incorporating the human rights principles of non-discrimination, participation, transparency and accountability. Monitoring of all food-based programmes, including PDS, must include monitoring of impacts on malnutrition and undernourishment;

(n) Food security programmes should include elements to ensure nutritional security and to address micronutrient deficiencies. National initiatives for fortification of salt and flour should be complemented by low-cost local initiatives, including promoting small-scale horticulture production and supplementary food being distributed to children and women under ICDS and the Mid-Day Meals Scheme;

(o) Food security programmes must also place more emphasis on protecting and promoting sustainable livelihoods. Public investment in smallholder agriculture is essential, given that two thirds of the population still depends on agriculture, and employment is currently only being generated in the high-tech sector that will not be able to absorb all those left unemployed, if public investment in agriculture is abandoned;

(p) Finally, the Special Rapporteur believes that greater liberalization of trade in basic staple foods should not be pursued as long as subsidies in the developed countries keep international prices at artificially low levels, otherwise India will suffer from competition from dumped agricultural products that will undermine its own production, especially of rice and wheat.

Notes

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**INTEGRATION OF THE HUMAN RIGHTS OF WOMEN
AND THE GENDER PERSPECTIVE**

VIOLENCE AGAINST WOMEN

**Report of the Special Rapporteur on violence against women, its causes
and consequences, Ms. Radhika Coomaraswamy, in accordance with
Commission on Human Rights resolution 2000/45**

Addendum

**Mission to Bangladesh, Nepal and India on the issue of trafficking
of women and girls (28 October-15 November 2000)***

* The executive summary of this mission report is being circulated in all official languages. The report itself is contained in the annex to the executive summary and is being circulated in the language of submission only.

Executive summary

At the invitation of the Governments of Bangladesh, Nepal and India, the Special Rapporteur on violence against women, its causes and consequences visited Dhaka, Kathmandu, Bhairahwa in Rupandehi district, Delhi, Bombay and Calcutta from 28 October to 15 November 2000, to study the issue of trafficking in women and girls in the region.

The present report is intended as a case study to complement the Special Rapporteur's previous report on trafficking in women, women's migration and violence against women, submitted to the Commission on Human Rights at its fifty-fifth session (E/CN.4/2000/68). It contains chapters on the definition of trafficking, the background to the problem of trafficking in South Asia, general findings, and more detailed chapters on each of the countries visited.

The Special Rapporteur was reassured that the Governments of Nepal, Bangladesh and India were politically committed to the eradication of trafficking in the South Asian region. She was concerned, however, that some of the national measures being contemplated to combat trafficking were in violation of basic human rights principles. She also impressed upon the Governments of the region the need to bring the proposed SAARC Convention on Trafficking into line with accepted international standards and agreed international language. The Special Rapporteur also engaged in a constructive discussion with Governments on possible initiatives at the level of the criminal justice system which could ensure an effective, targeted response to the problem of trafficking in the South Asian region. She also held discussions with various authorities on social welfare measures which could be taken to ensure that the rights of the women victims of trafficking were protected.

The Special Rapporteur makes the following recommendations in the report:

International

The international community must continue to play a proactive role in preventing trafficking in the South Asian region. More resources should be given to the Governments of the region to meet this problem of human servitude and forced labour. In this connection, the Nepalese effort should be replicated in the other South Asia Association for Regional Cooperation (SAARC) countries. There should be an inter-agency task force on trafficking or a joint initiative on trafficking involving all the international agencies. Cooperation among the agencies is essential if there is to be a coordinated effort to deal with the problem of trafficking in South Asia.

Regional

The countries of the SAARC region should join efforts to collect comprehensive data on trafficking. There should be a central database and a regional survey to assess the nature of the problems, the numbers involved, the profile of the trafficking victim, the profile of the trafficker and the response of national Governments. The collection of data is absolutely necessary if the problem is to be dealt with effectively.

A SAARC convention on trafficking should be encouraged. If the present draft convention for preventing and combating trafficking in women and children for prostitution is signed, there should be a Conference of Parties held within a year to ensure that the definition of trafficking in the SAARC instrument is along the lines of the language of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

The social and economic rights of the victims should be respected. In addition, a monitoring mechanism should be set up along with a regional fund to help victims of trafficking once they are rescued.

There should be an intergovernmental regional task force on trafficking that will plan and implement a concerted strategy for the region. This task force could be linked to the Women and Child Ministries of the respective countries. In addition, there should be an interregional police task force to fight trafficking, track traffickers and gather intelligence on trafficking rings.

National

The Governments of the region should each have a national plan of action to combat trafficking. To prevent such a plan from being just a piece of paper, there should be a monitoring mechanism involving Government, non-governmental organizations and international agencies.

There should be a nodal agency entrusted with implementing the action plan. In some of the SAARC countries there is such a nodal agency for drug prevention. Human trafficking is far more despicable a crime than drug abuse. The establishment of a nodal agency would give the world a sense that the countries take this issue seriously and that there is a political will to eradicate trafficking.

Legislation to combat trafficking should be considered but only if it complies with international human rights standards and does not violate the rights of women. Nothing should be done to prevent freedom of movement for adult women. No law or regulation should place women at the mercy of the men in their families or the men in their villages. Their autonomy must be respected.

Governments should refrain from enacting regulations and orders that restrict the free movement of women under the guise of fighting trafficking. Instead, measures aimed at educating women about their rights and raising awareness about conditions in receiving countries should be compulsory. The respective embassies in receiving countries should be proactive in providing assistance to women and girl victims of trafficking.

Protective custody as a means of dealing with victims of trafficking should be reconsidered. Women who are victims of trafficking have not committed any crime. For this reason, they should not be detained except with their consent. Any stay in a government home should be voluntary. In addition, conditions in these homes should be such that the women would want to stay there voluntarily. There should be programmes to keep women occupied;

there should be legal and psychological counselling and help for the women to plan their future. Proven NGOs should manage such homes with government monitoring and supervision.

Governments of the region must work towards facilitating the voluntary return, if that is appropriate, of trafficking victims who are foreign nationals rather than detaining them for long periods in government homes.

All the countries of the region should have training for their police forces on how to combat violence against women in general as well as trafficking in particular. The training should consist of awareness raising on the issue as well as development of investigative skills so that crimes of violence against women are investigated and prosecuted with proper evidence. The Special Rapporteur suggests that the countries of the region draw on international expertise present at the Office of the High Commissioner for Human Rights and the United Nations Office for Drug Control and Crime Prevention/Centre for International Crime Prevention in Vienna.

Corruption in the police seems to be a significant problem in all the countries of the region, especially in the area of trafficking. There should be a clear directive from the top of the police hierarchy that such behaviour will not be tolerated and police officers who engage in such activity should face severe consequences.

There should be seminars and workshops with judges in the region to increase their awareness on issues relating to violence against women as well as to issues related to trafficking. There are a number of such programmes already in existence and they should be encouraged.

The human rights commissions in all the countries of the region should make trafficking a special focus of their work.

Witness protection schemes should be set up for women victims so that they will testify against their traffickers. Such schemes should assist the police in presenting evidence before the courts and would help to achieve a higher rate of conviction.

There should be a concerted effort to deal with the problem of HIV/AIDS in the region. Sufficient resources should be allocated to deal with the problem. Special centres should be set up in the red light districts to assist sex workers. International standards on "voluntariness" with regard to testing and confidentiality should guide the campaign on AIDS. Gender training for the medical profession should be provided to ensure that women receive non-judgemental, confidential treatment.

Prevention programmes should exist in all three of the countries visited. Prevention should take the form of awareness raising through the media, through the education system and through social mobilizers in the villages. Prevention should not rely on social surveillance and neighbour spying on neighbour as such surveillance can be subject to a great deal of abuse.

Extensive support should be given to NGOs working in this field. The NGOs working with the children of the sex workers should be given special encouragement along with those who work with the victims of trafficking. A partnership between Government and NGOs working in this field is essential if the problem of trafficking is to be dealt with in the South Asian region.

Annex

**REPORT OF THE SPECIAL RAPPORTEUR ON VIOLENCE AGAINST
WOMEN, ITS CAUSES AND CONSEQUENCES, ON HER MISSION TO
BANGLADESH, NEPAL AND INDIA ON THE ISSUE OF TRAFFICKING
OF WOMEN AND GIRLS (28 OCTOBER-15 NOVEMBER 2000)**

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Appendix: List of selected persons/organizations with whom the Special Rapporteur met during her mission.

Introduction

1. At the invitation of the Governments of Bangladesh, Nepal and India, the Special Rapporteur on violence against women, its causes and consequences visited Dhaka, Kathmandu, Bhairahwa in Rupandehi district, Delhi, Bombay and Calcutta from 28 October to 15 November 2000 to study the issue of trafficking in women and girls in the region.
2. The present report is intended as a case study to complement the Special Rapporteur's previous report on trafficking in women, women's migration and violence against women, submitted to the Commission on Human Rights at its fifty-fifth session (E/CN.4/2000/68).
3. The Special Rapporteur chose South Asia because of the number of reports of trafficking in the region which she has received over the years, and also because of several existing programmes and initiatives to tackle the problem, both at the national and regional levels, by Governments, non-governmental and United Nations organizations and the South Asia Association for Regional Cooperation (SAARC), which is preparing to adopt a Convention for Preventing and Combating Trafficking in Women and Children for Prostitution.
4. The Special Rapporteur would like to express her sincere appreciation for the cooperation and assistance extended to her by all three Governments, which enabled her to meet with representatives of all relevant sectors of society and to obtain the necessary information and documentation to be able to report to the Commission on Human Rights in an objective and impartial manner. The Special Rapporteur wishes to thank State authorities in all three countries for their availability, particularly during the weekends, and cooperation with the visit. In this context, the Special Rapporteur would like to acknowledge the willingness of all the Governments to undertake efforts to combat trafficking in the region. Although the problem has been recognized, practical action is still in its initial stages.
5. During her visit to Dhaka she met with high-level government representatives at several ministries; the Acting Inspector General of Police; non-governmental organizations; academics; and United Nations and international agencies.
6. During her visit to Kathmandu the Special Rapporteur met with high-level government representatives at several ministries; district officials in Bhairahwa, Rupandehi district, on the border with India; the Parliamentary Human Rights Committee; the Attorney-General; the Acting Inspector General of Police; the Secretary-General of the SAARC secretariat; non-governmental organizations; academics; and United Nations and international agencies.
7. During her visit to India the Special Rapporteur met with high-level government representatives at relevant ministries; the National Commission for Women; the National Human Rights Commission and the Attorney-General. She also met with state authorities in Maharashtra State and West Bengal State; with non-governmental organizations and women's groups, as well as academics.
8. The Special Rapporteur heard testimonies from victims of trafficking in all three countries and sex workers in Bombay. The Special Rapporteur would like to thank the many young girls and women who individually gave their testimonies to her. She recognizes that the

retelling of their stories is a painful experience and that they had to overcome many obstacles to communicate with her. The Special Rapporteur appreciates their courage and their candour and would like to express her gratitude for the trust and confidence they displayed in a mechanism of the United Nations Commission on Human Rights.

9. The Special Rapporteur would also like to express her gratitude for the efficient cooperation and support provided by the United Nations Development Programme Resident Representative in Bangladesh, Mr. Shamim Hamid; in Nepal, Mr. Henning Karcher; and in India, Ms. Brenda Gael McSweeney, as well as their staff, in ensuring a substantively and logistically successful visit.

10. A list of selected persons is annexed to the present report.

I. CONCEPTUAL CLARITY: DEFINITION OF TRAFFICKING

11. Throughout the visit the Special Rapporteur noted the need for conceptual clarity and would like to recall at the outset of this report that she uses the following definition of trafficking:

Trafficking in persons means:

(1) The recruitment, transportation, purchase, sale, transfer, harbouring or receipt of persons: by threat or use of violence, abduction, force, fraud, deception or coercion (including the abuse of authority), or debt bondage

for the purpose of:

(2) Placing or holding such person, whether for pay or not, in forced labour or slavery-like practices, in a community other than the one in which such persons lived at the time of the original act described in (1).^a

II. GENERAL BACKGROUND TO THE PROBLEM OF TRAFFICKING IN SOUTH ASIA

12. Chamoli lived near the birthplace of the Buddha in Nepal. When she was 16, she met a young man and fell in love with him. He promised to marry her but insisted that she come away with him to India. So one day she ran away with the boyfriend and crossed the border to India on foot. From there she and her boyfriend took a train to the Indian city of Poona. Once they had reached Poona, Chamoli was taken to a house where there was an older Nepali lady and many young girls. The lady gave her boyfriend some money and then he told her that he was going for a moment. He never came back. Chamoli suddenly realized that she had been sold into prostitution. She refused to accept her new trade. She was repeatedly beaten. She was not given any food. When she screamed in defiance, knives and chilli powder were held to her genital area. Finally exhausted and worn down, she agreed to provide sexual services. After a few weeks, she was sold to a larger brothel in Bombay. There she was given a cubicle that consisted of one small wooden bed surrounded by a curtain. She lived and worked from this space. She served about 10 clients every night of the week, even when she was menstruating.

Often the police raided the place but she was hidden below floorboards. Once she hid behind a curtain and watched as the police began their raid. The Madame of the house took out some money and paid the police and they immediately went away. Finally, the police raided the brothel with some Nepalese NGO activists and Chamoli was rescued. Chamoli was taken to a government home near Bombay. She was kept in a large room with 40 other women. The sanitary conditions and the food were worse than in the brothel. She did absolutely nothing for seven months and was kept in confinement within the home "for her own protection". She was not allowed to leave the home or engage in any trade or vocation. After seven months she was flown to Nepal by an NGO called Maiti Nepal. She was treated well by the NGO who reunited her with her family. By that time she began to have dizzy spells, diarrhoea and constant vomiting. The doctors of the NGO diagnosed her as having AIDS and they began treating her accordingly. When the Special Rapporteur met her she was extremely thin and very ill. She pleaded with the Rapporteur to help other Nepalese girls avoid this fate that had befallen her. She was 18 years old.

13. In an industrial suburb near Bombay, NGO activists took the Special Rapporteur to meet some sex workers during the day when they had to time to speak to her. Many of these women were from traditional devadasi families. Their families had given them to the village temple for sex work but after a while they left the temple and went to work in the city. A group of women met with the Special Rapporteur at her request. She spoke to them of the possibility of setting up a rehabilitation centre near the suburb so that the women could get medical check-ups and learn another trade and find alternative avenues of employment. The women were visibly upset by the Special Rapporteur's suggestion. They informed the Special Rapporteur that they were very happy in their work and that they earned and saved enough money to keep their children and their parents back in the village. They had no intention of changing their trade. They informed the Special Rapporteur that she and other middle class women were safe and comfortable because of the sex workers and their trade. If the Special Rapporteur wanted to assist them, she could help them with programmes to prevent AIDS or programmes to educate their children. However, they felt that they were not in need of rehabilitation.

14. Trafficking of girls and women appears to have become a thriving industry in the countries of South Asia. However, hard data are not available with regard to the actual numbers involved in sex work or being trafficked across borders. NGO activists in Bangladesh estimate that 10,000-15,000 girls and women are trafficked across the border to India per year. Nepalese NGOs estimate that between 5,000 and 10,000 girls a year are trafficked from Nepal to India every year. No survey has been done in any of these countries to ascertain their actual numbers. They are trafficked for a variety of purposes: the primary purpose of trafficking in the region is for forced prostitution, but girls, boys and women are also trafficked for domestic service, organ harvesting, forced begging, forced labour in sweatshops, work as camel jockeys or for forced marriage. Traffickers use deception, fraud, intimidation, drugs and violence to take vulnerable people across borders and are reimbursed for their services. They work alone, in small gangs, or as part of an organized crime syndicate.

15. Trafficking of girls and women often follows the same routes as legitimate migration. As one commentator told the Special Rapporteur, "traffickers fish in the stream of migration". This makes trafficking a difficult crime to detect. Given the large movements of populations across open borders such as exist between India and Nepal, traffickers often merge with the general

population. In addition, traffickers often exploit the desire on the part of girls and women to migrate to escape poverty and discrimination at home. Therefore, without understanding the causes and patterns of migration, any strategy to eradicate trafficking is bound to fail.

16. Forced prostitution remains the primary goal of traffickers in women and girls into India. The actual number of women in sex work in India is difficult to assess. A survey sponsored by the Central Social Welfare Board of India in 1991 in six metropolitan cities indicated that the population of women and children in sex work is between 70,000 and 1 million. Thirty per cent of them are below 18 years old. Nearly 40 per cent began sex work when they were under 18. Seventy per cent of them are illiterate. Strangely, only 43 per cent wanted to be rescued; the majority did not mind remaining as sex workers as they saw few other options.^b

17. NGO estimates of sex work are, however, much greater. The Indian Association for the Rescue of Fallen Women estimated in 1992 that there are 8 million brothel workers in India and another 7.5 million call girls.^c The average age of recruitment in the 1990s was between 10 and 14^d years old. Half of this population may be infected with HIV/Aids^e (other commentators estimate the rate of HIV infection at 70 per cent).^f

18. The traffickers are usually young men and middle-aged women who travel back and forth from home countries to receiving countries. They are often referred to in the Nepali trade as “dalals” or “didis”. They sell girls to brothels for 15,000-40,000 Indian rupees (US\$ 500-1,333). Tragically, many of the traffickers are older women, themselves in forced prostitution trying to escape abuse and bondage. In some parts of Nepal and Bangladesh family members sell young girls to traffickers. In the past, in Nepal, it was the districts around Kathmandu that traditionally gave their daughters for concubinage or sex work. Today, however, the sale of children takes place in all parts of Nepal and Bangladesh. Sometimes a child can be bought for as little as Rs 200 (US\$ 4.00).^g

19. All commentators agree that there has been a recent growth in trafficking. This has paralleled an increase in undocumented migration within the region. Women and girls are trafficked both within South Asia and from South Asia to other regions. They also agree that in the present context of globalization and migration, fewer victims are being kidnapped or abducted. In fact, an overwhelming majority are being trafficked through deception and false promises and are therefore “active participants” in their own trafficking, at least at the beginning of the process which includes recruitment and transportation. This dimension adds to the difficulty of detecting or controlling trafficking.^h

20. The causes of trafficking are manifold and remain of great concern for the sending countries of the region. In her discussions with the women as well as with activists, the Special Rapporteur noted that poverty was a major factor and that many of these women were either sold into prostitution or left their homes to escape poverty. However, it was also pointed out that the poorest areas of Nepal were not the areas from which women are being trafficked. Other factors contributing to trafficking were traditional practices in certain villages and among certain castes whereby young girls were sold into concubinage for feudal lords or into prostitution. Social discrimination against women was also responsible for women leaving home. Lack of access to inheritance, land and employment and the practice of polygamy made women easy prey for traffickers who exploit their desire to migrate. Child marriage and unilateral divorce also make

women extremely vulnerable to the whims of male partners. This discrimination was often given as the reason why women did not wish to return to their homes once they had been rescued. They were afraid of the stigma, but they also did not want to return to the same lives that they had sought to escape. In addition, all commentators point to the fact that members of lower castes and ethnic minorities appear to be disproportionately represented in the sex worker population.

21. The conditions of prostitution in some of the brothels in Bombay and Calcutta appeared to resemble slavery-like practices. Most of the young girls the Special Rapporteur spoke to were being held against their will, were tortured, degraded, beaten severely, and were repeatedly assaulted on the lower half of their bodies. They were deprived of food and water until they submitted. Once they agreed to provide sexual services the stories diverge. Some women from more well-to-do brothels spoke about a collegial atmosphere, good food and good clothes and enough earnings to feed their loved ones. The majority, however, told of servicing more than 10 clients a night, of unsanitary and slavery-like conditions, of being afraid to move around freely because of the fear of violence from the Madame and young male bouncers who kept them in check. The Special Rapporteur herself witnessed the truth of this when she made an unannounced visit to the red light district in Bombay. One of the girls from the brothels ran towards the Special Rapporteur's entourage. Immediately, very tough looking young men surrounded the entourage in an extremely threatening manner. The girl extricated herself from the group and went back into the brothel.

III. GENERAL FINDINGS

22. Throughout her mission to Bangladesh, Nepal and India, the Special Rapporteur was satisfied to note that the Governments appeared to be seriously committed to the eradication of the trafficking of women and children across national borders. However, despite a formal commitment, effective institutions, laws and policies aimed at eradicating trafficking were still not in place. In addition, effective implementation of existing provisions and policies that are directed at combating trafficking was also lacking. The Special Rapporteur found that many of the campaigns and programmes were donor driven or under NGO leadership. The Governments of the region had not been aggressive or proactive in their commitment to eradicate trafficking in the past. However, owing to a greater awareness of the problem, government programmes to combat trafficking have gathered a certain momentum in the last few years.

23. The lack of effective implementation of laws and policies aimed at ending trafficking is reflected in the low conviction rates for perpetrators of crimes of violence against women. In Bangladesh, according to figures provided by the police, of about 7,000 cases of violence against women registered during the past year there were only 21 convictions, while 2,000 cases were being processed. The perpetrators on the rest - the vast majority - of the cases were set free. The same was true of Nepal: the police figures show that of about 150 cases of trafficking offences during the past year, 55 per cent resulted in acquittals.

24. The most urgent need in terms of the trafficking of women and girls from Nepal and Bangladesh to India is the collection of data so as to ascertain the true scope of the problem. Estimates of the number of women trafficked vary from 10,000 a year to 25,000. The estimated number of sex workers varies from 1 million to 8 million. The Government of India informed

the Special Rapporteur that it will conduct a comprehensive national survey on trafficking and prostitution in the coming year. The Special Rapporteur welcomes such an effort and calls on the Governments of Nepal and Bangladesh to do the same. Unless we know the numbers, trafficking patterns and trafficking routes, it will be impossible to deal with the problem of trafficking in the South Asian region.

25. In discussing trafficking in the South Asian region, it is important to retain a measure of conceptual clarity so that there can be a targeted response to the problem. The Special Rapporteur is particularly concerned with the lack of conceptual clarity reflected in the draft SAARC convention, especially in light of the international negotiations on the definition of trafficking. In this context, it is important to recognize the conceptual difference between trafficking and prostitution. Trafficking of people across boundaries is for a variety of purposes and not only for prostitution. The Special Rapporteur is aware of women, boys and girls being trafficked for forced labour, forced marriage and to work as camel jockeys to various parts of South Asia as well as to other regions. In addition, it is important to maintain conceptual clarity in separating the regimes that operate for women and those that operate for children. Women are adults and should be treated as such in laws, policies and programmes. Children may need additional special measures to prevent them from being victims of trafficking. Finally, trafficking must be conceptually separated from migration. For many countries trafficking is considered an immigration problem and the campaign against trafficking is linked to the desire to close borders to people from other countries. Trafficking should be dealt with not as an immigration problem requiring exclusionary laws and practices, but as a human rights issue. The struggle to prevent trafficking should not be made an excuse for racist or exclusionary immigration practices anywhere in the world.

26. Conceptual clarity with regard to trafficking is the only way we can prevent the enactment of laws and programmes to prevent trafficking that violate other human rights of women. While the Special Rapporteur welcomed the enthusiasm to fight trafficking she found in South Asia, she was disturbed by the fact that many of the laws and policies appeared draconian and seemed to violate other human rights of women. For example, Nepal and Bangladesh have reacted to the abuse of women domestic servants working in the Middle East by banning women and girls from going to the Middle East for domestic service. In Nepal, measures are being taken to require all unmarried girls to receive the permission of their father or brother to get a passport, or that the village councils sanction the decision of women to leave their communities. These measures violate women's freedom of movement and make them completely dependent on the men in their family and in the village. Many of the victims interviewed by the Special Rapporteur were very clear - they had left home because of poverty and discrimination. To force these women to remain against their will in communities where they are unhappy is a violation of their basic rights. For example, some of the women told the Special Rapporteur that they had left their communities because their husbands took other wives. To force these women to remain in their communities cannot be the answer to the problem of trafficking. What is needed is a targeted effort to capture the trafficker and prevent trafficking so that the vulnerability of the women is not exploited. What are not needed are draconian attempts to block the natural migration routes and social mobility.

27. The discrimination against women that is prevalent in South Asia runs parallel to an ideology that asserts that women are vulnerable, like children, and need protection. The Special

Rapporteur was told that some of the more drastic measures taken to curtail women's freedom of movement are in their interest and for their "protection". The notion of protection is perhaps most problematic when it comes to the practice of "protective custody". In India, when women victims of trafficking are rescued they are often sent to a government home for protective custody until their cases are heard or until they are sent back home. In many cases they languish for many years in these homes, forgotten by everyone. Protective custody is only marginally better than being in prison. Women are confined to the vicinity of the homes. The conditions in the home the Special Rapporteur visited were substandard, and the women there seemed deeply unhappy. Protective custody as practised in South Asia is a serious violation of women's rights and it is important that Governments of the region re-examine this concept, as well as the conditions in the government homes where women are kept.

28. The Special Rapporteur's visit to Bangladesh, Nepal and India took place at a time when the SAARC countries were debating how to tackle the trafficking issue. One of the aims of the Special Rapporteur's visit was to suggest new strategies for anti-trafficking work in the region, to recommend possible partnerships among players and the mechanisms for coordination of regional activities and, furthermore, to encourage States to develop an effective regional convention on trafficking, in line with current international legal developments and in particular the protocol to the United Nations Convention against Transnational Organized Crime which was agreed this year and opened for signature in December 2000.

29. Regional cooperation among SAARC countries is absolutely essential if trafficking in women and girls is to be eradicated in the South Asian region. The countries of the region have accepted this and the Special Rapporteur recognizes and welcomes the fact that the first regional treaty to be concluded under the auspices of SAARC is a regional convention on trafficking. Prior to the tenth SAARC summit, held in July 1998, the Foreign Ministers of the SAARC countries had adopted a draft SAARC convention for preventing and combating trafficking in women and children for prostitution. For political reasons a subsequent summit could not be held and the convention has therefore not been formally adopted. The Special Rapporteur was pleased to note that all the Ministers for Foreign Affairs of the region were absolutely committed to ensuring that the SAARC convention is adopted as soon as possible. The Secretary-General of SAARC has also played a pioneering role in this regard.

30. Though the Special Rapporteur, along with many others, welcomes the SAARC convention as a sign of regional commitment to the eradication of trafficking, she has some reservations with regard to the content of the convention. She has communicated with all the Ministers for Foreign Affairs and the Secretary-General of SAARC on this subject. In August 1999 the Special Rapporteur wrote to all the Heads of State of the SAARC countries to congratulate them for having taken the initiative to develop a regional instrument to address the urgent problem of trafficking in women and children. She drew their attention to efforts to develop new international law on trafficking in persons. The Special Rapporteur has reviewed the SAARC convention closely and proposed a number of observations and recommendations which she sent to all SAARC Heads of State.

31. The Special Rapporteur is especially concerned that the convention lacks conceptual clarity on important issues and is not in conformity with the new international legal standard on trafficking in persons as set out in the protocol to the new United Nations Convention on

Transnational Organized Crime. She encouraged SAARC Heads of State to ensure that the provisions of the SAARC convention do not conflict with existing international human rights law and the provisions of the protocol in particular so that there is one standard for international action. The SAARC convention does not distinguish between women and children. The legal regime surrounding women should be based on a framework of rights and the concept of coercion when it comes to trafficking. The legal regime with regard to children must be completely different. The draft convention also does not explicitly recognize that trafficking could be for other purposes than for prostitution. By concentrating on the end result and not on the process of trafficking and abuse, for whatever purpose, the convention does not recognize trafficking as a distinct and unique crime regardless of a nexus with prostitution. In not recognizing this distinction it is not in keeping with current international standards as set out in recent international conventions and instruments. In addition, the convention does not distinguish between movements and migrations that are legitimate and consensual and those that are coerced. This will result in a great deal of abuse and the violation of women's freedom of movement in a context of constant movement of people across national and local borders. In addition, the convention brings into play the concept of "protective custody" after rescue and rehabilitation without stipulating that any stay in a government home should be voluntary. The need to ensure women's economic and social rights within this context is also not examined.

32. During her visit to Nepal, the Secretary-General of SAARC told the Special Rapporteur that the convention had in theory been agreed upon by all States parties and that there would be a meeting early in 2001 to sign it. He conveyed the importance of regional cooperation on the trafficking issue and concern that if the current text were to be reopened for discussion, given the current political tensions an agreement would probably not be reached. He stated for the record that there would be an amendment conference in one year's time when the definition and other parts of the convention could be brought into line with recent international legal developments.

33. In discussions on the SAARC convention with all three Governments all indicated that they were not opposed to looking at the provisions of the new protocol to see what could be included in the SAARC convention. They agreed that they should not have a convention which is weaker than the new international standard, but nonetheless did raise concerns that if the convention were reopened it might not be possible to get a new consensus, as the initial text had been a compromise.

34. The Special Rapporteur hopes that her concerns, and the concerns of many others who have been involved in these issues, including the United Nations High Commissioner for Human Rights, will be taken into consideration by the States parties to the SAARC convention. The Special Rapporteur welcomes this initiative and the candour with which the issue of eradicating trafficking has been broached by the member Governments.

35. A regional convention in and of itself cannot solve the problem of trafficking in South Asia. It must be supplemented with a regional monitoring mechanism as well as regional cooperation among law enforcement officials. Among the mechanisms of cooperation that should be considered is a regional task force involving high-level officials from all the SAARC countries. In addition, there should be national and state-level nodal agencies that closely network with one another, and focal points in ministries of women, children, home, law and health that also network with one another. In addition to coordination among the executive

branches in the different Governments, many felt that the human rights commissions in these countries should also appoint special rapporteurs who would look into the specific problem of trafficking.

36. At the national level, it must be realized that ad hoc, piecemeal efforts will not result in effective action against trafficking. In this regard, the Nepalese Plan of Action with regard to trafficking is a useful model for other countries in the region. The Plan of Action envisions action being taken in the field of legal reform, awareness raising, rescue and rehabilitation as well as health. This coordinated effort is, at least in theory, a very laudable step; however, the Special Rapporteur feels that it is important to go beyond the words on paper. Implementing the Plan will require concerted, proactive programmes and mechanisms on the part of Governments. Unless such action is taken the Plan will not have any real effect on efforts to eradicate trafficking.

37. The struggle to eradicate trafficking in the South Asian region has two components. The first concern the efforts of the criminal justice system to prevent, prosecute and punish traffickers; the second involves social welfare for the women who want to be rescued and provided with alternative avenues of making a living. The social welfare component also includes health policies and activities around the problem of HIV/AIDS among women who have been trafficked for prostitution.

38. In recent times, because of increased awareness, most of the countries of the region are contemplating legislation to combat trafficking. It is extremely laudable that political will is now being translated into legislation. However, the Special Rapporteur, as a mechanism of the Commission on Human Rights, is deeply concerned that the legislation is unduly harsh and violates basic principles of human rights law.

39. An example of draconian legislation that presents serious human rights problems is the current draft Traffic in Human Beings (Offences and Penalties) Act 1999 prepared by the Nepalese Ministry of Women and Social Welfare. The bill appears to have been drafted from a law and order perspective without consideration for the human rights either of the perpetrator or of the victim. First of all, the draft criminalizes prostitution for the first time in Nepal. International standards as set by the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others as well as more modern legislation have all advocated that prostitution not be criminalized and that only the exploitation the prostitution should be criminalized. This is because experience has shown that criminalization of prostitution results in the double victimization of the woman concerned as she, and not the traffickers, becomes the main target of police action. This provision is a major step backwards for Nepal and will create great hardship for the women concerned.

40. In addition, the new legislation gives special powers to the police to arrest, detain, search and seize. Many of these provisions are direct violations of the International Covenant on Civil and Political Rights. The power to arrest and search without warrants, preventive detention and, most troubling, the shifting of the burden of proof so that the accused has to prove that he is innocent are all violations of international standards of human rights. This law will result in a great deal of harassment of innocent people as well as of the victims. Police forces anywhere in the world can act with a certain measure of impunity. The purpose of human rights standards is

to ensure that this impunity does not result in the harassment of innocent individuals. A law that allows so much scope for abuse is extremely problematic for those who wish to fight violence against women as a human rights issue. It is also a dangerous precedent for any criminal justice system.

41. Other countries of the region are also contemplating new anti-trafficking legislation. The Special Rapporteur sincerely hopes that any new legislation will be enacted from a human rights perspective and not purely as a law and order issue. In this context, experience from around the world may prove to be informative. Such experience seems to suggest that anti-trafficking legislation should be targeted; it should focus on trafficking and the punishment of traffickers, and not on the victims. It should concentrate on the problem of trafficking of minors and it should contain a comprehensive social welfare component based on respect for the economic and social rights of the trafficked woman. Such assistance should be voluntary, it should involve a significant health component and involve the empowerment of the women through skills training.

42. The police forces of the respective countries of the SAARC region are the most important institutions in the struggle to eradicate trafficking. At the moment there are ad hoc, informal attempts at cooperation among them. A more formal long-term arrangement for sharing information and joint operations against trafficking may prove to be essential in the present context. A joint task force of all the police departments of the SAARC countries may be a step in this direction.

43. Empowering the police to deal with trafficking may not be very successful unless there are appropriate guidelines and training procedures in place. The police response to the question of trafficking varied in the Special Rapporteur's interviews. Some police officers were very enthusiastic; others were pioneers in the field. However, some were indifferent and uninterested in new procedures or processes. The Special Rapporteur was concerned that even the enthusiastic police officers would in their zeal to fight trafficking infringe on the rights of women victims. For this reason, it was suggested that a handbook be prepared for the police forces of the region, in regional languages, to raise their awareness about the problem and to give them detailed instructions on how to handle cases involving traffickers. It would include procedures on how to deal with traffickers, brothel owners, pimps and, of course, the victims themselves. If such a handbook were prepared in consultation with the women's groups of the region, it might be a major step forward in making the police forces of the region more responsive to the problems of trafficking.

44. Police corruption in the trafficking process was an issue that was constantly raised by women's groups and women victims of trafficking. One of the victims described how, having escaped from a brothel in Calcutta, she went to complain to the police. The police called the brothel owner, who paid the police a substantial sum in front of the girl. She was taken back to the brothel and beaten till she was nearly senseless. She still suffers from injuries resulting from that episode. Other victims said that many policemen were clients of the brothels and on good terms with the traffickers, owners and pimps. Victims and women's groups in all three countries recounted many cases of police corruption and many felt it was endemic, something that was taken for granted. Unless direction comes from the top that such behaviour will not be tolerated,

and unless there are punitive sanctions against policemen who indulge in such behaviour, it is unlikely that the police will play the proactive role that is expected of them.

45. Even if the police in the region act with fortitude, if the judiciary is insensitive to the problems of women, effective action against trafficking cannot be taken. The 21 convictions for violence against women in Bangladesh and the 55 per cent acquittal rate in Nepal with regard to trafficking cases raise serious questions about how the rule of law operates in South Asia with regard to trafficking. The police and some women's groups blame the judiciary for this state of affairs, saying that judges are very lenient because they are insensitive to gender issues. The judiciary and other women's groups put the blame on the police, saying that the investigation of crime is so weak and the evidence produced so minimal that judges have no other option but to acquit the suspects. Training in investigation of trafficking crimes for all the police forces of the region is essential and may be possible with international technical assistance. In addition, it is extremely important that the judiciaries in the region be involved in workshops and programmes that raise their awareness about the problem of gender and violence against women in their societies. A gender-sensitive judiciary is absolutely essential if victims of sexual violence are to receive justice in South Asia.

46. In her discussions with women victims and NGOs as well as officials, the Special Rapporteur received a mixed picture about the judiciary's role in fighting trafficking, especially in India as a receiving country. The apex court of India, the Supreme Court, has been a pioneer both nationally and internationally in vindicating the rights of women. Its judgements in cases of sexual harassment and trafficking have been far-reaching, requiring maximum accountability on the part of State and non-State actors who violate the human rights of women. However, at the magistrate level the situation is far more mixed. Some judges are extremely sensitive and try to make the best possible judgement for the victims. Some are less caring and have sent women and girls to jail or for prolonged periods of protective custody. As a general rule, the Indian courts send rescued girls back to Nepal or Bangladesh, through NGOs like Maiti Nepal and the Bangladesh National Women Lawyers Association (BNWLA), or they send them to government homes. Beyond that there is very little activism or inquiry. Very little action is taken by the police or the judiciary against the traffickers and those who are initially responsible for the violation of the rights of these women.

47. With regard to the evidentiary procedures involved in trafficking cases, the women and girls who are victims of the trafficking are the primary witnesses against the perpetrators. In cases involving organized crime, they are extremely vulnerable and in fear for their lives. In addition, in Nepal, once they leave the police station after filing their complaint, they are often untraceable. As a result, the new trafficking bill allows as evidence their statement before the judge during the initial trial stages; the victims do not have to be present in court. In some countries in Europe, the witnesses must be present in court but they are kept incognito with written questions sent to them to answer. The defendant, however, does not see the witnesses. In other countries fighting organized crime, there are elaborate witness protection schemes paid by the State and the witnesses often change their identity and move to a different location. In adopting such procedures, the need to get hard evidence in trafficking cases must be balanced by procedures that ensure the defendant a fair trial. In this sense, the witness protection programme, even if it is the most expensive, is also the most fair. The countries of the region should inquire into this possibility and, with the help of women's groups and NGOs, counsel and provide

protection for women and girl victims so that they can appear in the witness box without fear. The Special Rapporteur wishes to emphasize that the provision of witness protection should be voluntary and at the request of the individual concerned.

48. The problem of trafficking has a social welfare component that is integral to the understanding of the phenomenon. The socio-economic factors contributing to trafficking require that the problem be understood within the context of the socio-economic rights of women. If one adopts this perspective different issues emerge that require the attention of the State.

49. The Special Rapporteur found that women and girls leave Nepal and Bangladesh in such large numbers because of a lack of economic opportunities at home and because they suffer from a great deal of social discrimination. Many of these women belong to lower caste groups or ethnic minorities. In addition, the inheritance laws, land laws and employment regimes in these countries appear to discriminate against women. Many women and girls leave home because husbands have taken second and third wives. Girls often run away from home because of stepmothers or because they feel they are not wanted or because there is abuse. The need to alleviate poverty is recognized as an important way to fight all forms of human exploitation, including trafficking. However, in addition, States must feel compelled to take measures that give dignity and equality to women and girls. Inheritance laws, personal laws and socially discriminatory attitudes should be reformed in order to give women an equal chance in their society and prevent them from becoming easy prey to traffickers. Their desperation to leave their home countries, recounted in one testimony after another, often makes women complicit in their own trafficking, at least in the initial stages. The Special Rapporteur recorded only a very few cases that involved abduction. Most of the cases involved young girls and women who wanted to leave in search of a better life than the one they had at home. Providing women with income-earning opportunities and avenues for economic independence is one strategy that should be adopted to prevent trafficking. The removal of discriminatory legislation and discriminatory practices is also essential if the root causes of trafficking are to be tackled. Unless the sending countries understand that most of the women leave because of unhappy conditions in the home, they will not take the measures that are necessary to prevent trafficking while respecting the human rights of the individual women.

50. The social welfare component is also an important factor in the main receiving country in the region, India. While the young girls and women remain sex workers they are in danger of contracting HIV/AIDS and other sexually transmitted disease. Though many recent initiatives have begun with regard to AIDS in Indian cities, a greater effort is needed to seriously combat the problem. According to unofficial estimates, between 60 per cent and 70 per cent of sex workers contract HIV/AIDS. In all the countries there were very few medical facilities available for AIDS patients. AIDS education among the sex workers is also minimal owing to the ambiguous legal position of these women. Unless more attention is focused on the health of the sex worker, her basic rights to life and to health will be greatly undermined.

51. Even if the sex worker is rescued, she is faced with innumerable problems. She is often kept in a government home while she waits to be released. Though she has done nothing wrong and is seen by the law as a victim, her stay in the home is by court order and is not voluntary. This "protective custody" is a serious infringement of the human rights of the women concerned.

In one case, a woman, her sister and daughter who had been trafficked to Calcutta from Bangladesh remained in a government home for four years, despite interventions by the Bangladeshi Consulate and NGOs. Meanwhile, the trafficker who was accused in the case was out on bail with full freedom of movement. For this reason many women and girls do not want to be rescued. On 16 February 2000 a Bombay High Court judge, acting on information received, ordered a round-up of young girls working in prostitution; 469 girls were rounded up. Most of them did not want to go home, nor did they want to stay in government homes. This created serious difficulties for the officials concerned. Unless the social welfare facilities exist for rescue, young girls and women will be reluctant to leave oppressive conditions at a brothel for what they see as a very uncertain future.

52. The Special Rapporteur visited a government home in Liluah in Calcutta where many of the women who had been rescued were kept. The conditions in the home resembled a prison. Surrounded by factories and an outdated drainage system, the health conditions at the home were very unsatisfactory. The living conditions were not only sparse but extremely gloomy. The trafficked women were kept with mentally ill patients, deaf and dumb women and destitute women. Records with regard to the women in the home were not properly kept and information on the women was scanty and not properly taken. All the women the Special Rapporteur spoke to were deeply unhappy and wanted to be released. There were very few activities and many victims we interviewed said they did nothing for the whole day. They had done nothing wrong and therefore their "protective custody" seemed particularly cruel. Fortunately, the National Commission of Women in India has recognized this problem and brought a public interest case against the Liluah Home. As a result of this action, there is a court order designating an NGO to intervene, investigate the home, straighten out the records, help release any of the women who wish to go and make recommendations with regard to the management of the home.

53. Women who are rescued should be sent to homes only on a voluntary basis since they are not guilty of any crime. In addition, the government home should be a refuge for the women, not a substitute for jail. The government home should offer programmes to develop the skills and talents of women so that they can become empowered, both economically and psychologically. In contrast to the government home at Liluah, the Special Rapporteur visited many NGO facilities for girls and women. St Catherine's Home in Bombay and Maiti Nepal in Kathmandu are examples of successful facilities. The women seemed well fed, talkative, lively and full of activity. Their talents were being brought out and they were being given counselling so that they could adapt to a new life away from the brothel. Critics argue that these homes are extremely moralistic and authoritarian towards the girls who have been rescued. The Special Rapporteur did not find any evidence of that and the women seemed happy and engaged. Many of them had voluntarily filed cases against their traffickers. Girls rescued by Maiti Nepal assist Maiti Nepal with its work at the borders and in their programmes. All NGOs are not as committed or as effective as these NGOs with regard to taking care of rescued women. However, a government home with NGO management subject to supervision by government health and social welfare bodies would be an effective way of moving forward in a context where resources for such homes are limited.

IV. BANGLADESH

54. Bangladesh is one of the poorest countries in the world; a large percentage of the vast population is young and lives below the poverty line. The slow economic growth of the country coupled with periodic natural disasters have put serious constraints on the ability of the Government to provide adequate resources for women's programmes and projects. The United Nations Family Planning Association State of the World Population 2000 report declared Bangladesh second highest in the world in incidence of violence against women. Violence takes many forms and includes wife murder for non-payment of dowry, custodial rape, attacking with acid and trafficking.

55. For the most part, women remain in a subordinate position in society. They are often ignorant of their rights because of continued high illiteracy rates and unequal educational opportunities, strong social stigmas and lack of economic means to obtain legal assistance. NGOs operate programmes to raise women's awareness of their rights and to encourage and assist them in exercising those rights. Yet, prevailing stereotyped attitudes and practices justified on social grounds create an environment for the acceptance of violence against women, especially in the area of trafficking.

56. There is extensive trafficking from Bangladesh, primarily to India, Pakistan and destinations within the country, largely for purposes of forced prostitution, although in some cases for labour servitude. Some children have reportedly been trafficked to the Middle East to work as camel jockeys. The exact number of women and children trafficked is unknown. NGOs estimate that several thousand women and children are victims of trafficking each year. Most trafficked persons, eager to escape the cycle of poverty, are lured by promises of a good job or marriage. Orphans, runaways and others outside the normal family support system are also susceptible. The border between Bangladesh and India is porous, especially around Jessore and Benapole, making illegal border crossings easy.

Legal framework

57. Bangladesh is a party to the Convention on the Elimination of All Forms of Discrimination against Women and has recently signed the Optional Protocol. In the concluding comments of the Committee on the Elimination of Discrimination against Women (CEDAW) adopted, following the consideration of the third and fourth periodic reports submitted by Bangladesh (A/52/38/Rev.1, paras. 409-464) the Committee, *inter alia*, expressed its concern about the Government's reservation to article 2 and article 16, paragraph 1 (a) of the Convention. Article 2 is regarded as a core provision as it concerns implementation of the Convention, while article 16 is critical for the full enjoyment by women of their rights.

58. The Special Rapporteur met with representatives of the Ministry of Women and Children's Affairs (MOWCA), who described the multisectoral action programme being undertaken to address violence against women, including trafficking in women and girls. The Law Commission was established by the Government to review existing laws and enact new ones to safeguard women's rights and to prevent violence against women. The Special Rapporteur was informed that the Law Commission had been mandated to look into the implementation of international obligations and may consider lifting the reservation to article 2.

59. The Government of Bangladesh in seeking to address the problem of violence against women generally, and trafficking in particular, has promulgated laws that have had negative repercussions for the victim. The Suppression of Immoral Trafficking Act of 1993 provides for stringent penalties for women and children forced into prostitution. The Women and Children Oppression Act of 1995 (Special Provision), a revision of the 1983 Cruelty to Women Ordinance, presents many of the problems discussed in the previous section. It treats women and children together and introduces the death penalty for those who involve children in trafficking. New legislation grants even more draconian powers to the police and provides for special tribunals and evidentiary procedures, and stiffer penalties.

60. The Suppression of Violence against Women and Children Act came into force in February 2000. It is intended to address the need for more effective prosecution of perpetrators of violence against women and children than existed previously and provides redress for victims of various manifestations of violence including trafficking and acid throwing. The Act makes provision for compensation for the victim from the guilty person/persons. It also contains provisions for remedial measures for negligence or wilful faults committed by an investigating officer and for a child born as a result of rape to be maintained by the father.

61. The Government reports that since the introduction of the new law the delay in investigating and trying cases relating to violence against women have greatly decreased. Punishments for trafficking and other offences have been made stiffer. Ten special tribunals have been set up to expedite the processing of cases. The tribunals can arrange for safe custody during the trial period. Previously, prisons were often used to provide safe custody for women victims of violence. One study conducted by the Bangladesh National Women Lawyers Association found that nearly half of the women in Dhaka's central jail were crime victims being held in safe custody, rather than criminals. While women may initially consent to this arrangement, it is difficult for them later to obtain their release, or to gain access to their family and lawyers. However, under the new Act, women will reportedly be given the choice of going to a government rehabilitation home or staying with relatives or other private persons.

62. While recognizing efforts to improve the situation, including the enactment of laws specifically prohibiting certain forms of discrimination against women, and although pleased that the Government is taking firm action to protect women from violence, the Special Rapporteur is concerned about the introduction of the new draconian laws and the application of the death penalty for a whole range of crimes against women including trafficking, rape, acid throwing/burning and dowry violence under the new Act. The Special Rapporteur is a mechanism of the Commission on Human Rights and she emphasizes that the campaign against trafficking must be undertaken from a human rights perspective. The Special Rapporteur is also worried about the accused's right to due process and a fair trial.

63. Though the law provides severe penalties for trafficking few perpetrators are punished. NGOs report that police and local government officials often either ignore trafficking in women, are easily bribed to look the other way, or may even be involved. Exact numbers of charges against traffickers are difficult to obtain and traffickers are usually charged for lesser crimes, such as crossing the border without the correct documentation.

64. Government statistics provided by the Ministry of Home Affairs indicate that out of 7,000 cases registered under sections 5 and 6 of the Oppression Act of 1995, which carry a maximum sentence of death or life imprisonment, only 21 convictions were obtained. Two thousand cases are said still to be in the trial process. Clearly, more stringent and punitive laws are not the answer. Tougher laws may in fact act as a deterrent to registering cases against traffickers and may lead judges to acquit defendants rather than impose what they feel to be an unfair punishment, especially the death penalty. Studies have shown that the majority of judges say that a lesser sentence would help the courts to convict, especially since trafficking is a very difficult crime to prove and the evidence presented by the police does not always justify stringent punishment.

Programmes and policies to combat trafficking

65. The Ministry of Women and Children's Affairs is the lead ministry for promoting the equality and development of women. The Ministry has made the campaign against trafficking an important priority and the National Policy for the Advancement of Women, drafted by the Ministry, includes a section on violence against women, including measures to combat trafficking. Furthermore, a comprehensive three-year project to combat trafficking is to be implemented by the Ministry, in association with UNICEF and funded by the Norwegian aid agency NORAD.

66. MOWCA also has a violence against women unit, which monitors incidents of violence and submits reports to the National Committee on Violence against Women.

The criminal justice system

67. The Special Rapporteur met with representatives from the Bangladeshi police. Although there was awareness of the problem of violence against women, they admitted that there was no police training in handling cases of violence against women in general or trafficking in particular. The police have received some training on reproductive health. The Special Rapporteur recommended gender sensitization and human rights training programmes for the judiciary, the police and health professionals, particularly those relating to violence against women which could be provided by the technical cooperation programme of OHCHR. She encouraged the Government of Bangladesh to request such assistance. OHCHR has informed the Special Rapporteur that since her visit Bangladesh has requested technical assistance and a programme is being developed with the Government.

68. In response to the many cases of trafficking, the Government has recently set up women's police units to look into cases of violence against women. If women want protective custody they can be kept in these units. The unit also follows the individual case, provides legal support to the victim/survivor and shelter for six months to a year. DFID has also funded a project to improve access to justice by women and the poor.

69. A special squad of the Criminal Investigation Department (CID) of the police force has been specially tasked with speedy investigation of cases of violence against women and also deals with the problem of trafficking. However, the statistics reveal that despite this squad, the actual number of cases filed in court is extremely small and the evidence produced before judges

inadequate. Again, the Special Rapporteur suggested that technical assistance be requested from multilateral agencies specializing in human rights protection and combating violence against women.

Rescue and social welfare

70. The Government of Bangladesh has no special programmes relating to the social welfare of trafficked women. The Ministry for Foreign Affairs informed the Special Rapporteur that the Home Minister of Bangladesh had asked the Government of India for a list of all Bangladeshi women being held in Indian shelters and jails, following reports that women are detained and not allowed to return home whilst a case is pending before the courts. However, the Special Rapporteur visiting women in homes and jails in India was informed that the Bangladeshi diplomatic representation in India was not very responsive, often taking years to respond to inquiries and information.

71. Several women's organizations have provided different forms of assistance, including shelters for the protection of victims of violence. These include the Bangladesh Women Lawyers Association and Bangladesh Mahila Porshod.

International agencies

72. At the time of the Special Rapporteur's visit to Bangladesh USAID was planning to start a 13-month anthropological study into the problem of trafficking. This would involve looking at the underlying factors of trafficking, collection of statistical data, setting up of a database, and compiling information about the victim, and a profile of the trafficker. The study will attempt to collect comprehensive data on the problem. Since there are no available data on trafficking in terms of a comprehensive national study, the Special Rapporteur welcomes this initiative.

73. The United Nations agencies are all involved in programmes that include some aspect of the campaign against trafficking. UNICEF and The International Labour Organization have taken the lead in working with government agencies to combat trafficking. However, unlike the agencies in Nepal, the United Nations in Bangladesh does not have a co-ordinated joint effort involving all the multilateral agencies. Such a joint task force may be useful in the long run in Bangladesh.

Non-governmental organizations

74. Most, if not all, the rescue and social welfare work in Bangladesh is carried out by non-governmental organizations, although the Government does support some local NGO initiatives to combat trafficking.

75. The BNWLA was one of the NGOs the Special Rapporteur met with during her visit to Dhaka. It has been very active in addressing the problem of trafficking. BNWLA conducts awareness-raising programmes, aimed at alerting persons to the dangers of trafficking through leaflets, stickers and posters; provides legal assistance to trafficking victims and initiates legal

action against traffickers; works with its counterparts in India to help trafficked girls and women return to Bangladesh. BNWLA also runs a shelter for trafficked women and children that provides health care, counselling and training.

76. The Center for Women and Children (CWCS) has networks to monitor trafficking across the country; it conducts awareness meetings and has a pilot project to make police aware of the rights of women and children. Other organizations working in the field are the Bangladesh Mahila Parisad (BMP) and Ain O Salish, which specialize in advocacy and lobbying for reform.

77. Dhaka Ahsania Mission has undertaken a child and trafficking prevention programme that comprises four components: community awareness, reintegration, rehabilitation and networking. ATSEC is a national anti-trafficking network formed to link NGOs and government initiatives, as well as to conduct awareness-raising programmes.

78. The Special Rapporteur also met the organizations Aparageya Hostel, the Bangladesh Manabdhikar Sangbadik Forum, Naripokkho, Ain-O-Unnyan Sangstha, Banchete Shekha, Rajshahi, UBINIG, Bangladesh Retired Police Officers' Welfare Association, CWFD, ADAB, and Women for Women, all of which are involved in programmes involving trafficking.

V. NEPAL

79. Trafficking in women and girls remains a serious problem. Nepal is a primary sending country for the South Asia region, with the main destination being India. International agencies estimate that 100,000 to 200,000 women from Nepal are currently engaged in exploitative situations of prostitution in the cities of northern and central India and, increasingly, further afield in South Asia and the Middle East. It is also estimated that an additional 5,000-10,000 women and girl children enter these trafficking networks annually.

80. Landlessness amongst women, unemployment and under employment, intense income poverty, widespread gender discrimination (both *de jure* and *de facto*), religious and cultural sanctions for prostitution amongst certain groups and the growing acceptance of the inevitability of migration have all been identified as contributing factors to the increase of trafficking of women and children from Nepal. Discrimination with regard to inheritance laws and citizenship laws is another factor that makes women victims of trafficking. The Special Rapporteur stressed the need to remove these discriminatory laws and to bring Nepalese law into conformity with international norms and standards.

81. The Government of Nepal has identified trafficking as one of its major priorities. To this effect, supported by donors, the Government adopted in 1999 the National Plan of Action against Trafficking in Children and their Commercial Sexual Exploitation. The ILO played a major role in pushing forward this programme.

Legal framework

82. Nepal is a signatory to the Convention on the Elimination of All Forms of Discrimination against Women. The 1990 Constitution of Nepal prohibits trafficking in human beings, slavery, serfdom and forced labour as do a number of international human rights treaties to which Nepal is party.

83. In Nepal, besides the Constitution, there have been many legal initiatives with regard to trafficking. The Traffic in Humans (Control) Act 1986 is the legislation that currently governs trafficking in Nepal. The most important recent initiative is the Anti-Trafficking Act that is in final draft form and currently before Cabinet. The Government of Nepal hopes to enact it during the course of the year. Though the Act recognizes trafficking as a problem and is full of good intentions, it is deeply problematic from a human rights perspective. The Special Rapporteur has outlined her concerns in the earlier section on general findings. These concerns include the criminalization of prostitution, extraterritorial jurisdiction, shifting of the burden of proof and draconian police search and seizure powers.

84. There is also an initiative to set up special tribunals to try the offence of trafficking with lesser evidentiary standards. Again, the Special Rapporteur reminds the Government of Nepal that it is obligated under international human rights standards to give the defendant a fair trial with the necessary safeguards so that the innocent are not victimized. The Government is also in the process of enacting laws in the field of domestic violence, a law on the rights of children and on a family court. All these will have some bearing on the trafficking issue.

Programmes and policies to combat trafficking

85. The Ministry of Women, Children and Social Welfare (MWCSW) has taken the lead in a number of initiatives, programmes and policies to combat trafficking. Donor agencies are also eager to deal with this problem and have been working with the Government to develop a comprehensive strategy. This partnership led to the National Policy on Trafficking and the National Plan of Action on Trafficking. Together they set out a detailed plan to combat trafficking in Nepal.

86. The National Plan of Action has six areas of implementation. The first is the drafting of appropriate policies and strategies for action in the various sectors to deal with the problem of trafficking. The second is the enactment of appropriate legislation to prevent trafficking and to punish traffickers. The third area is the raising of awareness among the general population and the criminal justice system to help fight trafficking. The fourth area is health, the fifth area is education and the final area deals with rescue and rehabilitation.

87. The Plan is extremely comprehensive and well thought out. However, like so many other initiatives it focuses on the victim, on raising awareness, health and education and rescue and rehabilitation. It is not very concerned with the trafficker, the prosecution of traffickers and the punishment of those who engage in the trade in humans. Given the fact that it is an initiative of the Ministry of Women, Children and Social Welfare, this is understandable. In this regard, the Special Rapporteur found that while the Ministry for Foreign Affairs and the Ministry of Women, Children and Social Welfare were very sensitive to the issue of trafficking, the Ministry

of the Interior was quite ill-informed and seemingly unconcerned with the problem. The Special Rapporteur feels that unless the Ministries of Law and the Interior are actively included in the trafficking initiative, the campaign against trafficking is bound to fail.

88. The Plan is to be implemented through the establishment of a national-level coordination committee under the Ministry of Women, Children and Social Welfare. In addition, a National Task Force on Trafficking consisting of secretaries to all the ministries is to be set up. There is also to be a district-level task force and a village development committee task force responsible for programme formulation, follow-up and monitoring. In all senses the Plan seems comprehensive. The Special Rapporteur was informed that all the committees had been set up during the course of 1999/2000. However, when she inquired about them, she was surprised to learn that they had rarely met or made any decisions. The representatives of the Ministry of Women, Children and Social Welfare said that it was difficult to get the national-level task force to meet. When the Special Rapporteur met a district-level committee she was told that the task force had met twice but that the Chairwoman was too busy to attend. The Special Rapporteur is therefore concerned about the gap between theory and practice and plan and implementation. In Nepal, this gap seems enormous. With every good intention, the Government sets up a policy, a law or a framework but in practice little is done on the ground. The Special Rapporteur feels that if the Government is truly committed to the issue, it will lessen the gap between national policy and national practice and seek to implement its promises.

89. In addition to the above, the Ministry of Labour has established a welfare home for women affected by trafficking and set up a skills development programme within that home. The Central Child Welfare Board as well as the district-level boards are being sensitized to look into the problem of trafficking and the Nepalese Bar Association provides legal support to women who are affected by trafficking.

The criminal justice system

90. The Special Rapporteur was pleased to have a consultation with the Nepalese police and to meet Mr. G. Thapa, a regional specialist on the problem of trafficking. The Government told the Special Rapporteur that some members of the police force had participated in a human rights training/trafficking workshop conducted by UNICEF which, it is reported, will become an integral part of the police training. Non-governmental organizations, human rights lawyers, United Nations agencies, and members of the police force will conduct it.

91. The police have also set up women's units in each police station to investigate women-related crimes, including search, inquiry and investigation. The Special Rapporteur visited a border police post and met with officials. In combating trafficking at the border the police are assisted by the NGO Maiti Nepal, which helps identify potential traffickers and their victims. So far the system of identification does not seem to have been abused and has in fact led to a great deal of assistance. Since some of the Maiti Nepal staff were earlier victims of trafficking, their assistance and knowledge have been invaluable. The Special Rapporteur was encouraged that the police at the border posts seemed very aware of the problem of trafficking and determined to deal with it.

92. The Nepalese judiciary has a mixed record when it comes to the problem of trafficking. The Supreme Court, despite some controversial rulings on women's inheritance rights, has generally held that Nepal is a signatory to the Convention and that international standards apply throughout the country. However, at the level of the lower judiciary, there is a high rate of acquittal for traffickers. Members of the judiciary argue that one of the reasons for these acquittals is that the police do not present enough evidence and the problem lies in the investigative power of the police. For this reason the Special Rapporteur suggested to the Government that it draw on available international expertise and seek technical assistance from international bodies to develop investigative skills.

93. Nepal has a National Human Rights Commission that has recently been set up to deal with human rights issues though it has not directly dealt with the problem of violence against women yet. One of the proposals put forward to involve the Commission has been to create a post of national rapporteur on trafficking within the National Human Rights Commission.

Rescue and social welfare

94. As in Bangladesh, rescue and social welfare for victims of trafficking have been left to NGOs. Several NGOs have rehabilitation and training programmes for victims of trafficking. Maiti Nepal, for example, has gained an international reputation for its work in this field. However, the Ministry of Women, Children and Social Welfare has opened a Women's Self-Reliance and Rehabilitation Centre 45 km from Kathmandu, which is a skills-training centre for women rescued from being trafficked and for women and girls at risk of being trafficked. It is reported that the centre is unfortunately inaccessible for many women, as it does not accept women who have children or women who have HIV/AIDS.

95. One of the major problems facing Nepal is the problem of AIDS resulting from the trafficking industry. Unfortunately, many of the women taken to India return to Nepal to spend their last years in terrible pain and suffering. According to estimates given to the Special Rapporteur, there are 38,000 HIV-positive persons in Nepal. There are worrying reports that even medical staff are unaware of how to treat the problem and have only minimal knowledge about how the disease is transmitted. There also does not seem to be an understanding of confidentiality requirements and voluntary testing practices. Some victims recounted that hospitals had refused to take or treat persons with HIV/AIDS for fear of catching the disease. Cremation of AIDS victims costs more than for people who die of other diseases. Some NGOs like Maiti Nepal and United Nations organizations are working with this problem but far more has to be done if the victims are to be helped.

96. The Special Rapporteur would encourage Governments when tackling the HIV/AIDS problem to avoid focusing on "high-risk groups" which can reinforce stereotypes and increase the stigmatization of victims of trafficking. Focus should instead be on behaviour and all sectors of society must be informed. In this context the new UNDP Project on AIDS in South and South-West Asia will be helpful.

97. With regard to prevention, the Government and donors have trained women from the village district councils as social mobilizers. The Ministry of Labour sponsors job- and

skill-training programmes in several districts thought to be sources of trafficking victims, who are given six months' skill training and special awareness raising with regard to the prevention of trafficking.

International agencies

98. The international agencies working in Nepal have been extremely active on the trafficking issue, particularly UNICEF, ILO, OHCHR and UNDP. There is a United Nations Inter-Agency Task Force on Trafficking that is two years old which deals with the problem of trafficking at the district, national and cross-border levels. There are over 60 programmes and projects run by international agencies on the problem of trafficking.

99. The most important recent initiative to come from the international agencies is the Joint Initiative in the Millennium Against Trafficking of Women and Girls in Nepal (JIT), which will be coordinated by UNDP. The overall objective is to reduce the incidence of trafficking by redressing gender inequities and discriminatory practices that make women and girls vulnerable to trafficking. The strategy uses an umbrella approach that builds on the initiatives of the United Nations Task Force on Trafficking, allowing donors and United Nations agencies to pool resources for the implementation of the components envisaged. The initiative involves a "Policy Advocacy Beacon" which would aim at influencing policy in Nepal at the national level. Among the projects to be inaugurated is one that will look at the problem of structural discrimination against women and girls in Nepal, including the gamut of inheritance and family laws. The project also advocates the setting up of a national rapporteur for trafficking and human rights at the Human Rights Commission, the publication of a human rights manual, the collection of national-level data, advocacy in the media and the establishment of a monitoring mechanism on trafficking.

100. In addition to policy efforts, there will be activity at the district level which will aim at developing leadership skills among women and raise awareness with regard to trafficking, health and legal advocacy. A handbook is being prepared that could be used at the district level. There will also be an attempt at building up cross-border cooperation between police, NGOs and media officials. A comprehensive strategy of rescue, rehabilitation and reintegration will be planned involving the concerned countries in the region.

101. In the context of OHCHR's ongoing project of technical assistance to the Government of Nepal, OHCHR, in cooperation with the United Nations Task Force on Trafficking, is developing a pilot anti-trafficking project in two selected districts of Nepal. The core of the project will be the establishment of special courts (as provided for in the Constitution) to deal with trafficking cases. These courts will be supported by trained police working from special "women's stations". Criminal justice initiatives against trafficking will also be supplemented by a range of activities aimed at increasing public awareness and civic responsibility. Additional activities will be directed towards supporting the reintegration of trafficked women and girls. A separate project component will be dedicated to activities aimed at fostering cooperation between Nepalese and Indian police/border and judicial authorities in order to promote a more effective cross-border response to the trafficking problem. This component should work towards the development of a bilateral treaty on the subject of trafficking.

102. UNICEF has played a key role in advocacy and awareness raising on trafficking. It has developed and conducted training workshops with law enforcement agencies, especially the police, and sponsored legal training, and has set up paralegal committees at the ward, village district council and department district council levels. UNICEF has also provided support for drafting a revised anti-trafficking Act. The United Nations Development Fund for Women (UNIFEM) will also be a partner in JIT through its Regional Programme against Trafficking. The UNIFEM South Asia regional office has also undertaken a wide range of projects in the region on violence against women and trafficking.

Non-governmental organizations

103. Nepal has a very dynamic NGO sector, both international and local, working to ensure women's rights, and many of these NGOs have specifically addressed the trafficking issue. NGOs provide various kinds of programmes including training, support services, advocacy and awareness raising.

104. In the context of NGOs, the Special Rapporteur would like specially to commend the work of Maiti Nepal, an NGO that has made a major difference in the combating of trafficking, and to pay a special tribute to Anuradha Koirala, the founder and Head of the organization. Critics of Maiti Nepal were of the view that Maiti Nepal did not always respect the will of the women concerned and used drastic measures to deal with the problem. These criticisms may have some validity but they can easily be dealt with by the organization. However, the overall work of the organization in rescuing and providing shelter and training for trafficking victims, in supporting children of sex workers and in pioneering work with AIDS victims has to be admired and appreciated.

105. The Special Rapporteur visited a Maiti Nepal transit home in Bhirahawa. Maiti Nepal staff, some of whom had been trafficked themselves, work on the border in cooperation with the border guards. They monitor the flow of persons across the border from early morning to night. If they see a woman who looks like she may be a potential victim (some 5-16 women a day), they stop and talk to her until they are satisfied that she is clear about her destination and aware of the problem of trafficking in India. If they think there is a problem, they take her to the police station.

106. Maiti Nepal also have prevention centres, where they are providing skill training and awareness raising in the villages for girls/women to offer them alternative ways of making a living. In addition, Maiti Nepal is setting up a support system for AIDS victims and making special efforts at health advocacy among the victims.

107. There are also other important NGOs working on this issue. Among them are the Asia Foundation, the Forum for Women, Law and Development, ABC Nepal, Child-Workers in Nepal (CWIN), Shakti Samuha, WOREC, the Informal Sector Service Centre (INSEC), the International Institute for Human Rights, Environment and Development (INHURED), Action Aid, PLAN, Redd Barna, the Alliance Against Trafficking in Women and Children in Nepal (AATWIN) and the National Network Against Girl Trafficking. All of these groups play a vital role.

VI. INDIA

108. India is a source, a transit point for persons trafficked to Pakistan and the Gulf States, and a destination for trafficked persons. India remains the main receiving country in the region of victims of trafficking. NGOs estimate that more than 12,000, and perhaps as many as 50,000 persons are trafficked into India annually from neighbouring countries.

109. Women and girls are trafficked into India for sex work, for forced labour and for forced marriage. Forced prostitution remains the primary goals of many of the traffickers. While a survey by the governmental Social Welfare Board estimates that in 1991, in six metropolitan cities there were about 1 million women and children engaged in sex work, the Indian Association for the Rescue of Fallen Women estimates that in 1992 there were 8 million women and children in sex work.

110. Internal trafficking also occurs from the rural, economically depressed areas to the cities. According to the Indian Centre for Indigenous and Tribal Peoples (ICITP), more than 40,000 tribal women, mainly from Orissa and Bihar, have been trafficked.

Legal framework

111. The Government of India is signatory to the Convention on the Elimination of All Forms of Discrimination against Women but has made reservations to article 16 dealing with family law and family life. In a famous case, Visakha v. State of Rajasthan, the Supreme Court of India held that the Convention was an essential part of Indian law. The Indian Constitution specifically prohibits trafficking, in article 23, but the term is not defined in detail. It has been interpreted as a generic definition that applies to the State as well as the private sector.

112. The Supreme Court has used the articles in the Constitution that deal with equality, human dignity, the right to life and trafficking to be activist when it comes to the rights of women. Of all the judiciaries in the world, the Supreme Court of India has made a name for itself internationally as the one that has championed the cause of women within a constitutional framework. Whether it is women in a remand home, Air India hostesses, or sexual harassment, the Supreme Court of India has made pathbreaking decisions.

113. The Supreme Court has delivered two important judgements with regard to the issue of trafficking. On the issue of child prostitution, in the case of Vishal Jeet v. Union of India, the Supreme Court called on the central and state governments to set up advisory committees to advise government on matters relating to child prostitution and social welfare. As a result of this decision, the Government of India set up a Central Advisory Committee on Child Prostitution and state governments also set up advisory committees.

114. In the second decision, Gaurav Jain v. Union of India, the Supreme Court in 1997 directed the Government to constitute a committee to make an in-depth study of the problem of prostitution and child prostitutes and to develop strategies for their rescue and rehabilitation. A Committee on Prostitution, Child Prostitutes and Children of Prostitutes was constituted, headed by the Secretary, Department of Women and Child Development. Its report was submitted in 1998. A copy was presented to the Special Rapporteur.

115. The primary legal framework that deals with the problem of trafficking is the Prevention of Immoral Traffic Act of 1986 (PITA). This Act is supplemented by provisions of the Indian Penal Code that are based on the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. Prostitution is not illegal in India but soliciting and exploiting prostitution are offences. The framework for laws are very close to those prescribed by the 1949 Convention. PITA was amended recently and the presumption of guilt is now on the accused for cases in which children or minors are found in a brothel who have been determined by medical examination to have been sexually abused. PITA has made stricter punishment for offences relating to children.

116. PITA also provides for the appointment by the Government of a police officer to fight trafficking nationwide. Such a person had not been appointed when the Special Rapporteur arrived in India. However, the Secretary of the Home Ministry promised the Special Rapporteur during the course of her visit that such an officer would be appointed. At a meeting held at the end of her stay, the Government informed the Special Rapporteur that the order appointing the officer had been made and that the officer was female and sensitive to gender issues.

117. There are many efforts under way to replace PITA with comprehensive trafficking prevention legislation. The National Commission on Women is looking into this possibility. The Special Rapporteur is very apprehensive about these initiatives given the experience in the other SAARC countries. The human rights implications of the new legislation are very disturbing. Many of the drafts shown to the Special Rapporteur contain the same negative features that were discussed above in the General Findings section. The texts criminalize prostitution, give police sweeping search and seizure powers, alter evidentiary requirements and stipulate mandatory punishments for traffickers. The only innovative bill in this regard is the one prepared by the National Law School of the University of India, which has strong provisions to fight trafficking but which also respects the right of sex workers. It attempts to organize them to prevent sexual exploitation and to protect health and hygiene in sexual work. It is the Special Rapporteur's belief that unless something like this can be adopted, PITA, with some amendments, should remain as the principal legal framework for combating trafficking.

118. According to the report of the Committee on Prostitution, Child Prostitutes and Children of Prostitutes submitted by the Department of Women and Children pursuant to the Supreme Court decision, the number of cases involving trafficking has lessened in recent years, especially during the period 1991-1995. However, given the fact that commentators have indicated to the Special Rapporteur that trafficking is on the increase, that statement may reflect the fact that PITA is not fully implemented. In addition, there are regional variations. The states of Tamil Nadu, Karnataka, Maharashtra and Andhra Pradesh account for 96.5 per cent of the cases. The question is also raised about which aspect of PITA is being implemented. Government officials and NGOs claim that 80 per cent of the cases registered under PITA are for soliciting. So the person who is being arrested is the victim. The number of actual cases of trafficking filed against traffickers is marginal. This proves the argument of many women's groups that more stringent laws and law enforcement may actually result in greater victimization of women and girls.

119. Other legislation that also has some bearing on trafficking cases, and in particular protective custody, are the following:

(a) The Indian Penal Code, 1860, includes offences, among others, relating to wrongful confinement, kidnapping, abduction, slavery and forced labour, and sexual offences. Of particular significance are importation of a girl from a foreign country, selling of a minor for purposes of prostitution, buying a minor for purposes of prostitution, and rape;

(b) The Juvenile Justice Act 1986 has elaborate provisions for the care, protection, treatment, education, vocational training, development and rehabilitation of children rescued from those procuring, inducing and taking persons for the sake of prostitution and detaining persons in premises where prostitution is carried on. Such children are covered under the definition "neglected juvenile". Besides the police, any person authorized by the state government may bring the juvenile before the Juvenile Welfare Board for placement with a fit person or a fit institution, or failing which, in a juvenile home. Voluntary institutions also function as protective homes under the respective laws. These institutions must function on the basis of certain minimum standards of care and reformatory treatment;

(c) The Foreigners Act, 1946, which regulates the entry, stay and departure from India of foreigners, is also relevant to the trafficking issue.

120. The governments of Maharashtra and West Bengal, the states that the Special Rapporteur visited, deal with trafficking under PITA and similar criminal law provisions. In this context, the Special Rapporteur was encouraged to note the approach of the government of Maharashtra and its Secretary, Mr. Sharma, who displayed very keen interest in the visit of the Special Rapporteur and involved her in intensive discussions on the future course of action. At the end of her visit, the Chief Minister of Maharashtra promised to set up a special team to study the problem of trafficking and to set up mechanisms to combat trafficking. She was also encouraged to note that they took up her suggestion that the new law to combat organized crime, the Maharashtra Organized Crime Act, should also include a protocol on trafficking like its international counterpart. The government also seemed interested in meeting the social welfare requirements of the women victims and the team was asked to look into this matter in detail.

Programmes and policies to combat trafficking

121. The year 2001 has been named Women's Empowerment Year by the Government of India and a host of activities will take place with regard to the rights of women under the ninth five-year plan (1997-2002), which has identified the empowerment of women as a strategy for development.

122. The National Commission for Women (NCW) is the body that takes the lead with regard to the protection of the rights of women. The Commission's mandate is to safeguard the rights and interests of women by running legal awareness programmes, looking into complaints regarding the violation of women's rights, examining the non-implementation of laws as well as non-compliance with policy guidelines, providing relief to women by taking up their concerns with the appropriate authorities, conducting research, undertaking investigations, etc. The NCW also has the powers of a civil court when investigating any case provided for by the NCW Act 1990. Combating the trafficking of women is one of its main areas of priority. When the Special Rapporteur made her visit, the Commission was in the process of engaging in national-level consultations with a view to amending PITA. It has been involved in

consultations in all the states and has talked to state officials, NGOs and the sex workers themselves. The Commission organized a very informative half-day workshop for the Special Rapporteur on trafficking. The members of the Commission seemed very committed to combating trafficking as well as other crimes of violence against women. In addition to reforming the law, the Commission has through public interest litigation intervened in the courts to protect the rights of victims of trafficking. The Commission is also in the process of working out a curriculum for gender training of the police.

123. The Department of Women and Child Development within the Ministry of Human Resource Development of the Government of India is the other official entity that plays an important role in protecting the rights of women. The Department's mandate is to formulate plans and policies, to enact and amend legislation, and to guide and coordinate the efforts of governmental and non-governmental organizations that work with women and children. The present Secretary seems very committed to developing a strategy on trafficking for the Department. The previous Secretary chaired the Committee on Prostitution, Child Prostitutes and Children of Prostitutes.

124. The Committee's report contained a Plan of Action, which was very interesting and included innovative ideas. The section on awareness raising and the provision of health services is particularly useful and comprehensive. The Social Welfare component is dealt with in detail, from rescue to rehabilitation, to education of the children of prostitutes, to housing and shelter. The section on health services is also very comprehensive, arguing for the setting up of health care centres in red light areas specializing in HIV/AIDS and the conducting of awareness and education campaigns on AIDS. Unlike other plans in the region, there is a determined effort to include psychological counselling as an aspect to health care.

125. The aspects of the Plan of Action that the Special Rapporteur feels pose human rights problems are, among others, the suggestion that the children of prostitutes be removed from their mothers to more healthy environments. This is a very disturbing violation of the right to family even if it is done with good intentions. The report also seems to rely on social surveillance as a method of preventing and fighting trafficking. Given the hierarchies of class, religion and caste, this can result in a great deal of abuse. Some of the women we interviewed described this abuse in detail, describing how certain women and groups are targeted for this type of social surveillance. Accountable state institutions are better vehicles for enforcement than social surveillance. In addition, the report focuses on the victim and has little to add with regard to laws and strategies for finding and punishing traffickers.

126. The Department of Women and Child Development is also planning to commission a nationwide survey on trafficking in order to collect comprehensive data on the subject so that the Government will know the nature and extent of the problem. This survey will be done with the support of the ILO.

127. There are also a number of state-level initiatives on trafficking.

128. At the level of state governments, especially in Maharashtra and West Bengal, the relevant ministries of women and child development were also in the process of developing programmes to combat trafficking. At the moment, much of the social welfare work has been

relegated to NGOs and the state governments have not played an active role. The government of Maharashtra was very eager to develop a plan and a programme to combat trafficking. The Special Rapporteur hopes that her visit will be a catalyst for this endeavour as much of the abuse resulting from trafficking takes place in Bombay and its environs. Bombay is located in Maharashtra.

129. The National Human Rights Commission was another institution that seemed very committed to eradicating trafficking in India as a human rights problem. The Commission has a good reputation in the country and is seen as fair and activist with regard to the protection of human rights. In discussions with the Special Rapporteur, the Commissioners intimated that they had decided to set up a focal point for trafficking within the Commission. They hope to deal with the issue as an important aspect of human rights protection in India.

Criminal justice system

130. Trafficking in India cannot be combated without the unstinting support of those who work in the criminal justice system. Given the international and national attention on trafficking, the Indian ministries dealing with home affairs and law are slowly beginning to deal with the problem. Unlike the Ministry of Human Resource Development, these “bastions of patriarchy”, as one NGO activist put it, in all the countries are slower to respond to the crisis. However, the Secretary, Ministry of Home Affairs in India promised the Special Rapporteur that a special officer and a unit on trafficking would be established in the Ministry that would deal with trafficking at the national level. The Special Rapporteur was informed at the end of the visit that this had been done.

131. Once there is political commitment, the police forces in India would begin to adapt to the new reality that trafficking is prohibited and that police corruption in this area must be eradicated. There appears to be a beginning. A manual for police training in the area of trafficking is currently being developed with the help of UNICEF. Such a handbook, translated in all the regional languages, would be a first step in the process of furthering effective law enforcement.

132. At the local level, the Special Rapporteur was informed that the Maharashtra police were also compiling a handbook and working out a gender sensitization programme for the police. The female officer in charge of the women’s unit of the Maharashtra police described in detail the initiatives taken by the Maharashtra police to combat violence against women. The programmes seemed comprehensive, with the police playing an active role. She said that similar programmes would be developed to combat trafficking during the course of the year, in consultation with the Women and Child Department. The Special Rapporteur offered the technical services of OHCHR to assist the Maharashtra police in this endeavour. In Calcutta too, the West Bengal police described in detail strategies and programmes to make the West Bengal police more gender sensitive. In recent times successful raids had taken place and many minors rescued, both in Maharashtra and West Bengal.

133. The victims of trafficking tell another story. The rescued minors and sex workers the Special Rapporteur spoke to recounted story after story of corruption in the police forces of Maharashtra and West Bengal, especially concerning sex workers. Numerous incidents of police

corruption that were witnessed by sex workers were recounted, as described in the General Findings Section. The Special Rapporteur reiterates that unless that message is received by the average cop who works in the red light areas and other trafficking routes that corruption will not be tolerated, there will be impunity for traffickers and the rights of women and children will be abused.

134. Also as noted earlier, despite the Supreme Court having given very clear direction that trafficking is a major violation of women's fundamental rights, at the lower levels of the judiciary the picture is again mixed. Some judges in Maharashtra and West Bengal have been very activist. In February 1996, the Maharashtra High Court, acting on a newspaper article, intervened and rescued 469 girls, many of whom were Nepalis. Critics have called some of these judges publicity seekers but in actual fact, they have done a great deal to further the quality of life in India with regard to fundamental rights. At the same time the Special Rapporteur heard of cases in which judges have been insensitive, sometimes even sending the victims to jail, and of long confinement in government homes pending a hearing of their cases.

Rescue and welfare programmes

135. The approach of state governments to the problem of rescue and social welfare centres around giving the women shelter in Government-run homes while their lives are sorted out. There are two kinds of home. The first is a Protective Home established by the Government for women and girls taken in under PITA. There are 80 such homes throughout India. The second type of home is a Short Stay Home. The Department of Women and Child Development assist these homes. There are also Juvenile Homes set up under the Juvenile Justice Act. Women rescued from brothels and from being trafficked may be assigned to any of these homes at the discretion of the judges.

136. The Special Rapporteur seriously questions the use of government homes as a means of "rehabilitating" victims of trafficking. From what she has seen, there are serious human rights implications associated with this strategy. Firstly, the women are not in these homes voluntarily. In the home that the Special Rapporteur visited, all the women said they wanted to leave. Having done nothing wrong, they are kept in homes that are akin to jails. Secondly, the conditions in these government homes from all reports are unsatisfactory. The one the Special Rapporteur visited was gloomy, the conditions barely basic and the women seemed extremely unhappy and idle. The Special Rapporteur suggests that the Government set up a committee involving government and NGO officials to review the conditions in these homes and to devise alternative modes of providing social welfare to women without depriving them of their basic rights.

137. The Central Social Welfare Board also provides financial assistance to NGOs to run centres and short-stay homes for women in need. Some trafficked victims are sent to these homes. In addition, financial assistance is given to NGOs to run development and care centres for the children of the sex workers. These centres are set up in the red light areas and provide day care along with educational support programmes and nutritional programmes for the children.

138. During her visit, the Special Rapporteur visited many homes managed by NGOs. Some were excellent, model institutions while others resembled the government homes. St. Catherine's in Maharashtra stands out as a model home though critics argue that, like at Maiti Nepal, there is a "moral overdose" given to victims of trafficking. Regardless of this, the premises were clean, and the women seemed alert and happy and involved in their work with a wide variety of programmes to keep them occupied.

139. Given the wide range of institutions she visited, the Special Rapporteur would assert that NGO management with government monitoring provides the best framework for the provision of social welfare to women and girl victims of trafficking. In any event, if human rights principles are to be respected the concept of "protective custody" in India must be reconsidered. Women and girls should never be kept in government or NGO homes against their will except in very exceptional circumstances.

International agencies

140. Unlike in the other countries in the region, the United Nations in India does not have an integrated, coordinated strategy to address trafficking. There is no inter-agency task force. However, UNIFEM, ILO and UNICEF, amongst others, have some very important regional programmes with regard to trafficking which are also functioning in India.

141. UNAIDS has also formed a Regional Task Force on Trafficking and HIV/AIDS in order to develop and facilitate regional interventions. The UNDP Regional Office has been assigned the role of coordinator of the activities under this initiative. The UNDP project on HIV and Development in South and South-West Asia was prepared in consultation with UNICEF, UNIFEM and WHO. The main objective is the empowerment of women and girls to enhance human security and mitigate factors that create their vulnerability to trafficking and HIV/AIDS, including social, economic and sexual exploitation and discrimination.

142. UNICEF has played a key role in advocacy and awareness raising on the issue within the region. Its country offices have also developed and conducted training workshops with law enforcement agencies, especially the police, on sensitization, investigation and establishment of women's units. It has sponsored research for situation analyses on trafficking in the various countries and supported skills training, protection and reintegration for children at risk, survivors of trafficking and children of sex workers. The Rights Cluster has activities regarding the trafficking of children and adolescents. The India office has supported both Government and NGOs in developing and implementing various kinds of activities and programmes on trafficking, working closely with the Department of Women and Child Development; it has also sponsored cross-border police workshops on the issue of trafficking.

143. UNIFEM provides technical assistance to the ministries concerned with women and children in the respective countries. UNIFEM has undertaken advocacy and sponsored action-research on trafficking in the region. It has played a leading role in supporting advocacy on the part of NGOs on the SAARC convention. UNIFEM also provides technical assistance to the various women's ministries and departments in developing databases and collating information.

144. The International Programme for the Elimination of Child Labour (ILO/IPEC) supports NGO prevention programmes, awareness raising, rescue and rehabilitation. Assistance is provided to projects to develop training packages to sensitize primary schoolteachers in human rights and child rights, and to establish "prevention camps" in trafficking-prone areas. ILO/IPEC also supports workshops for legal experts and prosecutors on enforcement and legislation regarding trafficking. ILO conducts intensive advocacy on the issues of child rights and child labour and works closely with the ministries of labour and social welfare in the concerned countries.

145. The International Organization for Migration (IOM) has placed trafficking on its regional agenda and is concerned with understanding and operationalizing the distinctions between migration and trafficking. IOM focuses primarily on cross-border trafficking and seeks to strengthen organizations and programmes which provide support to survivors of trafficking. UNFPA, WHO and UNAIDS are also committed to addressing the issue of trafficking through their principal mandates.

Non-governmental organizations

146. National and international NGOs working in India should be congratulated for raising awareness and for putting trafficking on the world's agenda as a high-priority issue. The Special Rapporteur could only visit a few NGOs during her visit. It is not possible to mention all the NGOs working on this issue (a list of selected persons/organizations with whom the Special Rapporteur met during the mission is contained in the annex); however, a few NGOs that the Special Rapporteur visited deserve very special mention.

147. The most unusual NGO that the Special Rapporteur met was the Durbar Mahila Samanyaya Committee (DMSC) and the Usha Collective of Sex Workers in Calcutta. These are self-help organizations of sex workers that have begun to address how to reduce forced entry of women and voluntary or forced entry of minors into the sex industry, including through trafficking. DMSC aims at mass-scale mobilization of sex workers to organize for their rights, better working and living conditions and freedom from abuse, coercion, violence and stigmatization. DMSC members have made a formal commitment to prevent the forced entry of women and the trafficking of minors into the industry. DMSC hopes to monitor this through its self-regulatory board. If trafficking into the sex industry is to be combated, the support and active participation of sex workers is extremely useful. They have the inside information about the methods employed, the perpetrators, as well as the location of the victims. The women from the DMSC that the Special Rapporteur met were committed women who were fighting a difficult cause with dignity and fortitude.

148. Prerana in Bombay and Sanlaap in Calcutta are also exceptional NGOs. Prerana has a project to eliminate second-generation trafficking of children into sexual exploitation, a night care centre for the children of the red light districts and a placement programme for the children of women sex workers. It is also trying to get ration cards for sex workers. The activities of Prerana have evolved through constant consultation and interaction with the beneficiaries. They are aimed at enhancing the capacity and self-reliance of the victims rather than generating new dependence. Prerana is currently fighting a case under public interest litigation at the Bombay High Court against the state government of Maharashtra to improve the post-rescue operations.

Sanlaap also provides shelter for women and child victims, health services, legal and psychological counselling and a whole array of other services. Committed staff supports it and its success lies in the large number of children and women who come to them for assistance on a voluntary basis. The children and women in their care seemed healthy and happy despite conditions of poverty.

149. Another NGO that seemed to provide exceptional services given the resource constraints in the NGO sector was St. Catherine's Home in Bombay for rescued children, abused children from brothels, and children with HIV/AIDS. St. Catherine's strives to provide a happy home environment for the children so they can learn and discover themselves and their potential through education and vocational training. Clean and friendly, St Catherine's seems, like the other NGOs mentioned above, a model NGO.

150. There are many NGOs working in the field with great enthusiasm and commitment. As a general rule, their centres, especially when they are monitored by the Government, are far cleaner, healthier, and provide more services than Government-run homes. However, government officials in Maharashtra did say that there were also many NGOs that are financially corrupt and provide minimum services to the women and girls. NGO management may be better for the women and children but government monitoring of standards is also essential if the victims of trafficking are to be given the necessary social welfare services.

VII. RECOMMENDATIONS

International

151. The international community must continue to play a proactive role in preventing trafficking in the South Asian region. More resources should be given to the Governments of the region to meet this problem of human servitude and forced labour. In this connection, the Nepalese effort should be replicated in the other SAARC countries. There should be an Inter-Agency Task Force on Trafficking or a Joint Initiative on Trafficking involving all the international agencies. Cooperation among the agencies is essential if there is to be a coordinated effort to deal with the problem of trafficking in South Asia.

Regional

152. The countries of the SAARC region should get together to collect comprehensive data on trafficking. There should be a central database and a regional survey to assess the nature of the problems, the numbers involved, the profile of the trafficking victim, the profile of the trafficker and the response of national Governments. The collection of data is absolutely necessary if the problem is to be dealt with effectively.

153. The adoption of the SAARC Convention on Trafficking should be encouraged. If the present draft Convention is signed, there should be an amendment conference within a year to ensure that the definition of trafficking in the SAARC instrument is in conformity with the international language agreed upon at Vienna for the Convention on Organised Crime Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention on Transnational Organized Crime. In addition,

the social and economic rights of the victims should be respected in the section entitled "Rehabilitation". A monitoring mechanism should be set up along with a regional fund to help victims of trafficking once they are rescued.

154. There should be an intergovernmental regional task force on trafficking that will plan and implement a concerted strategy for the region. This task force could be linked to the women and child ministries of the respective countries. In addition, there should be an interregional police task force to fight trafficking, track traffickers and gather jointly intelligence on trafficking rings.

National

155. The Governments of the region should each have a national plan of action to combat trafficking. To prevent such a plan from being just a piece of paper, there should be a monitoring mechanism involving Governments, NGOs and international agencies.

156. There should be a nodal agency entrusted with implementing the plan. In some of the SAARC countries there is such a nodal agency for drug prevention. Human trafficking is a far more despicable crime than drug abuse. The establishment of a nodal agency would give the world a sense that the countries take this issue seriously and that there is political will to eradicate trafficking.

157. Legislation to combat trafficking should be considered, but only if it complies with international human rights standards and does not violate the rights of women. Nothing should be done to prevent the freedom of movement of adult women. No law or regulation should place them at the mercy of the men in their families or in their villages. Their autonomy must be respected.

158. Governments should refrain from enacting regulations and orders that restrict the free movement of women under the guise of fighting trafficking. Instead, measures aimed at educating women about their rights and raising awareness about conditions in receiving countries should be compulsory. The respective embassies in receiving countries should be proactive in providing assistance to women and girl victims of trafficking.

159. "Protective Custody" as a means of dealing with victims of trafficking should be reconsidered. Women who are victims of trafficking have not committed any crime. For this reason, they should not be detained. Any stay in a government home should be voluntary. In addition, conditions in these homes should be such that the women would want to stay there voluntarily. There should be programmes to keep women occupied; there should be legal and psychological counselling and an effort to help the women plan their future. Proven NGOs should manage such homes with government monitoring and supervision.

160. In cases of trafficking victims who are foreign nationals, the Governments of the region must work towards facilitating their voluntary return, if that is appropriate, rather than detain them for long periods in government homes.

161. All the countries of the region should have training for their police forces on how to combat violence against women in general as well as trafficking. The training should consist of

awareness raising on the issue as well as development of investigative skills so that crimes of violence against women are investigated and prosecuted with proper evidence. The Special Rapporteur suggests that the countries of the region draw on international expertise present at OHCHR and the United Nations Office for Drug Control and Crime Prevention in Vienna.

162. Corruption in the police seems a significant problem in all the countries of the region, especially in the area of trafficking. There should be a clear direction from the top of the police hierarchy that such behaviour will not be tolerated and police officers who engage in such activity should face severe consequences.

163. There should be seminars and workshops with judges in the region to increase their awareness on issues relating to violence against women, as well as to issues related to trafficking. There are a number of such programmes already in existence and they should be encouraged.

164. The human rights commissions in all the countries of the region should make trafficking a special focus of their work.

165. Witness protection schemes should be set up for women victims so that they will testify against their traffickers. Such schemes should assist the police in presenting evidence before the courts and would help to secure a higher rate of conviction.

166. There should be a concerted effort to deal with the problem of HIV/AIDS in the region. Resources should be allocated to deal sufficiently with the problem. Special centres should be set up in the red light districts to assist sex workers. International standards on "voluntariness" with regard to testing and confidentiality should guide the campaign. Gender training for the medical profession should be provided to ensure that women receive non-judgmental, confidential treatment.

167. Prevention programmes should exist in all three countries. Prevention should take the form of awareness raising through the media, through the education system and through social mobilizers in the villages. Prevention should not rely on social surveillance and neighbour spying on neighbour, as such surveillance can be subject to a great deal of abuse.

168. Extensive support should be given to NGOs working in this field. The NGOs working with the children of the sex workers should be given special encouragement along with those who work with the victims of trafficking. A partnership between Government and NGOs working in this field is essential if the problem of trafficking is to be dealt with in the South Asian region.

Notes

^a For further information please refer to the Special Rapporteur's report on trafficking in women, women's migration and violence against women, submitted to the Commission on Human Rights at its fifty-fifth session (E/CN.4/2000/68).

^b Human Rights Watch, Rape for Profit, Trafficking of Nepali Girls and Women to India's Brothels, 1995, p.11

^c Ibid.

^d Central Welfare Board, Prostitution in Metropolitan Cities of India, New Delhi, August 1993.

^e This was the figure given to the Special Rapporteur by NGO activists working in Bombay and Calcutta.

^f Human Rights Watch, op. cit., pp. 20-24.

^g Jyoti Sanghera, Trafficking of Women and Children in South Asia: Taking Stock and Moving Ahead, for UNICEF and Save the Children Alliance, November 1999.

^h Ibid.

Appendix

SELECTED LIST OF PERSONS/ORGANIZATIONS WHOM THE SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN MET DURING HER MISSION

BANGLADESH

Dhaka

Mr. Munshi Faiz Ahmad, Director-General, Ministry for Foreign Affairs
Dr. Ali, Acting Foreign Secretary, Ministry for Foreign Affairs
Mr. Rabab Fatima, Director, Ministry for Foreign Affairs
Mr. Abul Hasan Chowdury, State Minister for Foreign Affairs
Mr. Reza, Ministry of Home Affairs
Prof. Zinantun Nesa Talukdar, State Minister, Ministry of Women and Children Affairs
Prof. (Dr.) Tehmina Hussain, Secretary, Ministry of Women and Children Affairs
Mr. Abdul Matin Khasru, Minister, Ministry of Law, Justice and Parliamentary Affairs
Mr. Mahmud Al-Faird, Acting Inspector-General of Police

Ms. Shamim Hamid, Principal Officer, Office of the United Nations Resident Coordinator
Ms. Farah Ghuznavi, Programme Officer, UNDP
Ms. Shahida Azfar, UNICEF Representative
Ms. Jun Kukita, Senior Programme Coordinator, UNICEF
ILO Representative
World Bank Representative
UNHCR Representative
IOM Representative

Mr. Kamal Khairuzzaman, Executive Director, Bangladesh Manabadhikar Sangbadik Forum
Ms. Salma Ali, Executive Director, Bangladesh National Women Lawyers Association (BNWLA)
Ms. Shirin Naer, Advocate, Supreme Court of Bangladesh/BNWLA
Ms. Maleka Begum, Gender Specialist and Researcher
Ms. Ruby Ghuznavi, Convenor, Naripokkho
Ms. Ayesha Khanam, GS, Bangladesh Mahila Parishad
Ms. Salma Sobhan, Executive Director, Ain O Salish Kendra
Ms. Sigma Huda, Advocate, Chancery Chambers, Ain-O-Unnyan Sangstha
Ms. Angela Gomes, Executive Director, Banchte Shekha
Ms. Salima Sarwar, Executive Director, ACD, Rajshahi
Ms. Farida Akhter, Executive Director, UBINIG
Mr. Aminul Islam Miah, GS, Bangladesh Retired Police Officers' Welfare Association, Detective Training School
Ms. Selina Shelley, Country Representative a.i. Oxfam
Ms. Mufawesa Khan, Executive Director, CWFD
Ms. Khushi Kabir, Chairperson, ADAB
Prof. Ishrat Shamim, President, CWCS

Ms. Salma Khan, President, Women for Women
Ms. Lulu Bilkis Khanom, Senior Programme Officer, Dhaka Ahsania Mission
Ms. Naheed Kamal
Ms. Carol Jenkins
Mr. Matthew Friedman
Mr. Rakin Hossain
Aparageya Hostel

NEPAL

Kathmandu

Mr. Ram Chandra Paudel, Deputy Prime Minister
Mr. Mahanth Thakur, Minister of Law
Mr. Arjun Kant Mainali, Section Officer, Ministry for Foreign Affairs
Ministry of Women, Children and Social Welfare
Mr. Badri Bahadur Karki, Attorney-General
Mr. Pradeep SJB Rana, Acting Inspector-General of Police, Chief of Nepal Office
Mr. G.P. Thapa, Deputy Inspector-General of Police, Training Directorate, PHQs
Mr. Jogendra Keshari Ghimire, Secretary, National Human Rights Commission
Ambassador Nihal Rodrigo, SAARC Secretary-General

Mr. Nick Langton, Representative, the Asia Foundation
Ms. Shtrii Shakti
Ms. Sapana Pradhan-Malla, Advocate, Forum for Women, Law and Development
INHURED
Ms. Anu Radha Koirala, Chairperson, Maiti Nepal
Dr. Renu Rajbhandary, Chairperson, WOREC
Ms. Pratima Mudbary, Women for Women Forum
Ms. Saloni Singh, Didi Bahini
Ms. Pramoda Shah, Saathi
Ms. Durga Ghimire, ABC Nepal
Ms. Kamala Hemchuli, Dalit Women's Organisation
Dr. Shanta Thapaliya, LACC
Ms. Tula Rana, Beyond Beijing Committee
Ms. Bandana Rana, Sancharika Samuha
Ms. Madhavi Singh, Coordinator, National Newtwork Against Girls Trafficking (NNAGT)
Ms. Bagwati, AAZWIN
Ms. Indira Shrestha, President, Strii Shakti
Mr. Yubaraj Sangroula, Chairperson, CeLLRd
Mr. Dilli Chaudary, President, BASE
Mr. Dillip Pariyar, President, SAFE
Ms. Shanti, Shanti Punarsthapana Kendra

Mr. Henning Karcher, United Nations Resident Representative
United Nations Task Force on Trafficking
Informal Inter-Agency Group on Trafficking

Ms. Bharati Silawal-Giri, Assistant Resident Representative (Programme), Gender Equality and Social Development Unit, UNDP
Ms. Tania Karpatschof, Gender Programme Officer, UNDP
Mr. Michel Dupoizat, Representative, UNHCR
Mr. J. Musoke, UNFPA Representative

Rupandehi district

Mr. Gupta Bahadur Shrestha, Deputy Superintendent of Police
District officials
Maiti Nepal transit home

INDIA

New Delhi

Mr. Lalit Mansingh, Foreign Secretary, Ministry of External Affairs (MEA)
Mr. A. Gopinathan, Joint Secretary (UNE), Ministry of External Affairs
Mr. Sunu Lai, Director (UNE), Ministry of External Affairs
Dr. Neeru Chadha, Legal Officer, Ministry of External Affairs
Mr. B.K. Chaturvedi, Secretary, Department for Women and Child Development (DWCD), Ministry of Human Resource Development
Mr. Rajmal Banger, Deputy Secretary (GC), Department for Women and Child Development
Ms. Vibha Parthasarathi, Chairperson, National Commission for Women
Mr. Kamal Pande, Home Secretary
Mr. Arun Jaitley, Minister of Law and Justice and Company Affairs
Mr. Soli J. Sorabjee, Attorney-General of India
Ms. Sumitra Mahajan, Minister of State for Human Resource Development
Mr. Justice J.S.Verma, Chairman, National Human Rights Commission
Mr. Ajai Raj Sharma, Commissioner of Police, Delhi
Smt. Sunita Sabharwal, Superintendant, Central Jail, Tihar

Mahila Dakshata Samiti

Ms. Vimla Vohra, Member-in-charge, BAPNU GHAR, All India Women's Conference (AIWC)
Satya Ravi Shakti Shalini
Ms. Madha Joshi, Joint Women's Programme
Ms. Ranjana Kumari
Ms. Sushila Kanshik
Dr. Syeda Sitmad
Ms. Akida Sivadasa, Media Advocacy Group
Dr. Jyoti Sanghera
Mr. Nair

Ms. Brenda Gael McSweeney, United Nations Resident Representative
Mr. Richard Conroy, Senior Deputy Resident Representative, UNDP
Ms. Sonam Yangchen Rana, UNDP
Ms. Padwa Seth, Consultant, UNICEF
UNIFEM

Mumbai

Hon. Chief Minister, Maharashtra State

Chief Secretary, Maharashtra State

Adv. Nirmala Samant Prabhavalkar, Chairperson, Maharashtra State Commission for Women

Smt. T.F.Thekkekara, Hon. Member Secretary, Maharashtra State Commission for Women

Shri. A.N. Borade, Officer, Maharashtra State Commission for Women

MAVIM, the corporation for economic development of women

Ms. S. Sridevi Goel, Deputy Inspector-General of Police, Maharashtra

Police Station, Kamathipura

St. Catherine's Home, Andheri

Asha Sadan, Umarkhadi

Prerana Trust, Kamathipura

Mr. Ratnakar Khaire, NGO Adviser, Mumbai District AIDS Control Society

Mr. B.Vijay, Hon. Secretary, Shape Up India

Government Observation/Remand Home, Umarkhadi

Ms. Jyoti Mhapsekar, President, Stree Mukti Sanghatana

Mr. Jhilam Roy Chowdury, Research Assistant, Committed Communities Development Trust

Ms. Vipula Kadri, Save the Children India

Calcutta

Ms. Rinchen Tempo, Director of Social Welfare, Department for Women and Child Development, West Bengal

Ms. Manjula Gupta, Principal Secretary, Department for Women and Child Development, West Bengal

ICDS Project

Liluah Government Home

Ms. Indrani Sinha, Secretary, SANLAP

Durbar Mahila Samanwaya Committee



General Assembly

Distr.
GENERAL

A/HRC/4/34/Add.1
19 March 2007

ENGLISH / FRENCH / SPANISH

HUMAN RIGHTS COUNCIL
Fourth session
Agenda item 2

IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”

**Report of the Special Rapporteur on violence against women, its causes and consequences,
Yakin Ertürk**

Addendum

Communications to and from Governments * **

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

** The present document is submitted late to reflect the most up-to-date information possible.

India

Urgent appeal

272. On 3 March 2006 the Special Rapporteur has jointly with Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people sent an urgent appeal to the Government concerning the arbitrary detention and possible torture of an indigenous woman, M.N. resident of Yairipok Leirongthel, Khangbok Part III, Thoubal District, Manipur.

273. According to the information received, M.N. was the girlfriend of the late K.R., alias Mr. B., who was reportedly a member of the prohibited People's Liberation Army (PLA).

274. On 20 February 2006, Mr. B. was killed in an armed encounter with police in Thoubal Market. In the same incident, an Inspector and Officer-in-Charge of the Thoubal District Police Commandos Unit, and three other police were also killed. On 21 February 2006 at around 4.30 p.m., police commandos reportedly came in four jeeps to the house of Mr. B.'s family, attacked several of his family members and arrested M.N. because of her personal relationship with Mr. B. No arrest memo was issued. Instead, a police report was filed, which stated that M.N. was arrested on 22 February 2006, at 8 p.m. – more than 27 hours after the actual arrest. M.N. was charged with being “an associate of the party who ambushed the Officer in Charge and commandos” and “B.'s girlfriend”. A First Information Report (FIR) bearing number 25(2)06 of Thoubal Police Station under Section 20 of Unlawful Activities (Prevention) Act 2004 is registered against her.

275. On 22 February 2006, K.D. filed a petition with the Manipur Human Rights Commission (MHRC), which was registered as case No. 6 of 2006. The MHRC asked the Government to submit a report on the incident to the Commission by 27 February 2006.

276. On 23 February 2006, M.N. appeared before the Chief Judicial Magistrate in Thoubal and was remanded to police custody for 9 days. Sources allege that she was visibly weak and dizzy, indicating severe physical and mental torture. She was wearing a new shirt since the original shirt had allegedly been torn by the police, raising serious concerns of possible sexual violence.

Allegation Letter

277. On 8 March 2006 the Special Rapporteur on violence against women, its causes and consequences has jointly with Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, sent an allegation letter to the Government concerning the alleged gang rape of M., a 22-year-old woman belonging to the indigenous Nut Community (a scheduled tribe) in Sirsi village, Chandauli District, Uttar Pradesh.

278. According to the information received, on 14 January 2006 at 1 a.m., four men from a nearby Hinauti village allegedly came to the house of M.'s family. All four men belong to the upper caste Singh community. The men assaulted M.'s family members and chased them away, leaving M. alone in the house. Allegedly, the four men then forcibly took her to the pulse plants field, one kilometer away from her house, where they gang raped her for three hours. When M.

fell unconscious, they threw her onto a nearby railway line, where she was found hours later by another villager.

279. The victim's family reported the incident to the Chandauli Police Station and lodged a First Information Report (FIR) against the four men under Section 376 of the Indian Penal Code and under Section 3(2) and Section 5 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989. Reportedly, however, the police tried to delay action against the alleged perpetrators. Under intense pressure from the Nut community, the police finally arrested the alleged perpetrators – more than 40 hours after the rape allegedly took place.

280. The members of the indigenous Nut community in Sirsi village live in very poor conditions on government-owned land and make their living from begging. Conversely, the members of the Singh community are big landowners and wield considerable influence in the region. Concern is therefore expressed that the victim could be threatened and pressured to withdraw her complaint against the four Singh men.

Allegation letter

281. On 13 April 2006 the Special Rapporteur has jointly with Special Rapporteur on the sale of children, child prostitution and child pornography and Special Rapporteur on trafficking in persons, especially women and children, sent an allegation letter to the Government to bring to its attention the information concerning the trafficking and sexual exploitation of Nepalese girls in brothels in Calcutta and Mumbai, India.

282. According to the information received, Nepalese girls, at an average age of 14 to 16 years, are trafficked from Nepal to brothels in Calcutta and Mumbai where they are required to work as prostitutes in slavery. The girls are trafficked against their will and without knowledge of their destination. The traffickers are reported to be Nepalese men and women, who sell the girls to brothel owners in Calcutta and Mumbai, at a price of approximately 60,000 to 70,000 Indian rupees (US \$ 1360-1590) in Calcutta and 100,000 to 120,000 Indian Rupees (US \$ 2270- 2720) in Mumbai. There is no evidence of extensive networks of traffickers of Nepalese women and girls and trafficking seems to take place though an informal network with the collaboration of community members, employers, local officials, border officials and others such as those who operate 'safe houses' where trafficked girls are kept prior to their sale.

283. Initially the girls are not taken to the brothels directly, but given some time to adjust to their new situation, in outside homes, sometimes owned by the brothel owner. After being told the work that is required of them, how to dress and behave and after being convinced that they themselves, or their families, have incurred a debt which they will have to pay off by working as a prostitute after which they are 'free' to leave, the girls are put to work as *tsukri* (the Bengali word for child in slavery or debt bondage).

284. When they start to work as tsukris, the girls are usually aged between 15 to 18 years. They often work in brothels that are referred to as "bungalows": brothels that occupy a flat, usually on the first or higher floors of a building, often with a shop on the ground floor. The bungalow is distinguished by a channel gate (a sliding iron accordion gate) at the entrance to the brothel. When locked, the channel gate is virtually impenetrable, making escape from the brothel impossible for the tsukris kept inside. The area within Calcutta that contains most bungalow-type

brothels with tsukris is Sonagachi, whereas in Mumbai brothels with tsukris can be found mainly in Kamathipura, although due to police raids these types of brothels are said to have moved to other cities in India or areas outside the known brothel areas.

285. It is reported that while clients of the brothels do not have a specific preference for tsukris, they do have a preference for girls between 15 and 20, which in turn creates a demand for children.

286. Under the tsukri system the brothel owner retains all of the fees paid by clients for the services provided to them by the tsukris. Considerable profits accrue from the use of tsukri system: brothel owners are said to earn four to twenty times the purchase price of the tsukri over the period of her servitude. The money that the trafficker earns is relatively insignificant compared to the large amount that the purchaser (brothel owner) earns.

287. The initial purchase price is recovered by the brothel owner, on average, in little over five and a half months. A Nepalese tsukri is also said to cost less than an Indian tsukri and because of continued client demand for Nepalese girls, the returns are higher. On occasion the brothel owner may also offer “special services” such as a tsukri’s virginity or oral or anal sex as well as sex without a condom, at a special price.

288. The total period the girls spend in confinement as tsukris varies from two to ten years. After being released from slavery, it is often very difficult for tsukris to go back to Nepal. They fear isolation and reprisals from family and community members. Many of them take up work as free-agent sex workers, earning their own fees by doing street prostitution or paying tenancy to brothel owners. Escape prior to release is difficult as there is also fear of being brought back to the brothels, either by police or other community members, followed by severe physical punishment, as well as a more general fear of “India outside” since few tsukris had a clear idea of where they were, could not speak the language and were easily recognized as foreigners.

Allegation letter

289. On 8 December 2006 the Special Rapporteur has jointly with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Rapporteur on the question of torture, sent an allegation letter to the Government concerning the reported murder of S.B., wife of B.B., their daughter P. and their two sons, S. and R., all belonging to the Dalit Community in the village of Khairlanji, Bhandara District, in Maharashtra.

290. According to information received, there are only three Dalit families in Khairlanji and, approximately one hundred upper caste families. In the past, Baiyyalal Bhotmange already clashed with upper caste community members over a land dispute. On 3 September 2006, a local Dalit policeman was allegedly beaten up by upper caste community members. B.B., S., P., and R. reportedly testified against alleged perpetrators leading to their arrest.

291. On 29 September 2006, the alleged perpetrators were released. The same day, at about 6 p.m., a mob of two to three hundred upper caste villagers, many equipped with axes and *ubhari* (a stick with a metal spike), stormed their home, and dragged S.B. and her three children out of

the house. They were stripped naked, beaten and driven to the main village square. B.B. happened to be out of the house at the time of the incident.

292. Upper caste men then gang raped S.B. and her daughter P. for over an hour, while bystanders, including upper caste women, verbally incited the rapists and spurred them on. One of P.'s brothers was asked to have sex with P. and after he refused, his genitals were thrashed. P. was hit on her breasts with an axe and thrashed and stabbed with *ubhari* in her genitals. All four persons were hacked to death and the bodies were thrown in a canal.

293. As of 30 November 2006, although a First Information Report (FIR) had been filed, the vast majority of the perpetrators, including those who allegedly became complicit to the gang rape and murder through verbal incitement, had reportedly not been arrested or charged. Many of Dalit families in the village were afraid to testify. Reportedly, only one eyewitness has come forward to testify.

Observations

294. The Special Rapporteur regrets that the Government of India did not reply to any of her communications sent in 2006.

295. Regarding the communication dated 13 April 2006 concerning the trafficking and sexual exploitation of Nepalese girls in brothels in Calcutta and Mumbai, the Special Rapporteur recalls the report of the previous Special Rapporteur on violence against women, its causes and consequences, on her missions to Bangladesh, Nepal and India (E/CN.4/2001/73/Add.2). In this report, the Special Rapporteur found that the conditions of prostitution in some of the brothels in Bombay and Calcutta appeared to resemble slavery-like practices. Most of the young girls the Special Rapporteur spoke to were being held against their will, were tortured, degraded, beaten severely, and were repeatedly assaulted on the lower half of their bodies. They were deprived of food and water until they submitted.

296. In view of the fact that the other reported cases concern indigenous and/or lower caste women, the Special Rapporteur would like to make reference to the conclusions and recommendations of the Committee on the Elimination of Discrimination against Women in its 2000 concluding observations on India (A/55/38, paras. 42-90). The Committee found that discrimination against women who belong to particular castes or ethnic or religious groups is also manifested in extreme forms of physical and sexual violence and harassment. The Committee also expressed concern about the continuing discrimination, including violence, suffered by women of the Dalit community, despite the passage of the Scheduled Castes and Scheduled Tribes (prevention of atrocities) Act of 1989 and urged the Government to introduce affirmative action programmes in such areas as education, employment and health so as to provide life chances to Dalit women and girls and create an environment conducive to their progress.

297. The Special Rapporteur reiterates her interest in receiving responses from the Government in regard to the allegations submitted and would be particularly interested to know whether these cases have resulted in any prosecutions of alleged perpetrators.



**Economic and Social
Council**

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COMMISSION ON HUMAN RIGHTS
Sixty-second session
Item 12 (a) of the provisional agenda

**INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND A GENDER
PERSPECTIVE**

VIOLENCE AGAINST WOMEN

**Report of the Special Rapporteur on violence against women,
its causes and consequences, Yakin Ertürk**

Addendum

Communications to and from Governments^{*}

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

proporcionada sobre el caso enviado el 5 de julio de 2004 y queda en espera de información adicional **por parte del Ministerio Público sobre cualquier investigación u otra medida llevada a cabo con vistas a la re-apertura del caso.**

India

Letter of allegation

65. On 10 March 2005, the Special Rapporteur, jointly with the Special Rapporteur on the sale of children, child prostitution and child pornography, sent a letter of allegation concerning the case of violence and abuse of **M**, an 8-year-old girl, daughter of K.S., who was working as a maidservant in East Midnapur District, West Bengal. K.S. was working at the house of a sub-inspector of the police. On 23 February 2005, M was accused of stealing a few biscuits and was severely beaten and abused by the sub-inspector and received serious injuries on her face, head and ear. The sub-inspector denied these allegations and instead claimed that his wife had slapped M for stealing some biscuits from his in-laws' house when he was not even present. M was hospitalised in the Primary Health Centre, Darigeria, West Midnapur District the next day, when she fell into unconsciousness and remained critical even a day later. Her injuries were said to have been the result of a brutal beating by a "lathi"(club). The hospital authorities brought this to the notice of the police station of the West Midnapur District. No action was, at the time this communication was sent, reportedly taken.

Letter of allegation

66. On 10 May 2005, the Special Rapporteur sent a letter of allegation concerning Ms. **B.**, a social activist living in Gangoh Sub-District, Saharanpur District, Uttar Pradesh State, India. According to the information received, Ms. B. was granted a piece of land by the Sub-divisional Magistrate, Gangoh, Saharanput District, Uttar Pradesh in recognition of her social services (Document No. 1502, received on 2 August 2000). In 2001, Ms B. received 9.5 bigha of land in Thola, Village Panchayat Madhaupur, in order to plant trees and create environmental awareness in the community. However, it is reported that some villagers objected to the grant of land because Ms. B. is a woman. They falsely claimed that she was not a resident of the village but the authorities refused to take back the land. Then, the villagers allegedly illegally occupied Ms. B.'s land. Ms. B. received threats and was attacked on 13 December 2001 by a man with a sharp weapon and sustained serious head injuries. It is reported that the police were reluctant to file the case and made lewd remarks to her when she reported the case. Although she was eventually able to file a complaint about the attack, no action had, at the time this communication was sent, as yet been taken. Moreover, on 24 March 2004, the Senior District Collector, Revenue, Saharanpur, issued an order canceling the grant of land to Ms. B. The order allegedly claimed that because Ms. B lived with her parents in Gangoh, she had no individual standing in the village and therefore had no right to own the land. At the time this communication was sent, the land in question was reportedly being occupied illegally.

Letter of allegation

67. On 12 May 2005, the Special Rapporteur sent a letter of allegation concerning **women in Kashmir**, who had reportedly been molested in the course of searches of their houses by Indian police. According to the information received, on 7 March 2005, officers from the BSG police

force and Sopore police station entered the house of the family of **A.B.** in Kulangam, Handwara Kupwara District, Kashmir, India. The police reportedly did not find anything in the house, but a police officer disguised in a burqa entered and attempted to plant a bag full of ammunition there. When F.B. (the father) protested, the police allegedly beat him and then molested **B.** (the daughter, 16 years old) and **F.** (the mother). The villagers heard the shouts of the family and came to their rescue. Moreover, on 8 March 2005, it is reported that 36 RR Jawans, stationed at Kokarnagh, entered the house of Ms. **H.Y.** They ransacked the house, molested H.Y. and beat up her family members. The incident caused a protest by villagers against the army. A senior official came to the village and assured them that an investigation would be conducted. However, the family of H.Y. who had reported what had taken place including that H.Y. had been molested, were threatened to withdraw the complaint concerning the molestation of H.Y. and only to report the harassment of the family. It is indicated that Indian police in Kashmir molest women and girls from Kashmiri and Muslim families during searches as a method of "shaming" the family and repressing resistance to the military presence there.

Letter of allegation

68. On 27 May 2005, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture, sent a letter of allegation concerning **P.A.** 19 (f), of Mattan, Islamabad, Kashmir India. According to information received, on 4 November 2004, she was raped by a group of soldiers belonging to the 7th Section of the Rashtriya Rifles Indian Army, who forced their way into her home under the pretext that they had to carry out a search, and ordered everyone else to leave. She was afterwards taken to hospital and her case was reported to the Shangas Police Station. However, at the time this communication was sent, no action had reportedly been taken by the authorities.

Letter of allegation

69. On 8 July 2005, the Special Rapporteur sent a letter of allegation concerning **R**, a resident of Yusufpur, Ghazipur District, who was allegedly murdered in connection with demands for increased dowry. According to the information received, R. married A.A. in February 2003. At that time, R's father, M.F. provided a dowry to A.A. and his family. However, after the marriage, A.A. and his family demanded more money and a motorcycle. When M.F. refused these demands, R was punished, beaten and denied food. On 8 May 2005, A.A. went to M.F.'s house to tell him that R was not well. M.F. went with his two sons to A.A.'s house and found that R had been burnt to death. When M.F. announced that he would report the case to the police, A.A.'s father, M.A. held him and his two sons hostage in a brick kiln. A police officer known to the A.A. family was called, and he took the signatures of M.F. and his sons on a blank piece of paper, claiming it was necessary for the post-mortem procedures. A.A. and his family then claimed that they were not responsible for R's death. M.F. sent a complaint on 11 May by registered post to the Station House in Ghazipur but no First Information Report had, at the time this communication was sent, been reportedly filed and no investigations had commenced.

Letter of allegation

70. On 23 August 2005, the Special Rapporteur, jointly with the Special Rapporteur on torture, sent a letter of allegation concerning **B.A.**, who was allegedly raped by a member of the Territorial Indian Army. According to the information received, a member of the Territorial

Indian Army kidnapped her on 3 July 2005 in Kashmir India. He took her to a “camp” where he raped her and kept her there for a week. B.A. was rescued by the police from Watroo village and taken to a hospital, where the rape was confirmed by a medical examination. However, according to the information received, although the case was reported to the police, no action had, at the time this communication was sent, reportedly been taken to investigate the crime.

Letter of allegation

71. On 2 September 2005, the Special Rapporteur sent a letter of allegation concerning Ms. **Z.D.**, 19, a Muslim from Kashmir, India. According to information received, on 1 July 2005 in the Islamabad area of Kashmir, troops belonging to the 49 Rashtriya Rifles, carried out a search operation. Members of these troops visited Z.D., inquiring after her father. One of the members of these troops reportedly made obscene comments to her and on 13 July 2005 at around 11.15 p.m. he returned to her house where he attempted to force himself on her and then stabbed her to death. A report was filed with the Dooru Police Station, reference no. 87.05 on 14 July 2005. At the time this communication was sent, no information concerning action taken by the authorities in reaction to this report was available.

Letter of allegation

72. On 14 September 2005, the Special Rapporteur, jointly with the Special Rapporteur on the sale of children, child prostitution and child pornography, and the Special Rapporteur on trafficking in persons, especially women and children, sent a letter of allegation concerning a **girl child** and her mother **P.K.**, a 19-year-old woman, who were sold in a public auction in Chirgaon village, Latehar District, Jharkhand. According to information received, P.K. had been sexually abused by four men of her village. As a result, she gave birth to a girl. She requested the four villagers to take responsibility for the baby. The village heads first decided that the men should pay some money to P.K., but as she refused, they decided to auction P.K. and her child off. On 20 August 2005, P.K. and her daughter were sold for six rupees to S of Balumath village, and the event was celebrated by the villagers. Despite a raid conducted by the police, the men involved in this incident had reportedly not been arrested at the time this communication was sent.

Urgent appeal

73. On 26 September 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights, sent an urgent appeal concerning Ms **R.C.** and Mr. **M.M.A.**, a human rights defender. According to information received, on 13 August 2005, R.C.’s brother, Mr. S.C., attempted to rape her at their home. Ms. R.C. ran away and went to stay with her other brother, Mr. RC, and his wife Ms. R, a Muslim woman. It is to be noted that neither family was happy with the marriage between Ms. R, a Muslim woman and Mr. R.C., a Hindu Dalit. Ms. RC, with the help of Mr. M.M.A, the State co-ordinator for the National Campaign on Dalit Human Rights, sent a letter of complaint to the Jaitpura station officer as well as to the Superintendent of Police and Director General of the Police in Varanasi concerning her attempted rape. Her case was registered before the courts. The fathers of both Mr. R.C. and Ms. R, angered that Mr. M.M.A. and Mr. M.C., another human rights defender, had helped Mr. R.C. and Ms. R remain together and for having helped Ms. R.C. file a complaint against one of Mr. C’s sons, informed the police that Mr. M.M.A., Mr. M.C., as well as Ms. R.C.

had kidnapped Ms. R. A First Information Report (FIR) was lodged by the police against Mr. M.M.A., Mr. M.C., and Ms. R.C. for kidnapping Ms. R. On 18 August 2005, the three were arrested. Mr. M.M.A. was badly beaten by the police both at his house where he was arrested and at the police station and was also forced to confess that he had helped Ms. R and Mr. R.C. elope. Mr. M.M.A. was still suffering from dizziness as a result of the beatings he received at the time this communication was sent. The Judge had accepted Mr. M.M.A.'s lawyer's request for medical treatment. Mr. M.M.A.'s bail petition hearing was scheduled for 13 September 2005. No action had, at the time this communication was sent, been taken in response to the complaint concerning the attempted rape by Mr. S.C.

Letter of allegation

74. On 7 November 2005, the Special Rapporteur, jointly with the Special Rapporteur on the sale of children, child prostitution and child pornography, and the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation concerning the **sexual exploitation of underage girls in Varanasi**, in the State of Uttar Pradesh. According to the information received, about 50 girls, all of them reportedly younger than 18 years, were trafficked from the States of West Bengal, Orissa and Bihar to Varanasi, where they were forced to prostitute themselves at a brothel in Shivaspur, the city's redlight district. The brothel was reportedly operated by a man and his wife. On 24 October 2005, Mr. A.S., the founder and president of Guria Swyam Sevi Sansthan (a non-governmental organization that helps prostitutes and their children to become aware of their human rights and offers them an alternative lifestyle), informed police officers at the Maduadih Police Station about this situation. Mr. A.S. was reportedly told by the police to go to the brothel and that the police would follow shortly. However, hours later, the police had not arrived. Concerned that the brothel owners would be tipped off by corrupt police officers, Mr. A.S. had the girls moved to a different location, with the help of his wife and approximately 200-300 other private volunteers. When the police finally arrived at 6 pm, they reportedly tried to prevent Guria workers and the girls from boarding buses taking them to the local police station. Faced with intense protests from Guria volunteers and bystanders, police finally agreed that the girls be removed from the area. At this point, only 31 of the estimated 50 girls, who were initially in the building, were present. The 31 girls were then handed over to the police once at the police station, where they received medical attention and were taken to a local women's shelter. The authorities acknowledged that 17 girls were younger than 18 years old. Mr. A.S. filed a First Information Report (FIR) alleging violations of the Immoral Traffic Prevention Act (ITPA). Two minor accomplices were arrested; two others managed to escape. It is further reported that a counter FIR was filed against Mr. A.S. for trespassing, robbery, out-raging the modesty of women, rioting and unlawful assembly.

Observations

75. The Special Rapporteur regrets that she did not receive a reply to any of her communications. The Special Rapporteur deems it appropriate to make reference to Human Rights Commission Resolution 2005/41 which requested all Governments to cooperate with and assist the Special Rapporteur in the performance of her mandated tasks and duties, to supply all information requested, including with regard to the Special Rapporteur's communications.

76. Moreover, in view of the nature of these allegations, the Special Rapporteur deems it appropriate to make reference to the conclusions and recommendations of the Committee on the

Elimination of Discrimination against Women in its report, A/55/38 paras. 70 and 71, where the Committee expressed concern that women in India continue to be exposed to the risk of high levels of violence, particularly, rape, sexual harassment, humiliation and torture in areas where there are armed insurrections. The Committee, moreover, called upon the Government to strengthen law enforcement and to introduce reforms proposed by the India National Commission on Women and women activists in regard to the law on rape, sexual harassment and domestic violence. Moreover, the Committee recommended that a national plan of action be developed to address the issue of genderbased violence in a holistic manner, in line with the Committee's general recommendations 19 and 24.

Indonesia

Letter of allegation

77. On 12 July 2005, the Special Rapporteur, jointly with the Special Rapporteur on the sale of children, child prostitution and child pornography, and the Special Rapporteur on trafficking in persons, especially women and children, sent a letter of allegation concerning the **inadequate protection of child domestic workers**, especially girls, against economic exploitation and psychological, physical and sexual abuse in Indonesia. According to the information received, over 680,000 domestic workers in Indonesia are children below the age of eighteen, more than 90% of them being girls. Many girls from poor families become domestic workers upon completing primary school around the age of twelve because their families can no longer afford to pay for their tuition and school books, need the girls' contribution to the family income and often also consider the education of girls to be less important. These children are recruited by formal and informal labour agents, friends, relatives, or directly by the employers. The recruiters often deceive the children and their families by falsely promising them educational opportunities and comparatively high wages. In the majority of cases child domestic workers live with their employers, where they are often made to work 14 to 18 hours a day, seven days a week. Many child domestic workers only receive very few days off every year to visit their families for Eid-ul-Fitr at the end of Ramadan. Most child domestic workers also have to discontinue their education because their employers do not give them the time or permission to attend a school. Furthermore, employers often withhold their salary for several months and eventually pay less than agreed. Frequently, employers psychologically abuse the children through verbal insults and taunts. In some cases, child domestic workers are also physically or sexually abused and then prevented from accessing essential medical care.

Letter of allegation

78. On 26 July 2005, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture, sent a letter of allegation concerning the rape of **Z.K.** (30), **N.A.** (32), **W.B.** (25), **N.A.** (22) on 7 July 2005. According to the information received, Indonesia's Police Mobile Brigade conducted a search operation in the village of Alue Gani-Gp Gunong Pungki, Kuala, district of Nagan Raya. They entered the home where the four women were present, threatened the women with guns, and then raped the four of them.



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HUMAN RIGHTS COUNCIL
Fourth session*
Agenda item 2

IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”

**Report of the Special Rapporteur on the human rights aspects of the victims of
trafficking in persons, especially women and children, Sigma Huda**

Addendum

Summary of cases transmitted to Governments and replies received**

* The present document, which carries the symbol number of the fourth session of the Human Rights Council, is scheduled for consideration by the fifth session of the Council.

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

101. In brief, legal adoption comprises the following stages: Prospective adopting parents, either through the competent social services or directly with no intermediaries, come in contact with the natural parents of the child to be adopted and obtain the latter's consent for the prospective adoption. Thereafter, the competent social services conduct an investigation, focused on the child's best interests and draw up a report based on its findings. Finally, the competent Court, after an application filed by the adopting parents, having taken into consideration the said report and any other information it may have, again basing itself primarily on the child's best interests, gives approval for the adoption to take place.

102. Considering all the relevant legal regulations which determine a purely administrative act, only the provisions of paragraphs 2 and 3, art. 10, Law 2447/96 have a criminal, and therefore, police interest. The said provisions stipulate imprisonment or incarceration penalties, depending on the regularity of perpetration, against the person(s) who give(s) away his/her/their child for adoption, or any other intermediate person(s) who act with the aim of gaining unfair benefits. By virtue of such provisions which criminalize a specific form of adoption, police authorities have been assigned the task of combating illegal adoptions and certifying the related crimes.

103. According to the statistics on illegal adoptions kept by the Directorate of Public Safety, Hellenic Police Headquarters, the following cases have been dealt with by the relevant Services: in 2002, there were 8 offenders (5 Bulgarian and 3 Greek nationals) and 1 victim (Bulgarian); in 2003, there were no cases; In 2004, there were 8 cases concerning 22 offenders (16 Bulgarian and 6 Greek nationals) and 8 infants (7 Bulgarians and 1 Greek); in 2005, there was 1 case concerning 4 offenders (3 Bulgarian nationals and 1 of unknown particulars), and one infant (Bulgarian); up to 6 April 2006, there were 7 cases concerning 27 offenders (20 Bulgarian, 2 Albanian and 5 Greek nationals), and 7 infants (6 Bulgarians and 1 Albanian).

104. As can be seen from the above statistics, all cases involved Bulgarian nationals, both as offenders and victims. Competent police authorities are aware of the places (Bulgarian cities) where pregnant Bulgarian women are recruited, the modus operandi, and the routes followed in order to enter Greece. In an effort to combat such criminal activities, the Hellenic Police Headquarters is cooperating with its Bulgarian counterpart which has yielded significant results during the last two years:

- Information exchange mechanisms have improved;
- Fruitful cooperation of liaison officers of the competent Police Authorities of the two sides has been attained;
- In cases of large-scale investigation, operational officers of both sides meet in order to eradicate criminal groups.

India

Communication sent

105. On 13 April 2006, the Special Rapporteur, jointly with the Special Rapporteur on the sale of children, child prostitution and child pornography, and the Special Rapporteur on violence against women, its causes and consequences, sent a letter of allegation concerning **the trafficking and sexual exploitation of Nepalese girls in brothels in Calcutta and Mumbai, India.**

106. According to information received, Nepalese girls, of an average age of 14 to 16 years, are trafficked from Nepal to brothels in Calcutta and Mumbai where they are required to work as prostitutes in slavery-like conditions. The girls are trafficked against their will and without knowledge of their destination. The traffickers are reported to be Nepalese men and women, who sell the girls to (Nepalese) brothel owners in Calcutta and Mumbai, at a price of approximately 60,000 to 70,000 Indian rupees (US\$ 1,360-1,590) in Calcutta and 100,000 to 120,000 Indian rupees (US\$ 2,270- 2,720) in Mumbai. There is no evidence of extensive networks of traffickers of Nepalese women and girls, and trafficking seems to take place through an informal network with the collaboration of community members, employers, local officials, border officials and others such as those who operate 'safe houses' where trafficked girls are kept prior to their sale.

107. Initially the girls are not taken to the brothels directly, but given some time to adjust to their new situation, in outside homes, sometimes owned by the brothel owner. After being told about the work that is required of them, how to dress and behave and after being convinced that they themselves, or their families, have incurred a debt which they will have to pay off by working as a prostitute after which they are 'free' to leave, the girls are put to work as *tsukri* (the Bengali word for a child in slavery or debt bondage).

108. When they start to work as *tsukris*, the girls are usually aged between 15 to 18 years. They often work in brothels that are referred to as 'bungalows': brothels that occupy a flat, usually on the first or higher floors of a building, often with a shop on the ground floor. The bungalow is distinguished by a channel gate (a sliding iron accordion gate) at the entrance to the brothel. When locked, the channel gate is virtually impenetrable; making escape from the brothel impossible for the *tsukris* kept inside. The area within Calcutta that contains most bungalow-type brothels with *tsukris* is Sonagachi; whereas in Mumbai brothels with *tsukris* can be found mainly in Kamathipura, although due to police raids these types of brothels are said to have moved to other cities in India or areas outside the known brothel areas.

109. It is reported that while clients of the brothels do not have a specific preference for *tsukris*, they do have a preference for girls between 15 and 20, which in turn creates a demand for children. Under the *tsukri* system the brothel owner retains all of the fees paid by clients for the services provided to them by the *tsukris*. Considerable profits accrue from the use of the *tsukri* system: brothel owners are said to earn four to twenty times the purchase price of the *tsukri* over the period of her servitude. The money that the trafficker earns is relatively insignificant compared to the large amount that the purchaser (brothel owner) earns.

110. The initial purchase price is recovered by the brothel owner, on average, in little over five and a half months. A Nepalese *tsukri* is also said to cost less than an Indian *tsukri* and because of continued client demand for Nepalese girls, the returns are higher. On occasions, the brothel owner may also offer "special services" such as a *tsukri*'s virginity or oral or anal sex as well as sex without a condom, at a special price. The total period the girls spend in confinement as *tsukris* varies from two to ten years.

111. After being released from this situation, it is often very difficult for *tsukris* to go back to Nepal. They fear isolation and reprisal from family and community members. Many of them take up work as free-agent women in prostitution, earning their own fees by doing street prostitution or paying tenancy to brothel owners. Escape prior to being released is not only very difficult because the girls are kept in confinement; there is also fear of being brought

back to the brothels, either by police or other community members followed by severe physical punishment, as well as a more general fear of 'India outside' since few *tsukris* have a clear idea of where they are, cannot speak the language and are easily recognized as foreigners.

112. The Special Rapporteur called the Government's attention to the Trafficking Protocol, with specific reference to its article 6, 7 and 8, entitled "Assistance to and protection of victims of trafficking in persons", "Status of victims of trafficking in persons in receiving States" and "Repatriation of victims of trafficking in persons" respectively. The Special Rapporteur also made reference to OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, and in particular to paragraph 7 of the Recommended Principles which states that trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons. The Special Rapporteur further recalled Guidelines 6 and 8 which refer to the protection and support for trafficked persons and to special measures for the protection and support of child victims of trafficking.

Communication sent

113. On 15 May 2006, the Special Rapporteur, jointly with the Special Rapporteur on the sale of children, child prostitution and child pornography, sent a letter of allegation concerning **the sale of children in Talwara migrant camp in Jammu and Kashmir**.

114. According to the allegations received, children in the Talwara migrant camp in Jammu and Kashmir are sold to work as labourers and domestic workers by their parents who are living in circumstances of extreme poverty. Even if both parents work, there is not enough money within the family to feed all family members so that these children are sold, sometimes for a fixed period of time. Allegedly, over 200 children had already been sold or mortgaged in this manner for a few thousand Indian rupees, at the time this communication was sent. The reported asking price for children aged nine years old is 8,000 Indian rupees, 10,000 Indian rupees for a thirteen year old, and 15,000 Indian rupees for an older teenager.

115. It is also reported that one of the residents of the camp, Ms. KD, had been forced to sell three of her daughters for 20,000 Indian rupees, in order to feed her other two daughters. Another camp resident, Ms. TD, agreed to sell her son for 8,000 Indian rupees but never received the money and a month and a week later her son's dead body was found. Mr. PS claimed that he had mortgaged three daughters at the end of 2005 for 3,000 Indian rupees each and was forced to sell a fourth in March because of acute poverty.

116. It is further reported that the issue of children being sold was brought to the Jammu and Kashmir State government's attention after a demonstration by several hundred migrant workers. A four member Committee, headed by Lal Singh, Congress Member of Parliament, was delegated on 29 March 2006 to investigate the allegations. Apparently, testifying before the panel, the children claimed to have been working as domestic help or in the stores of their 'buyers' voluntarily. The 'buyers' claimed to pay the children's parents 1,500 to 2,000 Indian rupees per month, apart from expenses incurred by them for the education, food and clothes of the children.

117. It was further reported that entry into the Talwara camp was allegedly obstructed for the duration of the committee investigation. Following the investigations, Jammu and Kashmir Chief Minister Ghulam Nabi Azad denied that children were being sold. It is alleged that the President of the Jammu and Kashmir National Panthers Party, Bhim Singh, had offered to buy back the sold children and to return them to their parents.

118. The Special Rapporteur suggested that, in the event that the Government's investigations support the above allegations or suggest them to be correct, the Government take all necessary measures to guarantee that the rights and freedoms of the aforementioned person are respected and the accountability of any person guilty of the alleged violations ensured. The Special Rapporteur also requested that the Government adopt effective measures to prevent the recurrence of these acts.

Israel

Communication sent

119. On 21 November 2006 the Special Rapporteur, jointly with the Special Rapporteur on the sale of children, child prostitution and child pornography, sent a letter of allegation to the Government regarding the situation of **MJ, a minor of between 11 and 15 years of age, of Guinean nationality**, who was reportedly trafficked to Israel and who had been detained in a detention facility run by the Immigration Police in Hadera since May 2006.

120. According to the information received, MJ is a victim of trafficking who, together with other Guinean citizens, was brought to Israel by Mr. BB. The trafficked victims had paid Mr. BB a considerable amount of money to take them to Israel and to ensure their legal entry, as well as a permit to stay and work in Israel. It is reported that some of the victims were arrested at the border while others, including MJ, managed to cross the border and enter Israel. Those who did manage to enter, however, were then forced into exploitative labour conditions and threatened with remaining without food or money for their work if they did not do as they were told. Some were also threatened that they would be reported to the police who would then detain them for not having the necessary legal papers. MJ was forced to work by Mr. BB and was not paid for his work.

121. Israeli authorities, upon receipt of information on Mr. BB's activities in this regard, arrested him and had him prosecuted for several trafficking-related offences. Mr. BB was convicted on 11 July 2006 and sentenced to 2 years in prison by the Magistrate Court in Tel Aviv. No steps were, however, taken to assist the trafficking victims concerned.

122. MJ was arrested by the Immigration Police on 11 May 2006, and detention and deportation orders were issued against him. However, since he is an unaccompanied minor and since Israel has no diplomatic relations with Guinea, it is alleged that he could not be deported, as travel documents could not be arranged for him.

123. At the time this communication was sent, MJ was being held in a detention facility in Hadera run by the Immigration Police. In this facility minors are held separately from adult detainees. The only personnel in the detention center, however, are Immigration Police officers. There are no psychologists, welfare workers or other professionals who are trained to deal with the special needs of children. Many of the children are reportedly trafficking victims, and some of them are refugees or asylum seekers. MJ was being held with other



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COMMISSION ON HUMAN RIGHTS
Sixty-second session
Item 12 of the provisional agenda

**INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND A GENDER
PERSPECTIVE**

**Report of the Special Rapporteur on the human rights aspects of the victims of trafficking
in persons, especially women and children, Sigma Huda**

Addendum

Summary of cases transmitted to Governments and replies received*

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

minor and juvenile cases and assistance requested by elementary and secondary school directors. The police also provides information to the competent protection authorities and pursues cases of exploitation, neglect or mal treatment. Furthermore, the police enforces relevant legislation, including laws on age restriction for certain activities and locations, laws on parent supervision and neglect of minors and, in collaboration with the labour authorities, laws related to the employment of minors. The police would also arrest and bring before court minors who led a vagrant or immoral life or seek means of livelihood in gambling or other activities that could result in criminal acts. The Government highlighted policies adopted to ensure that juvenile suspects were treated kindly and with respect. The Government also informed the Special Rapporteurs about various general measures to protect students and listed authorities charged with the protection of minors.

Follow up by the Special Rapporteur

48. By letter dated **20 April 2005**, the Special Rapporteur, joined by the Special Rapporteur on the sale of children, child prostitution and child pornography, thanked the Government for its response dated 18 March 2005 regarding the alleged disappearance of a large number of children from the Greek residential care institution Agía Varvara. The Special Rapporteurs noted that, while appreciating information on the work and competencies of the Hellenic Police Force for the protection of minors and on the services pertaining to minors, they would have appreciated receiving information on the specific case, in particular information on the outcome of the preliminary investigation carried out by the Directorate of Attica/Sub-Directorate for the Protection of Minors and on the status of the case.

India

Communications sent by the Special Rapporteur

49. On **14 September 2005**, the Special Rapporteur, jointly with the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Rapporteur on violence against women, its causes and consequences, sent a letter of allegation to the Government of India concerning **a girl child and her 19-year old mother P.K. who were sold in a public auction in Chirgaon village, Latehar District, Jharkhand**. According to information received, the mother was sexually abused over the course of the previous year by four men of her village, J.T., N.J., L.M. and L. As a result of this, she gave birth to a girl child. She then demanded the four villagers to take responsibility of her baby. The village heads first decided that the men should pay some money to the mother, but as she refused, they decided to auction the mother and her child off. On 20 August 2005, P.K. and her daughter were sold for six rupees to S. of Balumath village, the event being celebrated by the village rs. It is reported that some days later, a young man married her and adopted her daughter, which met with everyone's approval. However, and despite a raid conducted by the police, at the time the information was received, the men involved in the offence had not been arrested.

50. The Special Rapporteurs recalled articles 6,7 and 8 of the Trafficking Protocol, entitled "assistance to and protection of victims of trafficking in persons", "status of victims of trafficking persons in receiving states" and "repatriation of victims of trafficking in persons" respectively. They also made reference to the Recommended Principles and Guidelines on Human Rights and Human Trafficking developed by OHCHR, and in particular to guidelines 6

and 8, referring to the support to trafficked persons and to special measures for the protection and support of child victims of trafficking.

51. By letter dated **7 November 2005**, the Special Rapporteur, jointly with the Special Rapporteur on the sale of children, child prostitution and child pornography, the Special Rapporteur on violence against women, its causes and consequences, and the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation concerning **sexual exploitation of underage girls in Varanasi, State of Uttar Pradesh**. According to the information received, about 50 girls, all of them apparently younger than 18 years, were trafficked from the States of West Bengal, Orissa and Bihar to Varanasi, where they were forced to prostitute themselves at a brothel in Shivaspur, the city's red-light district. The brothel was reportedly operated by R.K. (also known as R.A.) and his wife A. On 24 October 2005, Mr. Ajeet Singh, the founder and president of Guria Swyam Sevi Sansthan, informed police officers at the Maduadih Police Station about this situation. Guria Swyam Sevi Sansthan is a non-governmental organization that helps prostitutes and their children to become aware of their human rights and offers them an alternative lifestyle. Ajeet Singh was reportedly told by the police to go to the location and that the police would follow shortly. However, hours later, the police had not arrived. Concerned that the brothel owners would be tipped off by corrupt police officers and move the girls to a different location, Ajeet Singh, his wife and approximately 200-300 other private volunteers entered and searched the brothel and began to remove the girls from the building. When the police finally arrived at the scene at 6 pm, police officers reportedly tried to prevent Guria workers and the girls from boarding buses taking them to the local police station. Faced with intense protests from Guria volunteers and bystanders, police finally backed down and agreed that the girls be removed from the area. At this point, only 31 of the estimated 50 girls, who were initially in the building, were still present. The 31 girls were handed over to the police, where they received medical attention and were taken to a local women's shelter. Reportedly, the authorities have since acknowledged that 17 girls were younger than 18 years old. The same day, Ajeet Singh filed a First Information Report (FIR) against R.K., A. and two minor accomplices alleging violations of the Immoral Traffic Prevention Act (ITPA). While the two minor accomplices were arrested, R.K. and A. managed to escape. It is further reported that a counter FIR was filed against Ajeet Singh for trespassing, robbery, out-raging the modesty of women, rioting and unlawful assembly.

52. The Special Rapporteurs recalled the Trafficking Protocol and appealed to the Government to investigate and prosecute all persons involved in the trafficking and sexual exploitation of girls, while ensuring that the girls' human rights and best interest be at the centre of all efforts to resolve the situation. The Rapporteurs also asked that the Government investigate and, if warranted, administratively discipline and prosecute police officers who failed to investigate allegations or actively obstructed the removal of the girls from the brothel.

Indonesia

Communications sent by the Special Rapporteur

53. By allegation letter dated **12 July 2005**, the Special Rapporteur jointly with the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Rapporteur on violence against women, its causes and consequences, brought to the Government's attention information concerning **inadequate protection of child domestic**



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HUMAN RIGHTS COUNCIL
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Agenda item 3

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

**Report submitted by the Special Rapporteur on the sale of children,
child prostitution and child pornography, Juan Miguel Petit**

Addendum

Communications to and from Governments * **

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

** The present document is submitted late to reflect the latest information.

familiaux. Elles seraient souvent tenues à l'écart, insultées et moquées. Beaucoup d'entre elles seraient aussi victimes de coups, de violence et de harcèlement sexuels. Malgré ces conditions, quitter la famille de l'employeur serait difficile pour beaucoup d'enfants employés domestiques qui ne pourraient pas rejoindre leurs parents et n'auraient pas d'autre endroit où aller. Ces filles vivraient dans des conditions analogues à l'esclavage. Certaines filles viendraient d'aussi loin que le Mali. Ces adolescentes maliennes en particulier viendraient en Guinée travailler comme domestiques pour gagner de l'argent pour leurs trousseaux.

49. De plus, un nombre important de ces mineurs seraient isolés dans la maison de leur employeur et incapables d'accéder à une quelconque information ou assistance de l'extérieur. Ils resteraient coincés pendant des années dans des situations traumatisantes et de maltraitance. Il n'y aurait pas d'organisme pour la protection de l'enfance chargé de contrôler de façon systématique le bien-être des enfants et de faciliter leur retrait d'une maison où ils sont maltraités, si nécessaire. Le Ministère des affaires sociales a la responsabilité de cette question, mais ne serait pas opérationnel. Il n'existerait pas non plus de système de placement en famille d'accueil qui puisse offrir aux enfants un environnement familial alternatif protecteur et contrôlé. Bien qu'il existerait un service d'inspection du travail, il manquerait de personnel et ne s'occuperait pas de la situation des enfants travaillant comme domestiques.

50. L'exploitation et la maltraitance des enfants employés comme domestiques constituent une violation du droit national et international. La Guinée est partie à la Convention relative aux droits de l'enfant et à tous les principaux traités régionaux et internationaux sur le travail des enfants, la discrimination selon le sexe et la traite. Selon le droit guinéen, les enfants ont droit à l'éducation, et la scolarisation dans l'enseignement primaire est obligatoire. L'âge minimum pour travailler est de 16 ans, mais il y aurait une disposition prévoyant que les enfants de moins de 16 ans peuvent travailler avec le consentement de leurs parents ou de leurs tuteurs légaux. Les enfants de plus de 16 ans sont autorisés à travailler dans certaines limites, mais doivent bénéficier de tous leurs droits du travail. De plus, le droit guinéen protégerait les enfants contre les châtiments corporels et autres violences physiques, les sévices sexuels, et la traite. Le droit international comporte aussi des interdictions claires contre certains comportements nocifs, pour protéger les enfants contre la discrimination, toute forme de violence, d'atteinte ou de brutalité physiques, de mauvais traitements ou d'exploitation, y compris la violence sexuelle, la traite et les conséquences nocives du travail des enfants. Il octroie aussi aux enfants le droit à l'éducation et établit la façon dont les devoirs envers les enfants devraient être remplis, que ce soit par l'État, les parents, les tuteurs légaux ou d'autres personnes ayant la garde d'un enfant.

India

Letter of allegation

51. On 9 March 2007, the Special Rapporteur, together with the Special Rapporteur on violence against women, its causes and consequences, sent a letter of allegation concerning the systematic physical and sexual abuse of girl children employed as dancers in Orissan folk-opera troupes. It is alleged that the owners and managers of these troupes rely heavily on child labour, particularly on the use of very young girls as dancers. It is also alleged that the Banaswari, Niyati and Sudamvati Troupes are particularly concerned.

52. According to the source, most of the young girls are aged between 10 and 16 and are hired out by their families in return for an advance on their wages. It is further alleged that each

troupe employs between 10 and 20 of these girls who come from poor families and are paid substandard wages. Moreover, they are reportedly kept in poor living conditions, sleeping only a few hours a day on mats on the floors, or sometimes even outside. In one case, a girl had allegedly spent an entire day without eating.

53. It is reported that these young girls encounter a high level of physical, mental and sexual abuse, including beating and rape. They face sexual harassment and blatant advances from male performers, as well as from older actors and management, and due to their vulnerable position, they often have no choice but to acquiesce. We have also received allegations of past managers having raped young girls. It is further alleged that these young girls are also publicly humiliated, slapped and beaten by the opera management or directors for alleged misbehaviour or mistakes.

54. It is reported that on 17 December 2006, a young girl was publicly beaten by a male manager with a heavy wooden stick. All the girls interviewed, aged from 10 to 16, admitted to being slapped or beaten with a stick as a form of punishment one to three times a week.

55. According to the source, these young girls are being exploited, physically and sexually abused and the State of Orissa and the Government have not yet taken action on the matter. Though national child labour legislation requires that Government inspectors visit any business that uses children to ensure that they are not abused, it is reported that there are currently no such inspections of the troupes. Furthermore, the Government has hitherto reportedly not placed dancing in the opera troupes on its list of hazardous employments for children.

Government Response

56. By letter dated 19 November 2007, the Government of India informed the Special Rapporteurs that comprehensive enquiries were undertaken which included visits to the headquarters of Banaswari, Niyati and Sudamvati folk-opera troupes as well as the sites of their performance; and interviews were carried out with the female artists of the troupes and feedback was obtained from the opera visitors, as well as the employees engaged in such performances. However, the aforesaid allegations could not be substantiated. The matter was also enquired into by the Labour Commissioner of Orissa through a team of officers having adequate exposure to the modus operandi of the opera parties and their recruitment process, who found the allegations to be without basis. The national Human Rights Commission of India has also been apprised of the findings of the enquiry by the Government of Orissa.

Malaysia

Response to previously transmitted communication

57. On 29 May 2007 the Government replied to the letter of allegation sent on 18 May 2004 concerning the trafficking of women and sale of children taking place in the region. According to information received, poor young Indonesian women are being trafficked to Malaysia. It had been reported that there were also cases of pregnant Indonesian women being trafficked to Malaysia for the purpose of selling their children for illegal adoption.

58. The Government stated that trafficking in persons, particularly in women and children, was a serious problem in the Asian region exacerbated by the increasing involvement of



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HUMAN RIGHTS COUNCIL
Fourth session
Agenda item 2

IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL"

**Report of the Special Rapporteur on the sale of children, child prostitution
and child pornography, Juan Miguel Petit**

Addendum

Communications to and from Governments * **

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

** The present document is submitted late to reflect the most up-to-date information possible.

India

Letter of allegations

85. On 13 April 2006, the Special Rapporteur, together with the Special Rapporteur on trafficking in persons, especially women and children and the Special Rapporteur on violence against women, its causes and consequences sent a letter of allegation concerning the trafficking and sexual exploitation of Nepalese girls in brothels in Calcutta and Mumbai, India.

86. According to the information received, it is alleged that Nepalese girls, at an average age of 14 to 16 years, are trafficked from Nepal to brothels in Calcutta and Mumbai where they are required to work as prostitutes in slavery. The girls are trafficked against their will and without knowledge of their destination. The traffickers are reported to be Nepalese men and women, who sell the girls to (Nepalese) brothel owners in Calcutta and Mumbai, at a price of approximately 60,000 to 70,000 Indian rupees (\$US 1360 to 1590) in Calcutta and 100,000 to 120,000 Indian Rupees (\$US 2270 to 2720) in Mumbai. There is no evidence of extensive networks of traffickers of Nepalese women and girls and trafficking seems to take place through an informal network with the collaboration of community members, employers, local officials, border officials and others such as those who operate 'safe houses' where trafficked girls are kept prior to their sale.

87. It is reported that initially the girls are not taken to the brothels directly, but given some time to adjust to their new situation, in outside homes, sometimes owned by the brothel owner. After being told the work that is required of them, how to dress and behave and after being convinced that they themselves, or their families, have incurred a debt which they will have to pay off by working as a prostitute after which they are 'free' to leave, the girls are put to work as 'tsukri' (the Bengali word for child in slavery or debt bondage). When they start to work as *tsukris*, the girls are usually aged between 15 to 18 years. They often work in brothels that are referred to as 'bungalows': brothels that occupy a flat, usually on the first or higher floors of a building, often with a shop on the ground floor. The bungalow is distinguished by a channel gate (a sliding iron accordion gate) at the entrance to the brothel. When locked, the channel gate is virtually impenetrable; making escape from the brothel impossible for the *tsukris* kept inside. The area within Calcutta that contains most bungalow-type brothels with *tsukris* is Sonagachi; whereas in Mumbai brothels with *tsukris* can be found mainly in Kamathipura, although due to police raids these types of brothels are said to have moved to other cities in India or areas outside the known brothel areas.

88. It is further reported that while clients of the brothels do not have a specific preference for *tsukris*, they do have a preference for girls between 15 and 20, which in turn creates a demand for children. Under the *tsukri* system the brothel owner retains all of the fees paid by clients for the services provided to them by the *tsukris*. Considerable profits accrue from the use of *tsukri* system: brothel owners are said to earn four to twenty times the purchase price of the *tsukri* over the period of her servitude. The money that the trafficker earns is relatively insignificant compared to the large amount that the purchaser (brothel owner) earns. The initial purchase price is recovered by the brothel owner, on average, in little over five and a half months. A Nepalese *tsukri* is also said to cost less than an Indian *tsukri* and because of continued client demand for Nepalese girls, the returns are higher. On occasion the brothel owner may also

offer 'special services' such as a *tsukri*'s virginity or oral or anal sex as well as sex without a condom, at a special price. The total period the girls spend in confinement as *tsukris* varies from two to ten years.

89. It is finally alleged that after being released from slavery, it is often very difficult for *tsukris* to go back to Nepal. They fear isolation and reprisals from family and community members. Many of them take up work as free-agent sex workers, earning their own fees by doing street prostitution or paying tenancy to brothel owners. Escape prior to being released is not only very difficult because the girls are kept in confinement; there is also fear of being brought back to the brothels, either by police or other community members followed by severe physical punishment, as well as a more general fear of 'India outside' since few *tsukris* had a clear idea of where they were and could not speak the language and were easily recognized as foreigners.

Letter of allegation

90. On 15 May 2006, the Special Rapporteur, together with the Special Rapporteur on trafficking in persons, especially women and children sent a letter of allegation concerning the sale of children in Talwara migrant camp in Jammu and Kashmir.

91. According to the allegations received, children in the Talwara migrant camp in Jammu and Kashmir are sold to work as labourers and domestic workers by their parents who are living under circumstances of extreme poverty. Even if both parents work, there is not enough money within the family to feed all family members so that these children are sold, sometimes for a fixed period of time. Allegedly, over 200 children have already been sold or mortgaged in this manner for a few thousand Indian rupees. The reported asking price for children aged nine years old is 8,000 Indian rupees, 10,000 Indian rupees for a thirteen year old, and 15,000 Indian rupees for an older teenager.

92. It is also reported that one of the residents of the camp, Ms. K. D., has been forced to sell her three daughters for 20,000 Indian rupees, in order to feed her other two daughters. Another camp resident, Ms. T. D., agreed to sell her son for 8,000 Indian rupees but never received the money and a month and a week later her son's dead body was found. Mr. Pyar Singh claimed that he had mortgaged three daughters at the end of 2005 for 3,000 Indian rupees each and was forced to sell a fourth in March because of acute poverty.

93. It is further reported that the issue of children being sold was brought to the Jammu and Kashmir State Government attention after a demonstration by several hundred migrant workers. A four member Committee, headed by Lal Singh Congress Member of Parliament, was delegated on 29 March 2006 to investigate the allegations. Apparently, testifying before the panel, the children claimed to have been working as domestic help or in stores of their 'buyers' voluntarily. The 'buyers' claimed to pay the children's parents 1,500 to 2000 Indian rupees per month, apart from expenses incurred by them for education, food and clothes of these children.

94. It is finally mentioned that entry into the Talwara camp was allegedly obstructed for the duration of the committee investigation. Following the investigations Jammu and Kashmir Chief Minister Ghulam Nabi Azad denied that children were being sold. It is alleged that the

President of the Jammu and Kashmir National Panthers Party, Bhim Singh, had offered to buy back the sold children and to return them to their parents.

Observations

95. The Special Rapporteur regrets that none of his communications have received a reply from the Government. The Special Rapporteur considers it appropriate to draw attention to the reports of trafficking and sexual exploitation of children, particularly pertaining to young girls, and urges the Government to address as a matter of priority.

He also considers it appropriate to reiterate the conclusions and recommendations of the Committee on the Rights of the Child with regard to its February 2004 review of the second periodic report of India under the International Convention on the Rights of the Child. The Committee expressed its concern at the increasing number of child victims of sexual exploitation, including prostitution and pornography. Concern was also expressed at the insufficient programmes for the physical and psychological recovery and social reintegration of child victims of such abuse and exploitation (CRC/C/15/Add.228, paras. 74-75).

Islamic Republic of Iran

Response to previously sent communications

96. By letter dated 2 June 2006, the Government responded to the urgent appeal sent on 24 August 2005 and indicated that Ms. R. T. had been charged with “coordination and participation in illegal demonstrations”, “dissemination of false information to internet sites and other media” and “inciting separatist movements”. She was thus indicted and released on bail. Mr. U.G. was charged with “dissemination of false information to internet sites and other media” and “cooperation with terrorist group of Pezhvak” and was also indicted and released on bail. As for Mr. M.S., he was charged with “measures against security of the state” and sentenced to five years of imprisonment and three years of residence in Qorveh (a town in Western Iran). The said detainee has appealed and his case is currently under consideration in the Local Judiciary of Kurdistan Province. Mr. M. S. K. was charged with “incitement of Hatred among Iranian Ethnic groups” and sentenced to imprisonment and five years of respite in his media carrier. Finally, the Government added that pertaining to the case of Mr. A. Z., he has been the main instigator of the unrest in July 2005 in Kurdistan Province and that he was a fugitive.

Israel

Urgent appeal

97. On 11 November 2006, the Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on trafficking in persons, especially women and children, regarding M.J., a minor of between 11 and 15 years of age, of Guinean nationality, who was reportedly trafficked to Israel and who has been detained in a detention facility run by the Immigration Police in Hadera since May 2006.

98. According to information received, M. J. is a victim of trafficking who, together with other Guinean citizens, was brought to Israel by Mr. B. B. The trafficked victims had paid Mr. B. a considerable amount of money to take them to Israel and to ensure their legal entry, as well

region. A review of Yemeni law and the enactment of amendments to the Criminal Code to prescribe a penalty for a child smuggler or the father of a child smuggled with his knowledge and consent, a training for security officers, the establishment of an information desk ("hot line") on cases of child smuggling within the Ministry of Human Rights are also being set up. Furthermore, several campaigns in Governorates, the preparation of a documentary video on the subject, leaflets and other materials, strategies and workshops are being elaborated. The celebration of Arab Children's Day 2005 in Hajjah Governorate, with the participation of children from the reception centre, also highlights the problem of child smuggling.

Observations

284. The Special Rapporteur would like to thank the Government of Yemen for its informative reply.

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RIGHTS OF THE CHILD

**Report of the Special Rapporteur on the sale of children, child prostitution and child
pornography, Juan Miguel Petit**

Addendum

Communications to and from Governments^{*}

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formular la acusación en contra de los presuntos responsables, sin embargo, tal solicitud debe contener los datos que identifiquen o individualicen a los acusados y la solicitud debe ser clara, precisa y circunstanciada y expresar los medios de investigación utilizados y los elementos de convicción.

Observaciones

52. El Relator Especial quisiera agradecer al Gobierno de Guatemala por la información proporcionada, y queda en espera de información por parte del Ministerio Público sobre cualquiera información relativa a la reapertura del caso.

India

Letter of allegation

53. On 10 March 2005, the Special Rapporteur, jointly with the Special Rapporteur on violence against women, its causes and consequences, sent a letter of allegation concerning the case of violence and abuse of **M., an 8-year-old girl**, daughter of K.S., who was working as a domestic worker in East Midnapur District, West Bengal. K.S. was working at the house of a sub-inspector of the police. On 23 February 2005, M. was accused of stealing biscuits and was severely beaten and abused by the sub-inspector and received serious injuries on her face, head and ear. The sub-inspector denied these allegation and instead claimed that his wife had slapped M. for stealing some biscuits from his in-laws' house when he was not even present. M. was hospitalized in the Primary Health Centre, Darigeria, West Midnapur District, the next day, where she fell into unconsciousness and remained in a critical state even a day later. Her injuries were said to have been the result of a brutal beating with a "lathi"(club). The hospital authorities brought this to the notice of the police station of the West Midnapur District. No action was, at the time this communication was sent, however taken.

Letter of allegation

54. On 14 September 2005, the Special Rapporteur, jointly with the Special Rapporteur on violence against women, its causes and consequences, and the Special Rapporteur on trafficking in persons, especially women and children, sent a letter of allegation concerning **a girl child and her mother P.K., a 19-year-old woman**, who were sold at a public auction in Chirgaon village, Latehar District, Jharkhand. According to information received, P.K. had been sexually abused by four men of her village. As a result of this, she gave birth to a girl. She then demanded the four villagers to take responsibility for the baby. The village heads first decided that the men should pay some money to P.K., but as she refused, they decided to auction P.K. and her child off. On 20 August 2005, P.K. and her daughter were sold for six rupees to S., of Balumath village, and the event was celebrated by the villagers. Despite a raid conducted by the police, the men involved in this incident had not been arrested at the time this communication was sent.

Letter of allegation

55. On 7 November 2005, the Special Rapporteur, jointly with the the Special Rapporteur on violence against women, its causes and consequences and the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation

concerning the sexual exploitation of underage girls in Varanasi, in the State of Uttar Pradesh. According to the information received, about 50 girls, all of them reportedly younger than 18 years, were trafficked from the States of West Bengal, Orissa and Bihar to Varanasi, where they were forced to prostitute themselves at a brothel in Shivaspur, the city's redlight district. The brothel was reportedly operated by a man and his wife. On 24 October 2005, Mr. A.S., the founder and president of Guria Swyam Sevi Sansthan (a non-governmental organization that helps prostitutes and their children to become aware of their human rights and offers them an alternative lifestyle), informed police officers at the Maduadih Police Station about this situation. Mr. A.S. was reportedly told by the police to go to the location and that the police would follow shortly. However, hours later, the police had not arrived. Concerned that the brothel owners would be tipped off by corrupt police officers, Mr. A.S. had the girls moved to a different location, with the help of his wife and approximately 200-300 other private volunteers. When the police finally arrived at the scene at 6 p.m., police officers reportedly tried to prevent Guria workers and the girls from boarding buses taking them to the local police station. Faced with intense protests from Guria volunteers and bystanders, police finally backed down and agreed that the girls be removed from the area. At this point, only 31 of the estimated 50 girls, who were initially in the building, were present. The 31 girls were then handed over to the police, and taken to the police station, where they received medical attention and were taken to a local women's shelter. The authorities acknowledged that 17 girls were younger than 18 years old. Mr. A.S. filed a First Information Report (FIR) alleging violations of the Immoral Traffic Prevention Act (ITPA). Two minor accomplices were arrested; two others managed to escape. It is further reported that a counter FIR was filed against Mr. A.S. for trespassing, robbery, outraging the modesty of women, rioting and unlawful assembly.

Observations

56. The Special Rapporteur expresses his concern that he had not received a reply to any of his communications. The Special Rapporteur urges the Government to respect its international human rights obligations in this matter, and to thoroughly investigate and punish those responsible for acts of violence against women and girls and to take all necessary measures to prevent the recurrence of similar acts.

57. The Special Rapporteur would like to draw attention to the concerns expressed by the Committee on the Rights of the Child at the high prevalence of violence and abuse, including sexual abuse of children, and at the lack of effective measures to combat this problem (CRC/C/15/Add.228). The Committee also expressed its concern at the increasing number of child victims of sexual exploitation, including prostitution and pornography.

58. Noting that the Government ratified the Optional Protocol on the sale of children, child prostitution and child pornography in August 2005, the Special Rapporteur wished to recall that the Optional Protocol provides that the States parties shall prohibit the sale of children and child prostitution and take measures to ensure the legal liability of persons involved in these offences.

59. The Special Rapporteur also takes this opportunity to reiterate his wish to undertake a visit to India within the framework of his mandate, as expressed in his letter dated 8 October 2004.



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RIGHTS OF THE CHILD

**Report of the Special Rapporteur on the sale of children, child prostitution and child
pornography, Juan Miguel Petit**

Addendum

Communications sent to Governments and replies received *

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golpeado y le habrían cortado las manos. Habría fallecido de una hemorragia debida a la amputación de sus manos. J.M.A. habría sido golpeado y violado. Seguidamente le habrían disparado mortalmente. La Unidad de investigación de muerte de menores de San Pedro Sula habría realizado una investigación y la Fiscalía Especial de Derechos Humanos de San Pedro Sula habría presentado una acusación por los delitos de asesinato y abuso de autoridad. Se habría dictado un auto de procesamiento y detención judicial contra dos inspectores de la Policía Nacional identificados por varios testigos. Cinco militares habrían sido destituidos de sus funciones. Todavía estarían pendientes otras siete órdenes de detención ordenadas por un juez.

Observaciones

112. El Relator Especial reitera su interés en recibir informaciones del Gobierno sobre el caso arriba citado.

India

Communication sent to the Government

113. On 18 June 2004, the Special Rapporteur, jointly with the Special Rapporteur on violence against women, sent an urgent appeal concerning the situation of **Kailash Satyarthi**, an activist for the abolition of child labour and Chairperson of the Global March Against Child Labour and the Global Campaign for Education.

114. According to the information received, on 15 June 2004 Kailash Satyarthi, accompanied by four parents who claimed that their daughters were being held in bondage in the Great Roman Circus in Colonelganj town, Gonda district, Uttar Pradesh, met the Sub-Divisional Magistrate, the Police Superintendent and media representatives in order to conduct a rescue operation at the circus. According to information received, the circus economically exploits children, especially girls, who are kept in bondage. It is reported that, in the presence of the above-mentioned judicial and police authorities, the circus owner threatened Kailash Satyarthi at gunpoint and with other members of the circus proceeded to attack him and the four parents with iron bars and knives. They managed to escape despite attempts by the circus owners and the members of the local administration to block their exit. Kailash Satyarthi was taken to hospital in Lucknow where he was treated for head injuries, and is reported to be in a stable condition. It is reported that despite confirmation from the administration of Uttar Pradesh that they would undertake action to release the children from the circus and despite the presence of members of this administration during the rescue operation, no action has been taken.

115. Concern is expressed that Kailash Satyarthi has been targeted for his work to defend children's rights and promote the abolition of the worst forms of child labour.

Observations

116. The Special Rapporteur reiterates his interest in receiving the reply of the Government of India in relation to these allegations and the measures taken to redress the situation of girls and boys kept in bonded labour.



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HUMAN RIGHTS COUNCIL

Seventh session
Agenda item 9

RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED FORMS OF INTOLERANCE, FOLLOW-UP TO AND IMPLEMENTATION OF THE DURBAN DECLARATION AND PROGRAMME OF ACTION

**Report of the Special Rapporteur on contemporary forms
of racism, racial discrimination, xenophobia and
related intolerance, Doudou Diène**

Addendum

Summary of cases transmitted to Governments and replies received * **

* The report is being circulated in the languages of submission only.

** The present report was submitted later than the indicated deadline, in order to incorporate the latest available information on the subject matter.

local Authorities of Patras have been blamed of being unacceptably tolerant to the constant infringements of law committed by the Roma. Moreover, the Patras Public Prosecutor Office had also been receiving numerous complaints on the same matter, both orally and in writing, filed by the inhabitants of the abovementioned areas.

52. The Government also noted that in April 2006, 637 inhabitants living in the areas of Makrygianni and Rodopoulou filed a complaint and consequently the Patras Public Prosecutor's Office initiated criminal proceedings for nine misdemeanors, the majority of which was related to violation of sanitary provisions. At the same time, the Public Prosecutor ordered the initiation of preliminary investigation. According to the complaints, members of the Greek Helsinki Monitor had been inducing the Roma to commit punishable acts. Mr. Kanellopoulos as the Head of Patras Public Prosecutor's Office ought to examine those allegations, by ordering preliminary investigation.

53. Furthermore, the Government underlined that Mr. Anastassios Kanellopoulos denied that he ever stated that «all Roma are criminals» and considers those allegations groundless and unsubstantiated. Regarding the alleged involvement of the Greek Helsinki Monitor to the commitment of punishable acts, it was indicated that Mr. Kanellopoulos stated that nobody is above the law and since there was a complaint by 637 Greek citizens it was absolutely reasonable to initiate an investigation which should also include alleged activities of members of the Greek Helsinki Monitor.

54. The Government finally noted that it believed that the above mentioned facts clearly show that in the first case the Greek authorities did their utmost to facilitate the inclusion of Roma children in the Greek society and to protect them from any discrimination, whereas in the second case the Public Prosecutor's Office acted according to the Greek laws in order to investigate allegations made by other Greek citizens. A 2007 updated report on the Integrated Action Plan for the social inclusion of Greek Roma was attached to the reply.

Observations

55. The Special Rapporteur thanks the Government of Greece for its response. However, he wishes to express great concern at several reports alleging manifestations of discrimination not only against the Roma population in Greece but also against non European migrants. The Special Rapporteur intends to closely monitor the situation.

India

Communications sent to the Government

56. On 23 August 2007, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, the Special Rapporteur on violence against women and the Special Representative of the Secretary-General on the situation of human rights defenders regarding attacks on the **Dalit communities, particularly women**, in Somebhadra District, Uttar Pradesh, India.

57. It is reported that in Sonebhadra District, the poorest District in Uttar Pradesh with a large Dalit population, Dalit families have been cultivating and living in a Government's waste lands, the Gram Sabha's, for years. Reportedly, the land ownership has always been a conflicting issue between the Upper Caste controlling land resources and Dalits and tribes.

58. Reports indicate that Dalits' reclaim of land has led to conflicts with forest officials and the Police, especially after the adoption of the "Schedule Tribe and other Forest Dwelling Communities (Recognition of Forest Rights) Act of 2006". It is further alleged that since the Act is not yet operational, the forest department officials have been harassing the activists working for the rights of the forest dwellers and the tribes, with the aim to ensure that evictions take place before the clauses of the Act are enforced. Reportedly similar actions are taking place in other parts of the country including Maharashtra, Madhya Pradesh and Orissa.

59. In this context, on 3 August 2007, **Ms. Roma** and **Ms. Shanta Bhattacharya**, two members of the National Forum of Forest People and Forest Workers (NFFPFW) who had been working in the Sonebhadra District for the past seven to eight years, were allegedly arrested in Robertsganj under charges of provoking Dalits and Tibals to encroach forest lands. According to information received, they were arrested under section 120 (B) and 447 of Penal Code; they were in Mirzapur jail and their bail applications had been rejected at the Circle Judicial Magistrate. In addition, it was reported that on 5 August 2007, **Lalita Devi** and **Shyamlal Paswan** were arrested from a local market in Rangarh and were also held in Mirzapur jail. As a consequence of these imprisonments, people would have been staging a protest since 4 August in front of the District Magistrate (DM) office in Sonebhadra demanding immediate release of the activists. New charges would have been brought against Ms. Roma under article 4 of the National Security Act on 10 August.

60. Reports also indicate that on 10 August 2007, at around 9 p.m., the police attacked Dalit women in Chanduli Village, in Sonebhadra District, leaving fifteen women seriously injured. Two trucks loads of Police along with upper caste representatives of the locality descended on Chanduli village in Sonebhadra district. They were allegedly heavily armed, and demanded to see **Bachchalal**, an active member of the local organisation Kaimoor Kshetra Mahila Mazdoor Kisan Sangharsh Samiti (KKMMKSS). According to information received, when they did not find Bachchalal in the village, they started attacking women present in the village. Police and upper caste representatives barged into the house of Bachchalal and attacked his pregnant sister and sister-in-law; pulling them out and attacking them. In three hours, the police and upper caste representatives beat up around 15 women and destroyed their houses.

61. At the time of the incident, there were very few male members in the village as most of them were staging a protest in front of the DM's office in Sonebhadra against the arrest of Ms. Roma, Ms. Shanta Bhattacharya, Lalita Devi and Shyamlal Paswan.

62. This was allegedly the third attack of this kind against Dalits in less than two weeks and reportedly a consequence of the Dalits families' requests for land that started in the last two years, as a response to the forest department's Government Resolution of 2002-3 to clear forest lands from any encroachments.

63. During the events, the police reportedly left the village giving an ultimatum to remove the bricks of the houses by 11 August 2007 and threatening them to come back with an administrative order to destroy the houses.

64. On 19 December 2007, the Special Rapporteur, jointly with the Independent expert on minority issues, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on violence against women, its causes and consequences sent an allegation letter to the Government concerning allegations of **violence against Dalit women** in India.

65. According to information received, Dalit women and men suffer descent based discrimination in various aspects of their lives; they are also victims of violence and untouchability practices (based on notions of Dalits' supposed impurity) arising out of the caste system. While both men and women are discriminated and suffer from social exclusion, Dalit women are confronted with discrimination, exclusion and violence to a larger extent than men. They are not only discriminated by people of higher castes but also by men of their own communities. Violence against women in India is generally structured by relationships of power set in systematic caste, class and gender discrimination.

66. The case of Dalit women is specific because of their socio-economic positioning at the bottom of the caste, class and gender hierarchies. Dalit women face violence in the community and in their family, from State and private actors alike, belonging to various castes and socio-economic groupings, and of both sexes. The major forms of violence that Dalit women are subjected to are physical and verbal abuse, sexual harassment, abduction, and sexual violence, including rape.

67. It is alleged that on many occasions, cases of violence against Dalit women are not registered by the police, and opportunities for intervention in the legal system are inexistent due to a general lack of law enforcement. Women are unaware of the laws protecting their rights and their ignorance is easily exploited by perpetrators, and some members of the police and the judiciary. Allegedly, even when the cases are reported to the police and the perpetrators arrested, they are usually released on bail and women do not receive justice as a result.

68. 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 physical or sexual violence against Dalit women, the police are obliged to register the complaints. However, according to information received, the police often refuse to register complaints under this act or register them under a different act, because the act imposes high prison sentences and fines and the police may not agree with the purpose of the act and may try to protect the perpetrators (who may be their fellow caste members).

69. If a case is not registered under the Prevention of Atrocities Act, it is possible for the perpetrator to receive anticipatory bail which, especially in rape cases, in practice means that the case is generally not examined and prosecuted further. This goes against a Supreme Court judgment that ruled that anticipatory bail should not be available in cases within the Prevention of Atrocities Act (Case 1995-1198, State of M.P. & anr. vs. Respondent, Ram Krishna Balothia & anr, judgment of 6 February 1995). The Supreme Court also ruled that anticipatory bail can be denied for the purpose of investigation (Case 2005-326), which would apply to most rape cases, but this is allegedly not implemented in practice (Appeal (crl.) 326 of 2005, Adri Dharan Das v. State of West Bengal, judgment of 21 February 2005).

70. The Special Rapporteur presented to the Government allegations on specific cases of physical and sexual violence affecting 21 Dalit women or girls that occurred between August 2004 and April 2007, and which outlined the impunity that allegedly prevails with respect to ensuring protection and redress.

Observations

71. The Special Rapporteur regrets that no reply to his communications had been received from the Government of India at the time this report was finalized.

72. The Special Rapporteur expresses his utmost interest in receiving responses in regard to the allegations submitted and would be particularly interested to know whether these cases have resulted in any prosecutions of alleged perpetrators. In the event that no response is received from the Government, he will no longer treat the cases as mere allegations but as proven facts.

73. The Special Rapporteur wishes to refer to the invitation he requested to the Government of India in 2004 and 2006, which has remained unanswered, and reiterates his interest in visiting the country. The Special Rapporteur considers the issue of caste-based discrimination to be an integral part of his mandate, in line with the CERD's general recommendation XXIX which strongly reaffirms that "discrimination based on "descent" includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights". In this regard, he wishes to refer to the chapter on caste-based discrimination in his 2008 general report to the 7th session to the Human Rights Council (A/HRC/7/19).

Follow-up to previously transmitted communications

74. In the absence of an answer from the Government concerning his allegation letters of 6 March 2006, 8 March 2006, 8 December 2006 and 26 January 2007 (see A/HRC/4/19/Add.1, par. 80-84, 88-95), the Special Rapporteur is forced to consider the following cases no longer as allegations but as proven facts.

75. According to the information received, on 22 July 2005, eight police officers, all of them dressed in civilian clothing, approached **Sekar Arjunan (Rajasekar)**, aged 32 years, a shopkeeper from Raja Thottam, Peravallur, Chennai as he was standing near a fruit shop close to the Central Prison in Chennai. The officers beat him and kicked him with their boots in his abdominal region. They then took him by car to Sangeetha lodge near Permbur Railway Station, where they locked him in a room on the second floor. Later that day, they took him to Sembiam Police Station and locked him in a dark room until 26 July 2005. While he was there, he was beaten and deprived of food. On 26 July 2005, he was taken to K-5 Peravallur Police Station, where he was put in a room on the third floor. He was stripped naked and beaten with an iron pipe, which resulted in a fracture to his right knee. The officers also subjected him to oral caste-related abuse and threatened to kill him by placing a pistol on his forehead.

76. Moreover, it was alleged that the police officers brought false criminal charges against him and he was remanded in custody by Judicial Magistrate's Court No. Five, Egmore. He was sent to the central prison in Chennai. Sekar Arjunan's mother had previously submitted a complaint to the State Human Rights Commission in Chennai requesting them to take action against the same police officials for killing her younger son, Ramesh. She had refused to withdraw the complaint, despite being pressured to do so by the alleged perpetrators. The names of the police officers are Sub-Inspector John Miller, Inspector Anbuselvam, Sub-Inspector Boopalan, Constable Koyilraj, Constable Vinod, Constable Paramasivam, Constable Vijayan and Constable Gunasekaran of K1 Sembiam Police Station and K-5 Peravallur police station in Chennai.

77. According to information received, on 14 January 2006 at 1:00 a.m., four men from nearby Hinauti village allegedly came to the house of a **22 year-old woman** belonging to the indigenous Nut Community (a scheduled tribe) in Sirsi village, Chandauli District, Uttar Pradesh. All four men belong to the upper caste Singh community. Allegedly, the four men then forcibly took the victim to the pulse plants field, where they gang raped her for three hours. When she fell unconscious, they threw her onto a nearby railway line, where she was found hours later by another villager.

78. The victim's family reported the incident to the Chandauli Police Station and lodged a First Information Report (FIR) against the four men under Section 376 of the Indian Penal Code and under Section 3(2) and Section 5 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989. Reportedly, however, the police tried to delay action against the alleged perpetrators. Under intense pressure from the Nut community, the police finally arrested the alleged perpetrators more than 40 hours after the rape allegedly took place.

79. According to information received, **Ms. S.B., wife of Mr. B.B., their daughter Ms. P. and their two sons, Mr. S. and Mr. R.**, all belonging to the Dalit Community in the village of Khairlanji, Bhandara District, in Maharashtra, were reportedly murdered by upper caste men.

80. On 3 September 2006, a local Dalit policeman was allegedly beaten up by upper caste community members. Mr. B.B., S., P. and R. reportedly testified against alleged perpetrators leading to their arrest. It was reported that on the same day, a mob of two to three hundred upper caste villagers, many equipped with axes and ubhari (a stick with a metal spike), stormed their home, and dragged Ms. S. B. and her three children out of their house where they were stripped naked, beaten and driven to the main village square. Mr. B. B. was not at home at the time of the incident. Upper caste men then gang raped Ms. S.B. and her daughter Ms. P. for over an hour, while bystanders, including upper caste women, verbally incited the rapists and spurred them on. One of Ms. P.'s brothers was asked to have sex with Ms. P. and after he refused, his genitals were thrashed. Ms. P. was hit on her breasts with an axe and thrashed and stabbed with ubhari in her genitals. All four persons were hacked to death and the bodies were thrown in a canal. As of 30 November, although a First Information Report (FIR) had been filed, the vast majority of the perpetrators, including those who were allegedly complicit in the gang rape and murder, have not been arrested or charged. Many Dalit families in the village are afraid to testify and, reportedly, only one eyewitness has come forward to testify.

81. According to information received, on 2 January 2007, Mr. **Ravikumar**, member of the Legislative Assembly of the Kaaumannarkoil constituency, owing allegiance to the Vidudalai Chruthaiga, Dalit Panthers of India (DPI), in Sedapalayam village of Cuddalore District, in the State of Tamil Nadu, sustained injuries to his hands and legs during an alleged attack by a contingent of approximately 100 police officers, including Delta police personnel, in Sedapalayam village during a funeral procession for Mr. Siva, a Dalit youth murdered on 1 January 2007. Twenty-eight other Dalit Panthers of India (DPI) members were also injured in the attack. Mr. Ravikumar was admitted to the Sri Ramachandra Medical College in Chennai on 3 January 2007 and discharged three days later.

82. According to reports, the funeral procession was attacked by police officers in response to an attempt by some individuals attending the funeral to set fire to houses belonging to the alleged perpetrators of Mr. Silva's murder. Dalit youths who later attended the hospital for medical treatment were reportedly arrested by police on charges of attempted murder.

83. Prior to the events of 2 January 2007, Mr. Ravikumar had reportedly been in contact with Mr. Gagandeep Singh Bedi, District Collector, Cuddalore, and Mr. M Karunanidhi, Chief Minister of Tamil Nadu urging them to ensure that an immediate investigation be carried out in relation to Mr. Silva's murder on 1 January 2007, and that the perpetrators be brought to justice. He also made an appeal to the police and district administration to ensure that law and order be maintained during the funeral.

84. Concern is expressed that the funeral procession of Mr. Silva was violently suppressed by authorities and that excessive police force may have been used against peaceful attendees of the

funeral. Concern is also raised that Mr. Ravikumar may have been targeted due to his high profile work in defence of the human rights of Dalits. The Special Rapporteurs do not condone the violence allegedly committed by members of the public, namely the attempt to burn the houses of those perceived to have been responsible for Mr. Silva's death, and hope that impartial and thorough police investigations are carried out in relation to both alleged incidents.

Iran (Islamic Republic of)

Follow-up to previously transmitted communications

85. In the absence of an answer from the Government concerning his urgent appeal of 1 March 2006, and his allegation letters of 22 May 2006 and 24 May 2006 (see A/HRC/4/19/Add.1, par. 103-110), the Special Rapporteur is forced to consider the following cases no longer as allegations but as proven facts.

86. According to the information received, on 13 February 2006, **173 members of the Nematollah Sufi Muslim community** were arrested due to their participation in a peaceful protest, which was reportedly violently suppressed by the security forces and members of the Hojatieh and Fatemiyon pro-government groups. The protest was being held against an order by the security forces to evacuate the community's place of worship, known as Hosseiniye. At the time the urgent appeal was sent was sent, the 173 individuals were reportedly being interrogated at Fajr prison in Qom and there were concerns that they were being tortured in order to force them to sign pre-prepared false confessions, stating that the protest had political motivations and was linked to anti-government groups. The relatives of the detainees had been unable to obtain official information about their whereabouts and the detainees had not had access to lawyers. Lawyer Bahman Nazari was arrested when he approached officials in an attempt to represent the detainees.

87. Reports indicated that, on 13 February 2006, members of the Fatemiyon and Hojatieh groups also reportedly surrounded the place of worship, shouting slogans such as "Death to Sufis" and "Sufi-ism is a British plot", and distributed leaflets alleging that Sufis are enemies of Islam. The next day, the Hosseiniye was demolished using bulldozers. Approximately 1,200 protesters were arrested and taken away on buses to unknown locations. The detainees were interrogated and many were allegedly subjected to torture or ill-treatment. Most of them were subsequently released. According to the information received, those who were released were required to sign papers as a condition of their release agreeing not to attend any Sufi gatherings in Qom. Some were required to sign documents renouncing Sufism.

88. It was also reported that arrest warrants had been issued for the main Sufi preacher in Qom, Seyed Ahmadi Shariati and the four lawyers who had previously been acting on behalf of the group. Their names are: Amir Eslami, Omid Behrouzi, Gholamreza Harsimi and Farshid Yadollahi. This incident occurred amid concerns about an increasing demonization of the Sufi Muslim group. In September 2005, a religious jurist in Qom, Ayatollah Hossein Nouri-Hamedani, called for a crackdown on Sufi groups in Qom.

89. According to information received, on 3 May 2006, **52 members of the Nematollahi Sufi Muslim community** and their two lawyers **Farshad Yadollahi** and **Omid Behrooz** were convicted on charges of "disobeying the orders of government officials" and "disturbing public order". They are amongst 173 members of the Nematollah Sufi Muslim community, who were arrested on 13 February 2006, due to their participation in a peaceful protest against an order by



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IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”

**Report by the Special Rapporteur on contemporary forms
of racism, racial discrimination, xenophobia and
related intolerance, Doudou Diène**

Addendum

Summary of cases transmitted to Governments and replies received**

* The present document, which carries the symbol number of the fourth session of the Human Rights Council, is scheduled for consideration by the fifth session of the Council.

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

had filed the complaint, Mr. Alexandridis was told he was under arrest and was detained for four hours before being released without charge. Moreover, the president of the Pupils' Parents Association allegedly lodged a complaint against Mr. Alexandridis for "libel" and "defamation".

77. It was also reported that, on 20 January 2006, the Head of the Appeals Prosecutor's Office stated during a radio interview that all Roma were criminals and announced that "perpetrators, instigators and accomplices" of Roma people who had helped them in a case concerning the alleged forced expulsion of Roma families in the Makrigianni area of Patras would be "called on to take the stand", specifically including among this group representatives of GHM. The Head of the Appeals Prosecutor's Office is also said to have stated in the same radio interview that he had opened an inquiry into the involvement of GHM in petitioning the First Instance Prosecutor to open a criminal investigation into alleged illegal evictions and attacks against Roma people in Makrigianni.

Observations

78. The Special Rapporteur regrets that no reply to this communication had been received from the Government of Greece at the time this report was finalized.

79. The Special Rapporteur intends to follow up on this case. In the event that no response is received from the Government, he will no longer treat the case as a mere allegation but as a proven fact.

India

Communications sent

80. On 6 March 2006, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture, sent an allegation letter concerning **Sekar Arjunan (Rajasekar)**, aged 32, a shopkeeper from Raja Thottam, Peravallur, Chennai. According to the information received, on 22 July 2005, eight police officers, all dressed in civilian clothing, approached Mr. Arjunan while he was standing near a fruit shop near the Central Prison in Chennai. The officers beat him and kicked him with their boots in the abdominal region. They then took him by car to Sangeetha lodge near Permbur Railway Station, where they locked him in a room on the second floor. Later that day, they took him to Sembiam Police Station and locked him in a dark room until 26 July. While he was there, he was beaten and deprived of food. On 26 July, he was taken to K-5 Peravallur Police Station, where he was put in a room on the third floor. He was stripped naked and beaten with an iron pipe, which resulted in a fracture to his right knee. The officers also subjected him to verbal caste-related abuse and placed a pistol to his forehead, threatening to kill him.

81. Moreover, it was alleged that the police officers brought false criminal charges against him and that he was remanded in custody by Judicial Magistrate's Court No. Five, Egmore. He was sent to the Central Prison in Chennai. Sekar Arjunan's mother had previously submitted a complaint to the State Human Rights Commission in Chennai requesting it to take action against the same police officials for killing her younger son, Ramesh. She had refused to withdraw the complaint, despite being pressured to do so by the alleged perpetrators. The names of the police officers are Sub-Inspector John Miller, Inspector Anbuselvam, Sub-Inspector Boopalan, Constable Koyilraj, Constable Vinod,

Constable Paramasivam, Constable Vijayan and Constable Gunasekaran of K-1 Sembiam Police Station and K-5 Peravallur Police Station in Chennai.

82. On 8 March 2006, the Special Rapporteur, jointly with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Special Rapporteur on violence against women, its causes and consequences, sent an allegation letter concerning **the alleged gang rape of a 22-year-old woman** belonging to the indigenous Nut community (a Scheduled Tribe) in Sirsi village, Chandauli District, Uttar Pradesh. According to the information received, on 14 January 2006, at 1 a.m., four men from nearby Hinauti village allegedly went to the house of the victim's family. All four men belong to the upper-caste Singh community. The men assaulted the victim's family members and chased them away, leaving the victim alone in the house. Allegedly, the four men then forcibly took her to a field 1 km away from her house where they gang-raped her for three hours. When she became unconscious, they threw her onto a nearby railway line, where she was found hours later by another villager.

83. The victim's family reported the incident to the Chandauli Police Station and lodged a First Information Report (FIR) against the four men under section 376 of the Indian Penal Code and under section 3 (2) and section 5 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989. Reportedly, however, the police tried to delay action against the alleged perpetrators. Under intense pressure from the Nut community, the police finally arrested the alleged perpetrators more than 40 hours after the rape allegedly took place.

84. The members of the Nut community in Sirsi village live in very poor conditions on Government-owned land and make their living from begging. Conversely, the members of the Singh community are large landowners and wield considerable influence in the region. Without wishing to prejudge the accuracy of these allegations, concern was expressed that the victim could be threatened and pressured to withdraw her complaint against the four Singh men.

85. On 11 May 2006, the Special Rapporteur, jointly with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, sent an allegation letter concerning a dispute that took place on 27 August 2005 between several members of the Jat and Dalit communities resulting in the **death of one member of the Jat community**. Upon complaint to the police, four Dalits were immediately arrested and charged, and a manhunt was organized to arrest the remaining allegedly responsible persons. Subsequently, on 28 August, the Jat community reportedly convened a *Maha Panchayat* (a Grand Caste court) and gave the police and the administration an ultimatum: if within 48 hours the guilty persons were not apprehended and justice done, the Jats would burn the entire Balmiki Basti (Dalit district), near Samata Chowk, Gohana, Sonapat, Haryana. Fearing reprisal from the Jats, some 1,500-2,000 Dalits had fled their homes in Balmiki Basti by 30 August 2005.

86. It was further reported that, on 31 August, while a second *Maha Panchayat* was taking place, a large group of about 1,500–2,000 armed members of the Jat community entered Balmiki Basti and, in four hours, burned 55 to 60 Dalit houses, destroying or stealing valuables. The report indicated that about 150-200 policemen were present at the scene but took no action. It was further alleged by some witnesses that the police asked the Jat rioters not to burn any shop or house that belonged to a non-Dalit.

87. Reports indicated that several measures to redress the situation were taken, including reconstructing the burnt houses at government cost, helping children in the affected Dalit families to return to school and organizing nutrition programmes for children under the age of 5 years. However, local Dalits contest the claim that the Government has paid Rs 100,000 compensation to 55 affected Dalit families. A probe by the Central Bureau of Investigation (CBI) was ordered. Allegedly, the CBI report into the incident described it as a simple case of arson, allowing many who were involved to remain unindicted even though the FIR implicated the Jat community in Gohana in the burning of the Dalit houses.

88. On 8 December 2006, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture and the Special Rapporteur on violence against women, its causes and consequences, sent a letter of allegation to the Government concerning the **reported murder of S.B., wife of B.B., their daughter P. and their two sons S. and R.,** all belonging to the Dalit community in the village of Khairlanji, Bhandara District, Maharashtra.

89. On 3 September 2006, a local Dalit policeman was allegedly beaten up by upper-caste members of the community. B.B., S., P. and R. reportedly testified against alleged perpetrators, leading to their arrest. It was reported that on the same day, at about 6 p.m., a mob of 200-300 upper-caste villagers, many armed with axes and *ubhari* (a stick with a metal spike), stormed their home and dragged S. B. and her three children out of their house where they were stripped naked, beaten and driven to the main village square. B. B. was not at home at the time. Upper-caste men then gang-raped S.B. and her daughter for over an hour while bystanders, including upper-caste women, verbally incited the rapists. One of P.'s brothers was ordered to have sex with her and when he refused, he was beaten on his genitals. P. was hit on her breasts with an axe and beaten and stabbed with *ubhari* on her genitals. All four persons were hacked to death and the bodies thrown in a canal.

90. As of 30 November, although an FIR had been filed, the vast majority of the perpetrators, including those who were allegedly involved in the gang rape and murder, had not been arrested or charged. Many Dalit families in the village are afraid to testify and, reportedly, only one eyewitness has come forward to testify.

91. On 26 January 2007, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an allegation letter concerning an attack against **Mr. Ravikumar**, a member of the Legislative Assembly of the Kaaumannarkoil constituency, owing allegiance to the Vidudalai Chiruthaiga, the Dalit Panthers of India (DPI), in Sedapalayam village, Cuddalore District, Tamil Nadu. Mr. Ravikumar also served as state president of the People's Union for Civil Liberties, Tamil Nadu-Pondicherry, and was elected to the Tamil Nadu Legislative Assembly in 2006.

92. According to the information received, on 2 January 2007, Mr. Ravikumar sustained injuries to his hands and legs during an alleged attack by a group of approximately 100 police officers, including Delta police personnel, in Sedapalayam village during a funeral procession for Mr. Siva, a Dalit youth who had been murdered on 1 January 2007. Twenty-eight other members of DPI were also injured in the attack. Mr. Ravikumar was admitted to the Sri Ramachandra Medical College in Chennai on 3 January 2007 and discharged three days later.

93. According to reports, the funeral procession was attacked by police officers in response to an attempt by some individuals attending the funeral to set fire to houses belonging to the alleged perpetrators of Mr. Silva's murder. Dalit youths who later went to the hospital for medical treatment were reportedly arrested by police on charges of attempted murder.

94. Prior to the events of 2 January 2007, Mr. Ravikumar had reportedly been in contact with Gagandeep Singh Bedi, District Collector, Cuddalore, and M. Karunanidhi, Chief Minister of Tamil Nadu, urging them to ensure that an immediate investigation was carried out into Mr. Silva's murder, and that the perpetrators were brought to justice. He also appealed to the police and the district administration to ensure that law and order was maintained during the funeral.

95. Concern is expressed that Mr. Silva's funeral procession was violently suppressed by the authorities and that excessive police force may have been used against peaceful participants in the funeral. Concern is also raised that Mr. Ravikumar may have been targeted due to his high-profile work in defence of the human rights of Dalits. The Special Rapporteurs do not condone the violence allegedly committed by members of the public, namely the attempt to burn the houses of those perceived to have been responsible for Mr. Silva's death, and hope that diligent, impartial and thorough police investigations are carried out in relation to both alleged incidents.

Reply from the Government

96. On 29 May 2006, the Government of India replied to the communication sent by the Special Rapporteur on 11 May 2006 indicating the steps taken by the Government following the dispute that took place on 27 August 2005 between several members of the Jat and Dalit communities resulting in the death of one member of the Jat community. It was reported that the Government of Haryana State had instituted an inquiry by the Central Bureau of Investigation to investigate the incidents. It was further stated that a case had been filed against the 23 accused and that four persons had been arrested by the police; that the Deputy Superintendent of Police and the Sub-Inspector of Police had been suspended and that departmental action was being taken against them; that the 54 houses which were identified as severely affected had been reconstructed and that grants of 5.4 million rupees had been given to the 54 families severely affected. It was further noted that a departmental grant of 275,000 rupees had been given to 55 other persons affected by the riots, an amount of 200,000 rupees had been distributed as daily allowances, and 33.26 rupees in compensation had been given to 144 families for loss of their belongings during the riots. It was also reported that those who had left their houses at the time of the incident had returned to them.

97. The Government further explained that the National Human Rights Commission of India had taken *suo motu* cognizance of the incident. After considering the case, the Commission expressed appreciation for the sensitivity and promptness shown by the State Government of Haryana in awarding compensation, repairing and reconstructing the houses of the victims and taking action against those responsible. A press release in this regard issued by the Commission was attached to the Government's communication.



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**RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND
ALL FORMS OF DISCRIMINATION**

**Report by the Special Rapporteur on contemporary forms
of racism, racial discrimination, xenophobia and
related intolerance, Mr. Doudou Diène**

Addendum

Summary of cases transmitted to Governments and replies received*

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

Dominican Republic

Communication sent to the Government

28. On 7 September 2005 the Special Rapporteur, jointly with the Independent Expert on minority issues and the Special Rapporteur on the human rights of migrants, sent a letter of allegation to the Government concerning the detention and deportation of Haitian nationals. According to the information received, **more than 3,000 Haitians** would have been detained and over 1,000 deported without consideration of their legal status in the country. Those with the legal right to remain and Dominicans of Haitian origin would have had their papers confiscated and would have been deported along with undocumented migrants. Reports of increasing violent attacks against Haitians were also received, including three persons who were burnt alive by a gang and had since died. The reports received indicated a racial connotation in the targeting, detention and deportation of Haitians.

Observations

29. The Special Rapporteur regrets that no reply to the communication was received from the Government of the Dominican Republic at the time this report was finalized.

30. The Special Rapporteur intends to follow up on this case. In the event that no response is received from the Government, he will no longer treat this case as a mere allegation but as a proven fact. He is also considering, in consultation with the other mandate holders, further actions, in particular a visit to the Dominican Republic.

France

31. En l'absence de réponse du Gouvernement à sa communication du 23 décembre 2004 (voir E/CN.4/2005/18/Add.1, page 7), le Rapporteur spécial se voit dans l'obligation de considérer le cas suivant non plus comme une allégation mais comme un fait avéré :

32. *Le 27 novembre à Sartène, Corse-du-Sud, un groupe d'hommes armés non identifiés aurait attaqué la maison d'un imam marocain, **Imam Mohammed al-Akrach**, maison dans laquelle il y aurait eu également un lieu de prière. Ces hommes auraient tiré six fois en proférant des insultes racistes. Il semble qu'en Corse les atteintes à la sécurité et au respect des droits des immigrés et des personnes d'origine étrangère, notamment nord-africaine, soient devenues relativement fréquentes, à la lumière du nombre considérable d'attaques violentes de nature raciste s'étant produites en Corse au cours de l'année.*

India

Communication sent to the Government

33. On 16 August 2005 the Special Rapporteur, jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal to the Government concerning the case of **Dr. Lenin Raghuvanshi**, a human

rights defender with the Peoples' Vigilance Committee for Human Rights (PVCHR), an organization working for the Dalits and 'lower caste' communities in Varanasi, Uttar Pradesh, India, focusing on education for children and the right to self determination for these community members, his associate **Mr. S.N. Giri**, and **Ms. Anupam Nagvanshi**, field coordinator for PVCHR.

34. According to the information received, on 5 August 2005, at approximately 8:00, Dr. Lenin Raghuvanshi received a phone-call on his mobile phone from a man (the identity of whom is known to the experts) demanding that Mr. S.N. Giri withdraw his nomination from an election due to be held in Belwa village on 17 August 2005. Furthermore, on 7 August 2005, at approximately 20:35, Dr. Lenin Raghuvanshi allegedly received another phone-call from the same person threatening that if his associate did not withdraw his nomination, Dr. Lenin Raghuvanshi, his family and Mr. S.N. Giri would be shot dead. Dr. Lenin recorded the phone conversation and lodged a complaint with the Senior Superintendent of the Police and the District Magistrate. He reportedly also faxed a complaint to the Chief Minister of the State.

35. It was reported that on 10 August 2005, at approximately 16:00, Ms. Anupam Nagvanshi, was surrounded by a number of people connected to the village authorities (the identity of whom is known to the experts) who asked her why she was encouraging the Dalits and 'lower caste' community to cast their votes in the upcoming election. Ms. Anupam Nagvanshi was allegedly threatened with murder if she returned to Belwa village. Ms. Nagvanshi telephoned the police at approximately 18:00 on 10 August 2005 but no officer was dispatched. She then sent a written complaint by registered post to Phoolpur police station. It was reported that no action had been taken in this case by the Phoolpur police.

36. In this respect, the Special Rapporteurs expressed their concern for the harassment of individuals working with the Dalits and 'lower caste' communities. In light of the fact that the Belwa village and its surrounding areas were reportedly known for both capturing and election related fraud, and that during the February 2002 elections, people from these communities were allegedly assaulted when they turned out to vote, these threats were considered to constitute an attempt to intimidate Dr. Lenin Raghuvanshi, Mr. S. N. Giri and Ms. Anupam Nagvanshi and prevent them from carrying out their human rights work with the Dalits and 'lower castes' in Varanasi. Previously, on 26 August 2003, Dr Lenin Raghuvanshi had been arrested and detained for four hours for organising a protest before the Sub Divisional Magistrate in Varanasi.

Observations

37. The Special Rapporteur regrets that no reply to his communication had been received from the Government of India at the time this report was finalised.

38. The Special Rapporteur intends to follow up on this case. In the event that no response is received from the Government, he will no longer treat the case as an allegation but as a proven fact.

39. Moreover, in the absence of answer coming from the government of India concerning his communication of 8 June 2004 (see E/CN.4/2005/18/Add.1, page 8), the Special Rapporteur is forced to consider the following case no longer as an allegation but as a proven fact:

40. *A group of 200 people attacked a Dalit settlement in the Kalapatti village of the Coimbatore district, Tamil Nadu, on 16 May 2004. The Dalits' homes were attacked by upper-caste villagers using swords and other weapons. Close to 100 houses have been burnt, money and jewels were stolen, and cattle owned by the Dalits were killed. In total, 14 Dalits were admitted to the Coimbatore Medical College Hospital.*

Iran (Islamic Republic of)

Communication sent to the Government

41. On 12 December 2005, the Special Rapporteur sent an allegation letter to the Government concerning information he received concerning a statement on the State of Israel made by Mr. Ahmadinejad, President of Iran. According to the information received, on 26 October 2005, President Ahmadinejad has stated in a public speech that the State of Israel should be "wiped off the map". Reportedly, President Ahmadinejad also stated in the same speech that Israel is a "disgraceful blot" and that "anybody who recognizes Israel will burn in the fire of the Islamic nation's fury".

Observations

42. The deadline for a response to this communication was set to 12 February 2006. Reference is made to paragraph 1 of this report.

Israel

43. In the absence of answer from the Government of Israel concerning his communication of 24 May 2004 (see E/CN.4/2005/18/Add.1, page 9), the Special Rapporteur is forced to consider the following case no longer as an allegation but as a proven fact:

44. *Since 2001, the Government of Israel refuses to issue press cards to **Palestinian journalists** as well as to renew their press accreditation. This is done on the grounds that Palestinians pose a potential security threat by being Palestinians. The Israeli High Court of Justice found that the Government Press Office was acting illegally, in a 25 April 2004 ruling, which added that Palestinian journalists should be given press cards if they have been given security clearance to work in Israel. However, reports indicate that on 11 May, the Government petitioned the High Court, claiming that threatening statements from militant Palestinian groups have now made Palestinian journalists a danger to Israeli leaders in particular, therefore in effect continuing this practice implemented since 2001.*

Latvia

Communication sent to the Government

45. On 11 March 2005 the Special Rapporteur sent an allegation letter to the Government concerning the information received regarding a paper entitled "***The Volunteer SS Legion in Latvia***", published by Latvian historians, Mr. Inesis Feldmanis and Kârlis Kangeris, which allegedly associated the history of Latvian statehood with the history of Latvian radical nationalism and collaborationism, as well as put into question the verdicts of the Nuremberg Tribunal concerning the crimes committed by the SS and its military and police detachments.



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**RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND
ALL FORMS OF DISCRIMINATION**

**Report by the Special Rapporteur on contemporary forms
of racism, racial discrimination, xenophobia and
related intolerance, Mr. Doudou Diène**

Addendum

Summary of cases transmitted to Governments and replies received*

* The report is being circulated in the languages of submission only.

des insultes racistes. Personne n'aurait été blessé. Cette même maison aurait déjà fait l'objet d'une attaque l'année passée avec l'incendie de l'entrée de la maison. Une enquête judiciaire serait en cours. La maison d'une famille tunisienne à Calvi aurait également fait l'objet de tirs, et des graffiti sur le mur à connotation raciste auraient été apposés. En outre, un groupe armé nommé Clandestini aurait fait une déclaration félicitant les auteurs de l'attaque d'une maison à Biguglia, appartenant à une famille d'Afrique du Nord. Ce même groupe aurait également critiqué une organisation qui lutte contre le racisme ainsi que la Ligue des droits de l'homme pour avoir condamné les attaques en question. Le Rapporteur spécial exprime sa profonde préoccupation pour la sécurité et le respect des droits des immigrés et des personnes d'origine étrangère, notamment nord-africaine, en Corse, à la lumière du nombre considérable d'attaques violentes de nature raciste en Corse cette année.

Observations

15. Le Rapporteur spécial remercie le Gouvernement français pour sa réponse datée du 25 mai 2004. Toutefois, il estime que, compte tenu de la fréquence attestée de ce genre de situation, le Gouvernement doit d'urgence accorder une attention particulière à ces pratiques, attentatoires aux droits de l'homme des personnes qui en sont victimes, et adopter des mesures administratives claires et suivies, notamment par des instructions fermes aux services aéroportuaires compétents pour que ces incidents, dont la fréquence est particulièrement préoccupante, ne se reproduisent plus. Dans l'attente d'une enquête approfondie sur les pratiques discriminatoires dans les ports et aéroports, assez généralisées dans toutes les régions du monde, qu'il se propose de faire prochainement, le Rapporteur spécial recommande la mise sur pied de structures conjointes forces de l'ordre et organisations non gouvernementales (ONG) humanitaires dans ces zones, pour la protection et le respect des droits de l'homme des personnes qui en sont victimes.

16. Étant donné que le Gouvernement a jusqu'au 23 février 2005 pour répondre à la communication du 23 décembre 2004, référence est faite au paragraphe 2 du présent rapport.

India

17. On 8 June 2004 the Special Rapporteur, jointly with the Special Rapporteur on violence against women, sent a letter of allegation to the Government concerning a group of **200 people who attacked a Dalit settlement** in the Kalapatti village of the Coimbatore district, Tamil Nadu, on 16 May 2004. The Dalits' homes were reported to have been attacked by upper-caste villagers using swords and other weapons. Allegedly, inter alia, they pushed the Dalits to the ground, stomped on them, used degrading caste names to refer to them, sexually assaulted the women and attempted to pull off their saris. Other specific incidents mentioned were that an 8-month-old baby was thrown against a wall, a 75-year-old man was attacked, and a middle-aged woman was hit on the head as she attempted to protect her son. Close to 100 houses were said to have been burnt, money and jewels were stolen, and cattle owned by the Dalits were reported to have been killed. In total, 14 Dalits were allegedly admitted to the Coimbatore Medical College Hospital. Many Dalits are said to have tried to escape but were prevented from leaving the settlement. Fears have been expressed for their security.

Observations

18. The Special Rapporteur regrets that no reply to his communication had been received from the Government of India at the time this report was finalised.

19. The Special Rapporteur intends to follow up on this case. In the eventuality that no response is received from the Government, he will no longer treat the case as a mere allegation but will include it in his next general report.

Israel

20. On 24 May 2004 the Special Rapporteur, jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, sent an urgent appeal to the Government, concerning the alleged refusal by the Government of Israel to issue press cards to **Palestinian journalists** as well as refusing, since 2001, to renew their press accreditation. This was reportedly done on the grounds that Palestinians pose a potential security threat by being Palestinians. This position was challenged before the High Court of Justice of Israel by media organizations. On 25 April 2004 the High Court decided that the Government Press Office was acting illegally in this regard and ruled that Palestinian journalists should be given press cards once they had been given a security clearance to work in Israel. Reports indicate however, that on 11 May 2004, the Government petitioned the High Court claiming that threatening statements from militant Palestinian groups had now made Palestinian journalists a danger to Israeli leaders in particular, therefore in effect continuing the discriminatory practice implemented since 2001.

Observations

21. The Special Rapporteur regrets that no reply to his communication had been received from the Government of Israel at the time this report was finalised.

22. The Special Rapporteur intends to follow up on this case. In the eventuality that no response is received from the Government, he will no longer treat the case as a mere allegation but will include it in his next general report.

Malaysia

23. On 26 April 2004 the Special Rapporteur, jointly with the Working Group on Arbitrary Detention and the Special Rapporteur on the human rights of migrants, sent an urgent appeal to the Government regarding 28 asylum-seekers from Myanmar. According to the information received, on 14 April 2004, at about 3.00 a.m., Malaysian police arrested 28 asylum-seekers from Myanmar (22 men and 6 women), outside the compound of the Office of the United Nations High Commissioner for Refugees (UNHCR) in Kuala Lumpur. The arrests took place as the asylum-seekers were queuing up to register with UNHCR. Their names were given as follows: **Adam Khin; Anandda Dandee; Anuar Shaker; Asoh Ulong; Ayouit; Banya; Brang Shang; Bumbo; Gilbert; Harun Numu Ahmad; Housin Ali; Kong Htut Aung; Mg Myo Myo; Mohamad Khan; Mohd Ayas Jamal; Muang Zaw Htet; Mustafa Ali; Na Ing; Soh Aung; Thein; Yasin Ali; Zahidamat; Ah Mai; Cherray; Khau Ng Pu; Kurzi; Matriah Marthy; and Nan Sar.**



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**SPECIFIC GROUPS AND INDIVIDUALS
MIGRANT WORKERS**

**Report of the Special Rapporteur
on the human rights of migrants, Jorge G. Bustamante**

Addendum

Communications sent to Governments and replies received*

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

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India

Communications sent to the Government

59. On 13 May 2005, jointly with the Working Group on Arbitrary Detention, the Special Rapporteur transmitted an Urgent Appeal to the Government of India concerning Mr. Aimaiti Alimu, a Uighyur refugee from Xinjiang province of China.

60. According to the information received, Mr. Aimaiti Alimu was arrested on 9 May 2005, and placed in a detention center in New Delhi by officials of the Foreigners Regional Registration Office (FRRO). He was detained at the Lampur Detention Centre in New Delhi.

61. Mr. Aimaiti Alimu is a member of the Uighyur Democratic Party in the Xinjiang province of China, which is not allowed to function legally. He had arrived in India on 14 February 2005 on a three-month visa which expires on 11 May 2005. According to Indian law, foreigners are required to register with the Foreigners Regional Registration Office (FRRO) if they intend to stay in the country for more than 180 days. On 9 May 2005, when Mr. Alimu went to the FRRO, with the intention of applying for an extension of his visa, he was arrested and taken into custody. On 10 May, he was from the FRRO to the Lampur Detention Centre, where foreigners are typically detained for overstaying or pending a decision on their deportation or other action.

62. Mr. Alimu speaks and understands no language apart from the Uighyur language. When his friend went to see him on the late evening of 10 May 2005, he was not allowed to speak to him for more than a few minutes.

63. It is feared that Mr. Alimu may be deported to China where he may be in danger of being tortured or executed.

Observations

64. The Special Rapporteur would like to reiterate his interest in receiving the reply from the Government of the India regarding these allegations. He would also like to reiterate his interest in receiving a reply to the communication sent on 11 May 2004. (E/CN.4/2005/85/Add.1, para. 108-110)

Indonesia/Bahrain (see also Bahrain/Indonesia)

Communications sent to the Government

65. By letter dated 11 October 2005, sent jointly with the Special Rapporteur on violence against women, including its causes and consequences, the Special Rapporteur notified the Governments of Indonesia and the Bahrain regarding information he received on the alleged mistreatment of Afiyah Binti Sapun, a migrant domestic worker from Indonesia working in Bahrain.

66. According to the information received, Ms. Afiyah Binti Sapun, a 22-years-old Indonesian domestic worker from Central Java, was placed with an Egyptian family in September of 2004



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**SPECIFIC GROUPS AND INDIVIDUALS
MIGRANT WORKERS**

**Report submitted by Ms. Gabriela Rodríguez Pizarro, Special Rapporteur
on the human rights of migrants**

Addendum

Communications sent to Governments and replies received^{*}

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

104. El 19 de enero de 2004 **Ricardo Pérez Rivas** se encontraba en un parque de Tecún Umán-San Marcos cuando habría sido requerido sus documentos de identidad por tres agentes de policía. El Sr. Pérez Rivas habría sido registrado por los agentes y al solicitar que le devolvieran el dinero que portaba (50 dólares), los agentes le habrían contestado que él nunca había tenido dinero.

105. El 7 de marzo de 2004, **Norman Fernández, Kiny Alfredo Norales, Rogelio Menjivar y Srta. Merlín Oneida Alvarez**, todos ellos hondureños, habrían sido interceptados por dos agentes de policía en Tecún Umán-San Marcos. Una vez identificados, los agentes de policía les habrían amenazado con deportarlos si no les entregaban el dinero que portaban. Entre los cuatro habrían entregado de 70 quetzales.

106. El 7 de mayo de 2004, **Carlos Martínez Alvarado**, nicaragüense de 24 años de edad, habría sido interceptado por tres policías que se desplazaban en un radio patrulla cuando se encontraba en la orilla del río Suciate en Tecún Umán-San Marcos. Por temor a que sus documentos pudieran ser destruidos, el Sr. Martínez Alvarado únicamente habría mostrado a los agentes una tarjeta de la Casa del Migrante. Los agentes de policía habrían roto la tarjeta y le habrían amenazado con golpearle. Uno de los policías le habría sustraído los 50 quetzales que portaba.

Observaciones

107. La Relatora Especial reiterara su interés en recibir informaciones del Gobierno sobre los casos arriba citados. La Relatora Especial quisiera también reiterar su interés en recibir la respuesta del Gobierno de Guatemala en relación con las dos alegaciones enviadas en 2002 (E/CN.4/2003/85/Add.1, paras. 82-86).

India

Communications sent to the Government

108. By letter dated 11 May 2004, the Special Rapporteur notified the Government that she had received information regarding the situation of **Harish Kumar Sharma** of Amritsar, Punjab, India, born in 1976, who left his country of origin on 8 August 2003 after having consulted and being assisted by a recruitment agency. It is reported that the agency—called “Settlement in Greece” and based in Jagraon, Ludhiana district, Punjab—requested a sum of money as advance payment for its recruitment services and, without providing any documentation, reassured Mr. Sharma that everything was in order.

109. It is alleged that Harish Kumar Sharma left India, accompanied by a travel and recruitment agent, for Turkey, but he was not admitted and was reportedly sent to the Islamic Republic of Iran, which also refused to admit him and sent him to Pakistan. According to the information received, Harish Kumar Sharma was detained in Queta Jail, Huda, Pakistan, on charges of violating the immigration laws. He was reportedly convicted and sentenced to three months’ imprisonment.

110. Reports indicate, moreover, that two other Indian nationals, Baljeet Singh (of Ghonewal village, Amritsar district, Punjab) and Tarsem Singh (of Mander Gate village, Dhilwan,

Kapurthala district, Punjab), who had used the services of the same recruitment agency were detained in the same detention centre.

Observations

111. The Special Rapporteur would like to reiterate her interest in receiving the reply of the Government of India to these allegations.

Israel

Communications sent to the Government

112. By letter dated 3 May 2004, the Special Rapporteur notified the Government that she had received information according to which since the creation of the Immigration Police in September 2003, the Government had increased its efforts to deport irregular migrant workers. Reports indicate that more than 60 per cent of migrant workers in Israel are defined as “illegal” and consequently liable to be deported. As noted in previous communications, reports indicate that according to Israeli regulations, the legal position of migrant workers with Government-issued work permits depends on their employment by the commissioning employer. Although new regulations have allegedly been passed that allow migrants in some sectors of the economy to change employers, work termination reportedly leaves the migrant worker without the right to stay in Israel and without the right to seek alternative work. The Special Rapporteur reiterated her concern that such conditions might result in a situation of extreme dependence of the migrant workers on their employers, discouraging migrants who suffer abuses from denouncing the perpetrators and therefore increasing their vulnerability. The Special Rapporteur also expressed her concern that such circumstances would prevent migrants from seeking redress and reparation for violations suffered. She also referred to reports that migrant workers in Israel continue to be subjected to passport confiscation, minimum wage violations and poor lodging conditions.

113. The Special Rapporteur cited to the case of 18 Thai nationals employed with work permits as agricultural workers in Moshav Amioz. Their names were given as follows: **Lai Seehanat, Boonpha Chaloemchoi, Prasit Songsuk, Bunyod Phiongoen, Hiran Phiakhot, Khamphan Khandee, Prasitcha Isalasart, Lueyol Sihoi, Praiwan Hiranphattarasakun, Akhom Bajukaew, Chomnok Yupa, Saman Udornporn, Khanchit Phosri, Thong Meesart, Supanee Sangkathip, Wirotmee Kul, Kraitsip Kaewsri, and Banlang Shaiwong.** During the period between November 2003 and February 2004 the employer of these workers reportedly repeatedly withheld wages and threatened to have the workers deported. The employment agency that had arranged their employment had allegedly confiscated their passports. An inspector from the Ministry of Labour collected the workers’ testimony but no further measures have reportedly been undertaken on behalf of these workers.

114. Finally, the Special Rapporteur referred to information received relating to three Thai nationals, **Bunsong Danrahan, Chanontree Kongphrai and Kittichai Saikaew**, who were employed with work permits as agricultural workers in Moshav Prazon. According to the information received, since December they have been forced to work 18 hours a day, seven days a week, while being paid the minimum wage without any overtime pay. In addition, their salaries were allegedly withheld for three months. The manpower agency that had brought these workers to Israel was allegedly the same as referred to above, Hanan-Shani. The Enforcement Unit at the



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IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”

**Report of the Special Rapporteur on torture and other cruel, inhuman or
degrading treatment or punishment, Manfred Nowak**

Addendum

**Summary of information, including individual cases, transmitted
to Governments and replies received***

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

Para	Country	Date	Type	Mandate	Allegations transmitted	Government Response
75.	Germany	16/12/05	UA	TOR;	Zokirjon Almatov, Uzbekistan's Minister of Internal Affairs , who is currently in Germany to receive medical treatment. On 12 December 2005, several survivors of torture filed a case against Mr Almatov in the German courts on three counts: individual crimes of torture, torture as a crime against humanity and the Andijan massacre as a crime against humanity. In light of the fact that the previous Special Rapporteur carried out a visit to the country in late 2002 and concluded that torture is systematic in Uzbekistan and a report of the High Commissioner for Human Rights of July 2005 found, on the basis of consistent, credible eyewitness testimony, that during events in Andijan in May 2005, the military and security forces committed grave human rights violations while curbing demonstrations, the Government is called upon to initiate criminal proceedings against the Minister.	
76.	India	19/12/05	JAL	SUMX; TOR;	Rajendran , aged 37, a salesman, Raj Nivas, Kodamkulam, Neeleswaram Post Office, Kottarakkara, Kollam District, Kerala. On 6 April 2005, he was arrested outside Sanker Hospital by the Assistant Sub Inspector of Kollam East Police Station. He was taken to Kollam East Police Station where he was forced to remove his clothes and was beaten by five policemen. He died in police custody and was taken to the District Government hospital where he was pronounced dead on arrival.	

Para	Country	Date	Type	Mandate	Allegations transmitted	Government Response
77.		22/12/05	AL	TOR;	Ms Pappathi , aged 40, an agricultural labourer, Arundhathiyar Colony, Vengamedu Village, Thiruppalayam Post, Perunthrai Taluk, Erode District, Tamil Nadu. On 31 March 2005, Ms Pappathi was verbally and physically assaulted by an upper caste member on a public pathway. He pulled off her sari, tore her blouse and beat her left breast, right shoulder and upper arm twenty to thirty times. He also kicked her in the back as she lay on the floor. He made derogatory caste-based statements and threatened to rape her. On 1 April 2005, Ms Pappathi tried to register a complaint against him at Chennimlaj Police Station. However, the police officer refused to register the complaint. On 2 April 2005, she reported the incident to the Superintendent of Police of Erode District who ordered Chennimlaj Police Station to register the complaint. However, according to the information received, no serious steps had been taken to investigate the case.	
78.		06/03/06	JAL	RACE; TOR;	Sekar Arjunan (Rajasekar) , aged 32, a shopkeeper from Raja Thottam, Peravallur, Chennai. On 22 July 2005, eight police officers, all of whom were dressed in civilian clothing, approached him as he was standing near a fruit shop close to the Central Prison in Chennai. The officers beat him and kicked him with their boots in his abdominal region. They then took him by car to Sangeetha lodge near Permbur Railway Station, where they locked him in a room on the second floor. Later that day they took him to Sembiam Police Station and locked him in a dark room until 26 July 2005. While he was there, they	

Para	Country	Date	Type	Mandate	Allegations transmitted	Government Response
					beat him and deprived him of food. On 26 July 2005, he was taken to K-5 Peravallur Police Station, where he was put in a room on the third floor. He was stripped naked and beaten with an iron pipe, which resulted in a fracture to his right knee. The officers also subjected him to oral caste-related abuse and threatened to kill him by placing a pistol on his forehead. Criminal charges were filed against him and he was remanded in custody by Judicial Magistrate's Court No. Five, Egmore. He was sent to the central prison in Chennai. Sekar Arjunan's mother had previously submitted a complaint to the State Human Rights Commission in Chennai requesting them to take action against the same police officials for killing her younger son Ramesh. She had refused to withdraw the complaint, despite being pressured to do so by the alleged perpetrators.	
79.		10/03/06	AL	TOR;	Maung Maung Oo , aged 40 and Chit Thein Tun , aged 42. They are both refugees from Myanmar who work for the Indian-based Burmese Solidarity Organization (BSO), which works with refugees from Myanmar in India. On 14 or 15 January 2006, Maung Maung Oo and Chit Thein Tun were abducted from Maung Maung Oo's home, in the town of Moreh in Manipur. The abduction took place at about 10.30pm and was carried out by approximately 25 unidentified armed men, who were dressed in black and spoke Burmese and the local Manipuri language. The men took Maung Maung Oo and Chit Thein Tun across the border into Myanmar. When Maung Maung Oo and Chit Thein Tun tried to escape, they were severely	

Para	Country	Date	Type	Mandate	Allegations transmitted	Government Response
					beaten with firewood, and Chit Thein Tun received head injuries. They are thought to have been handed over to the Myanmar army and are under interrogation in military custody, either in Yangon or Tamu, Sagaing Division. On 22 February 2006, the Myanmar Minister for Information stated that Chit Thein Tun and Maung Maung Oo had been arrested in connection with two bombs detonated at a market in Tamu on 8 January 2006. He said that Maung Maung Oo had confessed to being involved in the bombings and that he and Chit Thein Tun were members of the outlawed All Burma Students Democratic Front (ABSDF). He did not specify which side of the border they had been arrested on.	
80.		21/03/06	AL	TOR;	Mr Sahadevan , an employee of Thrissur Municipal Corporation, Karapurath House, Ayyapankavu, Mulayam, Thrissur District, Kerala. On 5 March 2006, at approximately 5:20pm, he was arrested at his house by a police officer, who held him by his shirt, pushed him against the wall and punched him in the chest. He then dragged him outside and threw him into a police jeep. The police also arrested one of his neighbours and threw him into the jeep. During the journey, they verbally abused them. They slapped him in the face and poked him with a lathi. They took them to a police station where they were told to remove all their clothes except their underwear. At about 6:30pm. the Circle Inspector came into the cell accompanied by another policeman, and slapped him hard on the face and also verbally abused the detainees in the cell. He made the detainees in	

Para	Country	Date	Type	Mandate	Allegations transmitted	Government Response
					the cell jump up and down for about 20 minutes. On 6 March 2006, he was informed that he was being charged in connection with a fight that had occurred in the area. On the same day, he was produced before a court and remanded in custody for 14 days. However, he was released on bail the next day.	
81.		25/08/06	JUA	WGAD; Indigenous People; TOR;	Leitanthem Umakanta Meitei , Secretary General of the Threatened Indigenous Peoples Society, Manipur and Spokesperson for the Apunba Lup, a coalition of 34 human rights organizations in Manipur, India. At 4am on 24 August 2006, Leitanthem Umakanta Meitei (subject of earlier communications in E/CN.4/2005/62/Add.1, Para. 785 and E/CN.4/2005/62/Add.1, Para. 786) was arrested at his home and taken to Manipur West Police Station, where he was beaten, causing him to pass out several times during interrogation. He was also threatened with further acts of torture or ill-treatment.	
82.		13/09/06	AL	TOR;	Darshan Singh , aged 34, a farmer from Amritsar, in Punjab State. At 5:10pm on 27 August 2006, he was arrested together with Harbhajan Singh during a police raid on a house near Majitha Road in Amritsar, which was carried out by the police from the C Division of the Criminal Intelligence Bureau. The two men were taken to a police compound run by the C Division in Mal Mandi. On arrival, the officers beat and kicked Darshan Singh and also applied rollers to his knees. They spread his legs as far as they would go until he lost consciousness. They then poured water on his face to bring him round and then continued to	

Para	Country	Date	Type	Mandate	Allegations transmitted	Government Response
					beat and kick him. Harbhajan Singh was released on 29 August 2006.	
83.		30/10/06	JAL	SUMEX; TOR;	Saju , a private bus conductor, Kerala State. On 8 September 2006, Mr Saju was taken into custody by three police officers from Kunnathunadu Police Station, accused of the theft of three telephone posts. According to our sources the posts had been abandoned by the Kunnathunadu Telephone Office on the road near Mr Saju's home, and he picked them up and used them as a protective barricade around an open well so that children and animals would not fall into the well. The police officers told Mr Saju he had to give them 3000 rupees (68 USD) if he wanted to be released, money that Mr Saju refused to pay. Mr Aliyar, a person who was also taken into custody by the police officers in connection with the same crime, was released by the police after he accepted to bribe the police officers. On 9 August 2006, at about 3:00pm Mr Saju's wife went to Kunnathunadu Police Station to visit her husband, who told her that he had been tortured because he refused to pay a bribe to the police officers. Ms Saju returned home and at about 4:30pm she received a call informing her that Mr Saju was at the Kolenchery Medical College. At the hospital she was informed that her husband died at the police station. A doctor asked her whether Mr Saju had any previous ailments. Ms Saju said her husband was perfectly healthy and that he had complained about the police torturing him while he was held in custody.	



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Agenda item 11 (a)

**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF
TORTURE AND DETENTION**

Torture and other cruel, inhuman or degrading treatment or punishment

Report of the Special Rapporteur, Manfred Nowak

Addendum

**Summary of information, including individual cases, transmitted to Governments
and replies received***

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

86		24/08/05	JAL	TOR; VAW;	Bilqees Aktar , Kashmir. On 3 July 2005, she was abducted, raped, and detained for a week by a member of the Territorial Indian Army. She was rescued by the police from Watroo village and taken to a hospital, where the rape was confirmed by a medical examination. Although the case has been reported to the police, no action has yet been taken to investigate the crime.	
87		13/12/05	AL	TOR	Amit alias Montu Babubhai Dabhi , aged 25, of 14 Fellowship Society, Bapunagar, Ahmedabad. On 28 April 2005, two policemen arrived at his home at approximately 11am. They requested him to go with them for questioning about an undisclosed matter. He was taken to Amit Mill Police Chowky where he was questioned about the possession of illegal arms. He was forced to remove his clothes and was severely beaten by a police inspector and constables of Bapunagar police station (whose names are known to the Special Rapporteur). He was also subjected to verbal abuse and threats against his life. Over the next two days he was taken from one police station to another and ill-treated by police. On 2 May 2005, he was left on the roadside near Amit Mill Police Chowky. Rajiv Rai , aged 16, of Rosemary Lane, Howrah, West Bengal. On 12 May 2005, the police detained Rajiv Rai at his home and took him to Golabari Police Station, where he was held in a crowded cell together with adult detainees. He was beaten by police officers, resulting in swollen fingers and bruising on his legs. On 16 May 2005, he was released from police custody.	
88		Follow-up to past cases			Umakanta Meiti (E/CN.4/2005/62/Add.1, para. 785-786).	By letter dated 4/02/05, the Government informed that he had been detained by the police on 9 September 2004, following the receipt of intelligence regarding the presence

						of armed terrorists in the state. As the police party approached Mr. Meiti fled. He was later apprehended after a chase on suspicion that he might be a terrorist. He was taken to Porompat Police Station, Imphal East, but was released without charge. He was neither arrested nor tortured.
89					Perveena Ahangar, Pervez Imroz, Bilal Mohammad Bhatt, Yasin Rah and Umtoo (E/CN.4/2005/62/Add.1, para. 771).	By letter dated 15/02/05, the Government informed that a group of 70 to 80 persons threw stones at vehicles and the police contingent deployed to maintain law and order. In response, the police cane-charged the group. The group was charged under sections 147, 341, 336 and 323 of the Penal Code and admitted on bail.
90	Indonesia	31/05/05	JUA	IJL; SUMX; TOR;	Sakak bin Jamak , a 50-year-old farmer, South Sulawesi, Sahran , aged 52, and Sabran , aged 45. Sentenced to death in May 1995 on confessions extracted under torture, they are at risk of imminent execution, according to a recent announcement from the Attorney General's office. During his interrogation at the police station, Sakak bin Jamak was once immersed in water for a period of around two hours, beaten with sticks and whips, and his feet were burned.	By letter dated 14/11/05, the Government informed that it had no information to indicate the veracity of the torture allegations. He had the right to benefit from legal defence.
91		26/07/05	JAL	TOR; VAW;	Zubaidah Karim , aged 30, Nurhayati Abdullah , aged 32, Warni Bukhari , aged 25, and Nur Alcah Adam , aged 22, from the village of Alue Gani-Gp Gunong Pungki, Kuala, District of Nagan Raya. On 7 July 2005, the four women were threatened with guns, and then raped by the Police Mobile Brigade, who forcibly entered their home during a search operation in the area.	By letter dated 22/09/05, the Government informed that an investigation was underway but that it had not yet been possible to verify the facts as alleged. Once the investigations were complete, those found guilty would be accordingly punished.
92		29/07/05	JAL	TOR; VAW;	Nurlaili M. Amin , aged 23, her father, Jacob M. Amin , 51, and her mother, Zainabon Ismael , 45, Seuneubok village, Sungai Raya subDistrict, East Aceh. On 8 June 2005 at around 4pm, she was	By letter dated 11/11/05, the Government informed that it was determined to investigate the incident and to bring the perpetrators to justice. It could not consider the issue of



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IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”

Report of the Working Group on Enforced or Involuntary Disappearances

Request for a visit

207. Following a decision of the Working Group at the seventy-eighth session, a request for a visit as part of a four-country initiative in Central America was sent to the Government of Honduras on 23 May 2006. The Government agreed and dates are being finalized for the mission to take place in February 2007.

Summary of the situation prior to the period under review

208. The majority of the 202 previously reported cases occurred between 1981 and 1984. Reportedly, the Armed Forces and heavily armed men in plain clothes seized people perceived to be ideological enemies and took them to clandestine detention centres. Four cases reportedly occurred in 1983 and concerned leaders of the Revolutionary Party of Central American Workers-Honduras, including a Jesuit priest, who were allegedly captured by the Honduran Army. Two of these persons were reportedly citizens of the United States. Allegedly, the United States Army and Central Intelligence Agency personnel may have helped the Honduran Army in the Olancho operation in which, according to the Honduran Army, these persons were killed.

Total cases transmitted, clarified and outstanding

209. In the past and during the year under review, the Working Group has transmitted 203 cases to the Government; of those, 43 cases have been clarified on the basis of information provided by the source, 35 cases have been clarified on the basis of information provided by the Government and 125 cases remain outstanding.

Observations

210. The Working Group welcomes the invitation and cooperation of the Government of Honduras.

India

Number of outstanding cases at the beginning of the period under review	Cases transmitted to the Government during the period under review		Cases clarified during the period under review by:		Number of outstanding cases at the end of the year under review
	Cases sent under the urgent action procedure	Cases sent under the standard procedure	Government	Non-governmental sources	
325	0	1	1	0	325

Number of cases on which the Government has replied	Multiple replies on some cases	Number of cases of possible clarification by Government (6-month rule)
3	N/A	2

General allegation	N/A	Government response	N/A
Prompt intervention letter	N/A	Government response	N/A
Working Group request for a visit	N/A	Government response	N/A

Standard cases

211. The Working Group transmitted one newly reported case of disappearance, concerning **Sukwinder Singh Batti**, a criminal defence lawyer who had represented victims of human rights abuses. He was reportedly last seen in 1994 in an unofficial detention centre located in Bahadur.

Information from the Government

212. In a communication dated 10 April 2006, the Government replied on three outstanding cases. In one case the Government stated that the subject, a militant from a pro-Pakistani group, Al-Jehad, had been released and was now at home. In another case, concerning the disappearance of an owner of a hardware shop, the Government reported that the subject's dead body was recovered from an orchard and handed over to the relatives. The Working Group considered that both replies could be clarifications, provided that the source did not raise objections within six months (see paragraph 12). In the third case, the Government provided new information on the subject, a 33-year-old watchman, and the circumstances concerning his arrest, but the Working Group considered it to be insufficient to determine the fate or whereabouts of the person.

Information from sources

213. A source replied concerning one case of a criminal defence lawyer who reportedly disappeared in 1994 (see paragraph 211), stating that an inquiry report remains pending before the Supreme Court.

Clarification

214. The Working Group decided to clarify one case, concerning a 17-year-old student who disappeared in 1999, where the six-month rule had been previously applied (see paragraph 11).

Request for a visit

215. On 13 July 2005, the Working Group requested to undertake a mission to India in the course of 2006. The request was based on an expected significant increase in the number of cases to be submitted by an NGO. However, these cases were not submitted. As a result, the Working Group decided at its eightieth session to withdraw its request for a visit to India.

Summary of the situation prior to the period under review

216. Most of the cases of disappearance reported to the Working Group occurred between 1983 and 2004, in the context of ethnic and religious disturbances in the Punjab and Kashmir regions. The disappearances were allegedly related to wide powers granted to the security forces under emergency legislation, in particular the Terrorist and Disruptive Activities Act and the Public Security Act, which allow for both preventive and prolonged detention in the absence of normal safeguards available under the criminal codes. The victims included two children, one aged 13 and one aged 16, students, a religious leader, journalists and human

rights activists. Regarding a case of a Kashmiri who disappeared in Kathmandu, it was reported that the Indian Embassy in Nepal was involved in his arrest. In accordance with the Working Group's methods of work, a copy of this case was sent to the Government of India (see also section on Nepal, paragraph 300).

217. Three cases concerned members of the Akhil Bharatiya Nepali Ekta Samaj (All India Nepalese Unit Society), who were reportedly arrested in New Delhi by the Indian Special Branch Police and handed over to Nepali security officials. In accordance with its methods of work, the Working Group sent copies of those cases to the Government of Nepal (see section on Nepal, paragraph 300). Four cases concerned members of the ULFA who were allegedly arrested by the Bhutanese Army and handed over to the Indian Army. Copies of those cases were sent to the Government of India (see section on Bhutan, paragraph 101).

Total cases transmitted, clarified and outstanding

218. In the past and during the period under review, the Working Group has transmitted 383 cases to the Government; of those, 10 cases have been clarified on the basis of information provided by the source, 48 cases have been clarified on the basis of information provided by the Government and 325 cases remain outstanding.

Indonesia

Number of outstanding cases at the beginning of the period under review	Cases transmitted to the Government during the period under review		Cases clarified during the period under review by:		Number of outstanding cases at the end of the year under review
	Cases sent under the urgent action procedure	Cases sent under the standard procedure	Government	Non-governmental sources	
154	0	0	0	0	154

Number of cases on which the Government has replied	Multiple replies on some cases	Number of cases of possible clarification by Government (6-month rule)
0	N/A	N/A

General allegation	N/A	Government response	N/A
Prompt intervention letter	N/A	Government response	N/A
Working Group request for a visit	Yes	Government response	N/A

Information from the Government

219. No information was received from the Government regarding outstanding cases.

Information from sources

220. No information was received from sources regarding outstanding cases.



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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:

DISAPPEARANCES AND SUMMARY EXECUTIONS

Report of the Working Group on Enforced or Involuntary Disappearances

260. In addition, during the period under review, the Government provided information on other outstanding cases, but the information was not able to be translated by the translation services in time for consideration by the Working Group for inclusion in the present report.

Information received from the source

261. During the period under review, no information was received from sources regarding outstanding cases.

Summary of the situation prior to the period under review

262. The majority of the 202 previously reported cases occurred between 1981 and 1984, a period during which members of Battalion 3-16 of the armed forces and heavily armed men in plain clothes seized people perceived to be ideological enemies and took them to clandestine detention centres. Four cases reportedly occurred in 1983 and concerned leaders of the Revolutionary Party of Central American Workers-Honduras, including a Jesuit priest, who were allegedly captured by the Honduran army. Two of these persons were reportedly citizens of the United States. Allegedly, the United States army and Central Intelligence Agency personnel may have helped the Honduran army in the Olancho operation, in which, according to the Honduran army, these persons had been killed. A report of the Inspector-General of the Central Intelligence Agency relating to the organization's activities in Honduras in the 1980s also allegedly contains references to their having been summarily executed by Honduran army officers after interrogation.

Total cases transmitted, clarified and outstanding

263. In the past and during the year under review, the Working Group has transmitted 202 cases to the Government; of those, 43 cases have been clarified on the basis of information provided by the source, 30 cases have been clarified on the basis of information provided by the Government and 129 cases remain outstanding.

India

Standard cases

264. During the period under review, the Working Group transmitted seven newly reported cases of disappearance and they were attributed to the Indian army, the Special Operation Group and Border Security Forces. The five cases, concerning **Mohammad Farooq Saïen**, **Manzoor Ahman Mir**, **Amin Wani Mohammed**, **Ghulam Muhammed** and **Bashir Ahmad Sofi**, reportedly occurred between 2003 and 2004 in Kashmir. It was also reported that **Bubul Nath**, a 16-year-old student, was arrested and disappeared in 2004 from his house in Nichilamari village by the army from Themajbat army camp. Reportedly, an eyewitness to the killing of a person by the police, **Majumdar Partha**, was taken away in 1997 and since then, his whereabouts remain unknown. Regarding a case of a Kashmiri who disappeared in Kathmandu, it was reported that the Indian Embassy in Nepal was involved in his arrest. In accordance with the Working Group's methods of work, a copy of this case was sent to the Government of India. (See also section on Nepal, paragraph 371.)

Number of outstanding cases at the beginning of the period under review	Cases transmitted to the Government during the period under review		Cases clarified during the period under review by:		Number of outstanding cases at the end of the year under review
	Cases sent under the urgent action procedure	Cases sent under the standard procedure	Government	Non-governmental sources	
318	0	7	0	0	325

Number of cases on which the Government has replied	Multiple replies on some cases	Number of cases of possible clarification by Government (6-month rule)
4	N/A	N/A

General allegation	N/A	Government response	N/A
Prompt intervention letter	Yes	Government response	No
Working Group request for a visit	Yes	Government response	No

Information received from the Government

265. During the period under review, the Government replied on four outstanding cases regarding members of the United Liberation Front of Assam (ULFA) (see section on Bhutan, paragraph 100), stating that the four persons were Indian nationals and commanders of the ULFA operating from one of the illegal militant camps in southern Bhutan. The Government reported that these camps were destroyed during military operations undertaken by the Royal Bhutanese Army between December 2003 and January 2004.

Information received from the source

266. During the period under review, no information was received from sources regarding outstanding cases.

Prompt intervention

267. On 13 May 2005, a prompt intervention (see paragraph 11) letter was sent to the Government of India on the alleged harassment of **Parvez Imroz**, a lawyer and Council Member of the Asian Federation Against Involuntary Disappearances, President of the Jammu and Kashmir Coalition of Civil Society and Patron of the Association of Parents of Disappeared Persons. The same person was the subject of an urgent appeal sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the question of torture in 2004. The concern is heightened in light of reports indicating that, during the last few years, several human rights defenders have been killed in Kashmir.

Request for a visit

268. On 13 July 2005, the Working Group requested to undertake a mission to India in the course of 2006, given the increasing number of cases received from Kashmir. In addition, the Working Group is interested in the visit to explore the effect of the federal structure of government on disappearances in such a vibrant democracy as India.

Summary of the situation prior to the period under review

269. Most of the cases of disappearance reported to the Working Group occurred between 1983 and 2003, in the context of ethnic and religious disturbances in the Punjab and Kashmir regions. They were primarily attributed to the police authorities, the army and paramilitary groups such as the Indian army, the Punjabi police, border security forces, and a joint group of the Punjabi police and the Special Operations Group. The disappearances were allegedly related to wide powers granted to the security forces under emergency legislation, in particular the Terrorist and Disruptive Activities Act and the Public Security Act, which allow for both preventive and prolonged detention in the absence of normal safeguards available under the criminal codes. The victims included two children aged 13 and 16, students, a religious leader, a musician, a businessman, a farmer, shopkeepers, a lawyer, journalists and human rights activists. In 2002, a member of the Movement to Save the Narmada River reportedly disappeared at the hands of the police. In accordance with its methods of work, the Working Group sent to the Government copies of three other cases concerning members of the Akhil Bharatiya Nepali Ekta Samaj (All India Nepalese Unit Society), who were reportedly arrested in New Delhi by the Indian Special Branch Police and handed over to Nepali security officials (see section on Nepal, paragraph 371), and copies of four cases concerning members of the ULFA who were allegedly arrested by the Bhutanese army and handed over to the Indian army (see section on Bhutan, paragraph 102). One case concerned a university student from Kashmir, who was reportedly arrested by army forces of the Beerwa camp in 2004. In the other 2004 case, the person was reportedly arrested by the Border Security Forces and disappeared.

Total cases transmitted, clarified and outstanding

270. In the past and during the year under review, the Working Group has transmitted 382 cases to the Government; of those, 10 cases have been clarified on the basis of information provided by the source, 47 cases have been clarified on the basis of information provided by the Government and 325 cases remain outstanding.

Observations

271. While expressing its appreciation to the Government of India for the information provided during the course of the year and for its efforts to investigate cases of disappearance, the Working Group remains concerned about the number of cases brought to its attention and the lack of any clarifications.

Indonesia

Standard cases

272. During the period under review, the Working Group transmitted 10 new cases to the Government of Indonesia. It was reported that **Aristoteles Masoka** disappeared after having been abducted by government forces in 2001 together with **Theys Eluay**, the leader of the Papua independence movement. He was the personal driver of Theys Eluay, who was found dead two days after the abduction. The second case concerns **Bachtiar Johan**, who allegedly disappeared when an Islamic lecture was broken up by military gunfire in 1984.



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IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”

**Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions,
Philip Alston**

Addendum

Summary of cases transmitted to Government and replies received * **

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

** The report was submitted late in order to reflect the most recent information

3. Please provide the 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 please explain why.
4. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken; Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please indicate whether compensation has been provided to the victim or the family of Mr. Rajendran.

India: Deaths of Demonstrators in Assam and Orissa

Violation alleged: Deaths due to the use of excessive force by law enforcement officials

Subject(s) of appeal: 15 persons (demonstrators)

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the preliminary information provided by the Government of India with respect to the incident in Orissa and will request the report of the commission of inquiry that was established. The Special Rapporteur would also note that he has received no clarification of the incident in Assam.

Letter of allegation dated 22 August 2006

I would like to draw the attention of your Excellency's Government to information I have received regarding two incidents in which lethal force was allegedly used against protesters. In the first incident, **three university students** were killed by the police on 23 December 2005 in Assam while protesting the alleged sexual molestation of their fellow students by police on a train. In the second incident, **twelve tribal people** were shot and killed by the police on 2 January 2006 while demonstrating against the construction of a Tata Steel plant in Kalinga Nagar in Orissa. It has been alleged that the use of lethal force was not justified under the circumstances.

If these allegations were correct, there would be ground for serious concern. Therefore, while I do not wish to prejudge the accuracy of these allegations, I would like to draw the attention of your Excellency's Government to the fundamental principles set forth in the International Covenant on Civil and Political Rights (ICCPR). Article 6 of the ICCPR provides that every individual has the right to life, that this right shall be protected by law and that no one shall be arbitrarily deprived of his or her life. The U.N. Basic Principles on the Use of Firearms by Law Enforcement Officials applies this standard to the policing of unlawful public assemblies. These principles explain that to disperse a violent protest or assembly, law enforcement officials may only use firearms when less dangerous means are not practicable and only to the minimum extent necessary (§14). In all circumstances, the intentional lethal use of firearms may only be made

when strictly unavoidable in order to protect life (§9) and after a clear warning of the intention to use firearms has been provided (§10).

It is my responsibility under the mandate provided to me by the Commission on Human Rights and reinforced by the appropriate resolutions of the General Assembly to seek to clarify all such cases brought to my attention. Since I am expected to report on these cases to the Commission, I would be grateful for your cooperation and observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any police investigation, and judicial or other inquiries carried out in relation to the deaths of the above mentioned victims.
3. Please provide the full details of any disciplinary action and prosecution undertaken with regard to the police officers responsible for the above mentioned shootings.
4. What instructions or guidance, if any, were law enforcement officers given with respect to the dispersal of this assembly? If no specific instructions were provided, what are the general rules or training given police on dispersing assemblies?

Response of the Government of India dated 30 August 2006 to a letter of allegation dated 22 August 2006

The Permanent Mission of India to the United Nations Office and other International Organisations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to refer to the letter No. AL C/SO/214 (33-23) dated 22 August 2006 from the Special Rapporteur on extrajudicial, summary or arbitrary executions, requesting for information relating to the following two incidents : (i) Alleged killing of three university students by the police on December 23, 2005 in Assam State, India (ii) Alleged killing of 12 tribal people by the police on January 2, 2006 in Kalinga Nagar, Orissa State, India.

With regard to the first incident, the Permanent Mission of India would like to convey that the details have been forwarded to the concerned authorities for ascertaining the facts.

On the second incident, the Permanent Mission of India has the honour to forward the following Facts:

On January 2, 2006, an estimated crowd of 1000 agitators armed with bows and arrows had assembled at Salbrga Nagar, Jajpur, Orissa, to prevent the construction of a boundary wall by tata Steel LTd which was being done with the support of the district administration on land acquired by the Industrial Development Corporation (IDCO), Government of Orissa, and allotted to industrial homes for setting up industrial complexes. The displaced persons had been agitating for some time against the low compensation rate given by the State Government as compared to the sale price charged front the industrial houses benefited by land allotment. The agitation was also directed against the Government and the companies for not having delivered the promised rehabilitation package, including employment to one eligible person per family losing the land.

According to the report of the State Government, 13 persons including one police Havildar and 12 agitators were killed in police firing, three of them while undergoing treatment at the Hospital.

Immediately after the incident, the State Government announced an ex-gratia payment of Rupees 100,000 which was subsequently raised to Rs 500,000. The State Government also offered an aid of Rupees 50,000 and free specialized treatment for the injured and employment of one member of each of the affected families. Government also announced a payment of Rs. 500,000 as ex gratia from Prime Minister's National Relief Fund to the next of kin of all the 13 persons killed.

The State Government of Orissa has also set up an Inquiry Commission consisting of a sitting Judge of Orissa High Court under the Commission of Inquiries Act, 1952 to submit a report within six months.

The State Government has also constituted a Group of Ministers (GOMs) on 5 January 2006 to review the rehabilitation package to the displaced persons and come up with a revised rehabilitation policy.

The Government of Orissa has been advised to take all possible steps to prevent recurrence of such incidents in future.

India: Killing of Longjam Surjit in Manipur

Violation alleged: Deaths due to attacks of killings by security forces

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur regrets that the Government of India has failed to cooperate with the mandate that he has been given by the General Assembly and the Commission on Human Rights.

Letter of allegation dated 17 October 2006

I would like to bring to your Excellency's Government attention, information I have received concerning the alleged extrajudicial execution of Mr. **Longjam Surjit**, a resident of Samurou Makha Leikai within the jurisdiction of Wangoi police station of Imphal West District, Manipur.

According to the information received, on 31 August 2006, Mr. Longjam Surjit was killed by the officers from the 22 Maratha Light Infantry, based at Mayang, Imphal, Manipur. It is alleged that Surjit was shot dead by the army when he went out looking for his missing horse with his friend Mr. Naorem Brajamani. According to our source, they went separate ways looking for the horse by the banks of the river Nabul, when Mr. Brajamani heard shots coming from the direction in

which Surgit had gone. Scared of the shots Mr. Brajamani ran back home. The next morning Mr. Surgit was found dead.

The army reportedly claimed responsibility for the killing and affirmed they had to shoot at Mr. Surgit because he tried to open fire on the army officers. The army also claimed they had found arms and ammunitions in Surgit's possession, a possibility that his family has denied.

During a public meeting which local residents organized, it was decided that Surgit's family would not claim his body from the mortuary, unless there was an independent investigation into this case. During the meeting, the local residents reportedly claimed that security forces often executed alleged militants of secessionists groups instead of bringing them to trial, and affirmed that most of those summarily executed are falsely reported to have died during armed clashes between the army and militants in "encounter killings." According to our sources, this situation is linked to the fact that the Armed Forces (Special Power) Act, 1958 is in force in this area.

In a letter dated 24 August 2005, I had previously raised with your Excellency's Government information I had received concerning alleged extra-judicial executions in Manipur. On that occasion, I suggested that the (Special Power) Act, 1958 violates non-derogable provisions of international human rights law and can thus facilitate the perpetration of extrajudicial executions, by giving the security forces the power to shoot to kill in circumstances where members of the security forces are not necessarily at imminent risk. Furthermore, the Act provides that no person can start legal action against any member of the armed forces for anything done under the Act or purported to be done under the Act, without permission of the Central Government which, I understand, is rarely given. Prosecutions of security force personnel, even where the facts are well established, have apparently been rare.

While I do not wish to prejudge the accuracy of these allegations, I respectfully request that your Government ensures that the death of Mr. Longjam Surgit is promptly, independently and thoroughly investigated, in accordance with the United Nations principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions.

In this connection, I would like to recall the principle whereby all States have "the obligation (...) to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions", as recently reiterated by the 61st Commission on Human Rights in Resolution 2005/34 on "Extrajudicial, summary or arbitrary executions" (OP 4). The Commission added that this obligation includes the obligation "to identify and bring to justice those responsible, (...) to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to (...) prevent the recurrence of such executions".

Furthermore, I would like to refer Your Excellency's Government to Article 6 of the *International Covenant on Civil and Political Rights (ICCPR)* which provides that every individual has the right to life and security of the person, that this right shall be protected by law and that no one shall be arbitrarily deprived of his or her life.

In its General Comment on Article 6, the Human Rights Committee has observed "that States parties should take measures not only to prevent and punish deprivation of life by criminal acts,

but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities."

Both Article 4(2) of the *ICCPR* and Principle 8 of the *Basic Principles on the Use of Firearms by Law Enforcement Officials* provide that exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any derogation from the right to life and security of the person. Besides, Article 3 of the *Code of Conduct for Law Enforcement Officials* provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

In this connection, I would like to urge your Excellency's Government to consider either repealing the (Special Power) Act, 1958 or ensuring that it and any other such future legislative measures comply fully with international human rights and humanitarian law treaties to which India is a state party, especially the *ICCPR* and the four Geneva Conventions. In the interpretation of these obligations full account should be taken of the detailed standards included in the *UN Code of Conduct for Law Enforcement Officials*, the *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*, and the *UN Declaration on the Protection of All Persons from Enforced Disappearances*.

It is my responsibility under the mandate provided to me by the Human Rights Council and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all such cases brought to my attention. Since I am expected to report on these cases to the Council I would be grateful for your cooperation and your observations on the following six matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged?
3. Please provide the details, and where available the results, of any investigation, medical examinations (autopsy), and judicial or other inquiries which may have been carried out in relation to the death of Mr. Longjam Surjit. If no inquiries have taken place or if they have been inconclusive please explain why.
4. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken; Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please indicate whether compensation has been provided to the family of Mr. Longjam Surjit.

India: Death in Custody of Saju in Kerala

Violation alleged: Death in custody

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur regrets that the Government of India has failed to cooperate with the mandate that he has been given by the General Assembly and the Commission on Human Rights.

Letter of allegation dated 30 October 2006

We would like to draw the attention of your Government to information we have received concerning Mr. **Saju**, a private bus conductor who reportedly died from custodial torture for refusing to pay bribes to police officers in Kerala state.

According to the information received, on 8 September 2006, Mr. Saju was taken into custody by three police officers from Kunnathunadu police station, on an allegation that he was involved in the theft of three telephone posts. According to our sources the posts had been abandoned by the Kunnathunadu telephone office on the road near Mr. Saju's home, and he picked them up and used them as a protective barricade around an open well so that children and animals would not fall into the well.

The police officers reportedly told Mr. Saju he had to give them 3000 rupees (68 USD) if he wanted to be released, money that Mr. Saju refused to pay. Reports indicate that Mr. Aliyar, a person who was also taken into custody by the police officers in connection with the same crime, was released by the police after he accepted to bribe the police officers.

On 9 August 2006, at about 3:00 pm Mr. Saju's wife went to Kunnathunadu police station to visit her husband who told her that he had been tortured because he refused to pay a bribe to the police officers. Ms. Saju returned home and at about 4:30 pm she received a call informing her that Mr. Saju was at the Kolenchery Medical College. At the hospital she was informed that her husband died at the police station. A doctor asked her whether Mr. Saju had any previous ailments. Ms Saju said her husband was perfectly healthy and that he had complained about the police torturing him while he was held in custody.

Without in any way implying any conclusion as to the facts of the case, we respectfully request that your Government ensures that the death of Mr. Saju is promptly, independently and thoroughly investigated, in accordance with the United Nations principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions.

In this connection, we would like to recall the principle whereby all States have "the obligation (...) to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions", as recently reiterated by the 61st Commission on Human Rights in Resolution 2005/34 on "Extrajudicial, summary or arbitrary executions" (OP 4). The Commission added that this obligation includes the obligation "to identify and bring to justice those responsible, (...) to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to (...) prevent the recurrence of such executions".

Furthermore, we would like to draw your Government's attention to articles 12 and 7 of the Convention against Torture. Article 12 requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 requires State parties to prosecute suspected perpetrators of torture. We would also like to draw your Government's attention to paragraph 3 of Resolution 2005/39 of the Commission on Human Rights. Paragraph 3 stresses that "all allegations of torture or other cruel, inhuman or degrading treatment or punishment must be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate or perpetrate acts of torture must be held responsible and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and takes note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture;".

It is our responsibility under the mandate provided to us by the Commission on Human Rights and reinforced by the appropriate resolutions of the General Assembly and extended by the Human Rights Council, to seek to clarify all cases brought to my attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters in relation to the case referred to above:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations (autopsy), and judicial or other inquiries which may have been carried out in relation to the death of Mr. Saju. If no inquiries have taken place or if they have been inconclusive please explain why.
3. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken; Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
4. Please indicate whether compensation has been provided to the family of Mr. Saju.

Indonesia: Death Sentences of Amrozi bin H. Nurhasyim, Ali Ghufron, and Imam Samudera

Violation alleged: Non-respect of international standards relating to the imposition of capital punishment

Subject(s) of appeal: 3 males

Character of reply: No response



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HUMAN RIGHTS COUNCIL
Seventh session
Agenda item 3

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

**Report of the Special Rapporteur on the adverse effects of the illicit movement and dumping
of toxic and dangerous products and wastes on the enjoyment of human rights**

Addendum

**Summary of communications sent and replies received from Governments
and other actors***

* The present report is submitted after the deadline in order to reflect the most recent information received. It is being circulated as received in the languages of submission only.

shipping company destined for Port Klang, Malaysia, and was to be used by the shipping company as a hotel or training ship following corresponding conversion work.

29. The inspection of the ship gave further credible impression that the ship was going to be further used and not scrapped. There was no apparent intention on the part of the owner to dispose of the ship after departing from Bremerhaven port was identified by the authorities concerned during the discussion on 12 April 2005 or in the period following it. The German Government concluded that the decision taken by the owner of the ship, to neither repair the ship nor to convert it into a hotel ship, could not have been predicted at the time the assessment was made.

Observations

30. The Special Rapporteur thanks the Government of Germany for its reply.

India

Communication sent

31. On 6 July 2006, the Special Rapporteur sent an urgent appeal regarding allegations relating to the **SS Blue Lady** (ex-Norway). According to the information received, on 6 May 2006, the *SS Blue Lady*, bearing tonnes of toxic wastes and was likely also to contain Polychlorinated biphenyls (PCBs), including asbestos in its structure, was towed out of Port Klang, Malaysia by two tugboats heading towards the Indian Ocean. It was further alleged that the ship had been allowed to anchor in Indian territorial waters on the basis of an interim report submitted by the Technical Committee on Ship-Breaking set up by the Indian Supreme Court. Reportedly, this Technical Committee does not include representatives from public interest groups and non-governmental organizations representing civil society. It was further reported that on 5 June 2006, the Indian Supreme Court allowed the *SS Blue Lady* to enter Indian waters. The *SS Blue Lady* has been reportedly denied entry to ship breaking yards in Bangladesh in February 2006 based on its toxic waste content.

32. Allegedly, the ship owner has failed to produce the required inventory of all toxic wastes onboard the vessel before exporting the vessel, making it difficult to ascertain the quantity and type of toxic waste onboard. Experts, have estimated that as much as 1,200 tonnes of asbestos remain in the *SS Blue Lady*. It is further alleged that the ship-breaking yards in Alang lack the possibility of environmentally sound management and protection of workers from PCBs. Reportedly, the presence of the ship in Alang will pollute the sea-side, soil and water, hence putting the life and health of the inhabitants of the region at stake. The Special Rapporteur was concerned with the potential human rights violations that could have occurred if the allegations mentioned in this communication were correct and the dismantling of the ship did indeed take place.

Observations

33. The Special Rapporteur regrets that he had not received a response to the communication sent at the time of finalizing the report.



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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

**Adverse effects of the illicit movement and dumping of toxic and dangerous
products and wastes on the enjoyment of human rights**

Report of the Special Rapporteur, Okechukwu Ibeanu

Addendum

**Summary of communications sent to and replies received
from Governments and other actors during 2005****

* In accordance with General Assembly resolution 53/208B, paragraph 8, this document is submitted late so as to include the most up-to-date information possible.

** Revised for technical reasons.

treat the affected children, and that the public health situation had improved after repairs and renovation to the water and sewage infrastructure had been carried out. Furthermore, UNMIK emphasized that although some funding had been secured and a communication plan involving consultation had been developed to inform affected communities about the emergency relocation and to solicit their cooperation, funding and consultation remained a challenge and were critical to the eventual success of the relocation.

14. At the time this report was finalized, a temporary relocation camp in northern Mitrovica/Mitrovicë was about to be opened for temporary relocation of the Roma, Ashkali and Egyptian communities currently living in the highly lead-poisoned camps of northern Kosovo.¹ Camp Osterode, recently vacated by the French Kosovo Force (led by the North Atlantic Treaty Organization) has been refurbished for lead-safer environment with contributions from several international donors. The Camp offers access to health and hygiene infrastructure, social support, children's programmes, as well as employment and training opportunities for IDPs who can be temporarily housed there until the ongoing reconstruction of their permanent homes is completed. A regular cleaning regime has been set in place, and the Camp management team, in collaboration with the IDP community, will implement a comprehensive risk management strategy to reduce levels of lead exposure in accordance with World Health Organization recommendations.

15. The Special Rapporteur wishes to thank UNMIK and donor Governments for their efforts aimed at improving the health situation of the Roma communities living in the contaminated camps. He welcomes the forthcoming relocation of the Roma, Ashkali and Egyptian communities to a lead-safer environment, and calls for the adoption of prompt and effective medical treatment for lead toxicity for the affected Roma communities. The Special Rapporteur will continue to monitor the situation of the Roma communities closely, especially with regard to the situation of children and pregnant women exposed to critical levels of lead poisoning. The Special Rapporteur looks forward to the reconstruction of the permanent homes in the Mitrovica/Mitrovicë Roma Mahala, and the elaboration of durable solutions for those IDPs who do not originate from the Mahala.

II. UPDATES ON CASES CONTAINED IN PREVIOUS REPORTS OF THE SPECIAL RAPPORTEUR

India - Case 2004/79

16. In October 2005, the Special Rapporteur made another attempt to enter into a dialogue with the Government of India concerning information he continues to receive alleging ongoing adverse human rights effects as a result of the Bhopal disaster. The Special Rapporteur had previously brought to the attention of the Government information alleging that significant amounts of highly toxic chemical stockpiles remained in several of the buildings of the now abandoned Union Carbide (India) Ltd. pesticides factory in Bhopal (the communication by the Special Rapporteur was reflected in E/CN.4/2004/46/Add.1, paragraphs 44-45). Additional information about the issue was received in 2005, as reflected in E/CN.4/2005/45/Add.1, paragraph 3. The Government of India had not replied to any previous communications in relation to the Bhopal case.

17. In his communication to the Government of India in 2005, the Special Rapporteur referred to further allegations related to the Bhopal case that, if confirmed, would imply violation of several human rights and fundamental freedoms, including the right to life; the right to the highest attainable standard of physical and mental health; the right to an adequate standard of living; the freedom from discrimination; freedom of association; freedom of expression; the right of access to information; and the right to an effective remedy for the victims of human rights violations. More specifically, the allegations brought to the attention of the Government included the following:

(a) According to Amnesty International, exposure to the toxins that leaked on the night of 2-3 December 1984 has resulted in chronic, debilitating illness for at least 120,000 people for whom treatment has proved largely ineffective. It is alleged that the extent and the quality of medical research has not been adequate to meet the level necessary to make decisions about action on detoxification, short- and long-term treatment, long-term health consequences and the implementation of a programme to compensate victims. This inadequate research has been further weakened by the lack of information about the nature of the gases released during the leak and their toxicity;

(b) According to the Indian Council for Medical Research studies, 68 to 86 per cent of the population in the severely affected areas belong to a “very depressed socio-economic class”. The economic and social consequences of the gas leak were therefore largely borne by those with the least resources. Many survivors complain of reduced earnings because of their inability to work as a result of various health problems or injuries. Women affected by the gas are said to be particularly disadvantaged;

(c) People living in the neighbourhood around Bhopal continue to drink heavily contaminated water from the local pumps in the absence of any other source of water. This means that people who were not exposed to the gas have developed health problems similar to those who had been exposed, probably from drinking contaminated water. It is alleged that the state government has yet to implement a Supreme Court order from May 2004 to supply fresh drinking water through tankers to peoples whose potable water supplies are contaminated by pollutants from the plant;

(d) Police in Bhopal used excessive and unnecessary force against some 300 protesters who on 17 May 2005 were opposing what they considered the failure of the Madhya Pradesh state government to provide clean drinking water to the communities affected by the ongoing contamination of the former Union Carbide plant in Bhopal;

(e) Compensation settlements agreed between the Union Carbide Corporation and the Government of India, endorsed by the Indian Supreme Court in 1989, were allegedly inadequate to cover the claims and provide an effective remedy by the victims. It is also alleged that the sum has not been distributed in full to the victims. In addition, the Government has rejected about 30 per cent of claims for injuries, around 16,000 claims are outstanding, and most of the successful applicants are said to have received minimal amounts of compensation. Twenty years after the disaster, around US\$ 330 million of the US\$ 470 million settlement remained held by the Reserve Bank of India.



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HUMAN RIGHTS COUNCIL
Fourth session*
Agenda item 2

**IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251
OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”**

**Report of the Special Rapporteur on the right to adequate housing as a
component of the right to an adequate standard of living,
Mr. Miloon Kothari****

Addendum

**Summary of communications sent and replies received
from Governments and other actors**

* The present document, which carries the symbol number of the fourth session of the Human Rights Council, is scheduled for consideration by the fifth session of the Council.

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

Observations

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

India

Communications sent

30. On 7 April 2006, the Special Rapporteur sent a joint urgent appeal with the Special Representative of the Secretary-General on the situation of human rights defenders, the Special Rapporteur on human rights and fundamental freedoms of indigenous people and the Special Rapporteur on the right to food, concerning environmental activists and human rights defenders involved with Narmada Bachao Andolan (NBA - Save Narmada Movement), and in particular NBA's leaders, Ms Medha Patkar, Mr. Jamsing Nargave and Ms. Bhagwatibai Jatpuria. Concerns are expressed regarding the impact of increasing water levels in the Sardar Sarovar Dam on the Narmada River, and particularly about the most recent developments in this respect. According to information received on 8 March 2006, the Narmada Control Authority (NCA) took a decision to raise the height of the above-mentioned dam, which contravenes the judgement of the Supreme Court of India in 2000 according to which any further increase in height was to be linked to the implementation of resettlement and rehabilitation measures, and would allegedly result in the violation of a range of human rights of an estimated 24,241 families in 177 villages of Madhya Pradesh. Reportedly, neither adequate rehabilitation nor alternative agricultural land has been provided for those affected, many of them indigenous peoples and farmers, leaving them homeless when submergence hits. Where land has been allotted, it is allegedly uncultivable and inadequate. The Resettlement and Rehabilitation Sub-group of NCA, the primary authority to assess the situation, has reportedly not visited the submergence area since November 2000, and the Grievance Redressal Authorities in the three concerned states are not functioning as expected in the light of the 2000 Supreme Court judgement. According to estimates from civil society organizations, there are at least another 10,000 families, who were affected the previous time the water level of the dam was raised, that are still not rehabilitated. An indefinite sit-in (dharna) by over 300 dam-affected persons and activists of NBA in New Delhi since 17 March, demanding a halt to construction at the Sardar Sarovar dam has been taking place, and 3 NBA activists are on indefinite fast since 29 March 2006. Concern is expressed regarding the intervention by the Indian police force with respect to NBA activists on the night of 5 April 2006, when according to allegations, more than 300 police officials used force described as indiscriminate. Further reports claim that Ms. Medha Patkar and Mr. Jasming Nargave, who were on their eighth day of indefinite fast were arrested and over 25 activists were also detained, using excessive and disproportionate violence. The Government was urged to act immediately to ensure that the dam height is not raised without measures being taken to provide just and proper resettlement of all the affected.

31. On 11 May 2006, the Special Rapporteur sent a joint letter with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, regarding an incident of violence between Jat and Dalit communities in Gohana, Sonapat district of Haryana state, in August-September 2005, resulting in the burning of houses and loss of property belong to members of the Dalit community. According to information received, a

dispute took place on 27 August 2005 between members of the two communities mentioned above that resulted in the death of one member of the Jat community. Four Dalits were immediately arrested by the police and charged, and a manhunt was organized to arrest the remaining alleged responsible people. Reportedly, the next day a Maha Panchayat (a Grand Caste court) was conveyed by the Jat community, threatening the authorities with an ultimatum saying that, if within 48 hours, the suspects were not apprehended and brought to justice, the Jats would burn the entire Balmiki Basti (Dalit district), near Samata Chowk, Gohana. Fearing reprisals, some 1,500 to 2,000 Dalits fled their houses by 30 August. On 31 August, while a second Maha Panchayat was taking place, a group of 1,500 to 2,000 armed persons of the Jat community entered the district and burned 55 to 60 houses, stealing and destroying valuables. Reportedly, about 150 to 200 policemen were present on the scene and did not react. According to reports received, several measures have been taken to redress the situation, including the reconstruction of burnt houses at government cost, helping children in the affected families to get back to schools and organizing nutritional programmes for children under the age of 5. It is alleged that while the Government claims to have paid Rs. 100,000 (Lakh) compensation to 55 affected families, local Dalits contest this claim. Allegedly, a probe by the Central Bureau of Investigation (CBI) was ordered but the report into the incident describes it as a simple case of arson letting many who were involved not indicted.

Communications received

32. By letter dated 29 May 2006, the Government replied to the joint letter sent on 11 May 2006 by the Special Rapporteur with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. The Government reported that the Government of Haryana state has instituted an inquiry by the CBI to investigate the incident, and that various additional steps had been taken. A case has been filed against the 23 accused and 4 have been arrested by the police, the Deputy Superintendent of Police and Sub-Inspector of Police have been suspended as departmental action is being taken against them, and compensation has been offered to the affected families. The 54 houses which were identified as severely affected have been reconstructed and an ad hoc grant of Rs. 100,000 has been given to each of these 54 families. A departmental grant of Rs. 275,000 has been given to 55 other persons affected, an amount of Rs. 200,000 had been distributed as daily allowances and Rs. 33.26 lakh has been given to 144 families for loss of their belongings during the riots. Furthermore, those who have left their houses at the time of the incident have returned to their homes. The National Human Rights Commission of India has taken suo-motu cognizance of the incident, appreciating the sensitivity and promptness shown by the State Government of Haryana in awarding compensation, repairing/reconstructing of the houses for the victims and taking action against those responsible for the incident.

Observations

33. The Special Rapporteur thanks the Government for its reply. However, he regrets that at the time of the finalization of this report, the Government had not transmitted any reply to his communication of 7 April 2006. The Special Rapporteur continues to monitor the situation with interest.



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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

**Report of the Special Rapporteur on adequate housing as a component
of the right to an adequate standard of living, Miloon Kothari**

Addendum

Summary of information transmitted to Governments and replies received

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COMMUNICATIONS SENT TO AND REPLIES RECEIVED FROM GOVERNMENTS DURING 2003-2004

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Introduction

1. The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living receives a large number of communications alleging violations of the right to adequate housing and related rights worldwide. The main sources of such communications are national, regional and international non-governmental organizations, intergovernmental organizations and other United Nations procedures concerned with the protection of economic, social and cultural rights. This addendum to the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living contains, on a country-by-country basis, summaries of general allegations and of urgent appeals transmitted to Governments during 2003 and 2004, as well as summaries of government replies received. The Special Rapporteur further would like to note that he continuously follows up on communications sent, where no reply has been received or where questions are still outstanding.

2. This is the first report by the Special Rapporteur on adequate housing reflecting his communications with Governments. The majority of communications and urgent appeals reflected in this report deals with threatened or undertaken forced evictions, including cases of alleged excessive use of force, lack of consultation and prior notice or absence of compensation or alternative housing arrangements. However, other issues such as administrative measures allegedly impacting negatively on low-income families, discrimination against the Roma community, and displacement due to development projects have also been brought to the Special Rapporteur's attention, as reflected. Where appropriate, the Special Rapporteur has joined in urgent appeals and letters of allegations with other special procedures, i.e. the Special Rapporteur on the question of torture, the Special Rapporteur on the human rights of migrants, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, the Special Rapporteur on the right to food, and the Working Group on Arbitrary Detention.

3. During the period under review, i.e. from 1 January 2003 to 15 December 2004, the Special Rapporteur sent 21 letters to 15 countries. The Special Rapporteur appreciates the timely responses received from a number of Governments to the letters and urgent appeals transmitted. He regrets that others have failed to respond or have done so in a selective manner, not responding to all the questions arising from the communication. Owing to restrictions on the length of documents, the Special Rapporteur has been obliged to reduce considerably details of communications sent and received.

Bangladesh

Communication sent

4. On 2 October 2003, in a joint letter of allegation with the Special Rapporteur on torture, the Special Rapporteur sent a communication to the Government of Bangladesh inquiring about the alleged demolition of houses belonging to the Hindu community of the villages of Chakribakri, Madhukhali, Radhanagar, Bigordana, and Parmadhukhali, all in Khula district. It is alleged that these housing demolitions, taking place between 5 and 18 January 2003, were

carried out by police officers as a form of punishment for the residents' alleged support for terrorist groups. In the letter, the Government was asked to provide and clarify the substance of these allegations. The Government was also urged to take any steps necessary to investigate, prosecute and impose sanctions on any persons guilty of the alleged violations, as well as to provide an adequate remedy for the victims of these abuses.

Observations

5. The Special Rapporteur regrets that at the time of the finalization of his report no response to the joint communication had been received from the Government.

China

Communication sent

6. On 10 June 2003, in a joint letter of urgent appeal with the Special Rapporteur on torture and the Chairman-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur sent a communication to the Government of China, inquiring about the alleged demolitions of dwellings within the Serthar Buddhist Institute, in Serthar county, Karze "Tibet Autonomous Prefecture", Sichuan province. It is alleged that on 27 May 2003 four individuals were arrested by officials of the Public Security Bureau of Serthar county, in connection with their alleged involvement in a row over reconstruction at the Serthar Buddhist Institute in 2002. Three of the arrested were monks, Tamding, Palzin, and Shongdu, along with Ngodup, a layman. It is alleged that between June and July 2001, over 2,000 dwellings within the Institute were demolished. It is also alleged that on 25 December 2002 Chinese officials attempted to demolish reconstructed huts of nuns and monks in the vicinity of the Serthar Institute. Reportedly, some of the nuns were still in their huts when the officials began the demolitions. According to information received, the next day, a major row erupted between the two parties, and the Chinese authorities threatened to arrest at least 200 monks and nuns if the Institute did not hand over the ringleaders of the incident. The letter urged the Government to clarify the information and the circumstances of the case. The Special Rapporteur urged the Government to provide information on its compliance with the provisions contained in the international legal instruments, especially those regarding forced evictions.

Government reply

7. On 29 July 2003, the Government of China informed the Special Rapporteur that although the actions of the four individuals were not sufficiently serious to incur criminal penalties, they are, according to provisions of articles 19 and 22 of the Chinese public security regulations, punishable by up to 15 days of administrative detention. The Government also claimed that its inquiries into the matter had established that the four involved persons were treated well during their time in custody, and were not subjected to torture. The Government also stated that it had allocated a considerable amount of money for the resettlement of those monks and nuns who wished to return to their villages and for the reconstruction of the seminary building. According to the Government, the working, studying and living conditions at Serthar

seminary have improved following its reorganization of the seminary. The Government stated that it had improved the right to adequate housing of the monks and nuns through its efforts, and not to have infringed on their rights, as alleged.

Egypt

Communication sent

8. On 2 October 2003, in a joint letter of allegation with the Special Rapporteur on torture, the Special Rapporteur sent a communication to the Government of Egypt inquiring about the alleged housing demolitions in the village of Mit Serag, resulting in injuries to several residents. According to information received, on 3 June 2003, approximately 400 police officers entered the village of Mit Serag with two bulldozers and destroyed 14 houses, on the grounds that they had been built on arable land, even though it is alleged that a court decision had withdrawn these charges. Reportedly, the belongings of the residents were destroyed in the process. The letter urged the Government to clarify the substance of these allegations by providing information on specified aspects of the case. The letter also urged the Government to take any necessary steps to investigate, prosecute and impose appropriate sanctions on any persons guilty of the alleged violations, as well as to provide adequate remedy to the victims of these abuses.

Government reply

9. On 17 November 2003, the Government of Egypt informed the Special Rapporteur that the Department of Agriculture and Irrigation of the city of Mahalla in the Governorate of Gharbeya had issued a number of demolition orders for “illegal housing” erected by several residents on arable land close to irrigation facilities in the villages of Mit Serag, Uthmaniyah and Hawamidiyah near Mahalla city. The Government explained that on 3 June 2003 governorate enforcement agencies proceeded with the execution of 16 demolition orders. To guarantee public safety, security forces were present. The Government claimed that after the demolitions had been completed 800 residents of Mit Serag village threw stones at the police and caused a disturbance. Consequently, 15 persons were arrested, 1 was released soon afterwards, and the rest remained in custody until they were released on 3 October 2003.

Greece

Communication sent

10. On 11 June 2003, in a letter of urgent appeal, the Special Rapporteur sent a communication to the Government of Greece, inquiring about the alleged forced evictions (perpetrated by the municipal authorities), both attempted and actual, of the Roma population living in Aspropyros. The Special Rapporteur also inquired about the alleged denial of living conditions meeting the most fundamental international standards related to the enjoyment of economic, social, and cultural rights, including access to running water and other essential services. Several Roma families in the settlement were allegedly forcibly evicted from their homes. The Special Rapporteur appealed to the Government to provide information on this case and about the steps taken to rectify the situation in accordance with the international legal instruments that Greece had ratified.

Government reply

11. On 14 July 2003, the Government of Greece provided general information on the housing situation of Roma people in Greece. The Government also outlined the Integrated Action Plan (IAP) for the social integration of the Roma people, a policy framework put in place in 1996 to address the serious problems that Greek Roma face regarding health, education, vocational training, social insurance and housing. Priority Axis 1 of the IAP refers to “Housing”, including new settlements, residences, settlement improvements, and urban and physical planning. The Government pointed out that the IAP recognizes the great importance that provision of an appropriate house and housing environment has on the attempt to eliminate the social exclusion of Roma citizens. Thus, the aim of Priority Axis 1 is the solution of the housing problem of Roma through a set of measures and actions that cover the different housing and settlement needs of the Roma. The Government outlined the various measures through which Priority Axis 1 can be achieved.

India

Communication sent

12. On 29 July 2003, the Special Rapporteur, in a joint letter of urgent appeal with the Special Rapporteurs on the human rights and fundamental freedoms of indigenous people and the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (“right to health”) sent a communication to the Government of India inquiring about the decision of the Resettlement and Rehabilitation (R&R) Subgroup of the Narmada Control Authority (NCA), supported by various state chief ministers and relevant authorities, to raise the level of the Sardar Sarovar dam from 95 to 100 metres. It was alleged that this decision would result in the flooding of several Adivasi communities living near the reservoir, given that during monsoon season there would be an increased number of dwellings that would be submerged. Reportedly, an estimated 3,000 families in Maharashtra and 12,000 families in Madhya Pradesh would be at risk of having their homes submerged as a result of the heightened water level. It was also reported that no proper resettlement was given for the Adivasi community.

Government reply

13. On 23 September 2003, the Government of India responded that the NCA had permitted raising the height of the dam in accordance with the requirements stipulated in the Supreme Court’s Directions as well as all necessary safety requirements, such as environmental safeguard measures taken by the Environment Subgroup constituted by the NCA. The Government also informed the Special Rapporteurs that the 4,736 resettled project-affected families in the states concerned (2,767 in Gujarat, 1,258 in Madhya Pradesh and 711 in Maharashtra) were provided with all civic amenities as mandated by the Narmada Water Disputes Tribunal. According to the information received, after the submission of Action Taken Reports by Gujarat, Madhya Pradesh and Maharashtra, the R&R Subgroup conveyed its clearance to NCA to consider giving permission for another raising of the height of Sardar Sarovar dam on 13 May 2003.

14. On 11 October 2004, the Government of India submitted a second response to the joint urgent appeal of 29 July 2003, stating that adequate care had been taken to protect and fulfil the human rights of all citizens, including the Adivasis of the Narmada Valley, when the decision to

raise the height of the Sardar Sarovar dam from 95 to 100 metres was taken. With respect to adequate housing, the Government stated that the Narmada Water Disputes Tribunal award provided that every displaced family is to be provided a free plot to build a house and that the Government of Gujarat would extend financial assistance to construct the core house on the allotted plot. Every displaced family is also provided three choices among which they may select agricultural land and the land is allotted with the consent of the project-affected families.

Communication sent

15. On 22 April 2004, following up on the reply of the Government received on 23 September 2003 (see above), a joint letter of urgent appeal with the Special Rapporteurs on the human rights and fundamental freedoms of indigenous people, and on the right of health was sent to the Government of India, inquiring about further developments with respect to the Sardar Sarovar dam. According to information received by the Special Rapporteurs, a decision was made on 16 March 2004 by the NCA, and supported by the Chief Ministers of Gujarat, Maharashtra and Madhya Pradesh, and other relevant authorities, to allow the raising of the height of the Sardar Sarovar dam from 100 metres to 110.64 metres. The Special Rapporteurs reiterated that information indicated that the result would be the enlargement of the submerged area, the flooding of several Adivasi communities and densely populated villages near the reservoir and on the banks of the river, and consequent displacement of communities.

Observation

16. The Special Rapporteur regrets that at the time of the finalization of his report, no reply to the joint communication had been received from the Government.

Communication sent

17. On 12 July 2004, the Special Rapporteur, in a joint letter of allegation with the Special Rapporteur on the right to food, sent a communication to the Government of India inquiring about reports of large-scale demolitions of slum dwellings and forced evictions allegedly undertaken by the Municipal Corporation of Delhi (MCD) and the Delhi Development Authority (DDA) since February 2004 in the Yamuna Pushta area of New Delhi. According to official reports, approximately 20,000 families, or roughly 100,000 people, have been evicted. However, information from local non-governmental sources indicates that the number of families evicted is 27,000, or approximately 130,000 people. Information suggests that only 16 per cent of the people affected have been given any kind of alternative housing. Reports from civil society groups working in the proposed resettlement sites of Bawana and Holambi Kalan point out that resettlement conditions are highly inadequate. Basic amenities like water and sanitation are also found to be grossly inadequate. The Special Rapporteur also requested information about the alleged use of force, arrests, and ill-treatment of slum dwellers with reference to the Yamuna Pushta evictions, highlighted by media reports and information from civil society organizations in New Delhi. According to the information received, in the Kanchanpuri demolition of 23 March 2004, two children were trapped under debris. On 13 March 2004 a child and a 40-year-old man were burnt to death in a fire that started during the demolition in Indira Basti of the Yamuna Pushta. According to reports from civil society groups, a fire gutted about 2,000 slum dwellings on 18 April 2004 in the Yamuna Pushta.

Government reply

18. On 6 September 2004, the Government of India responded that the clearance of slum clusters encroaching upon the Yamuna river bed had been undertaken as per the directions of the High Court of Delhi issued in March 2003. The slum and *jhuggi* (hutment) dwellers in Delhi had been rehabilitated in accordance with the policy adopted by the government of the National Capital Territory of Delhi. As per the policy: (i) *jhuggi* dwellers are relocated elsewhere if the land is required for a public project; (ii) in situ upgrading is done if the land is not needed in the foreseeable future; and (iii) civic amenities like water supply, street lighting, roads, storm water drains, etc., are provided in the remaining *jhuggi* clusters. According to the response, all eligible squatters had been allotted alternative plots as in accordance with the policy. The DDA and the MCD had reported that no coercive action whatsoever was taken during the clearance drive.

Communication sent

19. On 28 October 2004, in a letter of urgent appeal, the Special Rapporteur sent a communication to the Government of India, inquiring about the allegation of a forced eviction of women and children from the Palika Hostel night shelter for the homeless by the New Delhi Municipal Council (NDMC) on the morning of 16 October 2004. According to the information received, approximately 150 NDMC staff entered the shelter at 7.30 a.m., allegedly using excessive force while effectuating the eviction. At the time of the communication, the persons affected by the eviction continued to be without housing and were reportedly living in tents or on the streets. The information received suggested that the eviction had been conducted in a way that violated a series of requirements imposed by international human rights law, in particular the right to adequate housing as a component of the right to an adequate standard of living. The Special Rapporteur respectfully drew attention to the urgent need for developing a comprehensive policy and strategy to address the housing rights of the poorest segments of society, including the homeless, particularly in light of the onset of winter.

Observation

20. The Special Rapporteur regrets that at the time of the finalization of his report, no reply to the communication had been received from the Government.

Israel

Communication sent

21. On 29 July 2003, in a letter of urgent appeal to the Government of Israel, the Special Rapporteur inquired about the housing situation in the “unrecognized villages” in the Negev/Naqab. Allegedly, on 1 July 2003, Israeli authorities demolished 150 houses belonging to Bedouins in the “unrecognized villages” of Al-Dahiya, al-Missadiya and Ateir, claiming that the homes were built illegally on State-owned land. Subsequently, on 15 July 2003, Israeli forces demolished more homes and commercial buildings in the “unrecognized villages” of al-Sa’dia and al-Bohara. The Special Rapporteur noted that the Committee on Economic, Social and Cultural Rights in its concluding observations adopted on 23 May 2003 expressed concern over the situations of Bedouins living in Israel, particularly those living in villages that remain



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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

**Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest
attainable standard of physical and mental health, Paul Hunt**

Addendum

Summary of cases transmitted to Governments and replies received^{*}

^{*} The report is being circulated in the languages of submission only.

Ethiopia

Communications sent

33. On 23 June 2004, the Special Rapporteur sent a joint urgent appeal with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on freedom of opinion and expression, and the Special Rapporteur on torture, regarding **Imiru Gurmessa Birru**, who was arrested in March 2004. Mr. Birru was reportedly denied medical treatment, in particular for his diabetes and the injuries resulting from the ill-treatment he has allegedly been subjected to while in custody. The judges hearing his case were reported to have paid no attention to his health condition, which gradually deteriorated. As his condition became critical, he was eventually hospitalized at the Police Hospital in Addis Ababa around 11 June 2004. However, he reportedly received inadequate medical treatment. In view of these allegations, concern had been expressed for his physical and mental integrity if he did not receive prompt and adequate medical treatment.

Observations

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

India

Communications sent

35. On 22 April 2004, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and the Special Rapporteur on the situation of human rights and the fundamental freedoms of indigenous people, regarding information received that a decision was made on 16 March 2004 by the Narmad Control Authority, and supported by the Chief Ministers of Gujarat, Maharashtra and Madhya Pradesh, and other relevant authorities, to allow the **raising of the height of the Sarda Sarovar** dam from 100 metres to 110.64 metres. According to the information received, this was to lead to the flooding of several Adivasi communities and densely populated villages.

36. Approximately 500 families in Gujarat, 1,500 families in Maharashtra, and 10,000 families in Madhya Pradesh continue to live in the submergence zone, due to lack of proper resettlement and rehabilitation, and will therefore be in danger of having their homes submerged as a result of the heightened water level. The right of everyone to the enjoyment of the highest attainable standard of health includes an obligation to ensure that health facilities, goods and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination. The right also extends to the underlying determinants of health, such as access to potable water and adequate sanitation. Displacement without appropriate rehabilitation, including

access to adequate housing, water, sanitation, medical and other services, would represent a serious health risk to those displaced and jeopardizes their right to the highest attainable standard of health.

Communications received

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

Iran (Islamic Republic of)

Communications sent

38. On 25 March 2004, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on freedom of opinion and expression, the Special Representative of the Secretary-General on human rights defenders, and the Special Rapporteur on torture, regarding **Arzhang Davoodi**. Alleged torture had reportedly left him with a broken shoulder blade, bleeding in his left eye, deafness, a broken jaw and broken teeth, for which a doctor reportedly assessed that he required treatment of his eyes, ears and teeth, and physiotherapy for his shoulder. The authorities had allegedly provided him with no treatment. It was reported that prison officials refused to grant him leave to obtain the required medical treatment.

39. On 13 April 2004, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on freedom of opinion and expression, and the Special Rapporteur on torture, regarding **Siamak Pourzand**, aged 74, head of the *Majmue-ye Farhangi-ye Honari-ye Tehran* (Tehran Artistic and Cultural Centre). He was reportedly allowed out of Ervin prison on leave in November 2002, but re-arrested in April 2003. He was allegedly not allowed to take with him the medicine he required. It was said that while he was in custody four of his ribs were broken. Siamak Pourzand was reportedly suffering from spinal stenosis. If left untreated, this could lead to organ failure, notably of the bowels and bladder, and paralysis. Doctors had allegedly concluded that he required immediate surgery. However, he had reportedly not received medical treatment for this condition. Around 31 March 2004, he reportedly fell into a coma. He was allegedly not treated until another prisoner went to the prison medical facility and insisted that someone examine him. In view of these allegations, concern was expressed for his mental and physical integrity if he did not receive prompt and adequate medical treatment.

40. On 23 April 2004, the Special Rapporteur sent a further joint urgent appeal with the Special Rapporteur on freedom of opinion and expression, and the Special Rapporteur on torture, regarding the situation of **Siamak Pourzand**. According to information received, on 18 April 2004, Mr. Pourzand—allegedly unable to walk and supported by two prison guards—was taken to the prison's visiting room to see his sister. It was reported that a few hours later he was transferred to the intensive care unit of Modares Hospital. It was alleged that while in hospital Mr. Pourzand was chained to his bed by his feet. Information received indicated that he was in need of an urgent



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HUMAN RIGHTS COUNCIL
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Agenda item 2

IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”

Report of the Special Rapporteur on the right to food, Jean Ziegler

Addendum

Communications sent to Governments and other actors and replies received**

* The present document, which carries the symbol number of the fourth session of the Human Rights Council, is scheduled for consideration by the fifth session of the Council.

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

India

Communications sent

29. On 7 April 2006 the Special Rapporteur together with a number of other special procedures of the Human Rights Council brought to the Government's attention information received concerning environmental activists and human rights defenders involved with Narmada Bachao Andolan (NBA - Save Narmada Movement) and in particular the NBA leader, Ms. Medha Patkar, and Jamsing Nargave (from Amlali village, Badwani District) and Bhagwatibai Jatpuria (from Nissarpur village, Dhar District). In addition to earlier concerns expressed regarding the impact of increasing water levels in the Sardar Sarovar Dam on the Narmada River, the special procedures expressed concern about developments in this respect. According to information received on 8 March 2006, the Narmada Control Authority took a decision to raise the height of the Sardar Sarovar Dam from the present 110.64 metres to 121.92 metres. The implementation of this decision, apart from contravening the judgement of the Supreme Court of India in 2000 according to which any further increase in the height of the dam was to be linked to the implementation of resettlement and rehabilitation measures, would allegedly result in the further violation of a range of human rights of those affected. They were aware of the indefinite sit-in (*dharna*) undertaken by the over 300 dam-affected persons and NBA activists in New Delhi since 17 March to demand a halt to construction of the dam, as well as of the situation of the three NBA activists who had begun an indefinite fast on 29 March 2006. According to information received, adequate rehabilitation has not been provided for those affected by the dam, many of whom are indigenous peoples and farmers. Furthermore, alternative agricultural land is not being provided and where land has been allotted, as in Maharashtra and Gujarat, it is allegedly uncultivable and inadequate. Official estimates say that an additional 24,421 families in 177 villages of Madhya Pradesh are to be displaced should the dam height be raised to 121.92 metres. According to estimates from civil society organizations, at least 10,000 families were affected when the height of dam water level was previously raised to 110 metres who are still awaiting rehabilitation. Women and children are the worst affected by displacement and the lack of adequate rehabilitation.

30. On 12 April 2006 the Special Rapporteur together with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people wrote to the Government about allegations of deaths from starvation. In particular, the information received claims that on 24 January 2006 Ms. Bisni Mal, and a few days later her husband, Joyram Mal, members of one of the 13 indigenous families from Pakurdiar village in Jalangi, Murshidabad, died due to ill-health resulting from lack of food. In addition, on 6 March 2006, 8-year-old Deepali Singh, daughter of Kalipada Singh and resident of the same village, died of starvation. Allegedly, her medical report indicates that she was suffering from anaemia and hepatomegalia. The allegations received claim that because of river erosion in the Jalangi area, most people have lost their homes and lands. In this area there are reportedly no industries and the usual means of livelihoods of local communities used to be agriculture. However, erosion has affected most of the cultivated land, thus depriving the local communities of their usual access to food. In Jalangi villagers were promised ration cards that would enable them to obtain access to food grains, sugar, kerosene, oil and other items at subsidized rates. Reportedly, the majority of the villagers have not been able to access these items as either the shops which sell the subsidized food are closed or shopkeepers refuse to sell to the cardholders, claiming that the cards are counterfeit. It

is claimed that local authorities have not yet adequately intervened to address these problems. In addition, Murshidabad District has been identified as one of the places where the National Employment Guarantee Act, 2005 will be implemented. This legislation stipulates that 100 days of work at the minimum wage should be provided to a majority of the residents. It is claimed that in Jalangi this welfare scheme has not yet been implemented and most of the villagers have not had access to jobs or alternative land to cultivate. Bisni Mal and Joyram Mal were not given ration cards and had been unable to eat for days before they died. Allegedly, when their son left the house in search of employment, he gave his parents some grain on which they managed to survive for a few days. The Special Rapporteur believes that these facts appear to indicate a violation of the Government's obligation to respect the right to food, as omissions by the relevant authorities contributed to the violation of the right to life of Bisni Mal, Joyram Mal and Deepali Singh. In addition, the alleged facts would appear to violate the obligation to fulfil the right to food, as relevant authorities have failed to provide adequate food to Bisni Mal, Joyram Mal, Deepali Singh and the villagers in Jalangi, given their inability to do so themselves.

31. On 12 April 2006 the Special Rapporteur together with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people raised with the Government further allegations of deaths from starvation. In particular the information received by the Special Rapporteur claims that on 7 February 2006 Katraju Lakshmi, a Chenchu tribal woman working as a bonded labourer in the State of Meghalaya, died due to ill-health resulting from lack of food. The Chenchu tribe is mostly found in the Nallamalai hills of Andhra Pradesh and used to depend on the forest for their food. Forest products used to enable them to feed themselves and survive. This situation has reportedly changed in recent years due to the reduction in forest cover and the subsequent depletion of forest produce which has reportedly forced Chenchu to look for alternative employment opportunities. The allegations received claim that 600 Chenchu tribal people from Marredmandinne village in Pedakottapally Division, Mahabubnagar District, Andhra Pradesh, work as bonded labourers on construction sites in the State of Meghalaya. In addition, most of the Chenchu do not possess ration cards which would enable them to receive subsidized grain. It is reported that, following the tribe's displacement from their original habitations to nearby villages, village heads and village secretaries could not refer their names to the local administration for issuing ration cards because they were not original residents of these villages. It also appears that the Chenchu are generally not aware of their entitlements and authorities have so far failed to inform and educate them. It is alleged that perennial drought, lack of alternative employment, abject poverty and the absolute absence of other means to feed their families forced the illiterate Chenchu to search for employment in far-off places. Taking advantage of their situation, middlemen allegedly promised to provide them with employment in nearby cities such as Warangal and Hyderabad, but instead took them to places as far away as Meghalaya, which is almost 1,700 km from their home. The Chenchu reportedly covered the costs of living and transport through loans from the labour contractors. Unable to pay back the loans, they were forced to become bonded labourers. It is also claimed that tribal women are doubly affected due to the wage discrimination they suffer and the threats to their physical security they receive. When food is scarce, tribal women are often the ones who suffer most from hunger and malnutrition. The allegations received claim that Katraju Lakshmi was among the group of Chenchu that migrated to Meghalaya in September 2005. She worked as a construction labourer for the Lekhya power plant near Shillong in the State of Meghalaya. She was reportedly paid an advance of 1,000 rupees by middlemen and then forced into bonded



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HUMAN RIGHTS COUNCIL
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Agenda Item 3

**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 freedom of religion or belief,
Asma Jahangir**

Addendum

Summary of cases transmitted to Governments and replies received * **

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

** The present report was submitted later than the indicated deadline, in order to incorporate the latest available information on the subject matter.

article 18 of the Universal Declaration of Human Rights as well as article 18 of the International Covenant on Civil and Political Rights (ICCPR).

Guatemala

Llamamiento urgente enviado el 20 de enero de 2006

96. La Relatora Especial quiso llamar la atención urgente del Gobierno de Guatemala respecto a la información que recibió en relación con el lugar para ceremonias maya **Tulam Tzu**. Según la información, el 27 de diciembre de 2005 se emprendió la construcción de condominios en el lugar sagrado maya Tulam Tzu, ubicado en la 40.^a avenida, final del Naranjo, Zona Cuatro de Mixto, Guatemala. La Conferencia Nacional de Ministros de la Espiritualidad Maya de Guatemala Oxlajuj Ajpop utiliza este lugar para practicar sus rituales espirituales y tradicionales. Oxlajuj Ajpop ha demandado al Ministro de Cultura y Deportes y al alcalde del municipio de Mixto la interrupción de la construcción, dado que su continuación podría traer como consecuencia la destrucción (parcial o total) de este lugar sagrado maya.

Respuesta del Gobierno enviada el 12 diciembre de 2007

97. Además de la respuesta enviada el 4 de abril de 2006 (A/HRC/4/21/Add.1, paras. 160-166), el Gobierno informó asimismo que desde el 1 de agosto del 2006 viene implementando las medidas cautelares decretadas el 14 de julio de 2006 por la Ilustre Comisión Interamericana de Derechos Humanos, las cuales tienen por finalidad suspender definitivamente las labores de construcción y preservar el Centro Arqueológico de Rosario-Naranjo. El día 25 de septiembre del 2006, la Procuraduría General de la Nación realizó una reunión de trabajo en las instalaciones de COPREDEH con el fin de darle una solución al conflicto; sin embargo, los peticionarios se retiraron al momento de empezar las negociaciones. El estado de Guatemala ha seguido promoviendo el proceso relacionado en la vía ordinaria civil.

98. El Estado de Guatemala señaló la adopción de las medidas cautelares dictadas por la Ilustre Comisión Interamericana de Derechos Humanos.

Observaciones

99. La Relatora Especial agradece la respuesta que el Gobierno de Guatemala ha enviado.

India

Joint urgent appeal sent on 26 September 2007 with the Special Rapporteur on the question of torture

100. The Special Rapporteurs brought to the attention of the Government information they had received regarding Mr. **Sabir Ali**, Mr. **Iqbal Shahi**, Ms. **Anisa Abdul Jabbar**, Mr. **Muhammad Allauddin Syed**, Ms. **Zill Gohar**, Mr. **Asad Gohar**, Mr. **Muhammad Ashfaq**, Ms. **Shaista Gohar**, Mr. **Ayoub Gohar**, Mr. **Muhammad Irshad**, Mr. **Muhammad Sajjad Babar**, Ms. **Shabana Gohar**, Mr. **Zaheer-ud-din Bukhari**, Mr. **Muhammad Faheem Jaffar**, Ms. **Rozina Faheem**, Mr. **Farooq Azam**, Mr. **Muhammad Khalid**, Mr. **Sarfaraz Hussain**, Mr. **Muhammad**

Fiaz, Mr. Muhammad Furqan Uddin Syed, Mr. Muhammad Yasir, Mr. Shehzaib Gohar, Ms. Gulnaz, Ms. Samreen Shahzadi, Mr. Muhammad Ikhlaq, Ms. Kulsoom Khan, Mr. Imran Saeed, Ms. Zakia Imran, Mr. Imran Pasha, Mr. Muhammad Maqsood, Mr. Irshad Ali, Ms. Rakhshanda Asim Syeda, Mr. Javaid Iqbal, Ms. Qazmi Begum, Mr. Muhammad Muzammil, Mr. Shahzad Mukhtar, Mr. Muhammad Zafar Iqbal, Mr. Mansoor Khan, Ms. Bushra Mansoor, Ms. Misbah Nisa, Ms. Ashraf Nisa, Mr. Moin-ud-din Ahmed, Ms. Noreen Shahzadi, Mr. Abdul Rashid, Ms. Maqsooda Bibi, Ms. Sana Riaz, Mr. Hassan AlGohar, Mr. Muhammad Shafi, Ms. Safia Shafi, Mr. Tanveer Younus, Mr. Asim Ilyas, Mr. Tahir Rasheed, Mr. Usman Rashid, Mr. Abdul Waheed, Ms. Sajida Waheed, Ms. Farah Naz Gohar, Mr. Waqas Ahmed Gohar, Ms. Samira Wasim, Mr. Muhammad Wasim, Mr. Aurangzeb, Ms. Qamar Parveen, Mr. Akhtar Ali Ansari, Ms. Abhaya Gohar, Ms. Mary Gohar, Mr. Amir Gohar. These 65 persons have Pakistani nationality and are currently detained in Central Jail Tihar, New Delhi, India. The three last-named persons were born during the past three months in Central Jail Tihar. Currently, a total of ten detainees are under six years of age.

101. According to the information received, the first-named 62 persons are members of the Mehdi Foundation International (MFI), a multi-faith institution utilizing mystical principles of Mr. Ra Gohar Shahi. They claim that in Pakistan MFI members are not allowed to practice their beliefs, that they were tortured there and that blasphemy cases against 250 MFI members have been initiated in Pakistan. In early 2007, they travelled from Pakistan to India intending to seek asylum. On 23 April 2007, they staged a protest demonstration at Jantar Mantar, New Delhi, at which they burnt the Pakistani flag as well as their passports and visa papers. In the absence of valid visa and other travel documents, they were arrested by the local police and sent to Central Jail Tihar.

102. Subsequently, their application for bail was denied with the reasoning that without local address it would not be possible to secure their presence during the trial once released on bail. On 22 June 2007, 31 July 2007 and 24 August 2007, three women of the group gave birth to Ms. Abhaya Gohar, Ms. Mary Gohar, Mr. Amir Gohar in detention; another detained woman is pregnant. Several other detainees suffer from severe depressions and their constant screaming and weeping frightens the children who are detained in the same ward. Their requests to the jail authorities to provide separate accommodation for the female detainees with children have been denied by the Additional Chief Metropolitan Magistrate of New Delhi on 28 May 2007.

103. The 65 above-mentioned persons are at risk of imminent forcible return to Pakistan. In view of blasphemy and treason charges they may face there, the Special Rapporteurs expressed their concern that their life and physical integrity may be at risk should they be returned to Pakistan.

Observations

104. The Special Rapporteur regrets that she has not received a reply from the Government concerning the above mentioned allegation. She would like to take the opportunity to refer to her last report to the General Assembly where she has dealt with the vulnerable situation of refugees, asylum-seekers and internally displaced persons (see A/62/280, paras. 38-63).



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HUMAN RIGHTS COUNCIL
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**IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251
OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”**

**Report of the Special Rapporteur on freedom of religion or belief,
Asma Jahangir***

Addendum

Summary of cases transmitted to Governments and replies received

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muy agradecida de recibir, tal y como indica la respuesta del Gobierno de Guatemala, la información sobre los procesos mencionados que se están llevando a cabo.

Guinea-Bissau

Communication envoyée le 19 décembre 2005

168. La Rapporteuse spéciale attiré l'attention du gouvernement de la Guinée-Bissau sur la question de la communauté ahmadiyya, qui est un groupe religieux. Selon les informations reçues, le 14 octobre 2005, Aladje Abdu Baio, président du Conseil national islamique, aurait fait appel aux autorités de la Guinée-Bissau afin qu'elles expulsent la communauté ahmadiyya du pays. En août 2001, les missionnaires pakistanais de la communauté ahmadiyya avaient déjà été expulsés par le président Kumba Yala, lequel avait accusé la communauté d'interférer dans les affaires politiques et de provoquer la division au sein des musulmans. Cette expulsion fut suivie d'une décision du ministère public de confisquer l'ensemble des biens de la communauté et d'un ordre de fermeture de leurs mosquées. Le 7 janvier 2005, le ministère public déclara les deux précédentes décisions illégales et donna la permission à la communauté de recommencer ses activités. Le 7 mars 2005, M. Carlos Gomez Jnr, premier ministre, décida de suspendre les activités de la communauté dans l'attente d'une décision d'une commission d'enquête sur cette affaire. Selon les informations reçues, cette commission n'aurait pas encore été mise en place.

Observations

169. La Rapporteuse spéciale regrette que le Gouvernement de la Guinée-Bissau n'ait pas répondu à sa communication, envoyée le 19 décembre 2005. Elle voudrait faire référence aux « minorités religieuses » (selon le *framework for communications*, voir ci-dessus para. 1, catégorie III. 5.) et à son dernier rapport d'activité transmis au Conseil des droits de l'homme (A/HRC/4/21, para. 43) : « Comme cela a été noté dans les rapports précédents, les minorités religieuses et les nouveaux mouvements religieux sont en butte à diverses formes de discrimination et d'intolérance imputables à la fois aux politiques suivies, à la législation en vigueur et à la pratique des États. Parmi les sujets de préoccupation figurent les obstacles rencontrés dans le cadre des procédures officielles d'enregistrement ainsi que les restrictions indues à la diffusion de matériels et au port de symboles religieux. Qui plus est, certaines minorités religieuses pâtiennent de manifestations de rejet ou d'actes de violence de la part d'éléments non étatiques et de menaces contre leur propre existence en tant que communauté distincte. Lorsque les minorités religieuses sont des groupes assimilés à ce que l'on appelle des mouvements religieux non traditionnels ou nouveaux, leurs membres peuvent faire l'objet de suspicions et subir de plus importantes restrictions à l'exercice de leur droit à la liberté de religion ou de conviction. »

India

Communication sent on 13 June 2006

170. The Special Rapporteur brought to the attention of the Government information she had received concerning the **Freedom of Religion bill in Rajasthan**. According to the allegations, the Rajasthan Parliament has recently approved the 'Rajasthan Dharma Swatantraya Bill' (Rajasthan Freedom of Religion Bill). The aim of this bill, according to the 'Statement of Objects

and Reasons', is to prevent "unlawful conversion" which "at times has caused annoyance in the community belonging to other religions". Additionally such "unlawful conversions" would cause a "law and order problem for the law enforcing machinery of the State."

171. The new legislation specifies that those found guilty of converting or attempting to convert someone through allurement or forceful or fraudulent means, could face a minimum prison term of two years or a fine which may extend to 50,000 Indian rupees (approximately US \$ 1,125). The Governor of Rajasthan has refused to sign the bill on 18 May 2006.

Observations

172. The Special Rapporteur is concerned that she has not received a reply from the Government concerning the above mentioned allegation. The Special Rapporteur urges the Government to ensure compliance with article 18 of the Universal Declaration of Human Rights which clearly states that the right to freedom of thought, conscience and religion "includes freedom to change his religion or belief and freedom, either alone or in community with others, and in public or private, to manifest his religion or belief in teaching, practise, worship and observance". Moreover, she reminds the Government that she is still awaiting a reply to her request to visit the country.

173. Furthermore, the Special Rapporteur would like to refer to her framework for communications, more specifically to the international human rights norms and to the mandate practice concerning "Teaching and disseminating materials, including missionary activity" (see above para. 1, category I. 3. f). In her 2005 report to the General Assembly, she noted the following (see A/60/399, para. 62): "Whereas the scope of freedom afforded to persons for the practice of their religion or belief by producing and distributing information about their religion or belief is wide, certain limitations can be imposed in accordance with article 18, paragraph 3, of the Covenant. However, it should be noted that this article allows for restrictions only in very exceptional cases. In particular the fact that it mentions the protection of "*fundamental* rights and freedoms" (emphasis added) of others as a ground for restriction indicates a stronger protection than for some other rights whose limitation clauses refer simply to the "rights and freedoms of others" (e.g. article 12, 21 and 22). It could indeed be argued that the freedom of religion or belief of others can be regarded as such a fundamental right and freedom and would justify limitations to missionary activities, but the freedom of religion and belief of adults basically is a question of individual choice, so any generalized State limitation (e.g. by law) conceived to protect "others'" freedom of religion and belief by limiting the right of individuals to conduct missionary activities should be avoided."

Indonesia

Urgent appeal sent on 19 January 2006

174. The Special Rapporteur was concerned about Ms. **Lia Aminuddin**, leader of the Eden Community. According to the allegations, on 28 December 2005, a group of Muslims surrounded the Eden Community's premises on Jl. Mahoni, Jakarta, and threatened to burn it down. In response, the Jakarta police took Ms. Aminuddin and her followers into custody under the pretext of protecting them. Ms. Aminuddin was later formally charged with blasphemy. The other



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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF
RELIGIOUS INTOLERANCE**

Addendum

Summary of cases transmitted to Governments and replies received*

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

139. In Resolution 1998/77, the Commission on Human Rights also recognizes that persons performing military service may develop conscientious objections. The Special Rapporteur would also like to emphasize the concluding observations adopted by the Human Rights Committee on 25 April 2005 (CCPR/CO/83/GRC) further to the initial periodic report submitted by Greece (CCPR/C/GRC/2004/1), which states that, "The Committee is concerned that the length of alternative service for conscientious objectors is much longer than military service, and that the assessment of applications for such service is solely under the control of the Ministry of Defence (Article 18). The State party should ensure that the length of service alternative to military service does not have a punitive character, and should consider placing the assessment of applications for conscientious objector status under the control of civilian authorities." (Paragraph 15)

India

Communication sent on 20 January 2005

140. The Special Rapporteur brought to the attention of the Government information she had received according to which, following the tsunami disaster, in Tamil Nadu, a number of Dalits had been denied aid supplies and expelled from relief camps by higher caste groups who refused to eat with them or live under the same roof. In the relief camps of the port town of Nagapattinam, Dalits were allegedly not being allowed to drink water from tanks placed by UNICEF. In the tsunami-hit areas, food and cash distributions normally took place in Hindu temples, often the only structures still standing because they were built from solid granite. Reports indicated that Dalits were left out in these distributions due to the fact that as 'untouchables' they were not allowed to enter the halls of worship. Dalits had allegedly carried out much of the initial work in the immediate aftermath of the disaster such as carrying away dead bodies and disposing animal carcasses because upper caste people consider such work taboo and socially degrading.

Communication sent on 17 May 2005

141. The Special Rapporteur was informed that, on 19 April 2005, 200 persons, some of them carrying weapons, launched an attack and set fire to the 'Believer's Church' in Laming village, Tentha Lamkhai area, State of Manipur, which was still under construction. Mr. Romol, Mr. S. Tombi, Mr. O. Tiken, and Mr. L. Thoiba, all local Christians, were injured. The church had been attacked twice in the recent past (in early April 2005 and November 2004) and a local court had ordered police to provide security while reconstruction took place. However, it was not clear whether security was provided.

142. In a similar incident, a large number of villagers attacked a Christian house church on 1 May 2005 in Mangalwarapete village, Karnataka state. They harassed the 60 people present at the service and burned Christian literature. They beat Pastor Paulraj Raju of King Jesus Church and injured his wife and another elder of the Church. The latter had been attacked and asked to leave the district by villagers earlier this year. Pastor Raju had also been in detention between January and March 2005 on charges of converting Hindus.

Communication sent on 9 June 2005

143. The Special Rapporteur brought to the attention of the Government the situation of evangelist **Kiran Kurmar**, aged 30, who was assaulted on 27 February 2005 by nine Hindu extremists belonging to the Vishwa Hindu Parishad while he was on his way to visit a Hindu man who had invited him for prayers in the Khurda district. They tied him up and threatened to throw him into the Chilika Lake. When the police arrived, they arrested him and charged him with preaching Christianity to Hindus in order to convert them, an activity prohibited by the "Orissa Freedom of Religion Act" of 1967. Mr. Kumar was subjected to torture while in police custody. Reports further indicated that he was presented before the Sub-Divisional Magistrate in Banapur only on 1 March 2005. He was granted bail on 8 March 2005. Dasarathi Behera, the Hindu man that Mr. Kumar was visiting on the day of his arrest was also arrested and accused. He testified before the police that he believed in Jesus Christ without any fear or pressure induced by anyone, a testimony which should have absolved Mr. Kumar of any charges of "forced conversion".

Communication sent on 19 July 2005

144. The Special Rapporteur brought to the attention of the Government the situation of **Ms. Imrana**, a 28-year-old resident of Charthawal, who was raped by her father-in-law, Ali Mohammad, at Muzaffarnagar in western Uttar Pradesh. The Islamic panchayat (village council), referring to sharia provisions, subsequently asked her to abandon her husband. On 29 June 2005, the Deoband School of theology issued a fatwa stating that she could not return to her husband. Uttar Pradesh chief minister, Mulayam Singh Yadav, openly backed the clerics and called for acceptance of the fatwa.

Communication sent on 29 August 2005

145. The Special Rapporteur was informed that, following pre-election promises by the ruling Bharatiya Janata Party (BJP) to reduce the number of conversions to Christianity, the government of Chattisgarh had prepared draft amendments to the provisions of the Dharma Swatantraya Adhiniyam (Freedom of Religion Act) with the aim of reducing the number of conversions of the local population to Christianity. Already the law currently in force allowed punishing persons who attempt to convert somebody "forcefully or fraudulently" by prison sentences for up to two years and a fine. The pending amendments foresaw imprisonment for up to four years and a ten-fold increase in the amount of the fine. Moreover, the pending amendments required a person who wishes to convert to inform the local authorities 30 days in advance.

146. In a similar move, officials in the north-central state of Madhya Pradesh announced that their anti-conversion law would be amended to make the conversion of tribal people to Christianity more difficult following the publication of a report claiming large-scale conversions initiated by Christian missionaries. No details about the planned measures were known at the time of the communication, but already under the applicable law district officials had to be notified of conversions seven days in advance. It was feared that the amendments and the controversies surrounding them might have lead to increased tensions between the various religious groups.

Observations

147. The Special Rapporteur expresses her concern at not having received any response from the Government. She urges the Government to provide her a detailed reply concerning the communications sent as soon as possible.

148. She would like to point out that article 4(g) of Resolution 2005/40 of the Commission on Human Rights urges States to ensure that all public officials and civil servants, including members of law enforcement bodies, in the course of their official duties, respect different religions and beliefs and do not discriminate on the grounds of religion or belief. In addition article 10 of the Resolution emphasizes the importance of a continued and strengthened dialogue among and within religions or beliefs to promote greater tolerance, respect and mutual understanding.

149. With regard to the problem of conversion, the Special Rapporteur would like to draw attention to paragraph 5 of General Comment 22 of the Human Rights Committee which provides that, *“the freedom to “have or to adopt” a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one’s current religion or belief with another or to adopt atheistic views, as well as the right to retain one’s religion or belief.”* In addition the Special Rapporteur would like to refer to paragraphs 40 to 68 of her previous report to the General Assembly (A/60/399) where she addressed the question of conversion as well as missionary activities and propagation of religion. In particular, she underlined that *“[m]issionary activities and other forms of propagation of religion are part of the right to manifest one’s religion or belief. They may be limited only under restrictive conditions, and the Special Rapporteur disapproves of the criminalization of certain acts specific to the propagation of one’s religion”*.

150. She would furthermore like to draw attention to paragraph 21 of General Comment 28 of the Human Rights Committee which provides that article 18 of may not be relied on to justify discrimination against women by reference to freedom of thought, conscience and religion.

Indonesia

Communication sent on 25 January 2005

151. The Special Rapporteur had been informed that a hard line Islamic group had warned that Christian groups which assisted in aid efforts after the tsunami should not try to convert orphaned children in Aceh. The head of the radical Islamic Defenders Front, Hilmy Bakar Almascaty, allegedly warned an Australian Catholic group called Youth off the Streets that its plan to set up an orphanage in Aceh, the only Indonesian province to have fully implemented Muslim sharia law, would be unwelcome if it involved attempted conversion. Hilmy's organization, known as FPI, was reportedly better known for smashing up bars and nightclubs in Jakarta and elsewhere deemed to be un-Islamic. FPI was allegedly moving thousands of volunteers to help in the reconstruction of Aceh and to guard against foreign influence from the thousands of foreign military and aid workers delivering humanitarian assistance to the region.



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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF
RELIGIOUS INTOLERANCE**

**Report of the Special Rapporteur on freedom of religion or belief, Asma
Jahangir**

Addendum

Summary of cases transmitted to Governments and replies received*

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Moreover, all the legal and practical aspects of this complex issue were at the time of the reply being examined, so Mr. Petromelidis - and probably others in a similar situation - would be given a second chance under the law to perform alternative service and thus have the charges of military offences having been committed withdrawn.

India

129. On 15 March 2004, the Special Rapporteur transmitted a communication to the Government of India regarding the following cases:

(a) Fr. **Stanny Ferreira**, a Salesian parish priest of Alirajpur, was reportedly attacked and severely beaten by a crowd on 17 January 2004. Fr. Ferreira was reportedly returning by car from Jhabua when his vehicle was shot at and the driver lost control and hit an electric pole. A crowd allegedly attacked the priest and beat him while the vehicle was set ablaze. The attack followed the rape and murder of a 9-year-old girl who was found in the diocesan mission compound in Jhabua on 11 January 2004. It was reported that on 13 January 2004, the Vishwa Hindu Parishad (VHP) and Sangh Parivar declared a day of protest, allegedly accusing Christians of the murder. It was alleged that groups related to the Sangh Parivar held processions in different towns during which effigies of the bishop and priests were burnt, slogans against Christianity were shouted, and inflammatory leaflets against Christianity were distributed. On 14 January, a large crowd allegedly entered the campus of the Catholic Mission School in Jhabua and several priests were beaten, and significant material damage was incurred. The occupants of the campus were reportedly evacuated. On 15 January 2004, a non-Christian individual who worked in an office near the church allegedly confessed to the murder;

(b) On 16 January 2004, a crowd reportedly forcibly entered the premises of the **Church of North India** mission in the village of Amjut and distributed anti-Christian material, disrupted exams and tore down religious posters. Inhabitants of the predominantly Christian village, many of whom are second- or third-generation Bhil converts, reportedly started throwing stones at the attackers, forcing them to flee. It was reported that, in retaliation, armed Hindu activists descended on the village and the ensuing clashes led to one death and several injured;

(c) According to the information received, **numerous Muslim men** have been illegally detained since March 2003 in the Gayakwad Haveli Police Station in Ahmedabad. While it was reported that many of them have subsequently been formally arrested under the Prevention of Terrorism Act, a large number of illegal detainees allegedly remained in custody in the police station. It was reported that a climate of fear was prevailing within the Muslim community in Gujarat, which meant that most were too afraid to make official complaints about illegal detention or about torture and ill-treatment. Courts reportedly failed to take action when confronted with allegations of illegal detention and torture. It was further alleged that the Prevention of Terrorism Act was being used arbitrarily and punitively against Muslims. It was reported that the police regularly threatened those illegally detained and their relatives that they would be charged under the Act if they failed to cooperate or made complaints about their treatment to the courts or to human rights organizations.

130. By letter dated 31 December 2004, the Government of India informed the Special Rapporteur that, with respect to the last allegation in the communication dated 15 March 2004, inquiries had revealed that since March 2003 the Crime Branch of Ahmedabad city had been investigating a number of cases where a number of accused had been arrested and witnesses examined. These cases were serious in nature and triggered the provisions of various sections of relevant legislation, including the Arms Acts and the Prevention of Terrorism Act (POTA).

131. According to the Government's response, during the course of the investigations, a number of people were summoned and their statements recorded as being witnesses of the incidents. They were neither detained nor threatened by any personnel of the Crime Branch. The accused also did not have any complaint against the Crime Branch officers; it was apparent from the court records that whenever they were produced before the various magistrates/judges, no complaint was made. The Government suggested that, since the offences were serious in nature and provisions of POTA were invoked, the accused and their relatives might have made the allegations to avoid or prevent their arrests. Members of both Hindu and Muslim communities were arrested and thus the allegations of the use of POTA against Muslims were baseless.

Indonesia

Communications and replies received

132. On 15 March 2004, the Special Rapporteur sent a communication to the Government of Indonesia concerning allegations that under a draft bill drawn up by the Religious Affairs Ministry, interreligious marriage and interreligious adoptions would be banned. Furthermore, the bill would allegedly prohibit people from attending religious ceremonies of a different faith and ban teachings that "deviate from the main teachings of that religion". It was also reported that the bill stipulated that places of worship could be established only with the permission of the Government. The draft had been criticized by religious leaders, who claimed it was biased against minority groups, such as animist-based faiths practised by many people in Kalimantan and Papua, and allowed the State too much interference in private religious practice. The proposed bill reportedly only recognized five religions as official religions in Indonesia. The draft bill failed to recognize Confucianism as an official religion, which seemed to contradict the 2002 presidential decree that included Lunar New Year – a Confucian religious day – as an official religious holiday. The Special Rapporteur also mentioned a series of attacks on mostly Christian villages in the **Poso** area of Central Sulawesi, reportedly raising fears of a return to the sectarian clashes between Muslims and Christians that afflicted Sulawesi and the neighbouring Maluku islands between 1999 and 2001. It was reported that the situation started to deteriorate in Poso following the killing of at least 10 people in the regency and in neighbouring Morowali regency on 12 October 2003. Later, a mob reportedly beat to death a 23-year-old Christian man during a protest over the fatal shooting by police of a suspect in the October attacks. In November 2003 an elderly church official and his driver were reportedly killed in Poso by unknown gunmen. Between 26 November and 30 November 2003, two separate attacks left four people dead in Poso. In the first attack on the village of Kilo Trans two migrants from mainly Hindu Bali were killed.



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IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF FREEDOM OF EXPRESSION

The right to freedom of opinion and expression

Report of the Special Rapporteur, Amebyi Ligabo

Addendum

**Summary of cases transmitted to Governments
and replies received***

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Honduras

258. El 7 de abril del 2006, el Relator Especial, conjuntamente con la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos envió un llamamiento urgente en relación con la agresión a la periodista comunitaria **Martha Vásquez**, colaboradora del sitio de Internet Indymedia y miembro de la etnia lenca. De acuerdo con la información recibida, el 2 de abril de 2006, durante una reunión del Consejo Cívico de Organizaciones Populares e Indígenas de Honduras (COPINH) en Intibucá, varios hombres armados irrumpieron argumentando que la reunión no podía celebrarse sin la autorización del diputado Romualdo Bueso Melghem, quien además ocupa el cargo de vicepresidente de la Comisión de las Etnias. Más tarde, tal diputado se presentó en el lugar de la reunión y agredió violentamente a la Sra. Vásquez tras darse cuenta de que la periodista estaba grabando mientras el diputado agredía y amenazaba de muerte al Sr. Salvador Zúñiga, uno de los delegados del COPINH. El diputado Bueso Melghem golpeó a la periodista, estrangulándola y sustrayéndole el magnetófono. Se alega también que otros dos delegados del COPINH habrían sido también amenazados de muerte y agredidos durante el incidente.

Observaciones

259. Al finalizarse este informe, el Relator Especial no había recibido respuesta a la comunicación enviada. El Relator Especial invita al Gobierno a responder a dicha comunicación.

India

260. On 13 January 2006, the Special Rapporteur sent an allegation letter concerning Mr **Prahlad Goala**, a district correspondent of the daily *Asomiya Khabar*, who was killed on 6 January 2006 by undisclosed aggressors in Golaghat, Assam. The journalist was investigating the illegal felling of trees in the forest of Nambor, which is a protected area, and had allegedly received threats from the forest ranger for several weeks. Following a complaint by Goala's wife, the ranger was arrested together with two other persons who allegedly were responsible for the attack.

261. On 18 January 2006, the Special Rapporteur, jointly with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, sent a letter of allegation. According to the information received, on 2 January 2006, Mr **Sudam Barla**, Mr **Govind Laguni**, Mr **Janga Jarika**, Mr **Landu Jarika**, Mr **Ati Jamuda**, Mr **Mukuta Bankira**, Mr **Dedghi Taria**, Mr **Bhagat Sae**, Mr **Ram Gagrai**, reportedly members of the indigenous communities of Chandia, Gobarghati and Champaloila villages, were killed, and several others injured, during clashes with the police in the village of Nuagaon, Jajpur district, Orissa. A police constable, Mr **Gopa Prasad Mohanty**, was also killed in the confrontation, allegedly by one of the participants in the protest. It had been reported that a number of members of the mentioned communities were protesting against the inadequate compensation paid for the expropriation of their land for an industrial project at Kalinga Nagar, in Jajpur district when the police allegedly used excessive force to disperse the crowd. It had also been reported that postmortem examination of those killed during the clashes was carried out in a way which exasperated the families and communities involved in the incident.

262. On 17 February 2006, the Special Rapporteur sent a letter of allegation concerning **Ratan Luwangcha**, bureau chief of a daily *Poknapham* and well-known photographer. According to information received, on 9 February 2006, Ratan Luwangcha was shot by unidentified armed men, and critically injured, in Imphal town, Manipur state. He had undergone an emergency operation, but stayed in a critical condition at the date this communication was sent. On 12 February, the Kangleipak Communist Party (KCP) claimed responsibility for the murder attempt. In a separate incident, on 8 February, the Mumbai office of the national television channel *Zee* was raided by the Hindu Shiv Sena party. The raid took place after channel *Zee* broadcasted a programme about the leader of the Shiv Sena party. Moreover, on 9 February, the Srinagar office of the English daily newspaper *Greater Kashmir* was ransacked by members of Jammu and Kashmir Liberation Front (JKLF). Three staff members of *Greater Kashmir* were injured, and the office windows were broken. A computer was reportedly also stolen. A JKLF leader threatened the *Greater Kashmir* staff that he could get people working for the media killed.

263. On 21 February 2006, the Special Rapporteur sent a letter of allegation concerning two journalists: **Robin Dhekial Phukan** of the daily *Asomiya*, and **Parag Bhuyan** of the Assamese daily *Dainik Janambhumi*. According to the information received, on 17 February 2006, Mr Phukan and Mr Bhuyan were beaten by the police in Kakopathar, where they were reportedly covering a visit by the State Chief Minister Tarun Gogoi. Mr Phukan was seriously injured by the beating, was taken to a police station and eventually to the hospital. Mr Bhuyan was injured when the police charged a crowd shouting anti-government slogans. He was taken to the hospital.

264. On 17 May 2006, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal regarding Mr **Santhosh Patel**, staff member of the People's Vigilance Committee on Human Rights (PCVHR). PCVHR is an organization that monitors human rights violations committed by the state authorities in Uttar Pradesh, India. According to the information received, on 10 May 2006, Mr Patel was arrested and detained while he was attending a meeting with local people and the District Magistrate. It was reported that Mr Patel attempted to present a petition to the District Magistrate concerning violations by the authorities of the right to food of local people. It was further reported that the District Magistrate ordered his arrest and accused him of spreading false information. He was taken to Shivapur police station and released five hours later. It was alleged that no charges had been brought against him.

265. On 10 August 2006, the Special Rapporteur sent a letter of allegation concerning **Muhammad Maqbool Khokar** (better known as Maqbool Sahil), photojournalist for the daily paper *Chattan*, who was arrested on 18 September 2004 by a Counter Intelligence Kashmir unit in Srinagar. He was first held under the Official Secrets Act and from 20 October 2004 under the Public Safety Act (PSA), and was moved to a prison at Kotbalwal near Jammu. The Jammu and Kashmir High Court ordered his release on 27 October 2005 to no avail. On 9 January 2006 his detention was extended for another two years, under PSA, by security forces. On 8 August 2006, the Jammu and Kashmir High Court reiterated its request for an immediate release. Also the National Human Rights Commission had intervened in this case with no result.

Observation

266. At the time this report was finalized, the Special Rapporteur had not received any replies to the communications sent. The Special Rapporteur therefore invites the Government to respond to these allegations.

Indonesia

267. On 10 February 2006, the Special Rapporteur sent a letter of allegation concerning **four new public service broadcasting regulations** which had come into effect on 6 February 2006. The four regulations are based upon the Broadcasting Law of 2002, and deal with allocating frequencies, monitoring programmes, licensing broadcasting stations, as well as limiting foreign broadcast contents and foreign ownership of broadcasting outlets. These regulations prevent local television and radio stations from directly relaying news broadcasts provided by foreign agencies, and as a result no real-time broadcast of content from foreign broadcasters can be broadcasted. The power to issue broadcasting licences was transferred from the independent National Broadcasting Commission (KPI) to the Ministry of Communications and Information.

268. On 7 March 2006, the Special Rapporteur sent a letter of allegation concerning **the barring of foreign media, churches and non-governmental organizations (NGOs) in West Papua**. According to the information received, on 6 February 2006, the Minister of Defence Juwono Sudarsono made a public statement in the media, and stated that the Government would maintain the barring of foreign media from reporting from the province of Papua. He stated that the ban should be on all foreign media, churches and NGOs, including human rights organizations, as their presence in West Papua would be used as a platform by Papuans to publicize alleged human rights abuses. The ban against foreign media had effectively been in place since mid-2003, and had prevented any foreign journalists from having official access to the region. Severe concern was expressed that the barring of the foreign media, churches and NGOs might be a direct attempt to prevent them to report human rights abuses in West Papua.

269. On 21 March 2006, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the independence of judges and lawyers sent an urgent appeal regarding **Selpius Bobii**, a student at the Catholic Theological College “Fajar Timur”, Jayapura, Papua, as well as **57 detainees**. According to the allegations received, on 16 March 2006, they were arrested and detained in Jayapura Police Station, and were denied access to lawyers. The students were protesting in Abepura in demand for the closure of mining operations in Timika, West Papua, and the withdrawal of the Indonesian army (TNI) and police, which provide security for the mining company. The protesters blocked the main road of Jayapura and the police instructed them to clear the roads, deploying water cannon and armoured vehicles. It was reported that Special Mobile Police Brigade (BRIMOB) officers used tear gas, and fired on the crowd of unarmed demonstrators. In response, the protesters threw stones, bottles and pieces of wood at the police. In the violence that ensued, it was reported that four policemen were killed and about nine were wounded. The following individuals were among those treated in a hospital, some in critical condition: Waena, Jayapura: Etinus Kulla, university student; Obatius Wanimbo, university student, treated for severe gun shot wounds; Ishak Ulmami, university student; John Giyai, university student; Hermanus Maiseny, high school student; Glen Mahulete, aged five; Killion Somou, university



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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF
FREEDOM OF EXPRESSION**

The right to freedom of opinion and expression

Report of the Special Rapporteur, Ambeyi Ligabo

Addendum

**Summary of cases transmitted to Governments
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Observaciones

405. El Relator Especial lamenta no haber recibido respuesta a la comunicación enviada el 4 de Febrero de 2005.

406. Con respecto a la situación de los miembros **Consejo Indígena de la Comunidad de las Olominas**, en particular, los activistas agrarios indígenas **Genaro Vásquez Lorenzo** y **Roberto Chicas Mejia**, el Relator Especial teme que este incidente pueda formar parte de una campaña de intimidación contra los habitantes de las Olominas para que renuncien a sus derechos sobre la tierra. El Relator Especial reitera los principios enunciados, entre otros por la Comisión de Derechos Humanos en su Resolución 2005/67, la cual “Exhorta a todos los Estados a que adopten todas las medidas necesarias para garantizar la protección de los defensores de los derechos humanos y creen y mantengan un entorno favorable a la labor de los defensores de los derechos humanos y sus familiares”, y solicita al Gobierno que le informe oportunamente sobre cualquier acción llevada a cabo para proteger y garantizar el bienestar e integridad física y psicológica de los Sres. Genaro Vásquez Lorenzo y Chicas Mejia, en particular en lo que a la adopción de medidas de protección se refiere.

India

407. On 14 June 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, sent an urgent appeal concerning **G. Venugopal**, an editor for the Telugu-language *Veekshanam* based in the southeastern state of Andhra Pradesh; **Pinaka Pani**, the editor for the pro-Maoist literary magazine *Aruna Tara*; **V. Chenchiah**, the former editor of *Aruna Tara* and **Ravi Kumar**, a member of *Aruna Tara*'s staff. According to information received, on 30 May 2005, during a raid at a hotel in Aurangabad (near Nizamabad), special branch agents of the Andhra Pradesh state police arrested G. Venugopal, Pinaka Pani, V. Chenchiah and Ravi Kumar for holding a meeting with Maoist militants to discuss media interaction with the Maoist party, the second round of talks between the state and the Maoist party, as well as issues relating to the Revolutionary Writers Association. Two leaders of the communist party of India (Maoist) and four members of the Revolutionary Writers Association (Virasam) were also arrested. They were all tied with ropes, blindfolded and detained for 72 hours before being transferred to Bodhan prison. G. Venugopal was denied medication for his diabetic condition. Following widespread pressure on the authorities to provide him with the necessary medical attention, G. Venugopal was temporarily taken to the hospital; he was transferred back to the prison on 10 June 2005, despite the assurances of the Chief Minister of Andhra Pradesh that the Government would take steps to release him as soon as possible. On 3 June 2005, the above-mentioned persons were charged with ‘waging war against the state’ and ‘conspiracy’.

408. On 16 August 2005, the Special Rapporteur, jointly with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning **Dr. Lenin Raghuvanshi**, a human rights defender with the Peoples' Vigilance Committee for Human Rights (PVCHR), his associate Mr. **S.N. Giri**, and **Ms. Anupam Nagvanshi**, a field coordinator for PVCHR. PVCHR is an organisation working for the Dalits and ‘lower caste’ communities in Varanasi, Uttar Pradesh, India, focusing on education for children, including the setting up of a local school, and the right to self

determination for these community members. According to the information received, on 5 August 2005, at approximately 8:00 AM, Dr. Lenin Raghuvanshi allegedly received a phone-call, on his mobile phone, from a man linked to the village authorities demanding that Mr. S.N. Giri withdraw his nomination from an election due to be held in Belwa village on 17 August 2005. Furthermore, on 7 August 2005, at approximately 8:35 PM, Dr. Lenin Raghuvanshi received another phone call from the same person threatening that if his associate did not withdraw his nomination, Dr. Lenin Raghuvanshi, his family and Mr. S.N. Giri would be shot dead. Dr. Lenin recorded the phone conversation and has lodged a complaint with the Senior Superintendent of the Police and the District Magistrate. He reportedly also faxed a complaint to the Chief Minister of the State. Moreover, previously on 26 August 2003, Dr Lenin Raghuvanshi had been arrested and detained for 4 hours for organizing a protest before the Sub Divisional Magistrate in Varanasi. It was reported that on 10 August 2005, at approximately 4:00 PM, Ms. Anupam Nagvanshi was surrounded by a number of people connected to the village authorities who asked her why she was encouraging the Dalits and 'lower caste' community to cast their votes in the upcoming election. Ms. Anupam Nagvanshi was allegedly threatened with murder if she returned to Belwa village. Ms. Nagvanshi telephoned the police at approximately 6:00 PM on 10 August 2005 but no officer was dispatched. She then sent a written complaint by registered post to Phoolpur police station. It was reported that no action had been taken regarding this case by the Phoolpur police, at the time this communication was sent.

409. On 14 December 2005 the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation concerning Mr. **Kirity Roy**, along with **21 other human rights defenders** Kirity Roy is a secretary of Manabadhikar Suraksha Mancha (MASUM), a human rights organization working against custodial torture and violence and National Executive Committee Member of Amnesty International of India, and also attached to several other human rights organizations, health rights organizations, and workers' rights organization. According to information received, on 9 December 2005, at approximately 3:00 PM, Kirity Roy along with 18 other males and three females were arrested in Kolkata and taken to the police headquarters at Lal Bazar. The activists had been putting up posters in preparation for Human Rights Day on the 10 December 2005 and were also holding a peaceful protest against human rights violations in the state of West Bengal. They were all released on the day of their arrest having signed personal bonds. Concern was expressed that the arrest of Kirity Roy and the other 21 human rights defenders constitutes an attempt to prevent them from carrying out their human rights work.

Follow-up to previously transmitted communications

410. On 15 February 2005, the Government replied to the communication dated 5 October 2004. The Government informed the Special Rapporteur that, on March 20 2004, a group of 70 to 80 persons assembled at Lal Chowk (Srinagar), in spite of Government orders prohibiting this gathering. The demonstrators then resorted to throwing stones aimed at vehicles and at the police contingents deployed there for the purposes of maintaining law and order. The police, in response, cane-charged the demonstrators, arrested a number of them and took them into preventive custody. The Women among those who were arrested were later released. A case, FIR No. 17/2004 under Section 147, 341, 336 and 323 of the Penal Code was registered against the demonstrators at Police Station Maisuma. Those charged were later

released on bail. The case was later challenged before the Hon'ble Chief Judicial Magistrate of Srinagar against five persons, including **Yasin Rah** and **Perveena Ahangar**. The case was still open as of 31 December 2004.

Observations

411. The Special Rapporteur thanks for the Government's reply to his communication dated 5 October 2004. He regrets that no replies to his other communications were received.

412. Regarding the communication dated 14 June 2005, the Special Rapporteur was informed from other sources that **G. Venugopal** was released on bail on 16 June 2005.

413. With regard to the communication dated 16 August 2005, without making any determination of the facts and circumstances of the cases, and pending the Government's reply, the Special Rapporteur deems it appropriate to make reference to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular article 12, which provides that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. Reference is also made to Resolution 2005/38 of the Commission on Human Rights which does not consider restrictions connected with discussions on government policies and political debate, engaging in election campaigns, including by persons belonging to minorities or vulnerable groups, as legitimate limitations of the right to freedom of opinion and expression.

Indonesia

414. On 11 May 2005, the Special Rapporteur sent an urgent appeal concerning **Darwin Ruslinur** and **Budiono Saputro**, the chief editor and journalist respectively for the weekly newspaper *Koridor Tabloid*. According to information received, on 4 May 2005, the Lampung District Court in Sumatra Island sentenced the two journalists to a term of nine months imprisonment. The journalists were found guilty of defaming Aluzier Dianis Thabrani and Indra Karyadi in an article published in the 12 – 18 July 2004 *Koridor* edition. The journalists accused them of embezzling political party funds. Both journalists were free pending an appeal which was due to be heard in nine days, at the time this communication was sent.

415. On 13 June 2005 the Government replied to the communication of 11 May 2005 concerning **Darwin Ruslinur** and **Budiono Saputro**. The Government stated that on 4 May 2005, after several hearings, the district court of Lampung in Sumatera Island found that the tabloid never confirmed the story with Aluzier Dianis Thabrani and Indra Karyadi, and on this basis ruled that the journalists were in breach of articles 310, 311 and 315 of the Indonesian criminal Code, and therefore found them guilty of defamation. The two journalists were not in custody at the time the Government sent this reply and they could have both appealed to the High Court and the Supreme Level court. The Government stressed that the court was not subject to any outside influence or interference.



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HUMAN RIGHTS COUNCIL

Sixth session

Item 3 of the agenda

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

**Report of the Special Rapporteur on the situation of human rights and
fundamental freedoms of indigenous people, Rodolfo Stavenhagen**

ADDENDUM

Summary of cases transmitted to Governments and replies received*

* This addendum is being circulated in the language of submission only, as it greatly exceeds the word limitations currently imposed by the relevant General Assembly resolutions.

sources sur la situation du peuple autochtone kanak en Nouvelle-Calédonie. Le Rapporteur spécial remercie aussi le Gouvernement pour l'invitation à effectuer une visite officielle en Nouvelle-Calédonie et espère que cette importante visite sera effectuée par son successeur.

India

Allegation letter concerning the Adivasi communities of the state of Chhattisgarh

256. On **19 July 2007**, the Special Rapporteur, jointly with the Special Rapporteur on the right to food and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, sent an allegation letter to the Government of India concerning the alleged threat of **eviction of Adivasi families in the state of Chhattisgarh**.

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

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

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

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

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

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

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

Observations

264. The Special Rapporteur regrets not having received a reply to its communication sent on **19 July 2007** at the time this report was finalized.

Israel

Allegation letter regarding the indigenous Bedouin in the village of Al-Sira

265. On **19 October 2006**, the Special Rapporteur, together with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, drew the attention of the Government to information received concerning the alleged intention of destroying the village of **Al-Sira**, an indigenous Bedouin village in the Negev (southern Israel). The letter was included in the Special Rapporteur's previous report on communications (A/HRC/4/32, Add.1, paras. 262-270) and is summarized below.

266. The report indicated that the indigenous **Bedouin** people had been living in the Negev for centuries. Almost half of the 160,000 Bedouins lived in seven Government-planned towns without secure land tenure or sufficient development opportunities, and the remainder was living in 45 villages unrecognized by the Government. These villages reportedly did not appear on the official maps of Israel and did not receive basic services such as running water, electricity, garbage collection, etc. The **Al-Sira** community lived in one of these villages.

267. According to the information received, the **Al-Sira** community is located near the Nevatim Air Force Base (10 km southwest of the city of Arad); 350 indigenous Bedouins reportedly live at Al-Sira and the 50 houses of the village stretch over 4 square kilometres. The community has



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HUMAN RIGHTS COUNCIL
Fourth session
Agenda item 2

IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”

**Report of the Special Rapporteur on the situation of human rights and
fundamental freedoms of indigenous people, Rodolfo Stavenhagen**

Addendum

Summary of cases transmitted to Governments and replies received*

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

Respuesta del Gobierno

224. En carta de fecha **28 de septiembre de 2006**, el Gobierno de Honduras informó de que se continúa brindando las medidas cautelares a la Comunidad Triunfo de la Cruz y San Juan, Tela, específicamente para proteger la integridad física de la Sra. **Jessica García** y los Sres. **Wilfredo Guerrero** y **Zellin María Ellis**, miembros de la Comunidad antes mencionada. La protección es brindada por parte de la Jefatura Departamental N.º 1, así como de los Directivos del Patronato y del Comité de Defensa de la Tierra de la Comunidad de San Juan, Tela, Atlántida, por lo cual las alegaciones de Jessica García serían infundadas ya que la Secretaría de Seguridad, a través de los entes responsables, está dando estricto cumplimiento a las medidas de protección implementadas, mismas que siguen siendo cumplidas en ambas comunidades.

225. Las medidas de protección que se brindaba a la Comunidad Garifuna, en especial a los Directivos del Patronato y del Comité de Defensa de Tierra de la Comunidad de San Juan, Tela, Atlántida, eran las siguientes :

- a) Patrullajes tres veces por semana;
- b) Mesas de seguridad ciudadanas;
- c) Patrullajes frecuentes en la Comunidad de San Juan, en los alrededores de los domicilios de los miembros del Comité de Defensa de Tierras y Directivos de Patronatos;
- d) Visitas a la Organización Fraternal Negra de Honduras (Oficina OFRANEH), ubicada en el centro de la ciudad de la Ceiba, Atlántida, y a la casa de habitación de **Jessica García**, Presidenta del Patronato de la Comunidad de San Juan, Tela, Atlántida.

Observaciones

226. El Relator Especial agradece al Gobierno por su completa respuesta a su comunicación de **17 de agosto de 2006**.

India

Letter of allegation in relation to members of the Chandia, Gobarghati and Champaloila villages

227. On **18 January 2006**, the Special Rapporteur, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, sent a letter of allegation on information received regarding the situation of members of the indigenous communities of **Chandia, Gobarghati** and **Champaloila** villages.

228. According to the information received: On 2 January 2006, **Sudam Barla, Govind Laguni, Janga Jarika, Landu Jarika, Ati Jamuda, Mukuta Bankira, Dedghi Taria, Bhagat Sae, Ram Gagrai**, claiming by the source to be members of the indigenous

communities of Chandia, Gobarghati and Champaloila villages, were killed, and several others injured, during clashes with the police in the village of Nuagaon, Jajpur district, Orissa. A police constable, **Gopa Prasad Mohanty**, was also killed in the confrontation, allegedly by one of the participants in the protest.

229. It had been reported that a number of members of the mentioned communities were protesting against the inadequate compensation paid for the expropriation of their land for an industrial project at Kalinga Nagar, in Jajpur district, when the police had allegedly used excessive force to disperse the crowd. It had also been reported that post-mortem examination of those killed during the clashes was carried out in a barbarous way which exasperated the families and communities involved in the incident.

Letter of allegation in relation to MN

230. By letter dated **3 March 2006**, the Special Rapporteur, jointly with the Special Rapporteur on violence against women, its causes and consequences, drew the attention of the Government of India to information received concerning the **arbitrary detention and possible torture of an indigenous woman, MN** resident of Yairipok Leirongthel, Khangbok Part III, Thoubal District, Manipur.

231. According to the information received: MN was the girlfriend of the late KR alias B, who was reportedly a member of the prohibited People's Liberation Army (PLA). On 20 February 2006, B was killed in an armed encounter with police in Thoubal Market. In the same incident, Inspector NLS, Officer-in-Charge of the Thoubal District Police Commandos Unit, and three other policemen were also killed.

232. On 21 February 2006 at around 4.30 p.m., police commandos reportedly came in four jeeps to the house of B's family, attacked several of his family members and arrested MN because of her personal relationship with B. Contrary to what is required by law, no arrest memo was issued. Instead, a police report was filed, which stated that MN was arrested on 22 February 2006, at 8 p.m – more than 27 hours after the actual arrest. MN was charged with being "an associate of the party who ambushed the Officer-in-Charge and commandos" and being "B's girlfriend". A First Information Report (FIR) bearing number 25(2)06 of Thoubal Police Station under Section 20 of Unlawful Activities (Prevention) Act 2004 was registered against her.

233. On 23 February 2006, MN appeared before the Chief Judicial Magistrate in Thoubal and was remanded to police custody for nine days. Sources alleged that she was visibly weak and dizzy, indicating severe physical and mental torture. She was wearing a new shirt since the original shirt had allegedly been torn by the police, raising serious concerns of possible sexual violence.

Letter of allegation in relation to M

234. By letter dated **8 March 2006** the Special Rapporteur, together with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Rapporteur on violence against women, its causes and consequences, brought to the Government's attention information received concerning the

alleged **gang rape of M**, a 22 year-old woman belonging to the indigenous Nut Community (a scheduled tribe) in Sirsi village, Chandauli District, Uttar Pradesh.

235. According to the information received, on 14 January 2006 at 1 a.m., PS, son of BS, BS, son of RS, PS, son of MS, and GS, son of BS, from nearby Hinauti village allegedly came to the house of M's family. All four men belonged to the upper caste Singh community. The men assaulted M's family members and chased them away, leaving M alone in the house. Allegedly, the four men then forcibly took her to the pulse plants field; one kilometre away from her house, where they gang raped her for three hours. When M had fallen unconscious, they threw her onto a nearby railway line, where she was found hours later by another villager.

236. The victim's family had reported the incident to the Chandauli Police Station and lodged a First Information Report (FIR) against the four men under Section 376 of the Indian Penal Code and under Section 3(2) and Section 5 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989. Reportedly, however, the police had tried to delay action against the alleged perpetrators. Under intense pressure from the Nut community, the police had finally arrested the alleged perpetrators – more than 40 hours after the rape had allegedly taken place.

237. The members of the indigenous Nut community in Sirsi village are reported to live in very poor conditions on government-owned land and make their living from begging. Conversely, the members of the Singh community are big landowners and wield considerable influence in the region. Concern was therefore expressed that the victim could be threatened and pressured to withdraw her complaint against the four Singh men.

Follow-up letter in relation to the Sardar Sarovar Dam

238. By letter dated **6 April 2006**, the Special Rapporteur, together with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, the Special Rapporteur on the right to food and the Special Representative of the Secretary-General on the situation of human rights defenders, referred to previous communications, dated 29 July 2003 and 22 April 2004 in relation to the **Sardar Sarovar Dam on the Narmada River**, noting that no response had been received to the latter. Reference was also made to the recommendation made by the Special Rapporteur on the right to food in the report on his mission to India whereby dams, mining and infrastructural projects must not be implemented if this entails displacement and irreversible destruction of people's livelihoods. Such projects should only be carried out with the consent of communities, and on the condition that due legal process, proper resettlement, rehabilitation and compensation to all victims are guaranteed (E/CN.4/2006/44/Add.2, para. 48 (j)).

239. In addition to earlier concerns expressed regarding the impact of increasing water levels in the **Sardar Sarovar Dam**, the Special Rapporteurs and the Special Representative expressed their concern about **recent developments** in this respect. According to information received on 8 March 2006, the Narmada Control Authority (NCA) took a decision to raise the height of the Sardar Sarovar Dam from the present 110.64 metres to 121.92 metres. The implementation of this decision, apart from contravening the judgment of the Supreme Court of India in 2000 according to which any further increase in height of the dam was to be linked to the implementation of resettlement and rehabilitation measures, further would allegedly result in the violation of a range of human rights of those affected.

240. The Special Rapporteurs and the Special Representative declared also referred to the indefinite sit-in (dharna) by the over 300 dam-affected and activists of the Narmada Bachao Andolan (NBA – Save Narmada Movement) in New Delhi since 17 March 2006, demanding a halt to construction at the Sardar Sarovar dam as well as of the situation of the three NBA activists who were on an indefinite fast since 29 March.

241. According to information received, adequate rehabilitation had not been provided for those affected by the dam, many of them indigenous peoples and farmers. In Madhya Pradesh not one rehabilitation site was ready and none of the sites had sufficient house plots for affected families. This would reportedly leave people homeless when submergence would hit. Furthermore, alternative agricultural land was not being provided, and where land had been allotted as in Maharashtra and Gujarat, it was allegedly uncultivable and inadequate. Official estimates said that an additional 24,421 families in 177 villages of Madhya Pradesh were to be displaced at the dam height of 121.92 metres. According to estimates from civil society organisations, there had been at least another 10,000 families who had been affected when the height of dam water level was previously raised to 110 metres and who were still to be rehabilitated. Women and children were the worst affected by displacement and the lack of adequate rehabilitation.

242. The Resettlement and Rehabilitation Sub-group of NCA, the primary authority to assess the situation, had reportedly not visited the submergence area since November 2000. As per claims of the affected, the Grievance Redressal Authorities in the three concerned states was not functioning as expected in light of the 2000 Supreme Court judgement.

243. The Special Rapporteurs and the Special Representative noted with concern recent information regarding the intervention by the Indian police force with respect to NBA activists on the night of 5 April 2006. According to allegations, more than 300 police officials used force described as indiscriminate against the dharna protestors. The Special Rapporteurs and the Special Representative were also informed that **Medha Patkar** and **Jamsing Nargave**, who were on the eighth day of their indefinite fast, were arrested and that over 25 activists were detained. According to testimonies, the use of violence was excessive and disproportionate and allegedly in non-compliance with international human rights law.

Letter of allegation concerning starvation deaths in Pakurdiar village

244. By letter dated 12 April 2006, the Special Rapporteur, together with the Special Rapporteur on the right to food, brought to the attention of the Government that they had continued to receive **allegations of starvation deaths**. In particular the information received claimed that on 24 January 2006 **Bisni Mal** and, a few days later, her husband, **Joyram Mal**, members of one of the 13 indigenous families from Pakurdiar village in Jalangi, Murshidabad, had died due to ill health resulting from lack of food. In addition the information received claimed that on 6 March 2006, 8-years-old **Deepali Singh**, resident of the same village, had died of starvation. Allegedly her medical report had indicated that she had been suffering from anaemia and hepatomegally.

245. The allegations received claimed that because of the river erosion that had been occurring in **Jalangi** area, most people had lost their homes and lands. In this area there were reportedly no industries and the usual means of livelihoods of local communities used to be

provided by cultivation. However, it was reported that erosion affected most of the cultivated land, thus depriving the local communities of their usual access to food. The information received alleged that the relevant authorities were planning to build a barricade along the **Padma River** of 1.5 kilometres in length from Dayarampur to Taltali. However this measure was allegedly inadequate as it failed to provide any permanent solutions to the continuing erosion of the river and the livelihoods of the villagers.

246. The allegations received also claimed that, in Jalangi, villagers had been promised ration cards that would enable them to obtain access to food grains, sugar, kerosene oil and other items at subsidized rates. Reportedly, the majority of the villagers had not been able to access these schemes as either the shops which sell the subsidized food had been closed or shopkeepers refused to sell to the cardholder claiming it was counterfeit. It was claimed that local authorities had not yet adequately intervened to address these problems.

247. In addition, the reports received indicated that the Murshidabad district had been identified as one of the places for the implementation of the National Employment Guarantee Act, 2005. This legislation stipulates that 100 days of work at minimum wage should be provided to a majority of the residents. It was claimed that in Jalangi this welfare scheme had not yet been implemented and most of the villagers had not had access to jobs or alternative land to cultivate.

248. The allegations received also claimed that lack of adequate food led to the death of **Bisni Mal** on 24 January 2006 and a few days later of her husband, **Joyram Mal**. It was claimed that **Bisni Mal** and **Joyram Mal** had not been granted ration cards and had been unable to eat for days before they died. Allegedly their son had had to leave the house in search of employment handing some food grains with which his parents managed to survive for some days.

Letter of allegation in relation to the Ms. Katraju Lakshmi

249. By letter dated **12 April 2006** the Special Rapporteur, together with the Special Rapporteur on the right to food, brought to the attention of the Government that they had continued to receive **allegations of starvation deaths**. In particular the information received claimed that on 7 February 2006 **Katraju Lakshmi**, a Chenchu tribal woman working as a bonded labourer in the State of Meghalaya, had died due to ill health resulting from lack of food.

250. The **Chenchu tribe** is mostly found in the Nallamalai hills of Andhra Pradesh. They are spread across six districts including Mahabubnagar district of Andhra Pradesh. The Chenchu used to depend on the forest for their food. Men were skilled in collecting honey, and the women in picking gum, honey, berries and roots from the forests. Forests products used to enable them to feed themselves and survive. This reportedly changed in recent years due to the reduction in forest cover and the subsequent depletion of forest produce.

251. The allegations received claimed that 600 **Chenchu tribals** from Marredmandinne village, Pedakottapally division, Mahabubnagar district, Andhra Pradesh, worked as bonded labourers on construction sites in the State of Meghalaya. Depletion of the forest cover and produce reportedly forced Chenchus to look for alternative employment opportunities. In addition, the information received alleged that most of the Chenchu did not possess ration

cards which could enable them to receive subsidized food grains. It was reported that, further to the tribes' displacement from their original habitations to nearby villages in plain areas, village heads and secretaries could not refer their names to the local administration for issuing ration cards on the basis that they were not the original residents of these villages. For example in Marredmandinne village reportedly only two Chenchu families were able to obtain ration cards. It also appeared that Chenchu were generally not aware of their entitlements and authorities had so far failed to inform and educate them about such entitlements.

252. It was alleged that perennial drought, lack of alternative employment, abject poverty, the absolute absence of other means to feed their family, had forced illiterate Chenchu tribals to search for employment in far off places. Taking advantage of their situation, middlemen (Group Masons) allegedly promised to provide them with employment in nearby cities such as Warangal and Hyderabad but took them to places as far as Meghalaya which is almost 1700 kilometres away from their homes. Chenchu reportedly covered the costs of living and transport through loans from the labour contractors. However, unable to pay back the contractors' loans, they had allegedly ended up as bonded labourers. It was also claimed that tribal women were doubly affected due to the wage discrimination they suffer and threats they receive to their physical security. When food is scarce, tribal women are often the ones to suffer most from hunger and malnutrition.

253. The allegations received claimed that **Katraju Lakshmi** was among the group of Chenchu which migrated to Meghalaya in September 2005. She worked as a construction labourer for the Lekhya power plant near Shillong in the State of Meghalaya. She had reportedly been paid an advance of 1,000 Indian Rupees by middlemen and then forced into bonded labour. During pregnancy, **Katraju Lakshmi** had not received any nutritious food from the local Integrated Child Development Scheme Department (ICDS) which are supposed to supply nutritious food to pregnant women. As a result she had suffered from post childbirth weakness and ill health and faced acute poverty and lack of food. During her last days, **Katraju Lakshmi** had survived on a small quantity of rice and mixed vegetable juice. As per agreement, middlemen have to provide cooked meals to all labourers during their stay at the work place. However it was alleged that the meals they supplied were insufficient and inadequate. **Katraju Lakshmi's** health condition was already precarious when she had started working on the site. This, coupled with insufficient and inadequate food and hard labour, further deteriorated her health conditions leading to her death.

Urgent appeal in relation to Mr. Leitanthem Umakanta Meitei

254. On **25 August 2006**, the Special Rapporteur, together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, and the Special Rapporteur on the question of torture, drew the attention of the Government to information received concerning **Leitanthem Umakanta Meitei**, Secretary General of the Threatened Indigenous Peoples Society, Manipur and Spokesperson for the Apunba Lup, a coalition of 34 human rights organizations in Manipur, India.

255. According to the information received, at 4 a.m. on 24 August 2006, **Leitanthem Umakanta Meitei** had been arrested at his home and taken to Manipur West Police Station, where he had been beaten, which had caused him to pass out several times during interrogation. According to the information received, he had been interrogated about his

participation in the United Nations Working Group on Indigenous Populations and the Permanent Forum on Indigenous Issues. According to the information received, he had been subjected to severe beatings and had been threatened with further acts of torture or ill-treatment.

256. **Leitanthem Umakanta Meitei** had been the subject of a previous communication sent to the Government by the Special Rapporteur on the question of torture, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Special Representative of the Secretary-General on the situation of human rights defenders on 15 September 2004, which the Government responded to on 23 September 2004 (E/CN.4/2005/62/Add.1, paras. 785 and 786).

Letter of allegation in relation to the Jarawa people

257. On 25 September 2006, the Special Rapporteur brought before the Government's attention the situation of the human rights of the **Jarawa people**, in the Andaman Islands. A hunter-gatherer people, indigenous to the Andaman Islands, the Jarawa people are estimated to be reduced to only 270 members.

258. According to the information received, the Indian authorities had undertaken the works of improvement and enlargement of the highway (the so-called "Andaman Trunk Road") that cuts across the forest where the **Jarawa** have traditionally dwelled and found their subsistence. The re-opening and improvement of that highway would allegedly promote the massive influx of non-indigenous settlers and poachers. Since the illegal construction of the highway in the late 1960s, the opening of the Jarawa traditional lands to foreign settlement would have been a major cause of dispossession of their land and the resources they require for their livelihood, as well as of their exposure to serious infections and epidemics. The influx of foreign settlers would have further resulted in widespread violence against the Jarawa communities and sexual exploitation of Jarawa people. All those factors would have placed the Jarawa on the verge of their physical and cultural extinction.

259. The closing of the Andaman Trunk Road would have been ordered by the Supreme Court in a landmark 2002 decision, on view of its severe effects on the **Jarawa** people. The ongoing works in the highway would allegedly enter in open contradiction with the Supreme Court's decision.

260. In addition, allegations were received that **Jarawa** communities were victims of a new outbreak of measles epidemics starting in May 2006. According to the allegations received, this new outbreak would be connected to the lack of sustained vaccination campaigned by the Andaman Directorate of Medical Services (DSM). It had been noted that the previous measles outbreak that had taken place in 1999 would have affected some 200 persons belonging to the Jarawa people, corresponding to one third of the entire population.

Observations

261. The Special Rapporteur regrets not having received any response to his communications sent to India before the report was finalized. The Special Rapporteur expressed his deep concern about the seriousness of the allegations that gave rise to his communications, and strongly urges the Government of India to cooperate with the activities

undertaken by the mandate that was given to him by the Commission on Human Rights and extended by the Human Rights Council.

Israel

Letter of allegation in relation of the village of al-Sira

262. On **19 October 2006**, the Special Rapporteur, together with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living drew the attention of the Government to information received concerning the alleged intention of destroying the village of al-Sira, an **indigenous Bedouin village** in the Negev (Southern Israel).

263. The report indicated that the indigenous **Bedouin** people had been living in the Negev for centuries. Reportedly, on the date of the report, almost half of the 160,000 Bedouins were living in seven Government-planned towns without secure land tenure or sufficient development opportunities, and the remainder was living in 45 villages unrecognized by the Government. These villages reportedly did not appear on the official maps of Israel and did not receive basic services such as running water, electricity, garbage collection, etc. The **al-Sira** community was living in one of these villages.

264. According to the information received, the **al-Sira** community is located near the Nevatim Air Force base (10 km southwest of the city of Arad). 350 indigenous Bedouins reportedly live at al-Sira and the 50 houses of the village stretch over 4 square kilometres. The community has allegedly lived in this area for generations, throughout the Ottoman administration and British mandate. A number of documents of land acquisition dating back to the Ottoman period, as well as remaining works of infrastructure apparently prove the community's connection to those lands.

265. It was reported that in 1980, Israel had adopted "The Negev Land Acquisition (Peace Treaty with Egypt) Law," allowing for the expropriation of the village lands for the purpose of establishing the Nevatim Air Force Base. Although the village lies outside the base, Israeli authorities had allegedly declared all of the village lands to be a military zone. The residents were reportedly neither informed nor consulted about this decision.

266. The information received alleged that police officers and officials from the Ministry of the Interior reportedly had already posted seven warning notices of imminent house demolitions. On 7 September 2006, approximately 200 police officers and inspectors reportedly returned to the village and posted 45 demolition notices as well as an additional six houses that had been given a prior warning. In practice, this would mean that all houses of the village were to be destroyed.

267. Community members had reportedly made several attempts to find a negotiated solution with the Israeli authorities. On 4 June 2006, they were told by the commander of the Nevatim Air Force Base that there was no plan to enlarge the base in the direction of the village. It was reported that on 6 June 2006, a meeting was held with the construction inspector of the Ministry of Interior, who promised to hold the demolition for three months but no alternate housing solution was proposed.



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INDIGENOUS ISSUES

Human rights and indigenous issues

**Report of the Special Rapporteur on the situation of human rights and
fundamental freedoms of indigenous people, Rodolfo Stavenhagen**

Addendum

Analysis of country situations and other activities of the Special Rapporteur* **

* This addendum is being circulated in the language of submission and in Spanish only.

** The reason for the late submission of this report is the need to reflect the latest information.

Guatemala

Communications received

48. On 8 January 2004, the Special Rapporteur received a reply from the Government of Guatemala to a joint urgent appeal sent on 9 October 2003, concerning the alleged death of **Eusebio Macario Chicoj**, one of the founding members of the indigenous rights organization Council of Ethnic Communities Runujel Junam (CEFJ). The Government stated that investigations into the murder were ongoing and that, at that time, there were different hypotheses being considered by the Attorney-General.

Honduras

Urgent appeals

49. On 8 June 2004, the Special Rapporteur, jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal to the Government of Honduras, regarding the situation of **José Idalecio Murillo**, leader of the “Coordinadora Regional de Resistencia Popular”, an organization promoting human rights and environmental issues supported by several indigenous’ human rights defenders belonging to the Civil Council of the Indigenous Organizations (COPINH). According to the information received, on 27 May 2004, four unknown people reportedly shot at José Idalecio Murillo’s house. It was feared that these acts of intimidation, especially against indigenous human rights defenders belonging to the Civil Council of the Indigenous Organizations, were related to the protest campaign against the exploitation of the forest. The Special Rapporteur requested the adoption of all necessary measures in order to ensure the protection of the right to life and physical integrity of the aforementioned individuals, in compliance with the provisions contained in the relevant international legal instruments.

Observations

50. The Special Rapporteur regrets that at the time this report was finalized he had received no reply from the Government.

India

Urgent appeals

51. On 22 April 2004, the Special Rapporteur, jointly with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, sent an urgent appeal to the Government of India requesting information about the decision taken on 16 March 2004 by the Narmada Control Authority (NCA), supported by the Chief Ministers of Gujarat, Maharashtra and Madhya Pradesh and other relevant authorities, to allow the height of the Sardar Sarovar dam to be raised from 100 m to 110.64 m. According to the information received, this approval would result in the enlargement of the area brought under water and thereby increase the number of dwellings submerged during the monsoon season, resulting in the flooding of several Adivasi communities

and densely populated villages near and on the banks of the reservoir. Reports also stated that by 3 March 2004, none of the three States of Gujarat, Maharashtra and Madhya Pradesh had submitted the mandatory "Action Taken Reports", required by the "Resettlement and Rehabilitation Subgroup" to give clearance for an increase in height. The Special Rapporteur highlights that the decision to raise the height of the dam might lead to the violation of several human rights, as reflected in international human rights instruments, as it was already underlined in the previous urgent appeal sent to the Government on 29 July 2003. In this context, the Government was requested to submit information concerning the steps taken by the competent authorities in order to guarantee, among others, the right to adequate housing and in particular the right to be free from forced evictions, the right of indigenous peoples to self-determination and their traditional systems of sustenance, the right to the enjoyment of the highest attainable standard of physical and mental health, the need to redress development induced displacement losses and the need to respect certain core obligations.

52. On 15 September 2004, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal to the Government of India regarding the alleged arrest of **Umakanta Meitei**, an indigenous human rights defender from Manipur. According to the information received, on 9 September 2004 he was arrested, reportedly without charge by a Manipur Police Commando, Central Reserve Police Force, Indian Reserve Battalion. Reports also stated that he suffered injuries to his head, legs and chest, before being released the same day. The Special Rapporteur expressed deep concern that Umakanta Meitei was targeted for his work as a human rights defender and may be at risk of torture or other forms of ill-treatment. Therefore, in the letter the Government was requested to seek clarification of the circumstances with a view to ensuring that the right of Umakanta Meitei to physical and mental integrity was protected.

53. On 20 September 2004, the Special Rapporteur sent a joint allegation letter with the Special Rapporteur on violence against women to the Government of India regarding the alleged brutal killing of **Thangjam Manorama Devi**, an indigenous woman from the Imphal East District in Manipur. According to the information received, on 11 July 2004 Thangjam Manorama Devi was raped and killed, reportedly by members of the 17th Assam Rifles. Reports also stated that during the demonstrations following the murder, several people suffered from the tear gas used by the police and one person, **Kangjam Memita**, died as a result of it. The Special Rapporteur expressed concern regarding the allegations of excessive use of force and intimidation by the police and military personnel and regarding the reported mass arrests of indigenous protesters.

Communications received

54. On 23 September 2004, the Special Rapporteur received a reply from the Government of India to a joint urgent appeal sent on 15 September 2004, regarding the alleged arrest of **Umakanta Meitei**, an indigenous human rights defender from Manipur. In the letter, the Government stated that it did not recognize any separate category of its citizens as "indigenous peoples", as there is no internationally accepted definition of an indigenous person. It also noted the lack of universal standards for the definition of "human rights defender".

55. On 11 October 2004, the Government of India submitted a second response to the joint urgent appeal of 29 July 2003, stating that adequate care had been taken to protect and fulfil the human rights of all citizens, including the Adivasi, living in the Narmada valley, when the decision of raising the height of the Sardar Sarovar dam from 95 to 100 m was taken. With respect to adequate housing, the Government states that the award of the Narmada Water Disputes Tribunal provides that every displaced family is to be provided a free housing plot and that the Government of Gujarat extends financial assistance to construct the core house on the allotted residential plot. Every displaced family is provided three choices to select the agricultural land, and the land is allotted as per the consent of the project affected families.

Observations

56. On 6 October 2004, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, answered the Government of India regarding the reply received on 23 September 2004. In the letter, the Special Rapporteurs noted that the absence of an internationally agreed definition of indigenous peoples does not prevent the international community from constructive action. For this reason, while analysing the information regularly brought to his attention, the Special Rapporteur takes into consideration the four principles, considered in 1995, by the Working Group on Indigenous Populations on the question of definitions. The Special Representative of the Secretary-General specified that any person striving towards the protection or promotion of human rights has to be considered as a human rights defender in the context of that activity. The Special Rapporteur therefore calls on the Government of India to take all the necessary measures to prevent any acts of intimidation against human rights activists collaborating with United Nation mechanisms.

Indonesia

Urgent appeals

57. On 5 April 2004, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the right to freedom of opinion and expression, the Special Rapporteur on torture and the Special Representative of the Secretary-General on the situation of human rights defenders sent an urgent appeal to the Government of Indonesia, enquiring about the alleged detention of **Mr. Bestari Raden**, a 55-year-old environmental and pro-democracy activist, coordinator of the Environmental Caucus (Kaukus Lingkungan) and member of the Indigenous People's Alliance of the Archipelago (Aliansi Masyarakat Adat Nusantara, AMAN). According to the information received, on 23 March 2004 he was allegedly arrested by soldiers from the Aceh Tenggara District Military Command (Kodim 0108) in Lawe Pakam village, Babul Makmur subdistrict, Aceh Tenggara district, Nanggroe Aceh Darussalam province (NAD) and, at the time the communication was sent, he was still undergoing intensive interrogation. Bestari Raden had reportedly already been previously accused of being a leader of the armed opposition group, the Free Aceh Movement (Gerakan Aceh Merdeka, GAM). In view of past allegations of torture and ill-treatment in military custody in NAD, the Special Rapporteur appealed to the Government to take all necessary measures to guarantee the right of Bestari Raden not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, as well as the right to freedom of expression.



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Eighth session
Agenda item 3

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

**Report of the Special Rapporteur on the independence of judges
and lawyers, Leandro Despouy**

Addendum

SITUATIONS IN SPECIFIC COUNTRIES OR TERRITORIES* **

* Owing to the fact that the present document greatly exceeds the page limit required by relevant General Assembly resolutions, it is being circulated as received, in the languages of submission only.

** Late submission.

Presidente del Grupo de Trabajo sobre la utilización de mercenarios como medio de violar los derechos humanos y obstaculizar el ejercicio del derecho de los pueblos a la libre determinación y de la Representante Especial del Secretario-General para los defensores de los derechos humanos, con fecha de 13 de diciembre de 2006 y el más reciente también del Presidente del Grupo de Trabajo sobre la utilización de mercenarios como medio de violar los derechos humanos y obstaculizar el ejercicio del derecho de los pueblos a la libre determinación y de la Representante Especial del Secretario-General para los defensores de los derechos humanos, con fecha de 11 de enero de 2007. De acuerdo con la información adicional recibida: el 17 de mayo de 2007, hacia las 15:00, el Sr. Cáceres Alvarenga habría recibido un mensaje de texto amenazante en su teléfono móvil, lo cual decía 'Será mejor que se retire de (nombre de una empresa de seguridad privada) o lo dejamos como a Dionisio'. El Sr. Dionisio Díaz García, también abogado de la ASJ, fue asesinado el 4 de diciembre de 2006. Según se informa, desde el asesinato del Sr. Díaz García, otros miembros de la ASJ, incluyendo los arriba mencionados, habrían recibido amenazas mediante mensajes de texto y habrían sido seguidos y vigilados por desconocidos. Además, se ha denunciado la presencia de individuos en vehículos aparcados delante de sus casas. El 15 de diciembre de 2006, fuentes vinculadas a la inteligencia militar, revelaron al Sr. Roberto Marín un supuesto plan organizado por empresas de seguridad privadas para matar a los miembros de la ASJ.

Comunicación recibida

No se ha recibido ninguna comunicación del Gobierno.

Comentarios y observaciones del Relator Especial

149. El Relator Especial manifiesta su preocupación por la ausencia de respuesta oficial al llamamiento urgente enviado el 31 de Mayo de 2007 y urge al Gobierno de Honduras para que envíe lo más pronto posible, preferiblemente antes de la finalización de la novena sesión del Consejo de Derechos Humanos, una respuesta sustantiva al llamamiento arriba mencionado. Preocupa sumamente al Relator Especial las amenazas sufridas por los abogados de ASJ en el ejercicio de sus funciones y al respecto llama la atención sobre los Principios básicos sobre la función de los abogados, específicamente los principios 16, 17 y 18.

India

Communications sent

150. On 18 December 2007, the Special Rapporteur sent a joint allegation letter together with the Independent Expert on Minority Issues, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Rapporteur on violence against women on violence against Dalit Women in India. According to the information received, Dalits women and men suffer descent based discrimination in various aspects of their lives; they are also victims of violence and untouchability practices (based on notions of Dalits' supposed impurity) arising out of the caste system. While both men and women are discriminated and suffer from social exclusion, Dalit women are confronted with discrimination, exclusion and violence to a larger extent than men. They are indeed not only discriminated by people of higher casts but also by men of their own communities. The case of Dalit women is

specific because of their socio-economic positioning at the bottom of the caste, class and gender hierarchies. Dalit women face violence in the community and in their family, from State and private actors alike belonging to various castes and socio-economic groupings, and of both sexes. The major forms of violence that Dalit women are subject to are: physical and verbal abuse, sexual harassment, abduction, and sexual violence, including rape. On many occasions, cases of violence against Dalit women are not registered by the police and opportunities for intervention in the legal system are inexistent due to a general lack of law enforcement. Women are unaware of the laws protecting their rights and their ignorance is easily exploited by the perpetrators, and some members of the police and the judiciary. Allegedly, even if the cases are reported to the police, and the perpetrators arrested, they are usually released on bail and women do not receive justice as a result. 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 physical or sexual violence against Dalit women, the police are obliged to register the case. However, the police often refuse to register the case under this act, because the act imposes high prison sentences and fines and the police may not agree with the purpose of the act and may try to protect the perpetrators (who are their fellow caste members) by not registering cases at all, or registering them under a different act. If a case is not registered under the Prevention of Atrocities Act, it is possible for the perpetrator to receive anticipatory bail which, especially in rape cases, in practice means that the case remains in full impunity. This goes against a Supreme Court judgement that ruled that anticipatory bail should not be available in cases within the Prevention of Atrocities Act (Case 1995-1198, State of M.P. & anr. vs. Respondent, Ram Krishna Balothia & anr, judgement of 6 February 1995). The Supreme Court also ruled that anticipatory bail can be denied for the purpose of investigation (Case 2005-326), which would apply to most rape cases, but this is allegedly not implemented in practice (Appeal (crl.) 326 of 2005, Adri Dharan Das v. State of West Bengal, judgement of 21 February 2005). The experts brought to the Government’s attention some specific cases which outline the impunity that seems to prevail with respect to ensuring protection and redress for Dalit women victims of physical and sexual violence. The common elements of these cases are the lack of investigation, not prosecution of alleged perpetrators. The experts expressed serious concern that the perpetrators of these acts of violence against members of the Dalit community continue to enjoy impunity and asked the Government to take all necessary measures to ensure accountability of any person guilty of the alleged violations. Moreover, they called the Government to take all necessary measures to prevent similar attacks on persons belonging to the Dalit caste in the future and to guarantee that the rights and freedoms of the aforementioned persons are respected.

Communications received

151. On 29 April 2008, the Government requested the mandate holders to provide the details of the place of occurrence (village/district/state) concerning each case included into the communication, in order to facilitate the investigations.

Special Rapporteur’s comments and observations

152. The Special Rapporteur thanks the Government for the reply regarding the allegation letter sent on 18 December 2007. He will reply to the Government’s request as soon as possible.



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IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”

**Report of the Special Rapporteur on the independence of judges and lawyers,
Leandro Despouy**

Addendum

Situations in specific countries or territories*

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

Derechos Humanos, informaciones precisas y detalladas acerca de las alegaciones arriba resumidas.

India

Communications sent

171. On 1 May 2006, the Special Rapporteur sent a joint urgent appeal together with the Special Representative of the Secretary-General on the situation of human rights defenders concerning Parvez Imroz, a lawyer and member of the Council of the Asian Federation Against Involuntary Disappearances (AFAD), President of the Jammu and Kashmir Coalition of Civil Society (JKCCS) and Patron of the Association of Parents of Disappeared Persons (APDP). AFAD is a federation of NGOs that work against enforced or involuntary disappearances, JKCCS is a coalition of NGOs that work on human rights and democracy in Kashmir and APDP is an NGO that works against enforced or involuntary disappearances in Jammu and Kashmir and is a member of AFAD and JKCCS. Mr. Imroz was already the subject of an urgent appeal sent by the Special Representative of the Secretary-General on the situation of human rights defenders on 11 May 2005 and an urgent appeal sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the question of torture on 5 October 2004, to which the Government replied by letter dated 15 February 2005. According to the information received, in November 2004 Mr. Imroz sent an application for a passport to the passport authority of Jammu and Kashmir. He has received no formal response or rejection from the authorities, despite having sent a number of reminders. Without a passport Mr. Imroz has been unable to attend a number of international conferences, workshops and consultations connected with his activities as a human rights defender. Concern is expressed that the refusal by the authorities to issue Parvez Imroz with a passport may be connected with his activities in defence of human rights, in particular his work on involuntary and enforced disappearances in Kashmir, and may represent an attempt to prevent him from being able to meet and communicate with other international human rights defenders.

172. On 14 September 2006, the Special Rapporteur sent another joint urgent appeal together with the Special Representative of the Secretary-General on the situation of human rights defenders regarding Parvez Imroz. Still without a passport, Mr. Imroz will not be able to go to France on 13 October 2006 to receive the Ludovic Trarieux international human rights prize, which was awarded to him jointly by the Bordeaux Bar, the Brussels Bar, the Paris Bar and the Human Rights Institute of the European Bar. The prize, created in 1984, is awarded every year to a lawyer for activities defending human rights. According to the award's rules, the prizewinner must attend the award ceremony, which takes place in Bordeaux at the National School of the Magistracy. Concern is expressed that the refusal by the authorities to issue a passport to Mr. Imroz may be connected with his activities as a lawyer and human rights defender, in particular his work related to involuntary and enforced disappearances in Kashmir, and may represent an attempt to prevent him from being able to meet and communicate with other international human rights defenders.

Communications received

173. None.

Special Rapporteur's comments and observations

174. The Special Rapporteur is concerned at the absence of an official reply and urges the Government of India to provide at the earliest possible date, and preferably before the end of the fourth session of the Human Rights Council, a detailed substantive answer to the above allegations.

Indonesia**Communications sent**

175. On 3 March 2006, the Special Rapporteur sent an allegation letter regarding the trial relating to the attack on 29 November 2005 on three hamlets, Karama, Bonto Badong and Ujung Moncong, in Bandri Manurung village, Jeneponto Regency, Sulawesi, by members of the military forces, in which 82 houses were destroyed and civilians were injured. On 16 January 2006, three soldiers, Private Siradjuddin, Private Jusmianto and Chief Private Alimuddin, who were allegedly involved in the attack were sentenced to 2 ½ months' imprisonment by Military Court 316, Makassar, South Sulawesi. They were convicted under article 160 of the Criminal Code of Indonesia for inciting people to commit unlawful acts in public and under article 406 (1) of the Criminal Code for inciting people to destruction. It is reported that despite the perpetrators' direct involvement in the destruction of the houses and attacks against civilians, they were only charged with incitement to unlawful acts, which resulted in a lenient sentence. The three convicted soldiers are still believed to be serving in the military. Second Private Kopoda Syarifuddin, who reportedly stabbed a civilian with a sword and severely injured him during the same incident, was sentenced to six months' imprisonment by the military court. It is alleged that civilians were not able to access the military court because the hearings were conducted behind closed doors. Finally, there was no decision by the court regarding compensation to the victims of the attack. The military has reportedly rebuilt a small number of the destroyed houses and paid some money to the villagers.

176. On 21 March 2006, the Special Rapporteur sent a urgent appeal jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression regarding Selpius Bobii, a 27-year-old student at the Catholic Theological College "Fajar Timur", Jayapura, Papua, as well as 57 detainees. According to the allegations received, on 16 March 2006, they were arrested and detained in Jayapura Police Station and are denied access to lawyers. Students were protesting in Abepura to demand the closure of mining operations in Timika, West Papua, and the withdrawal of the Indonesian Army and police, which provide security for the mining company. The protesters blocked the main road of Jayapura so as to attract the attention of the



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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:
INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY**

**Report of the Special Rapporteur on the independence of judges and lawyers,
Leandro Despouy, submitted in accordance with
Commission on Human Rights resolution 2003/43**

Addendum

Situations in specific countries or territories *

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

23 de septiembre, el juez ordenó el sobreseimiento definitivo a favor de los imputados. Con fecha de 29 de septiembre la Fiscalía interpuso recurso de reposición y subsidiaria apelación ante la Corte de Apelaciones de Santa Rosa de Copán y el 29 de octubre la misma Corte reformó el sobreseimiento definitivo dictado por el juzgado de primera instancia y ordenó que el mismo se decreta de manera provisional. Con respecto a las acusaciones contra Marcelino Miranda y Leonardo Miranda, el Gobierno hizo saber que próximamente se dictará sentencia por cargos de tentativa de homicidio y asesinato, y con respecto al cargo de lesiones y atentado, se dictó sentencia absolutoria a la que el ministerio público luego interpuso recurso de Casación ante la Corte Suprema de Justicia, que aún está pendiente de sentencia. Respecto a las amenazas contra el abogado **Jose Leonardo Miranda Espinoza**, el Gobierno informó de que una denuncia fue interpuesta el 16 de octubre ante la Dirección General de Investigación Criminal de Gracias Lampira y un requerimiento de investigación había sido emitido el 28 de octubre a la Dirección General de Investigación Criminal. La investigación sigue en curso.

India

Communications to the Government

38. On 24 July 2003, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on torture regarding **Ayub Khan Pathan, Abdul Latif Pathan, Shamshad Begum A Pathan and Mehzabin Ayub Khan Pathan**. Mr. Ayub Khan Pathan was reportedly arrested on 15 June 2003 and Mr. Abdul Latif Pathan on 25 June 2003 by crime branch police officers of the Gujarat police. According to the information received, the wives of two of the detainees filed a habeas corpus petition in the Gujarat High Court on 7 July 2003, but were subjected to pressure by the superintendent of police to make them to withdraw it, and their husbands were threatened with death. On 11 July 2003, the women reportedly filed a complaint with the High Court which claimed that their husbands had been detained without due legal safeguards and that they had been subjected to torture and other forms of ill-treatment. It is said that at the hearing, the crime branch denied that they were in their custody. The High Court reportedly dismissed the habeas corpus petition and Ayub Khan Pathan and Abdul Latif Pathan were allegedly remanded to police custody. They are believed to be currently held in police detention without access to their lawyers and their relatives since 9 July 2003.

Indonesia

Communications to the Government

39. On 10 April 2003, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the question of torture regarding **Susyanti, An'am Jaya, Sahabuddin, Ansar Suherman, Hariansyah and Muhammad Akman**, who were reportedly arrested on 25 January 2003 in Sulawesi Tenggara Province. The six activists were reportedly charged under articles of the Indonesian Criminal Code which punish "insulting the President and Vice-President" (article 134) and "hate-sowing" (articles 154 and 155) with imprisonment for up to six and seven years respectively. It is alleged that two days before their arrest they had participated in a peaceful demonstration organized by a coalition of Indonesian organizations known as the Governing Front of the Poor (*Front Pemerintah Rakyat Miskin, FPRM*) in Kendari Town, Kendari Sub-district. According to the information received, they were initially detained at Kendari Police Resort (Polres Kendari), where they are believed to have been beaten and kicked. According to the information



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Report submitted by the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani

Addendum

Summary of cases transmitted to Governments and replies received*

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

relacionadas con su trabajo en defensa de los derechos humanos, en particular su consejo legal y apoyo a los doce empleados despedidos de la empresa de seguridad privada SETECH.

Observaciones

1047. La Representante Especial agradece al Gobierno las respuestas proporcionadas en relación con los llamamientos enviados el 5 de diciembre de 2006, el 5 de abril de 2007, el 1 de mayo de 2007 y el 22 de Mayo de 2007. Sin embargo, la Representante Especial sigue preocupada por la seguridad y la integridad física y psicológica de los defensores de los derechos humanos en Honduras y está especialmente preocupada por las alegaciones de que agentes policiales hayan estado directa o indirectamente implicados en atentados contra los derechos de activistas de los derechos humanos.

1048. La Representante Especial urge al Gobierno que transmita repuestas a los demás casos con informaciones respecto al resultado de las investigaciones llevadas a cabo. La Representante Especial agradecería recibir del Gobierno el segundo informe mencionado en la respuesta del Gobierno con fecha 13 de junio de 2007 al llamamiento urgente con fecha 5 de abril de 2007 sobre las investigaciones con relación al caso del Sr. Donny Reyes.

India

Urgent appeal

1049. On 8 December 2006 the Special Representative sent an urgent appeal to the Government concerning threats against Mr. **Gopan Sharma**, a staff member of non Governmental organisation MASUM based in West Bengal, which works to create awareness of human rights violations in rural areas and promotes the rights of agricultural workers.

1050. According to the information received, on 15 November 2006, Mr Gopan Sharma had drafted a written complaint on behalf of an agricultural worker, Mr Mohammad Sayab Ali Mondal, who was allegedly beaten by members of the Border Security Force (BSF) because he apparently witnessed the smuggling of goods across the border with Bangladesh. It was reported that when Mr Sharma accompanied Mr Mondal to lodge the complaint they were told by Mr Somnath Banerjee, Officer in Charge of the Jalangi police station, that he could not entertain complaints against the BSF. Reportedly the police officer then verbally insulted the two men and disposed of the written complaint.

1051. It was further reported that Mr Sharma contacted the Additional Superintendent of Police (ASP) of the Murshidabad district in relation to the complaint. The ASP reportedly instructed the Jalangi police to accept the complaint without further delay. However sources indicated that the aforementioned Officer in Charge continued to refuse to act on the complaint and had allegedly threatened that Mr Sharma will face serious consequences if he continues to defend victims of human rights violations carried out by the BSF. It was also reported that Mr Mondal had been harassed by the Jalangi police because he has involved human rights activists in his case.

1052. Concern was expressed for the safety of Mr Gopan as it is feared that the threats and acts of intimidation against him are related to his activities in relation to human rights, in particular his defence of the rights of agricultural workers in the West Bengali area.

Letter of allegations

1053. On 9 January 2007, the Special Representative sent a letter of allegations to the Government concerning a search of the premises of Manabadhikar Suraksha Mancha (MASUM), and harassment of its members including Mr **Kirity Roy**, Secretary General of the organisation and a national executive member of the Indian branch of Amnesty International. MASUM is an organization which promotes the rights of agricultural workers, based in Kolkata. Mr Kirity Roy was the subject of a joint communication sent to your Government on 14 December 2005 by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders, and a subsequent urgent appeal sent by the Special Representative of the Secretary-General on the situation of human rights defenders on 25 January 2006.

1054. According to the information received, on 21 November 2006, an officer from the District Intelligence Branch Department (DIB) searched the headquarters of MASUM apparently in search of information relating to the activities of the organisation. The police officer allegedly failed to produce a search warrant when requested to do so by Mr Kirity Roy, responding that he was acting on orders issued by Mr Raj Konjia, the West Bengal General Inspector of Police (Law and Order). The officer reportedly asked for the organisation's registration certificate and took a note of Mr Roy's address.

1055. A short time after the officer left, it is reported that Mr Roy received a phone call in which he was summoned to the DIB office in Howrah to meet with the Deputy Superintendent of Police. When Mr Roy asked for notification in writing, the officer allegedly hung up. Furthermore, it is reported that MASUM's headquarters were previously subjected to a search on 10 November 2006 by the same officer. It is alleged that he also asked on that occasion about the activities of the organisation and requested to see the registration certificate, as well as personal details of leading members including their names, addresses and phone numbers. The only employee who was present at the time apparently refused to divulge this information.

1056. Concern was expressed that the arbitrary searches of the MASUM headquarters and harassment of its staff, in particular Mr Kirity Roy, may represent an attempt by the authorities to prevent the organisation from carrying out its legitimate activities in defence of human rights, in particular the promotion and protection of the rights of farm workers in West Bengal.

Urgent appeal

1057. On 16 February 2007 the Special Representative, together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, sent an urgent appeal to the Government concerning **Mr Gopen Sharma**, District Human Rights Officer in the Murshidabad District of West Bengal of a non Governmental organisation called People's Watch, which is implementing an European Union funded "National Project on Prevention of Torture in India" (NPPT) in West Bengal in collaboration with a non Governmental organisation Manabadhikar Suraksha Mancha (MASUM). Mr Sharma was already the subject of an urgent appeal of the Special Representative of the Secretary-General on the situation of human rights defenders on 8 December 2006.

1058. According to further information received, Mr Gopen Sharma was arrested by police officers on 8 February 2007 during his visit to the Kaharpara Border Outpost of the Border Security Force (BSF) camp in order to collect information on three cases of human rights violations alleged committed by the BSF following complaints lodged with the National Human Rights Commission (NHRC). At Outpost No. 1 he was approached and assaulted by an individual not known to Mr Sharma with the name of Achinto Sarkar, who alleged that one of his co-villagers owed him money. When Mr Sharma asked for protection by the local BSF he was taken into custody instead and transferred to Ranninagar Police Station. Mr Sharma was not provided with an arrest warrant. Upon arrest Mr Sharma was threatened and insulted by a police officer, who accused him of filing complaints with human rights organisations against the police and the BSF. Police officers seized his mobile phone and all documents related to the complaints to the NHRC Mr Sharma had been investigating.

1059. Mr Sharma was charged pursuant to sections 420, 468 and 471 of the Indian Penal Code on allegations of fraud and dishonestly inducing delivery of property, forgery for the purpose of fraud and using as genuine a forged document, respectively. On 9 February 2007 Mr Sharma was summoned before the Additional Chief Judicial Magistrate of Lalbagh, Murshidabad, who decided to remand him until 22 February 2007. The application for bail filed by Mr Sharma's lawyer was also rejected by the court. These events followed Mr Sharma's participation in a fact-finding mission to the BSF Khayer Tala Border Outpost that the NPPT undertook on 1 February 2007.

1060. The other members of the fact-finding mission were Mr Henri Tiphagne, Executive Director of People's Watch, Mr Biplap Mukherjee, State Programme Coordinator for the NPPT for West Bengal, and Mr Kirity Roy, President of MASUM, who was already the subject of a letter of allegations by the Special Representative of the Secretary-General on the situation of human rights defenders on 9 January 2007, an urgent appeal by the Special Representative of the Secretary-General on the situation of human rights defenders on 25 January 2006 and a joint allegation letter by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders on 14 December 2005.

1061. When the fact-finding mission reached the area it was threatened and harassed by BSF officers at BSF Khayer Tala Border Outpost. The fact-finding mission was related to alleged human rights violations by police officers committed against local villagers. Concern was expressed that the charges issued against Mr Sharma may be false and may be directly related to his legitimate work as a District Human Rights Officer with the National Project on Prevention of Torture's in Murshidabad District

of West Bengal. Further concern was expressed that such actions may represent an attempt to warn and deter other human rights defenders and particularly, the NPPT's fact finding mission from investigating human rights violations committed by the BSF or the police.

Letter of allegations

1062. On 26 January 2007 the Special Representative, together with the Special Rapporteur on contemporary forms of racism, racial discrimination and xenophobia and related intolerance, sent a letter of allegations to the Government concerning an attack against Mr **Ravikumar**, Member of the Legislative Assembly of the Kaaumannarkoil constituency, owing allegiance to the Vidudalai Chruthaiga, Dalit Panthers of India (DPI), in Sedapalayam village of Cuddalore District, in the State of Tamil Nadu. Mr Ravikumar also served as state president of the People's Union for Civil Liberties, Tamil Nadu-Pondicherry and was elected as a Member of the Tamil Nadu Legislative Assembly in 2006. He is also a well known Dalit writer, social activist and co-publisher of a publishing house which focuses on caste issues.

1063. According to information received, on 2 January 2007, Mr Ravikumar sustained injuries to his hands and legs during an alleged attack by a contingent of approximately 100 police officers, including Delta police personnel, in Sedapalayam village during a funeral procession for Mr Siva, a Dalit youth murdered on 1 January 2007. Twenty-eight other Dalit Panthers of India (DPI) members were also injured in the attack. Mr Ravikumar was admitted to the Sri Ramachandra Medical College in Chennai on 3 January 2007 and discharged three days later. According to reports, the funeral procession was attacked by police officers in response to an attempt by some individuals attending the funeral to set fire to houses belonging to the alleged perpetrators of Mr Siva's murder. Dalit youths who later attended the hospital for medical treatment were reportedly arrested by police on charges of attempted murder.

1064. Prior to the events of 2 January 2007, Mr Ravikumar had reportedly been in contact with Mr Gagandeep Singh Bedi, District Collector, Cuddalore, and Mr M Karunanidhi, Chief Minister of Tamil Nadu urging them to ensure that an immediate investigation be carried out in relation to Mr Siva's murder on 1 January 2007, and that the perpetrators be brought to justice. He also made an appeal to the police and district administration to ensure that law and order be maintained during the funeral. Concern was expressed that the funeral procession of Mr Siva was violently suppressed by authorities and that excessive police force may have been used against peaceful attendees of the funeral. Concern was also raised that Mr Ravikumar may have been targeted due to his high profile work in defence of the human rights of Dalits.

Urgent appeal

1065. On 26 January 2007, the Special Representative, together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention sent an urgent appeal to the Government concerning Mr **Hebal Abel Koloy**, Chairperson of the Borok People's Human Rights Organisation (BPHRO), a non Governmental organisation that promotes and protects the rights of the indigenous peoples of Tripura.

1066. According to the information received, Mr. Hebal Abel Koloy was rearrested on 19 January 2007 in Kamalpur District on charges related to the National Security Act (NASA). Mr Hebal Abel Koloy had been granted bail on 17 January 2007 by the Agartala Bench of the Gauhati High Court, in respect of four different legal cases, on the grounds that evidence did not exist for his detention. Furthermore, the Court ruled that his arrest had been arbitrary and that the repeated attempts to prosecute him constituted a type of political harassment, so therefore ordered his immediate release. However, when his family travelled to Kamalpur District Jail to collect him, they found that he had been rearrested.

1067. It was further reported that Mr. Hebal Abel Koloy, a respected teacher working in a school set up by the Government of Tripura, was previously detained during the night from 26 to 27 October 2006 at the West Tripura District police station. A case was registered against him under s.27 of the Arms Act and 120(b) of the Penal Code. He was brought before the Chief Judicial Magistrate of Kailashar, who found no evidence to support the charges brought against him. Despite this ruling, he was reportedly remanded in custody for three days. On 29 October 2006, in addition to a search being carried out on his residence, the premises of the BPHRO were raided and identity card forms, donors' registrar books, membership fee books and other documents relating to the organisation were removed by the police, as well as a personal computer. I

1068. It was alleged that this person was being held in detention as a consequence of his human rights work and that his detention may represent an attempt by the local authorities to deter him and other defenders from carrying out their legitimate activities in defence of the indigenous peoples of Tripura.

Letter of allegations

1069. On 5 April 2007 the Special Representative sent a letter of allegations to the Government concerning Mr **Ram Prasad Bharati**, member of the Peoples Vigilance Committee on Human Rights (PVGHR). The PVCHR is an organisation based in Uttar Pradesh which promotes civil and democratic rights and in particular the rights of minority groups, including the rights of the Dalit community. According to information received, on 6 March 2007, whilst travelling from Sonbadra to Varanasi, Mr Bharati was arrested by members of the local police stationed at Naugarh police outpost, Chgandauli district, Uttar Pradesh. Prior to his arrest Mr Bharati was allegedly followed by two individuals known to be feudal leaders before being intercepted at the Naugarh police outpost.

1070. Mr Bharati contacted the PVCHR at midday on 6 March 2007 to inform the organisation of his arrest. He was subjected to verbal abuse whilst in detention but later released without charge. Mr Bharati has been the subject of previous harassment by members of the Naugarh police force. On 15 September 2005 he was detained at Majhgavan police station for a number of hours for questioning during which time senior police officers allegedly threatened him by implying that he would be the victim of a staged murder.

1071. Furthermore, on 6 February 2005 a senior officer visited Mr Bharati's home asking for his whereabouts. Mr Bhratai was not at home at the time and the officer asked his son to inform Mr Bahrati that a bullet had been reserved for him and would be used in the near future. Mr Bahrati reported the aforementioned incidents to the local authorities and to the National Human Rights Commission however no action was taken to investigate the matter. Concern was expressed the arrest and detention of Mr Ram Prasad Bharati forms part of an ongoing campaign against human rights defenders in India, in particular those working on behalf of the Dalit community and minority groups. Further concern was expressed for the safety of Mr Bharati given the alleged threats he was subjected to in the past by members of the police force.

Letter of allegations

1072. On 20 April 2007, the Special Representative sent a letter of allegations to the Government concerning Mr **Phani Gopal Battacharaya**, Vice-President of Banglar Manabadhikar Suraksha Manch (MANSUM). Mr Battacharay is also Secretary of the Indo Japan Steels Limited Employees Union and Working President of Belur Sramajibi Sasthya Prakalpa Samity (Sramajibi Hospital) in West Bengal. The hospital was established by ex-factory workers and provides treatment for torture victims.

1073. According to information received, on 10 March 2007, Mr Bhattacharya was charged under sections 34, 427 and 447 of the Indian Penal Code for alleged mischief causing damage (427), criminal trespassing (447) and common intention to commit any crime with others (34) and was subsequently detained at the Bally Police Station, West Bengal. On 20 March 2007 Mr Bhattacharya was granted bail by the Chief Justice Magistrate of Howrah, West Bengal.

1074. According to reports, Mr Bhattacharya was employed by the Indo Japan Steels Ltd, and Secretary of the Employees Union until 1996 when the factory closed. Since then, Mr Bhattacharya along with the other trade union members, have been involved in working for the rights of employees at the factory including making demands for the payment of salaries due, redundancy, repayment of workers' contributions to Co-Operative Fund and Provident Fund. The business was then in the final stages of its liquidation process. Since the closure of the factory, employees have had legal control over a room adjacent to the factory premises, which had been used as a workers' co-operative. The Indo Japan Steels Ltd had no legal rights over the factory premises as it was a leasehold property and the lease had been terminated. The Calcutta High Court had previously ordered, in other cases, that the peaceful workers could remain in the premises of the closed factory. Mr Bhattacharya, along with other workers, was reportedly trying to prevent the illegal taking of valuable machinery that had been left since the factory's closure.

1075. Concern was expressed that the charges against Mr Phani Gopal Bhattacharya form part of an ongoing campaign against human rights defenders in India. Concern was also expressed that the charges brought against Mr Battacharaya along with 25 other trade union workers are may be related solely to their legitimate and peaceful work in defence of human rights, and in particular workers' rights and may form part of an ongoing campaign against human rights defenders in India.

Letter of allegations

1076. On 10 May 2007 the Special Representative sent a letter of allegations to the Government concerning Ms **Subhajit Dey**, a transgender Peer Educator at the AIDS Prevention and Control Society, West Bengal State. Ms Dey is also a member of the Pratyay Gender Trust, an organisation which works to defend the rights of those marginalized due to their sexual orientation in India. She has been involved in the Targeted Intervention Project for Communities at risk of HIV/AIDS, in Calcutta.

1077. According to information received, on 24 April 2007, at approximately 22:45, Ms Dey, along with an outreach client, were entering Sealdah train station in Calcutta when they were accosted by two plain-clothes police officers from the Railway Protection Force. The police officers allegedly attempted to persuade Ms Dey to meet them in a secluded part of the station. However, when Ms Dey and her companion refused, they were forcefully brought to the nearby police station. The police officers proceeded to beat Ms Dey and the outreach client outside the police station when the latter managed to escape.

1078. According to reports, Ms Dey was then brought inside the police station where she was met by 8 to 9 police officers, the majority of whom were in civilian clothing. The officers accused Ms Dey of being a criminal before subjecting her to a barrage of verbal abuse and sexual assault. After her ordeal, Ms Dey was permitted to leave the police station on the condition that she would never return to Sealdah again. Concern was expressed that the aforementioned events may be directly related to Ms Subhajit Dey's work in the defence of human rights in India, in particular her work defending the rights of those marginalised because of their sexual orientation in the country.

Response from the Government

1079. In a letter dated 20 November 2007, the Permanent Mission of India in Geneva responded to the above communication, stating that no FIR/complaint had been lodged by Ms Dey or on her behalf. However, an enquiry had been conducted by the Office of the Superintendent of Police, Government Railway Police, Sealdah, which established the allegation of misbehaviour by two police officers; namely Mr Soumen Nandi and Mr Ranjit Mondal. Consequently, departmental action against both officers was being initiated.

Letter of allegations

1080. On 1 June 2007, the Special Representative sent a letter of allegations to the Government concerning Dr **Binayak Sen**, medical doctor and General Secretary of the People's Union for Civil Liberties, Chhattisgarh, and Vice-President of PUCL National. Dr Sen has been involved in working on access to health for adivasi communities in the state of Chhattisgarh, and he has been instrumental in highlighting alleged human rights abuses against the adivasi including unlawful killings, sexual abuse and forced disappearances. Dr Sen has also publicly criticized Salwa Judum, the armed anti-Maoist campaign reportedly sponsored by the state Government.

1081. According to information received, on 14 May 2007, Dr Sen returned from a two week break in Kolkotta to attend his medical clinic in Bilaspur when he was informed by the Superintendent of Police to go to the TarBahar local police station, as

he was required to give a police statement. On arrival at the station, Dr Sen was arrested and charged with allegedly 'aiding and abetting Naxal activity in the State' thus violating the Chhattisgarh Special Public Security Act, 2006 (CSPSA) and the Unlawful Activities (Prevention) Act 1967 (amended in 2004). The CSPSA and UAPA reportedly allow for detention of persons suspected of belonging to an unlawful organization or participating in its activities or giving protection to any member of such an organization. On 15 May 2007, Dr Sen was transferred to Raipur Central Prison, Chhattisgarh, whilst police officials reportedly conducted a search of his residence and medical clinic.

1082. According to reports, authorities had also accused Dr Sen of passing letters from Mr Narayan Sanyal, a detained leader of the banned Communist Party of India (CPI), whom he had met at Raipur prison in April 2007, to Mr Piyush Guha, an alleged member of CPI who was arrested on 1 May 2007. At the time of his arrest, Dr Sen claimed that the charge had no basis as he had been authorized to visit Mr Sanyal by the Superintendent of Police in Raipur and prison officials were present during the meeting.

1083. On 22nd May 2007, Raipur District Court issued an order to have Dr Sen's computer examined by a Government expert in the presence of the District Head of the National Informatics Centre. A decision was also taken to detain Dr Sen on judicial remand, until 5 June 2007; so at time of writing, Dr Sen remained in detention at Raipur Central Prison. Concern was expressed that the arrest and detention of Dr Sen were directly related to his activities in defending the rights of the adivasi communities in Chhattisgarh state and his open criticism of the Salwa Judum.

Letter of allegations

1084. On 28 June 2007, the Special Representative sent a letter of allegations to the Government concerning the arrest and detention of Mr **Gopen Sharma**, District Human Rights Monitor (DHRM) with the National Project on Preventing Torture in India: From Public Awareness to State Accountability, in the Murshidabad District, West Bengal. Mr Sharma was the subject of an urgent appeal sent by the Special Representative of the Secretary-General on the situation of human rights defenders on 8 December 2006. He was also the subject of a joint urgent appeal sent by the Special Representative of the Secretary-General on the situation of human rights defenders, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on 16 February 2007.

1085. According to reports received, on 12 June 2007, at approximately 12:30pm, Mr Sharma was taking note of the name of a judge that was displayed on a notice-board outside a courtroom at the '2nd Fast Track Court', Baharampur, Murshidabad. He was collecting the information as part of a project administered by the United Nations Development Programme (UNDP) and the Ministry of Law and Justice in India entitled "Strengthening Access to Justice in India" (SAJI). Contact details for all the judges and magistrates in the district are required as part of the project.

1086. Whilst outside the courtroom, Mr Sharma was approached by a police officer who questioned him as to the reasons for his actions. Mr Sharma was then reportedly

arrested and brought before the court of the aforementioned judge who asked him in open court, why he had recorded his name. Mr Sharma provided details of the project to the judge and was released later that afternoon without charge. Concern was expressed that the afore-mentioned events are directly related to Mr Sharma's legitimate activities in defence of human rights and may have been an attempt to prevent him from continuing his investigative work as part of the SAJI project.

Letter of allegations

1087. On 11 July 2007, the Special Representative, together with the Special Rapporteur on the right to food, sent a letter of allegations to the Government concerning the arrest and detention of human rights activists Mr **Medha Paktar**, head of Narmada, **Bachao Andolan**, Mr **Gutam Bandhopadhyay** and Mr **Yogini Khanolkar** of Nadi Ghati Morcha (NGM), Mr **Simpreet Singh** and Mr **Mukta Srivastava** of the National Alliance of Peoples Movements (NAPM), Sr **Celia** of the Domestic Workers Union, based in Bangalore, Ms **Nidhi Agarwal** of the Saheli Women's Collective and 55 other individuals. The aforementioned organisations campaign for water rights and mobilise tribal people, Adivasi, farmers, environmentalists and human rights activists against the construction of the Sardar Sarovar Dam across the Narmada River in Gujarat. Mr **Santhosh Patel**, a member of the People's Vigilance Committee on Human Rights (PVCHR) since 2000 and PVCHR fellow, is also an active campaigner for the right to water and supporter of villagers living in Varanasi district who have been deprived of water since 2004.

1088. According to information received, in the afternoon of the 22 March 2007, 62 individuals gathered outside the Planning Commission Office (Yojana Bhavan), New Delhi, in order to speak with the Deputy Chair of the Planning Commission on World Water Day. The event was organised by Action 2007 (a civil movement fighting for justice and equality in India) as part of a peaceful protest against the privatisation and appropriation of water resources leading to water scarcity. At approximately 14:00pm, police and members of the Rapid Action Force (RAF) dispersed the crowd, arresting 62 peaceful protesters including the afore-mentioned individuals. It is reported that the police used excessive force whilst conducting the arrests tearing some of the female protesters' clothing. Those arrested were detained at Parliament Police Station where they were obliged to sign blank arrest memos.

1089. Later that evening, all of the male detainees and two females were presented before the judicial magistrate and remanded in custody until 5 April 2007. They were then taken to Chanakyapuri Police Station before being transferred to Tihar Jail at 11:00am the following morning. All were released a short time later and no charges were brought against them. On the morning of 26 March 2007, in a separate incident, Mr. Patel was arrested and detained by officers from the Phulpur Police station in the Varanasi district in the village of Badepur. No reason was given for his arrest however it is believed that his detention was related to his support of rural residents of the villages of Badepur, Dhebhuaha, Nagapur under Badagaon Block and Pindrai, Chuppepur, Aswalpur under Pindra Block in the Varanasi district who have allegedly been deprived of water for the last three years and as a result have been unable to irrigate their crops. This has allegedly affected the villagers' usual access to sufficient and adequate food. According to reports, the authorities have reportedly insisted that

the farmers pay water tax, threatening them that if they do not pay they will be arrested and imprisoned.

1090. As a result of the situation in the area farmers organized various protests in November 2006, and on 12 December 2006, villagers submitted a request to the District Magistrate of Varanasi to exempt them from paying water tax. A second request was submitted on 2 January 2007 and again the following day. The District Magistrate allegedly forwarded the complaint to the concerned executive engineer of the irrigation department. On 10 January 2007, an Amin (an official who collects revenue in the district) went to Chuppepur village of Pindra Block to collect the water tax, where he was met by individuals who told him to leave the village. The Amin reportedly responded by threatening the villagers that he would ask the police to beat them before arresting them.

1091. He subsequently lodged a complaint with the police about some of the villagers including Mr Patel. Mr Patel was later released on bail on 29 March 2007, and no charges were brought against him. Concern was expressed that the aforementioned events were directly related to the work of Mr Medha Paktar, Mr Gutam Bandhopadhyay, Mr Yogini Khanolkar, Mr Simpreet Singh, Mr Mukta Srivastava, Sister Celia, Ms Nidhi Agarwal and Mr Santhosh Patel in defence of human rights and in particular, the right to food and water.

Letter of allegations

1092. On 27 July 2007, the Special Representative sent a letter of allegations to the Government concerning the alleged arbitrary arrest and charges brought against Mr **Subash Mohapatra**, director of the Forum for Fact-Finding Documentation and Advocacy (FFDA), a non-Governmental organisation which monitors the human rights situation in Raipur, Chhattisgarh. In his capacity as director of the FFDA, Mr Mohapatra has had cause to file in excess of 300 complaints to the Chhattisgarh State Human Rights Commission and has publicly expressed his concerns with regard to the Commission's shortcomings, particularly in the areas of inefficiency and corruption.

1093. According to information received, on 17 July 2007, at approximately 3.50pm, Mr Subash Mohapatra was allegedly arrested in the office of the Chhattisgarh State Human Rights Commission. According to reports, he was arrested while attempting to file a response to an investigation undertaken by the Commission on the case of a Dalit student that had been submitted to the Commission by the FFDA. Although the Commission had expressly requested that Mr Mohapatra file this response to their investigation of the aforementioned case, Mr Mohapatra was allegedly asked to pay a bribe by Mr Binod Agrwal, a clerical employee with the Commission, in order to file his response. When he refused, he was physically and verbally abused by seven individuals, who spoke to him using offensive language and repeatedly dealt him blows to the back of the neck. Mr Mohapatra was firstly detained in the office of the Joint Secretary of the Commission for thirty minutes, before being forcefully taken to Gol Bazar Police Station by two police officers where he was placed in police custody. The police officers did not show a warrant for his arrest prior to detaining him, nor did they grant Mr Mohapatra the right to inform his family and/or lawyer of his whereabouts. After three hours, he was brought to City Kotwali Police Station

where he was subject to an interrogation which lasted until 9pm that evening. Mr Mohapatra was particularly questioned about his alleged involvement with the militant Naxalite movement.

1094. Mr Mohapatra was then taken back to Gol Bazar Police Station and released on bail at 10.30pm. Mr Subash Mohapatra was charged under Sections 186, 353, 294, and 506 of the Indian Penal Code for “obstructing a public servant in the performance of his public functions”; “assault or criminal action deterring a public servant in the performance of his public functions”; “obscene acts and songs”; and “punishment for criminal intimidation”, respectively. He was due to appear before Raipur’s Judicial Magistrate’s Court on 6 August 2007.

1095. Despite the fact that Mr Mohapatra filed a formal complaint to the Gol Bazar Police in relation to the abuse he suffered in the office of the Chhattisgarh State Human Rights Commission, thus far no investigation into this complaint had yet been carried out by the authorities. Concern was expressed that the aforementioned arrest and charges brought against Mr Mohapatra may be related to his peaceful human rights activities. Further concern was expressed for the physical and psychological integrity of Mr Mohapatra, his family, and his colleagues at FFDA.

Urgent appeal

1096. On 23 August 2007, the Special Representative, together with the Special Rapporteur on violence against women and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, sent an urgent appeal to the Government concerning attacks on Dalit communities, particularly women, in Somebhadra District, Uttar Pradesh, India. On 3 August 2007, Ms **Roma** and Ms **Shanta Bhattacharya** were arrested in Robertsganj under charges of provoking Dalits and Tibals to encroach forest lands. They were arrested under section 120 (B) and 447 of Penal Code; they were in Mirzapur jail and their bail applications had been rejected at the Circle Judicial Magistrate.

1097. On 5 August 2007, **Lalita Devi** and **Shyamlal Paswan** were arrested from a local market in Rangarh and were also in Mirzapur jail. As a consequence of these imprisonments, people have been staging a protest since 4 August in front of the District Magistrate (DM) office in Sonebhadra demanding the immediate release of the activists. New charges were brought against Ms. Roma under article 4 of the National Security Act on 10 August. Reports also indicated that on 10 August 2007, at around 9 p.m., the police attacked Dalit women in Chanduli Village, in Sonebhadra District, leaving fifteen women seriously injured. Two trucks loads of Police along with Upper Caste representatives of the locality descended on Chanduli village in Sonebhadra district. They were allegedly heavily armed, and demanded to see Bachchalal, an active member of the local organisation Kaimoor Kshetra Mahila Mazdoor Kisan Sangharsh Samiti (KKMMKSS).

1098. According to information received, when they did not find Bachchalal in the village, they started attacking women present in the village. Police and upper caste representatives barged into the house of Bachchalal and attacked his pregnant sister and sister-in-law; pulling them out and attacking them. In three hours, the police and upper caste representatives beat up around 15 women and destroyed their houses. At

the time of the incident, there were very few male members in the village as most of them were staging a protest in front of the DM's office in Sonebhadra against the arrest of Ms. Roma, Ms. Shanta Bhattacharya, Lalita Devi and Shyamlal Paswan. This was allegedly the third attack of this kind against Dalits in less than two weeks and reportedly a consequence of the Dalits families' requests for land that started in the last two years, as a response to the forest department's Government Resolution of 2002-3 to clear forest lands from any encroachments. During the events, the police reportedly left the village giving an ultimatum to remove the bricks of the houses by 11 August 2007, or they would come back with the administrative order to destroy the houses.

Letter of allegations

1099. On 2 November 2007 the Special Representative sent a letter of allegations to the Government concerning Mr **Vasanth SR**, a staff member of People's Watch, a non-Governmental human rights organisation based in India.

1100. According to information received, on 8 March at approximately 1.00pm, Mr Vasanth SR was detained while carrying out human rights monitoring activities at the Medikeri Town Police Station in the Kodagu District of Karnataka State. While there, Mr Vasanth SR reportedly witnessed policemen torturing two men. When Mr Vasanth SR questioned the policemen as to why they were doing this, they detained him. At 6.00pm that same day, the Head Constable of the Medikeri Town Police Station, Mr Devaiah, called People's Watch and the South India Cell for Human Rights Education and Monitoring (SICHEM) to inform them that Mr Vasanth SR had been taken to hospital for a medical examination. Mr Devaiah reportedly said that this examination was required due to an assault between Mr Vasanth SR and a police inspector which occurred when Mr Vasanth SR allegedly intervened in an official interrogation and attacked the police inspector. Mr Devaiah also informed People's Watch and SICHEM that Mr Vasanth SR had been charged under Section 353 of the Indian Criminal Code, for "assault or criminal force to deter a public servant from the discharge of his duty".

1101. Mr Vasanth SR has been released on bail prior to his trial and is reportedly receiving threats from the policemen who detained him. On 9 March 2007, People's Watch and SICHEM lodged a formal complaint regarding the detention and physical assault of Mr Vasanth SR with the National Human Rights Commission (NHRC) of India. On 18 July 2007, the NHRC deferred the complaint to the Medikeri Town Police Station.

1102. At the time of his detention, Mr Vasanth SR was carrying out human rights monitoring activities as part of an ongoing project entitled the "National Project on the Prevention of Torture in India" (NPPT). In the state of Karnataka, People's Watch is working on the NPPT in collaboration with SICHEM. On 8 March 2007, Mr Vasanth SR was carrying out the aforementioned activities on behalf of his wife, Ms Shyla, who is the District Human Rights Monitoring Coordinator with People's Watch, and who was pregnant at the time. Concern was expressed that the aforementioned detention, alleged physical assault and ongoing threats, as well as the charges that were filed against Mr Vasanth SR may be directly related to his human rights activities, in particular his work in the defense of victims of torture in India.

Letter of allegations

1103. On 29 November 2007 the Special Representative sent a letter of allegations to the Government concerning Mr **Evert de Boer**, Ms **Ineke Zeldenrust**, Ms **Esther de Haan**, Ms **Christa de Bruin**, Mr **Gerard Oonk**, Mr **Hans Maas** and Ms Pauline **Overeemand**. Mr **Evert de Boer** is Chair of the Clean Clothes Campaign (CCC) and Ms **Ineke Zeldenrust**, Ms **Esther de Haan** and Ms **Christa de Bruin** are all members of the CCC. The CCC is an organisation campaigning for the improvement of working conditions in garment industries. Mr. **Gerard Oonk**, Mr. **Hans Maas** and Ms. **Pauline Overeemand** are members of the India Committee of the Netherlands (ICN), a non-Governmental organisation dedicated to raising awareness with regards to human rights issues in India.

1104. According to information received, on 26 September 2007, arrest warrants were issued by the Indian VII Additional Chief Metropolitan Magistrate in Bangalore against Mr Evert de Boer, Ms Ineke Zeldenrust, Ms Esther de Haan, Ms Christa de Bruin, Mr Gerard Oonk, Mr Hans Maas and Ms Pauline Overeemand. The warrants were reportedly issued following a complaint filed by Fibres and Fabrics International (FFI) and its subsidiary company, Jeans Knit Pvt Ltd (JKPL) on 9 February 2007. The aforementioned human rights defenders have been accused of having committed crimes under Articles 499 and 500 of the Indian Criminal Procedure Code as well as under the Additional Protocol to the Convention on Cybernetic Crime, including “cybernetic crimes”; “racist and xenophobe acts” and “criminal defamation”. If arrested they face a sentence of two years’ imprisonment.

1105. Furthermore, local trade unions the Garment and Textile Workers’ Union (GATWU); the New Trade Union of India (NTUI); the Civil Initiative for Development and Peace (CIVIDEP); the Textile Industry Workers’ Front (Munnade); and the task-force of the CCC based in Tamil Nadu, all of which reported violations of FFI/JKPL workers’ rights, have all been sued by the FFI for defamation. A court order issued in Bangalore on 28 July 2006 by the Court of the IV Additional City Civil Judge and extended on 19 February 2007, denies the aforementioned trade unions the right to report information regarding the working conditions of FFI/JKPL workers. This ruling was expected to be challenged before the High Court although no date had yet been confirmed. According to reports, the aforementioned had returned to the Netherlands. Concern was expressed that the arrest warrants against the aforementioned may have been issued as a result of their human rights activities, in particular their work to promote workers’ rights in India.

Observations

1106. The Special Representative thanks the Government of India for their response to the communication of 10 May 2007, but regrets the lack of response to the other fourteen communications sent in the time-period covered by this report.

1107. The Special Representative reiterates her concerns for the situation of human rights defenders representing vulnerable groups, such as lesbians, gays, bisexual and transgender (LBGT) persons and members of caste groups facing discrimination. The

situation of the Dalit community is of particular concern as human rights defenders advocating their rights face entrenched prejudice from many sectors of society.

1108. The Special Representative hopes that the Government of India will continue in its efforts to work for the improvement of conditions for those belonging to such communities and those working in defence of their rights.

Indonesia

Urgent appeal

1109. On 11 July 2007 the Special Representative sent an urgent appeal to the Government concerning the situation of Ms **Frederika Korain**, Rev **Perinus Kogoya**, and Mr **Barthol Yomen**, members of the Peace and Justice Commission for the Diocese of Jayapura (SKP Jayapura), Mr **Yan Christian Warinussy**, Director of LP3BH (Lembaga Penelitian, Pengkajian dan Pengembangan Bantuan Hukum or Institute of Research, Analysis and Development of Legal Aid) of Manokwari - West Irian Jaya, and Mr **Albert Rumbekwan**, Head of the National Commission on Human Rights in West Papua province ("Komnas HAM"). The Special Representative met with all the aforementioned persons during her visit to Indonesia from 5 to 12 June 2007.

1110. According to the information received, on 8 June 2007, Ms Korain, Rev Kogoya, and Mr Yomen flew back to Jayapura after attending a public hearing with the Special Representative in Jakarta on 7 June. After leaving the airport, their vehicle was followed by a blue Kijang car with police license plate number DS 1693 AF, and was hit by this car at the Post 7 Sentani in Ifar. As a result of the crash, the SKP vehicle was damaged and the passengers were in shock. The driver of the police car came out and introduced himself as FX Subangun, Commander of Intelligence of the Military Regional Command of Trikora (Komandan Intel Kodam XVII Trikora). He apologized and said that it was an accident, before driving away. The police, who witnessed the entire incident, allowed him to leave the scene of accident without being questioned. The occupants later checked the identity of FX Subangun, but it turned out that there is no military officer known by that name. It is believed that this incident was not accidental, but was perpetrated by an intelligence official who monitored the Special Representative's visit to West Papua, with the direct purpose of intimidating the occupants of the car.

1111. On 9 June 2007, Mr Warinussy returned to Manokwari after meeting with the Special Representative the day before in Jayapura. At around 8pm that day, he noticed a black Kijang Innova car with tinted windows parked in front of his house for about 20 minutes. The car returned at around 11pm that same night. On 11 June 2007, at around 7pm, two Kijang cars parked in front of the LP3BH office on Gunung Salju St for about 30 minutes. Mr Warinussy requested protection from the non-Governmental organization Peace Brigade International (PBI) and asked them to accompany him from 15 June 2007 onwards.

1112. On 16 June 2007, at around 8pm, two PBI activists and Mr Warinussy saw a metallic-coloured Kijang diesel car and police license plate number DD 546 PD parked in front of Mr Warinussy's house for some 20 minutes. The car left and then



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IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”

**Report of the Special Representative of the Secretary-General on the
situation of human rights defenders, Hina Jilani**

Addendum

Summary of cases transmitted to Governments and replies received *

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

India

Communications sent

314. On 14 December 2005, the Special Representative, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent a letter of urgent appeal concerning **Kirity Roy**, Secretary of Manabadhikar Suraksha Mancha (MASUM), a human rights organisation working against custodial torture and violence and National Executive Committee Member of Amnesty International of India, and 21 other human rights defenders. According to the information received, on 9 December 2005, at approximately 1500h, Mr Roy, along with 18 other males and three females, was arrested in Kolkata and taken to the police headquarters at Lal Bazar. The activists had been putting up posters in preparation for Human Rights Day on the 10 December 2005 and were also holding a peaceful protest against human rights violations in the state of West Bengal. They were all released on the day of their arrest having signed personal bonds. Concern was expressed that the arrest of Kirity Roy and the other 21 human rights defenders constituted an attempt to prevent them from carrying out their human rights work.

315. On 25 January 2006, the Special Representative sent a letter of urgent appeal concerning regarding **Kirity Roy**, Secretary of Manabadhikar Suraksha Mancha (MASUM), a human rights organization working against custodial torture and violence and a National Executive Committee Member of Amnesty International of India. He is also attached to several other human rights organizations. **Mr Roy** was the subject of a letter of allegation sent jointly by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative on 14 December 2005. According to the information received, on 18 January 2006 Kirity Roy went to the Serampore police station in West Bengal, India, on prior appointment, accompanied by a client, in order to view a post mortem report of the wife of the same client. It is alleged that when Kirity Roy approached the police station and requested a copy of the post mortem report, he was confronted by the inspector in charge of the Serampore Police Station who proceeded to physically assault and verbally abuse him. The inspector in charge is reported to have said that the post mortem records would only be available to the courts and that there was no legal requirement to make them available to a third person. It is alleged that as Mr Roy was leaving the police station, the inspector in charge punched Mr Roy and threatened to kill him if he returned to the police station. It is also reported that when contacted by a human rights organization with regard to the above incidents, the Superintendent of Serampore Police Station denied that the inspector in charge had assaulted or threatened Mr Roy.

316. On 7 April 2006, the Special Representative, together with the Special Rapporteur on adequate housing, 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 letter of urgent appeal concerning environmental activists and human rights defenders involved with **Narmada Bachao Andolan** (NBA – Save Narmada Movement) and in particular NBA's leader, **Medha Patkar** and **Jamsing Nargave** (from village Amlali Badwani district) and Bhagwatibai Jatpuria (from village Nissarpur Dhar district). Reference was made to previous communications of the Special Rapporteur on adequate housing, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, dated 29 July 2003 and 22 April 2004, noting that no response has

been received to the latter. Reference was also made to the recommendation made by the Special Rapporteur on the right to food in the report on his mission to India whereby dams, mining and infrastructural projects must not be implemented if this entails displacement and irreversible destruction of people's livelihoods. Such projects should only be carried out with the consent of communities, and on the condition that due legal process, proper resettlement, rehabilitation and compensation to all victims are guaranteed (E/CN.4/2006/44/Add.2). Concerns were also expressed regarding the impact of increasing water levels in the Sardar Sarovar Dam on the Narmada River. According to information received on 8 March 2006, the Narmada Control Authority (NCA) decided to raise the height of the Sardar Sarovar Dam from 110.64 metres to 121.92 metres contravening a Supreme Court judgment of 2000 according to which any height increase of the dam was to be linked to the implementation of resettlement and rehabilitation measures. Furthermore the decision would allegedly result in the violation of a range of human rights. An indefinite sit-in (dharna) was organized by over 300 dam-affected persons and activists of the Narmada Bachao Andolan (NBA – Save Narmada Movement) in New Delhi since 17 March, demanding a halt to construction at the Sardar Sarovar dam and three NBA activists were on an indefinite fast from 29 March 2006. Concern was expressed regarding an intervention by the Indian police force to NBA activists on the night of 5 April 2006. More than 300 police officials used indiscriminate force against the dharna protestors. Information was also received that Medha Patkar and Jamsing Nargave, who were on the eighth day of their indefinite fast, were arrested and that over 25 activists were detained. According to testimonies, the use of violence was excessive and disproportionate and allegedly in non-compliance with international human rights law.

317. On 1 May 2006, the Special Representative, together with the Special Rapporteur on the independence of judges and lawyers sent a letter of urgent appeal concerning **Parvez Imroz**, a lawyer and Council Member of the Asian Federation Against Involuntary Disappearances (AFAD), President of the Jammu and Kashmir Coalition of Civil Society (JKCCS) and Patron of the Association of Parents of Disappeared Persons (APDP). The AFAD is a federation of NGOs that works against enforced or involuntary disappearances, the JKCCS is a coalition of NGOs that work on human rights and democracy in Kashmir and the APDP is an NGO that works against enforced or involuntary disappearances in Jammu and Kashmir State and is a member of the AFAD and the JKCCS. Mr Imroz was already subject of an urgent appeal sent by the Special Representative on 11 May 2005 and an urgent appeal sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the question of torture on 5 October 2004, to which the Government replied by letter dated 15 February 2005. According to the information received, in November 2004 Mr Parvez Imroz sent an application for a passport to the passport authority of Jammu and Kashmir. It is reported that since this time he has not received a formal response or denial from the authorities, despite having sent a number of reminders regarding his application. It is further reported that Mr Imroz has been unable to attend a number of international conferences, workshops and consultations connected with his activities as a human rights defender, as a consequence of being without a passport. Concern was expressed that the refusal by the authorities to issue Mr Parvez Imroz with a passport may have been connected with his activities in defence of human rights, in particular his work on involuntary and enforced disappearances in Kashmir and may represent an attempt to prevent him from being able to meet and communicate with other international human rights defenders.

318. On 17 May 2006, the Special Representative, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent a letter of urgent appeal concerning **Santhosh Patel**, a staff member of the People's Vigilance Committee on Human Rights (PCVHR), an organization that monitors human rights violations in Uttar Pradesh. According to the information received, on 10 May 2006, Mr Patel was arrested and detained while he was attending a meeting with local people and the District Magistrate. Mr Patel attempted to present a petition to the District Magistrate concerning violations by the authorities of the right to food of local people. The District Magistrate ordered the arrest of Mr Patel and accused him of spreading false information. Mr Patel was taken to Shivapur police station and released five hours later. It is alleged that no charges have been brought against him. Concern was expressed that the arrest of Mr Patel was connected with his activities in defence of human rights, in particular because of his work promoting the right to food for people in Belwa, Uttar Pradesh.

319. On 12 September 2006, the Special Representative, together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention sent a letter of urgent appeal concerning regarding indigenous lawyers and human rights defenders in India including **Yengkokpam Langamba Meitei** (alias Thabi), Publicity Secretary of the Threatened Indigenous Peoples' Society (TIPS) and spokesperson for Apunda Lup, a coalition of human rights organisations in Manipur and **Leitanthem Umakanta Meitei**, a human rights lawyer and the Secretary General of TIPS. Mr Leitanthem Umakanta Meitei was the subject of an urgent appeal sent by the Special Rapporteur on the question of torture, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Special Representative, on 15 September 2004; and an urgent appeal sent by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the question of torture and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people on 25 August 2006. According to the information received, on 23 August 2006, Mr Yengkokpam Langamba Meitei was detained on allegations that he had stolen government files and burned a vehicle in Kamuchingjil. It is reported that members of a paramilitary organization, the Assam Rifles, and Manipur police officers arrested Mr Meitei at his home. It is also reported that the police searched his home before he was transported to the Police Station in Imphal (IPS). On 24 August 2006, members of the Manipur police and officers of the Assam Rifles arrested Mr Leitanthem Umakanta Meitei at his home, at approximately 04:00, without an arrest warrant. The police took fifteen CDs containing information related to TIPS, a number of books including three from the International Labour Organisation, (ILO) and a mobile phone belonging to his wife. An arrest warrant was later produced and shown to Mr Leitanthem Umakanta Meitei's wife and brother when they went to visit him at Imphal Police Station. It is further reported that both men have been tortured while in detention and have been denied access to legal representation. They have both been accused of association with the illegal terrorist organization Kanglei Yawol Kanna Lup (KYKL) – "Organisation to Save the Revolutionary Movement in Manipur" and charged under Sections 38 and 39 of the Unlawful Activities Prevention Act (1967) which they deny. They were reported to have been remanded in custody for a further 15 days and are due to appear before the court on 13 September. Concerns were expressed that the detention of Mr Yengkokpam Langamba Meitei and Mr Leitanthem Umakanta Meitei and the charges against them were arbitrary and may have been related to their activities as human rights defenders and lawyers, in particular, because of their involvement in a peaceful protest on 23 August 2006, to draw attention to a bomb attack which had occurred in Krishna on 16 August 2006. It was further alleged that their detention may be

associated with the work of their organization, Threatened Indigenous Peoples' Society, in defence of the rights of indigenous peoples, including their participation in various United Nations international forums such as the Permanent Forum on Indigenous Issues, in New York, or the Working Group on Indigenous Populations, in Geneva.

320. On 14 September 2006, the Special Representative, together with the Special Rapporteur on the independence of judges and lawyers sent a letter of urgent appeal regarding **Parvez Imroz**, a lawyer and Council Member of the Asian Federation Against Involuntary Disappearances (AFAD), President of the Jammu and Kashmir Coalition of Civil Society (JKCCS) and Patron of the Association of Parents of Disappeared Persons (APDP). The AFAD is a federation of NGOs that works against enforced or involuntary disappearances, the JKCCS is a coalition of NGOs that work on human rights and democracy in Kashmir and the APDP is a federation of NGOs that works against enforced or involuntary disappearances in Jammu and Kashmir State. The ADP is also a member of the AFAD and the JKCCS. Mr Imroz was already subject of an urgent appeal sent by the Special and the Special Rapporteur on the independence of judges and lawyers on 1 May 2006. Another urgent appeal was sent by the Special Representative on 11 May 2005 and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the question of torture had previously sent an urgent appeal on 5 October 2004. The Government replied to the communication sent on 5 October 2004, by a communication dated 15 February 2005. According to the information received and as pointed out in previous communications sent to the Government, on 1 May 2006 Mr Parvez Imroz was denied the right to obtain his travel documents. Mr Parvez Imroz sent an application for a passport to the passport authority of Jammu and Kashmir in November 2004 however he had not received any formal response from the authorities, despite having sent several reminders regarding his application. As a result, he has been prevented from attending important international human rights conferences. In particular, he was unable to go to France on 13 October 2006 to receive the "Ludovic Trarieux international human rights prize" which had been granted to him jointly by the Bar of Bordeaux, of Brussels, of Paris and the European Bar Human Rights Institute. The Prize created in 1984 is awarded every year to a lawyer for activities defending human rights. According to the award's rules, the prize winner must attend the award ceremony, which takes place in Bordeaux in the National School of the Magistracy.

Observations

321. On 13 April 2006, the Special Representative, together with the Special Rapporteur on adequate housing and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people issued a public statement expressing their concern about the impact of raising the height of the Sardar Sarovar Dam on the Narmada River which would result in the submergence of villages and displacement of over 35,000 families. Concern was expressed about three NBA activists who have been on an indefinite fast since 29 March, recently joined by other human rights defenders and allegations that on the night of 5 April, a large police force allegedly used excessive and indiscriminate force against the protestors, arrested and hospitalised Medha Patkar and Jamsing Nargave on the eighth day of their fast and detained another 25 NBA activists. Concern was expressed regarding the situation of those carrying out peaceful protest to demonstrate their opposition to the raising of the dam-level and it was recommended that the allegations of indiscriminate and excessive use of force by the police against activists engaged in the protest is properly investigated and that action is taken against

the responsible officers, as appropriate. It was also recommended that proper and swift investigation is undertaken with respect to allegations of false charges, if any, against Medha Patkar and other NBA activists.

322. The Special Representative deeply regrets that the Government of India has never responded to any of her communications since the establishment of the mandate. She considers response to her communications as an important part of cooperation of Governments with her mandate. She urges the Government to respond to her communications and the concerns raised by her.

Indonesia

Communications sent

323. On 12 June 2006 the Special Representative, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent a letter of urgent appeal concerning the non-governmental organization **Syarikat** and other participants in a peaceful gathering organized to commemorate the 1965 massacre. Syarikat promotes reconciliation between the victims of the 1965 massacre and the perpetrators of the massacre. According to the information received, on 20 May 2006 approximately 100 individuals belonging to the civil militia groups the Laskar Siliwangi (Siliwangi Army) and Pemuda Panca Marga (The Youth of Military Veterans) attacked and chased 200 people who were participating in a peaceful gathering organized by Syarikat to commemorate the 1965 massacre. It is reported that the individuals belonging to Laskar Siliwangi and Pemuda Panca Marga threatened and intimidated the participants. It is alleged that when police officers arrived at the place of the incident, they questioned two members of Syarikat's committee but did not question the members of Laskar Siliwangi and Pemuda Panca Marga. Concern was expressed that the alleged harassment and intimidation of staff members of Syarikat and other peaceful participants in this demonstration is connected with their activities in defence of human rights, in particular their promotion of reconciliation between the victims and the perpetrators of the 1965 massacre.

324. On 1 December 2006 the Special Representative, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent a letter of urgent appeal concerning the **International People's Forum (IPF)**, a group of civil society groups and non-governmental organizations who were planning to hold peaceful rallies at the same time as the World Bank/International Monetary Fund meetings which were due to take place in Singapore on 19 and 20 September 2006. According to the information received, the Batam Police authorities rejected a request from the IPF to hold peaceful demonstrations in Batam Island, during the World Bank/International Monetary Fund meeting, between 12 and 20 September 2006. It was alleged that the Batam Island Police Chief publicly stated "we will disperse them", referring to the planned peaceful demonstrations. It was also reported that the Indonesian Police Chief stated that an elite anti-terror squad would arrest any protestors who were considered to be a security threat. Since no outdoor activities were allowed, it was reported that several events had to be cancelled. Concerns were expressed that the alleged prohibition on peaceful protests in Batam island were aimed at preventing the activities of the International People's Forum in defence of human rights, in particular their activities highlighting the impact of World Bank and IMF policies on women's rights, trade and finance, the environment, migrant workers and indigenous peoples.



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PROMOTION AND PROTECTION OF HUMAN RIGHTS

HUMAN RIGHTS DEFENDERS

**Report submitted by the Special Representative of the Secretary-General
on human rights defenders, Hina Jilani**

Addendum

Compilation of developments in the area of human rights defenders*

* The reason for the late submission of this report is the need to reflect the latest information. As it considerably exceeds the word limitation, this report is circulated as received in the languages of submission only.

NGO to send teams of independent human rights monitors into any police jail or prison in Hungary, where teams monitor detention conditions and treatment of detainees. Furthermore, based on an agreement of cooperation with the National Border Guard Headquarters, the HHC carries out human rights monitoring in immigration detention facilities. This is a positive step towards fulfilling article 6 (a) of the Declaration which states that everyone has the right to “know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems”.

Communications and concerns

736. No communications have been sent to the Government of Hungary during the two mandate periods.

737. The Special Representative has been informed that Article 9 (1 and 2), concerning the State’s obligation to provide an effective remedy for persons who claim to have been victims of a human rights violation, has so far not been fully implemented. In certain cases there is no effective remedy available to victims of human rights violations (e.g. with regard to complaints concerning detention conditions and treatment in detention, in the majority of cases the law does not provide an opportunity for the complaint against the penitentiary authority to be examined by an independent tribunal). Complaints/legal actions are reportedly often dealt with in protracted procedures, particularly in case of court procedures. Several rulings of the European Court of Human Rights against Hungary have found a violation of the right to a fair trial due to lengthy procedures.

India

738. The Special Representative regrets that the Government has not provided her with information in response to the questionnaire she transmitted for the preparation of the present report at the time of the finalization of the report. She encourages the Government to transmit this information so that the below profile can be updated in the future.

The human rights defenders community

739. Human rights defenders in India are active on a wide range of civil and political, economic, social and cultural rights such as caste discrimination, child rights, environmental issues, globalization and human rights, housing rights, indigenous rights, LGBT rights, women’s rights and trafficking.

Legal framework

740. India is a State party to six of the core international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR). India has not yet acceded to the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (signatory), the Optional Protocol to the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment, the two Optional Protocols to the ICCPR, the

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, or the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

741. Article 19 of the Constitution of India guarantees the rights to freedom of expression, peaceful assembly, freedom of movement and freedom of association.

742. After coming to power following elections in May 2004, the new Government has repealed the controversial Prevention of Terrorism Act (POTA). This act, amongst other provisions, empowered security forces to hold individuals for up to 180 days without filing charges.

Measures taken at national level for the implementation of the Declaration

743. The Indian National Human Rights Commission was established in 1993. According to its website the Chairperson and Members of the Commission are appointed by the President on the basis of recommendations of a Committee comprising the Prime Minister as the Chairperson, the Speaker of Lok Sabha, the Home Minister, the leaders of the opposition in the Lok Sabha and Rajya Sabha and the Deputy Chairman of the Rajya Sabha.

744. The Special Representative regrets that she has not received further information on the policies and programs adopted by relevant Indian authorities to ensure an effective implementation of the declaration.

Communications and concerns

745. From the establishment of her mandate to 1 December 2005, the Special Representative has sent 21 communications to the Government, concerning 42 defenders in addition to the situation of a human rights organization several of whose members were targeted. The Special Representative acknowledges the responses from the Government to four of her communications, but regrets that the Government has not responded to the other 17 communications. She would appreciate receiving responses to these remaining communications from the Government.

746. The Special Representative is gravely concerned about reports of defenders being killed as a result of their work to promote and protect human rights. A number of the communications sent from the establishment of the mandate to 1 December 2005 concerned members of human rights organizations and groups working to defend land rights that had been threatened, attacked or killed. The Special Representative has sent three communications concerning defenders who were killed, and has asked the Government to investigate the killings.

747. The Special Representative is concerned about what she sees as a pattern of impunity for violations committed against human rights defenders. She is also concerned about the fact that in 12 of the cases that she sent communications on, the Authorities were allegedly the perpetrators of the violations. The Special Representative would appreciate receiving information from the Government on measures taken to ensure that violations against human rights defenders are investigated. She would like to remind the Government that according to



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**PROMOTION AND PROTECTION OF HUMAN RIGHTS:
HUMAN RIGHTS DEFENDERS**

Report of the Special Representative of the Secretary-General, Hina Jilani

Addendum

Summary of cases transmitted to Governments and replies received*

* 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.

justice. She looks forward to receiving further information regarding the progress of the investigations and the judicial process.

242. With regard to **Juan Almendarez Bonilla**, the Special Representative looks forward to receiving further information with regard to the investigations into the alleged incidents.

India

Communications sent

243. On 11 May 2005, the Special Representative sent an urgent appeal concerning Mr. **Parvez Imroz**, a lawyer and Council Member of the Asian Federation Against Involuntary Disappearances (AFAD), President of the Jammu and Kashmir Coalition of Civil Society (JKCCS) and Patron of the Association of Parents of Disappeared Persons (APDP). The AFAD is a federation of NGOs that works against enforced or involuntary disappearances, the JKCCS is a coalition of NGOs that work on human rights and democracy in Kashmir, and the APDP is an NGO that works against enforced or involuntary disappearances in Jammu and Kashmir state and is a member of the AFAD and the JKCCS. Mr. Imroz was already subject to an urgent appeal sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the question of torture on 5 October 2004, to which the Government replied by letter dated 15 February 2005. According to the information received, on 30 April 2005 at 5.30 am, an unidentified gunman came to Mr. Imroz's house in the Kralpora area, stating that he wanted to discuss a case with him. Reportedly, the door was not opened for the man. Fifteen minutes later, the man allegedly banged on the door and left. The information received indicates that, at this time in the morning, there are restrictions on civilian movement in the Kashmir valley. It was alleged that the man who came to Mr. Imroz's house that morning was a member of the army. Concern was expressed that the reported harassment and intimidation of Mr. Parvez Imroz and his family may have been retaliation for his human rights defence activities. In particular, it was believed that it may have been related to his role in the APDP to organise, in Srinagar on 21 April 2005, the laying of foundation stone for a monument to disappeared persons. The concern was heightened in light of reports indicating that, during the last few years, several human rights defenders have been killed in Kashmir. It was noted that the United Nations Working Group on Disappearances had also raised concern with the Government on the basis of the above information.

244. On 16th August 2005, the Special Representative, together with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent an urgent appeal concerning Dr. **Lenin Raghuvanshi**, a human rights defender with the Peoples' Vigilance Committee for Human Rights (PVCHR), an organisation working for the Dalits and 'lower caste' communities in Varanasi, Uttar Pradesh, India, focussing on education for children, including the setting up of a local school, and the right to self determination for these community members, his associate Mr. **S.N. Giri**, and Ms. **Anupam Nagvanshi**, field coordinator for PVCHR. According to the information received, on 5 August 2005, at approximately 8:00, Dr. Raghuvanshi allegedly received a phone-call, on his mobile phone, from a man (the identity of whom is known to the Special Representative) demanding that Mr. Giri withdraw his nomination from an election due to be held in Belwa village on

17 August 2005. Furthermore, on 7 August 2005, at approximately 20:35, Dr. Raghuvanshi allegedly received another phone-call from the same person threatening that if his associate did not withdraw his nomination, Dr. Raghuvanshi, his family and Mr. Giri would be shot dead. Dr. Raghuvanshi recorded the phone conversation and lodged a complaint with the Senior Superintendent of the Police and the District Magistrate. He had reportedly also faxed a complaint to the Chief Minister of the State. It was reported that on 10 August 2005, at approximately 16:00, Ms. Nagvanshi, was surrounded by a number of people (the identity of whom is known to the Special Representative) who asked her why she was encouraging the Dalits and 'lower caste' community to cast their votes in the upcoming election. Ms. Nagvanshi was allegedly threatened with murder if she returned to Belwa village. Ms. Nagvanshi telephoned the police at approximately 18:00 on 10 August 2005 but no officer was dispatched. She then sent a written complaint by registered post to Phoolpur police station. It was reported that no action has been taken in this case by the Phoolpur police. Concern was expressed for the harassment of individuals working with the Dalits and 'lower caste' communities. In light of the fact that the Belwa village and its surrounding areas are reportedly known for booth capturing and election related fraud, and that during the February 2002 elections, people from these communities were allegedly assaulted when they turned out to vote, concern was expressed that these threats constituted an attempt to intimidate Dr. Raghuvanshi, Mr. Giri and Ms. Nagvanshi and prevent them from carrying out their human rights work with the Dalits and 'lower castes' in Varanasi. Previously on 26 August 2003, Dr Raghuvanshi had been arrested and detained for four hours for organising a protest before the Sub Divisional Magistrate in Varanas.

245. On 26 September 2005, the Special Representative, together with the Special Rapporteur on violence against women, its causes and consequences, sent an urgent appeal regarding Ms. **Ritu Chaudhary** and Mr. **Mohammad Musa Azami**. According to information received, on 13 August 2005, MsChaudhary's brother, Sabash Chaudary, attempted to rape her at their home. Ms. Chaudhary ran away and went to stay with her other brother, Ravi Chaudary, and his wife Reshma, a Muslim woman. Neither family was happy with the marriage between Reshma, a Muslim woman and Ravi, a Hindu Dalit. Ms. Chaudhary, with the help of Mr. Musa Azami, the State co-ordinator for the National Campaign on Dalit Human Rights, sent a letter of complaint to the Jaitpura station officer as well as to the Superintendent of Police and Director General of Police in Varanasi concerning her attempted rape. Her case has been registered before the courts. The fathers of both Ms. Chaudhary and Reshma, angered that Mr. Musa Azami and Manoj Cupta had helped Ravi Chaudary and Reshma remain together and for having helped Ms. Chaudhary file a complaint against Mr. Chaudary's son, informed the police that Mr. Musa Azami, Manoj Cupta, another human rights activist, and Ravi Chaudary had kidnapped Reshma. A First Information Report (FIR) was lodged by the police against Mr. Musa Azami, Manoj Cupta, Ravi and Ms. Chaudhary for kidnapping Reshma. On 18 August 2005, the four were arrested. Mr. Musa Azami was badly beaten by the police both at his house where he was arrested and at the police station and was also forced to confess that he had helped Reshma and Ravi Chaudhary to elope. He was still suffering from dizziness as a result of the beatings he received. The Judge accepted his lawyer's request for medical treatment. Mr. Musa Azami's bail petition hearing was scheduled for 13 September 2005. No action was taken in response to the complaint concerning the attempted rape by Sabash Chaudary. Concern was expressed that Mr. Musa Azami was beaten and arrested because of his well known work for the Dalit community in the area, as State co-ordinator for the National Campaign on Dalit Human Rights.

246. On 7 November 2005, the Special Representative, together with the Special Rapporteur on the sale of children, child prostitution and child pornography, the Special Rapporteur on trafficking in persons, especially women and children and the Special Rapporteur on violence against women, its causes and consequences, sent a letter of allegation concerning **sexual exploitation of underage girls in Varanasi**, State of Uttar Pradesh. According to the information received, about 50 girls, all of them apparently younger than 18 years, were trafficked from the States of West Bengal, Orissa and Bihar to Varanasi, where they were forced to prostitute themselves at a brothel in Shivaspur, the city's redlight district. The brothel was reportedly operated by Rahmad Khan (also known as Rahmad Ali) and his wife Afzel. On 24 October 2005, Mr. **Ajeet Singh**, the founder and president of Guria Swyam Sevi Sansthan, informed police officers at the Maduadih Police Station about this situation. Guria Swyam Sevi Sansthan is a non-governmental organization that helps prostitutes and their children to become aware of their human rights and offers them an alternative lifestyle. Mr. Singh was reportedly told by the police to go to the location and that the police would follow shortly. However, hours later, the police had not arrived. Concerned that the brothel owners would be tipped off by corrupt police officers and move the girls to a different location, Mr. Singh, his wife Sandwana Manju and approximately 200-300 other private volunteers entered and searched the brothel and began to remove the girls from the building. When the police finally arrived at the scene at 6 pm, police officers reportedly tried to prevent Guria workers and the girls from boarding buses taking them to the local police station. Faced with intense protests from Guria volunteers and bystanders, police finally backed down and agreed that the girls can be removed from the area. At this point, only 31 of the estimated 50 girls, who were initially in the building, were still present. The 31 girls were handed over to the police, where they received medical attention and were taken to a local women's shelter. Reportedly, the authorities have since acknowledged that 17 girls are younger than 18 years old. The same day, Ajeet Singh filed a First Information Report (FIR) against Rahmad Khan, Afzel and two minor accomplices alleging violations of the Immoral Traffic Prevention Act (ITPA). While the two minor accomplices were arrested, Rahmad Khan and Afzel managed to escape. It was further reported that a counter FIR was filed against Ajeet Singh for trespassing, robbery, out-raging the modesty of women, rioting and unlawful assembly.

Responses received to communications sent in previous years

247. In a letter dated 4 February 2005 the Government of India responded the communication of 6 October 2004 concerning **Umakanta Meiti**. The Government stated that on 9 September 2004 police personnel of the District Police Imphal East apprehended Umakanta Meiti on suspicion that he might be a terrorist. He was taken to Porompat Police Station for identification and verification. It was decided there was no case against him and Mr. Meiti was released and allowed to go home immediately. The Government stated that he was neither arrested nor tortured.

Observations

248. The Special Representative regrets that at the time this report was finalized no responses had been received from the Government of India to her communications of 2005.

249. The Special Representative thanks the Government of India for their reply to her communication of 6 October 2004 and welcomes the news that Mr. **Umakanta Meiti** was released without charges.

250. The Special Representative notes that no response has been received to her request to conduct a country visit.

Indonesia

Communications sent

251. On 16 June 2005, the Special Representative, jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent an urgent appeal concerning four human rights defenders: **Mugiyanto Sri Suparyati**, Chairman of the Indonesian Association of Families of the Disappeared; **Usman Hamid**, Coordinator of the Commission for Missing Persons and Victims of Violence (KONTRAS); **Abdul Hakim Garuda Nusantara**, Chairman of the National Commission on Human Rights (KOMNAS HAM); and the President of the Trisakti University, **Thoby Mutis**. Members of KONTRAS have already been the subject of communications by the Special Representative on 3 December 2004, 16 August 2004, 3 July 2003, 25 June 2003, and 10 June 2003, as have KOMNAS HAM on 29 October 2003. According to the information received, on 27 May 2005, a letter was sent by fax to the Asian Federation Against Involuntary Disappearances (AFAD), during their workshop on “Protecting persons from enforced or involuntary disappearances” in Bangkok. The letter made death threats against Mugiyanto Sri Suparyati, Usman Hamid, Abdul Hakim Garuda Nusantara and Thoby Mutis, and stated that they would be killed within 14 days. The death threat was signed by a person who identified himself as Mr. Julfikar, “Defender of the New Order”, and accused the aforementioned of affiliating themselves with the Indonesian Communist Party (PKI). Concern was expressed that these death threats may be a result of their work in defending human rights, in particular, the work of KONTRAS, KOMNAS HAM and AFAD in exposing the alleged human rights violations perpetrated under President Suharto. These concerns were heightened by the killing on 7 September 2004 of Mr. **Munir**, the Chairman of AFAD and co-founder of KONTRAS. It was noted that **Usman Hamid** is a member of the official fact-finding team charged with investigating the suspected murder of Mr. Munir.

252. On 23 November 2005, the Special Representative, together with the Special Rapporteur on the independence of judges and lawyers, sent a letter of allegation concerning the investigation into the death of Mr. **Munir**, a human rights lawyer and co-founder of human rights group Imparsial and the National Commission for Disappeared Persons and Victims of Violence (Kontras), a group that have allegedly exposed the abduction by the military of several human rights activists in Jakarta. Mr. Munir died on 7 September 2004 aboard a Garuda flight from Jakarta to Amsterdam and was the subject of an urgent appeal by the Special Rapporteur on the independence of judges and lawyers and the Special Representative of the Secretary-General on the situation of human rights defenders on 3 December 2004. The presidential fact-finding team (TPF) established in December 2004, ended its six month mandate on 23 June 2005 and produced a lengthy report with detailed findings and recommendations. The TPF suggested the involvement of high-ranking intelligence officials and senior employees of Garuda Airlines with Mr. Munir’s death. According to the new information received, since the police took over the



UNITED NATIONS

Press Release

HUMAN RIGHTS EXPERTS EXPRESS CONCERN ABOUT IMPACT OF RAISING OF HEIGHT OF DAM IN NARMADA RIVER, INDIA

13 April 2006

The following statement was issued today by the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, and the Special Rapporteur on the human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen

We are concerned about the recent decision of the the Narmada Control Authority (NCA) to further raise the height of the Sardar Sarovar Dam on the Narmada River from the present 110.64 metres to 121.92 metres and reports indicating that this will result in the submergence of villages and displacement of over 35,000 families.

According to a Supreme Court judgement in 2000 any further increase with respect to the height of the Sardar Sarovar Dam should be preceded by the implementation of resettlement and rehabilitation measures. However, according to reports received, adequate rehabilitation has not yet been provided for those affected at the current dam-height, many of them indigenous peoples and farmers. Official estimates say that an additional 24,421 families in 177 villages of Madhya Pradesh are to be displaced at the dam height of 121.92 metres. We are concerned about information indicating that in Madhya Pradesh rehabilitation sites are still not ready and none of the sites have sufficient house plots for affected families and that this may leave people homeless when affected villages are submerged. Furthermore, alternative agricultural land is reportedly not being provided, and where land has been allotted as in Maharashtra and Gujarat, it is uncultivable and inadequate.

We are aware of the indefinite sit-in (dharna) by the over 300 dam-affected and activists of the Narmada Bachao Andolan (NBA – Save Narmada Movement) in New Delhi since 17 March, demanding a halt to construction at the Sardar Sarovar dam. We are also aware of the three NBA activists who have been on an indefinite fast since 29 March, recently joined by other human rights defenders.

We are seriously concerned about recent information according to which on the night of 5 April, a large police force allegedly used indiscriminate force against the protestors, arrested and hospitalised Ms Medha Patkar and Mr Jamsing Nargave on the eighth day of their fast and detained another 25 NBA activists. Testimonies suggest that the use of force was excessive and disproportionate.

In view of the above, we urge the Government of India to release the report of the findings of the three Union Ministers who visited the Narmada Valley on 7 April to assess the status of resettlement and rehabilitation, as reportedly announced by the Minister of Water Resources in a statement dated 4 April. We also urge the Government of India and appropriate authorities to take immediate steps to ensure that any further raising of the dam height will not result in the violation of the human rights of those affected, including to ensure that just and proper resettlement and rehabilitation of all the affected is provided in accordance with international human rights instruments, including the right to food and adequate housing as enshrined, for example, in the International Covenant on Economic, Social and Cultural Rights. Such measures could include the undertaking of a comprehensive assessment of the entire resettlement and rehabilitation experience in the areas affected by the Sardar Sarovar dam in Gujarat, Maharashtra and Madhya Pradesh, possibly through the setting up of an independent inquiry. Until the human rights of those affected can be guaranteed we recommend that the construction of the dam is halted.

We are also deeply concerned regarding the situation of those carrying out peaceful protest to demonstrate their opposition to the raising of the dam-level. We remind the Government that the United Nations Declaration on Human Rights Defenders protects the right to peacefully react or oppose any action detrimental to human rights or fundamental freedoms. We, therefore, recommend that the allegations of indiscriminate and excessive use of force by the police against activists engaged in the protest is properly investigated and that action is taken against the responsible officers, as appropriate. In this context it is also recommended that proper and swift investigation is undertaken with respect to allegations of false charges, if any, against Ms Medha Patkar and other NBA activists.

<http://www.unhchr.ch/huricane/hurricane.nsf/view01/EEBEC520B4FA19D5C125714F0055336C?opendocument>



UNITED NATIONS

Press Release

UN EXPERT ON HOUSING "DEEPLY CONCERNED" OVER FORCED EVICTIONS IN INDIAN CAPITAL

29 October 2004

The Special Rapporteur on adequate housing of the United Nations Commission on Human Rights, Miloon Kothari, issued the following statement today:

"The Special Rapporteur on adequate housing, appointed by the United Nations Commission on Human Rights, has paid particular attention to the problem of forced evictions worldwide. In this context, he has on several occasions expressed his concern about the practice of forced evictions in India generally, and in New Delhi particularly. This includes his asking the government for information regarding the large-scale demolitions of slum dwellings and forced evictions in the Yamuna Pushta area of New Delhi that took place from February to June 2004. His attempts to seek information from authorities on this issue have so far not received any response. The Special Rapporteur wishes to publicly express his deep concern about the reported forced eviction on 16 October 2004, affecting women and children from the Palika Hostel night shelter for homeless, by the New Delhi Municipal Council (NDMC). According to reports NDMC staff was using excessive force and destroying the personal belongings of the women and children while effectuating the eviction. Information received suggests that the eviction was undertaken in a manner contrary to international human rights law, in violation of the rights of the women and children, in particular of their right to adequate housing as a component of the right to an adequate standard of living.

Despite alleged assurances to the contrary given to civil society by the Prime Minister, NDMC went ahead with the eviction that has pushed over 100 homeless women and children back on the streets. New Delhi's high crime rate and unsafe streets make homeless women and children particularly vulnerable to rape, sexual assault, abuse, and oppression. This should be seen in light of the evictions in Yamuna Pushta, when slums were demolished and approximately 130,000 people were forcibly evicted. Disturbing reports indicate that

these families have still not received alternative housing, compensation or appropriate rehabilitation, and many have been forced to return to the streets. The Special Rapporteur is particularly concerned that these evictions have affected the very poor and already vulnerable.

The alleged forced eviction of women and children and the closure of the Palika Hostel night shelter was seemingly undertaken in a manner not respecting the international human rights obligations of the Government of India, in particular those under the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. The forced eviction is seemingly also in direct contradiction with the NDMC Act 1994 and the Government's Common Minimum Programme (CMP).

The Special Rapporteur calls on responsible government bodies to immediately provide alternative housing for the displaced women and children in an adequate shelter, close to the original location of Palika Hostel. Civil society organisations have reportedly identified several unused community centres in the vicinity for this purpose. In the absence of an urgently needed comprehensive strategy to address the housing rights of Delhi's poor, and in light of the onset of winter, the Special Rapporteur also strongly calls for the creation of more shelters and adequate housing that provide basic amenities like water and sanitation, and are located close to livelihood sources of the poor and homeless. The Special Rapporteur further urges the relevant authorities to take all necessary steps to investigate alleged human rights violations, including excessive use of force, in connection with the evictions on 16 October 2004, including, where appropriate, prosecution of perpetrators".

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UNITED NATIONS

Press Release

HIGH COMMISSIONER FOR HUMAN RIGHTS EXPRESSES CONCERN ON THE PLIGHT OF THE DISPLACED IN GUJARAT, INDIA

04.09.02

United Nations High Commissioner for Human Rights, Mary Robinson, called on the Government of India to ensure that those persons internally displaced since the outbreak of violence on 27 February in Gujarat, are not cut off from life-saving assistance, including adequate shelter, as a result of the ongoing closure of relief camps.

Concerned by reports that the closure of almost all of the 121 camps said to have been set up in the State of Gujarat, has led to people moving to unofficial camps instead of returning to their homes, the High Commissioner emphasized the responsibility of the State in ensuring conditions which would encourage people to return to their homes voluntarily and with dignity. Such conditions include : prosecuting the perpetrators of the violence and taking steps to realise the right to adequate housing. The High Commissioner, referring to a recent report (16 August) of the Election Commission of India, expressed concern that "the slow progress in relief and rehabilitation work on the one hand and non-arrest and non-punishment of the guilty and fear of communal backlash on the other have hampered the process of restoration of normalcy to the State."

With elections imminent, the High Commissioner recognized India's history of firm commitment to upholding citizens' right to vote and underlined the need for the safe and voluntary return of people to their homes to achieve a more accurate electoral roll, enabling more Gujaratis to exercise their right to vote.

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<http://www.unhchr.ch/huricane/hurricane.nsf/view01/4CF3C5F7B8FE16CCC1256C2F002939B7?opendocument>