



Addressing the economic, social and cultural root causes of torture

OMCT ACTION FILE: IND 180808.ESCR

**INDIA: DENIAL OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF
THE TRIBAL PEOPLES OF WAYANAD DISTRICT, KERALA RISKS
GENERATING FURTHER VIOLENCE**

**Continued denial of housing and employment rights leads to risk of further
protests and violent suppression by police**

The International Secretariat of the World Organisation Against Torture (OMCT) has received reliable information concerning ongoing tensions and police harassment of members of local *adivasi* community following the breach by the Agricultural University of Kerala of conditions attached to a transfer of land from the *adivasi* community to the University for the construction of a veterinary college. These conditions were intended to compensate the indigenous community for the appropriation of their land by re-housing them and by providing employment.

As a result, the affected *adivasi* families have been left homeless and have lost their livelihood. This has exacerbated the poverty suffered by the already marginalised community and has led them to engage in pacific protest activities. In turn, the police have responded with harassment, intimidation and ill-treatment of community members, and have brought false charges against the protest leaders. OMCT condemns the police reaction and expresses concern that, unless remedial steps are taken, the *adivasi* community will continue to be persecuted by the authorities. Steps must be taken to bring an end to the threats and harassment, prevent further violence and ensure the community's full enjoyment of economic, social and cultural rights.

OMCT calls upon the *Union Government of India* and the *State Government of Kerala* to, *inter alia*, take action to ensure compliance by the University Authorities with the conditions attached to the transfer of land and provide reparation as appropriate. It also calls for a prompt, impartial and independent inquiry into the failure of the University to comply with the conditions and into police action against the community, as well as the prosecution of perpetrators of human rights violations.

OMCT further calls upon the *Union* and *State Governments* to ensure that the police fully respect the rights of the *adivasi* community and that an immediate end is put to the harassment and intimidation of this community.

The situation

Across India, *adivasis* – tribal or indigenous people – experience severe discrimination and marginalisation. They have little or no political voice, and rarely have the means to seek legal redress for violations of their rights. In the Wayanad District of Kerala, approximately 17% of the population is *adivasi*. In 1979 the Government of Kerala introduced the Pookode Dairy Project in the Wayanad District with the principal aim of developing the area and building the capacity of the local indigenous population. In particular, the Dairy Project aimed to: utilise the land resources for the welfare of the different *adivasi* tribal groups (including the Paniyans, Adiyans and Kuttunaikken); further economic and social development of these communities; rehabilitate a section of the indigenous population that had traditionally been under bonded labour; and generate employment opportunities for these communities to increase their earning capacity.

The Dairy Project was wound up in 1998 when 100 acres of Pookode Dairy Project land that had previously been entrusted to the *adivasi* community were transferred to the Kerala Agricultural University for the establishment of a veterinary college and attached farm (the College of Veterinary & Animal Sciences) by Government Order GO Rt. No. 3643/98/RD of 13 August 1998.

The transfer of land was subject to a number of conditions that had been recommended in 1997 by an Expert Committee appointed by the Government to report on the feasibility of establishing a veterinary college at Pookode, and that were later reflected in the Government Order and accepted by the Kerala Agricultural University in an Order endorsed by the Vice-Chancellor dated 1 June 2001. The conditions were intended to compensate the indigenous community in return for this appropriation of land and stated that:

- “The appointment of farm labourers in the farm attached to the college will be made from the members of the families settled in Pookode Dairy Project”;
- Priority will be given to qualified persons from the indigenous community when making appointments to other posts within the college;
- The 26 families evicted from the land needed for the veterinary college will be re-housed in specially built residential quarters.

In fact, this land transfer and its associated conditions marked the beginning of a series of events that has led to the further marginalisation of the Pookode *adivasi* community, culminating in violence and police repression.

Broken promises

At the time of the land transfer, the families affected made no objection, given the promises made by the Government and the Agricultural University to re-house and employ them. In 1998, the farm became operational and preparations for the building of the veterinary college began. At the same time, the first affected *adivasi* families were moved off their land. By 2002, concern was growing among the *adivasi* community that the Agricultural University was not complying with the conditions attached to the transfer of the land. In November of that year the community staged a ten-day protest which

ended when the then District Collector promised that appropriate action would be taken to rectify the situation. However, this promise was broken.

The last of the families, who had been resisting the move until alternative arrangements were made for them, were finally evicted in 2004. No arrangements had, in fact, been made: they were simply given Rs4500 (approximately US\$100) to make their own shelters. In all, 26 households belonging to the *adivasi* community in Pookode were evicted from their land and received no alternative accommodation. Jananeethi, a Kerala-based human rights NGO, reports that the residential quarters that were supposedly intended for the indigenous families were allotted to college staff. Further, none of the positions at the veterinary college (including on the farm attached to the college) were assigned to members of the affected *adivasi* community, in contravention of the Government Order.

By the time the veterinary college was officially inaugurated in December 2004, it had become clear that the Agricultural University had failed to comply with the conditions set out in the Orders. Indeed, it is reported that the associate dean of the veterinary college, Dr. P. P. Balakrishnan, publicly declared that during his tenure in office, he would not allow the *adivasis* to set foot on college grounds.

Deteriorating conditions and growing tensions

The homeless members of the *adivasi* community (including women and children) sought shelter in other parts of the District, in the huts of community members in the remaining (or balance) land of the Pookode Dairy Project, or were forced to sleep under trees or by the roadside in makeshift huts made of plastic sheeting and bamboo. This situation has led to the erosion of community structures, increasing levels of poverty and further marginalisation. Women in particular have become vulnerable to exploitation, including commercial sexual exploitation. Children are also significantly affected in that they are no longer able to attend school, having been forced into child labour or having become the victims of child trafficking.

From October 2006, community members filed complaints with relevant government offices¹ and sent copies of these petitions to the National Human Rights Commission and the State Human Rights Commission of Kerala State requesting their intervention. The authorities and human rights institutions failed to respond. The community also took to pacific protest. In the first week of October 2007, the tribal community members protested in front of the veterinary college office under the banner of “Pookode Veterinary College Tribal Employees’ Union”. At the end of the same month, members of affected families, under the leadership of Ms. Tulasy Vijayan, began a hunger strike at the college gates, demanding the immediate compliance of the University and the

¹ Including the President of India, the Prime Minister of India, the National Commission for Scheduled Tribes, the Government of Kerala State, the Chief Minister of Kerala State, the Speaker of Kerala Legislative Assembly, the State Minister for Scheduled Castes and Tribes, the State Minister for Food & Agriculture, the Veterinary Council of India, the Vice Chancellor of Kerala Agricultural University, the Privilege Committee of Kerala Legislative Assembly, local Members of the State Legislative Assembly, the Department for Local Self Government in Kerala and the District Collector of Wayanad.

authorities with the conditions attached to the transfer of the land. Human Rights organisations and civil society groups from different parts of the State came in support of the protesters. The hunger strike ended after 28 days when the District Collector of Wayanad, Mr. P.P.Gopi assured the protesters that he would settle all the disputes in accordance with the conditions set out in the Government Order within a period of two months. He also promised that all the evicted families would be adequately re-housed in accordance with the University's Order of 1 June 2001. Again, these assurances were not fulfilled, and the community organised a further protest on 26 February 2008. Community members have also since filed further complaints with the authorities and the National Human Rights Commission. To date, no response has been received from any of these bodies.

In reacting to these protests, the University authorities have resorted to harassment and threats against members of the Pookode *adivasi* community. For example, Ms. Tulasy Vijayan, the leader of *adivasis*, filed criminal complaints against Dr. Balakrishnan, the associate dean of the college, on the grounds of harassment, verbal sexual abuse, threats and attacks on her personal integrity. Similarly, a young *adivasi* young man with a physical disability was reportedly threatened by Dr. Balakrishnan on several occasions. On one such occasion, Dr. Balakrishnan allegedly told the young man that he would break his other leg, cut him into pieces and throw him to the dogs. On another occasion, during the community's hunger strike, the University authorities informed the police and Government departments – falsely – that the protesters were being helped by the Naxalites and Maoists and other banned terrorist organisations.

For its part, the police have supported the University's position, engaging in intimidatory tactics, including issuing threats, engaging in harassment and bringing false charges. For example, during the protests of early October 2007, the police dispersed the community members using threats and abusive language. That night, the police drove into the tribal hamlets and warned the protesters individually that there would be serious consequences, including criminal charges against them, if they continued to challenge the college authorities. The police are said to have verbally abused the *adivasi* women, and threatened that their children would have to live without parents.

In the course of this protests, three leading protesters were regularly summoned to the local police station on false charges that included theft, making pornographic material, criminal assault and the manufacture of illicit liquor. On each occasion they were forced to spend the day at the police station before being released. The police have continued to harass these individuals and many of the charges against them are still pending: this has a serious impact on their psychological well-being, and has also served to undermine the *adivasi* collective action.

The result of these tactics by the police has been to divide the tribal people into two camps, namely those who still challenged the college authorities and those who oppose the protesters out of fear of the consequences of protesting. The college authorities have exploited this divide: community members who no longer supported the protests were engaged on the farm on a daily basis (on low pay), and were also given liquor and other

minor benefits. This in turn has created unrest and tension among the community and has contributed to intra-community violence.

Economic, social and cultural rights and violence

The information received by OMCT indicates that Kerala Agricultural University, through its veterinary college, has failed to comply with its obligations under the Government's Order of 1998 and with its own promises in the Order endorsed by the University Vice-Chancellor in 2001. The Government of the State of Kerala and the Union Government of India have failed to take any action to remedy this situation and to ensure compliance. In turn, this has resulted in a breach of the Indian State's international obligations under the International Covenant of Economic, Social and Cultural Rights (ICESCR).² The violation of the community's basic rights has led to protests by community members and harassment on the part of the police. The police tactics in suppressing the protests, including intimidation of the community and false charges against individuals leading the protests, is a common form of harassment in India and the Criminal Justice Administration System fails to address this issue adequately. Most of these charges are still pending, a fact used by the police to discourage further protests or complaints on the part of community members. The police have also been responsible for provoking resentment and violence within the Pookode community itself.

OMCT is concerned at the treatment of the protesters and the wider *adivasi* community by the police and by the veterinary college authorities and underlines that marginalisation and discrimination lie at the root of the harassment and ill-treatment to which the *adivasi* community has been subjected. OMCT is also concerned at the risk of escalating violence should this situation not be adequately addressed. This risk of further violence is directly linked to the violation of a number of the community's basic economic, social and cultural rights.

Article 11 of the ICESCR establishes the right to an adequate standard of living. This includes the right to adequate housing. General Comment No. 4 on the right to adequate housing confirms that this right must not be subject to any form of discrimination. The failure to provide alternative housing to the affected *adivasi* families and the fact that they have effectively been forced to live on the streets as a result of non-compliance with the Orders constitutes a violation of the community's right to an adequate standard of living, in particular the right to adequate housing. The failure to provide adequate alternative housing and compensation for displacement also runs counter to the *Basic principles and guidelines on development-based evictions and displacement* prepared by the UN Special Rapporteur on Adequate Housing.³ Furthermore, OMCT recalls that the Indian Supreme Court has interpreted the right to adequate housing in the light of the right to life, as guaranteed under Article 21 of the Indian Constitution. This was

² India acceded to the ICESCR on 10 July 1979.

³ "6. Forced evictions constitute gross violations of a range of internationally recognized human rights, including the human rights to adequate housing, food, water, health, education, work, security of the person, security of the home, freedom from cruel, inhuman and degrading treatment, and freedom of movement. Evictions must be carried out lawfully, only in exceptional circumstances, and in full accordance with relevant provisions of international human rights and humanitarian law." *Basic principles and guidelines on development-based evictions and displacement*, A/HRC/4/18 5 February 2007.

established under the Supreme Court's 1985 ruling in the case of *Olga Tellis v. Bombay Municipal Corporation*,⁴ and subsequently reiterated in the 1990 ruling in the case of *Shanti Star Builders v. Naryan Khimali Tatome*.⁵

Further, Article 6 of the ICESCR provides for the right to work. General Comment No. 18 affirms that a key obligation under this article is to ensure non-discrimination and equal protection of employment which includes ensuring "the right of access to employment, especially for disadvantaged and marginalized individuals and groups, permitting them to live a life of dignity" and avoiding "any measure that results in discrimination and unequal treatment in the private and public sectors of disadvantaged and marginalized individuals and groups."⁶ The failure of the veterinary college authorities to provide employment opportunities to the *adivasi* community in contravention of the Government Order and the passivity of the Government of the State of Kerala and of the Union of India in response to this breach, amounts to a violation of community members' right to work and has resulted in the community's loss of livelihood.

In addition, the impact of these events on the children of the community has compromised their right to education, enshrined in Article 13 of the Covenant and Article 28 of the Convention on the Rights of the Child.⁷ General Comment No. 13 on the right to education specifically refers to the obligation of State parties to ensure that communities and families are not dependent on child labour.⁸

Finally, Article 2 of the Covenant provides that everyone is entitled to enjoy the rights enshrined in the Covenant without discrimination. In the case of the Pookode *adivasi* community, however, their situation both derives from and is exacerbated by their socio-economic vulnerability as indigenous or tribal people, their vulnerability to outside influences, bribery and intimidation, their lack of political voice and the obstacles they face in obtaining justice as a result of discrimination. OMCT is concerned to ensure that the *adivasi* community in Wayanad, as well as other tribal groups in similar situations, are no longer subjected to this form of treatment.

OMCT calls upon the Union Government of India and the State Government of Kerala to fulfil their international obligations under the ICESCR and to take immediate action to put a stop to the violations committed against the *adivasi* community in Wayanad.

⁴ *Olga Tellis v. Bombay Municipal Corporation* (3) SCC 545 (1985). The Supreme Court declared that "eviction of petitioners from their dwellings would result in the deprivation of their livelihood."

⁵ *Shanti Star Builders v. Naryan Khimali Tatome et al.* (1) SC 106, Civil Appeal No. 2598 of 1989 (JT 1990). The Supreme Court ruled that "The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in [...] For a human being [the right to shelter] has to be a suitable accommodation which would allow him to grow in every aspect-physical, mental and intellectual [...] A reasonable residence is an indispensable necessity for fulfilling the constitutional goal in the matter of development of man and should be taken as included in "life" in article 21." *Shanti Star Builders v. Naryan Khimali Tatome et al.* (1) SC 106, Civil Appeal No. 2598 of 1989 (JT 1990).

⁶ General Comment No. 18, UN Doc. E/C.12/GC/18, paragraph 31.

⁷ India acceded to the CRC on 11 March 1993.

⁸ CESCR, General Comment No. 13, UN Doc. E/C.12/1999/10, paragraph 55.

Requested Actions

Please write to the Union Government of India and the State Government of Kerala asking them to:

- Take prompt action to ensure compliance by the University authorities with the conditions set out in the Government Order GO Rt. No. 3643/98/RD and in the University Order dated 1 June 2001 and, to the extent that this is not possible, to ensure adequate compensation is provided to those families denied employment and housing;
- Take prompt action to provide alternative adequate housing to the 26 evicted *adivasi* families;
- Introduce measures to ensure all children in the *adivasi* community enjoy their rights to education and to protection from all forms of exploitation, including child labour;
- Introduce measures to ensure that women in the *adivasi* community enjoy protection from all forms of exploitation, including sexual exploitation;
- Dismiss all remaining unsubstantiated charges against the protesters of the *adivasi* community and ensure that any losses are compensated and any costs incurred by these individuals are fully met;
- Order a prompt, impartial and independent inquiry into the failure of the University authorities to implement the conditions in the Orders and into human rights violations committed against the *adivasi* community, particularly women, at Pookode, in Wayanad District;
- Ensure that all state officials, including police personnel, who are suspected of perpetrating human rights violations are investigated and, where appropriate, prosecuted;
- Ensure that police fully respect the human rights of protesters and ensure that an end is put to the harassment and intimidation of communities in tribal hamlets in Wayanad District;
- Establish a Monitoring Committee, of which the majority should be members of tribal communities, to ensure that the rights and privileges of the tribal communities are respected and upheld by University;
- Ensure that, while law and order is maintained, those who are engaged in peaceful exercise of their rights to freedom of assembly and speech are able to do so without fear of violence, harassment or false accusation of involvement in criminal activities;

And in addition, as regards India's adivasi population in general, call upon the Union Government of India to:

- Take all necessary steps to ensure that members of *adivasi* communities enjoy their human rights without discrimination of any kind and receive adequate and effective protection from all forms of violence, intimidation and harassment.

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Information on action taken and follow-up

OMCT would appreciate receiving information on any action taken in relation to the matters dealt with in this Action File so that it might be shared with OMCT's network and

others interested in this issue. Please quote the code of this appeal on the cover page in contacting us (IND 180808.ESCR).

Geneva, 18 August 2008

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