



Addressing the economic, social and cultural root causes of violence

The Economic Roots of Relativism: a selection of cases addressed by OMCT

December 2008

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A three-year project, funded by the European Union¹ and aimed at addressing the economic, social and cultural root causes of violence, is permitting OMCT to focus on the link between economic interests and the incidence of various forms of violence, including torture. The four cases brought together in this compendium have all been addressed by OMCT, and each offers a striking illustration of the extent to which states are prepared to violate human rights - or stand by as others violate these rights – in order to promote or facilitate economic development. OMCT's aim in addressing these cases is not to challenge the right of states to pursue development goals or make use of the resources within their territory, but rather to ensure that this is done in the full respect of human rights.

Introduction

Economic development is all too often regarded by states as an imperative that may involve, or even require, the abuse of human rights, including the use of torture and other forms of cruel, inhuman or degrading treatment or punishment. In many cases, the target of these abuses are individuals or communities who express their opposition to development projects because such projects compromise their way of life or their standard of living. Often the issue at stake is access to the land on which they rely for their livelihoods or, in the case of indigenous communities, from which they also draw their identity. Protests may also arise as a result of concerns over the health implications of certain industrial activities or their environmental impact, or because communities have been excluded from meaningful consultation or denied adequate compensation for the use of their land and resources. And violence is not only directed against those who seek to oppose certain economic projects or influence their form. It is also frequently employed as a means to protect economic interests from industrial unrest provoked by low wages, poor working conditions or restrictions on labour rights.

In some situations the state is the direct perpetrator of human rights abuses, as in the case of the suppression of opposition to the Merowe and Kajbar Dams in Sudan (SDN 301107.ESCR). In others, like the shooting of the anti-mine activists in front of the offices of a mine jointly owned by Pelican Resources and Sibuyan Nickel Properties Development Corporation in the Philippines (PHL 121207.ESCR), the direct perpetrator is a non-state actor. Here, the state's responsibility lies in its omission to adequately protect its citizens, punish the perpetrator and sanction the companies involved.

These two cases also illustrate that while the ideology fuelling the drive toward development may be different, the result in terms of human rights abuses is often the same. The incident in the Philippines took place in an economic and political context characterised by an unqualified commitment to trade liberalisation intended to attract foreign capital and accelerate domestic economic development. This approach has seen the establishment of export economic zones, where workers' rights are pared down to a minimum (in the Philippines, as elsewhere, such zones are perhaps one of the most explicit expressions of a state's conviction that human rights present an obstacle to effective development). At the same time, around the country, trade union leaders, labour activists and others who seek to defend economic, social and cultural rights become the targets of harassment, intimidation, abduction, torture and assassination by both state and non-state actors.

¹ The European Commission, within the framework of the European Initiative for Democracy and Human Rights (EIDHR) provides substantial funding for the core activities of the project for the period 2007-2009 OMCT receives further support from the Swiss Ministry of Foreign Affairs, the Karl Popper Foundation, the Interchurch Organisation for Development Cooperation and the Fondation pour les droits de l'homme au travail.

In Sudan, the impetus for economic development is more closely tied to bilateral geopolitical interests and, specifically, to trade links with China based on a mutually advantageous exchange of oil and arms. Indeed, China is responsible for providing the majority of the financial backing, as well as the technical expertise for Sudan's hydro-electric developments (although a number of European companies are also involved in supplying parts).

The victims of torture or other forms of violence that result from the primacy of economic interests are frequently those who have least means to express their opposition to development projects, and whose capacity to reach a negotiated resolution is most limited. This is clearly illustrated by the case of the *dalit* village in India's Tamil Nadu State (IND 041007.ESCR). Here, the failure of the owner of a nearby aquaculture business to respect clearly-established industry norms has had direct consequences for the health and livelihood of the villagers. When these villagers sought to protest against the harmful impact of the aquaculture farm, they were subjected to police violence and harassment and had false charges of a serious nature brought against them by the owner of this farm. Sadly, the elements of this case from Tamil Nadu are replicated around the world, among marginalised communities that lack the economic and political influence to shape development policies or to avoid their damaging effects.

Strong as economic imperatives may be, they do not always prevail, as illustrated by the case of the project for an open-pit coal mine in Phulbari, in the Dinajpur District of Bangladesh (BGD 211207.ESCR). The development rights for this ambitious project are owned by GCM Resources, a British mining company. Until recently, this project has also enjoyed the financial support of the Asian Development Bank (ADB) and several commercial banks (including UBS, Credit Suisse and Barclays). At the same time, however, the Phulbari project has generated widespread opposition due to its environmental impact and its potential negative effects on the socio-economic wellbeing of the population affected (estimates range from 50,000 to 500,000 persons). A public demonstration against the mine in 2006 saw at least five persons killed and fifty others injured by the police and personnel of the Bangladesh Rifles. OMCT contacted the Government of Bangladesh, GCM Resources, the Asian Development Bank, the financial institutions involved, UN special procedures mandate holders and the European Parliament to express its deep concern at the risk of further violence associated with the project, and insisting that a decision on the future of the Phulbari mine should only be taken once a thorough, transparent and independent investigation into its human and environmental impact has been carried out, with the full and informed participation of all local communities.

In February 2008, at the invitation of GCM Resources, OMCT staff met with the company's Sustainable Development Manager in Geneva to discuss the issues of concern. In early April 2008, OMCT learned that the Asian Development Bank had decided to suspend its support for the project. In a statement, the Bank said,

We think it is premature to continue dialogue with the private sector under current circumstances. So, at this stage we are open to suggestions of the government of Bangladesh, civil society and other stakeholders and prepared to review our engagement in this project to ensure that all sensitivities, including concerns relating to safeguard issues, are fully considered.²

² See <http://www.guardian.co.uk/business/2008/apr/06/mining.bangladesh>

In June 2008 it was announced that Barclays Bank had sold its shares in GCM Resources. The Royal Bank of Scotland followed suit in October.

These decisions bear testament to the potential of concerted civil society action to influence an issue with serious human rights implications and, ultimately, they suggest that the primacy of economic interests, while not easily challenged, is not necessarily absolute.

OMCT ACTION FILE (BGD 211207.ESCR)

BANGLADESH: RISK OF VIOLENT SUPPRESSION OF PUBLIC OPPOSITION TO THE PHULBARI COAL MINE PROJECT, DINAJPUR DISTRICT, BANGLADESH

Your action is called for to suspend the Phulbari Project until community concerns are met

OMCT is concerned that police and security forces may again employ violence to deal with public opposition to the Phulbari open-pit mining project

The International Secretariat of the World Organisation Against Torture (OMCT), on the basis of reliable information received, expresses its concern that communities affected by the proposed Phulbari open-pit coal mine in the Dinajpur District of **Bangladesh**, have been neither adequately consulted nor fully informed regarding this significant project. Estimates put the number of people affected by the mine at anything between 50,000 and 500,000, including a number of indigenous communities. Many of these affected will be forced to leave their homes and land.

A public demonstration against the mine in August 2006 saw at least five persons killed and fifty others injured by the police and personnel of the Bangladesh Rifles. OMCT expresses its serious concern that further violence, ill-treatment and even deaths may ensue if local communities again seek to give public expression to their opposition.

To prevent further human right violations, and having regard to the strong local opposition to the project, OMCT calls upon the **Government of the People's Republic of Bangladesh** to instigate a thorough independent investigation into the human and environmental impact of the Phulbari coal mine project, ensuring the full and informed participation of all local communities, to make the findings of this investigation available in a public report and to abide by the recommendations of this report. It also calls for the Government to lift the restrictions on public demonstrations imposed under emergency rule and take all necessary steps to prevent future episodes of violence by police and security forces against persons defending their human rights.

OMCT calls upon **Global Coal Management Resources Plc (GCM)** - the company in charge of the Phulbari project - to suspend its activities in this area until this investigation has been conducted and to abide by the recommendations resulting from this investigation. It also calls upon GMC to fully respect the land rights, resources and livelihoods of all local communities affected by any subsequent mining activity and provide fair and adequate compensation wherever appropriate.

Finally, OMCT calls upon **UBS, RAB Capital and Barclays**, all of which have significant financial interest in GCM, to use their influence to ensure that the company abides by the recommendations issuing from the independent investigation and to make certain that it complies fully with national laws and international human rights standards.

The Phulbari coal mine project

The Phulbari coal deposit, in the Dinajpur District of Bangladesh, was discovered during the second half of the 1990s by the Australian mining company BHP. In 1998, the Government of Bangladesh awarded the licensing agreement for mining the deposit to the Asia Energy Corporation (Bangladesh) Pty Ltd,³ a wholly-owned subsidiary of British-registered Global Coal Management Resources Plc. (GCM). The Phulbari mine is expected to lead to a 1 per cent increase in the gross domestic product of Bangladesh over the next 30 years, bringing more than US\$ 21 billion to the Bangladeshi economy.⁴ The Asian Development Bank is scheduled to approve a US\$100 million private sector loan and a US\$200 million political risk guarantee in favour of the Phulbari project on the basis of environmental and social impact studies included in a Definitive Feasibility Study carried out since April 2004.⁵

The Phulbari project is an open-pit mine.⁶ In order to access the coal seams, it is reported that between 140 and 300 metres of earth will need to be removed, affecting an area of 59 km². In terms of the human impact of the project, there are differing views. According to estimates from GCM, the mining company involved, the project will affect approximately 50,000 people (a total of some 12,000 households), including some 2,200 indigenous people. Of this total, some 43,000 will be displaced from their homes and land by the mine. This number will be higher if the full-scale expansion plans for the mine are carried out. On the other hand, according to the National Committee to Protect Oil, Gas, Mineral Resources, Electricity and Ports, the number of people potentially affected could be as many as 470,000, including indigenous peoples belonging to Santhal, Munda and Mahali tribes, who occupy some 100 villages in Phulbari and surrounding sub-districts.⁷

In terms of the impact upon community structures, it is reported that the project will involve the closure of 50 educational institutions, including six colleges and 18 *madrassas*,⁸ as well as 171 mosques, 13 temples and other religious establishments.⁹ The mine will also have a significant environmental impact due to the considerable waste material produced in the extraction process. This in turn will have serious implications for the livelihood and, potentially, the health of local communities: the area around Phulbari is one of the most productive agricultural zones in Bangladesh, and the project will not only destroy productive farmland, but also cause the diversion of the Choto Jamuna River from its natural course. According to Professor Anu Muhammad in the Faculty of Economics at Jahangirnagar University, Bangladesh, studies in other countries have shown that rivers as far as 160km away from an open-pit mine can remain polluted for three decades as a result of the waste generated. He concludes that "in a country like Bangladesh, with hundreds of small rivers linked like a huge net, polluted water can travel long beyond the mining area."¹⁰ Despite these concerns, on 11 September 2005, the Bangladeshi Department of Environment approved the

³ Asian Indigenous and Tribal Peoples Network, http://www.aitpn.org/IRQ/vol-I/issues-2-3/story01.htm#_ftnref4

⁴ BBC News: *Bangladesh coal divides region*, <http://news.bbc.co.uk/2/hi/business/5080386.stm>

⁵ See Asian Development Bank – Projects, <http://www.adb.org/Documents/PIDs/39933014.asp>

⁶ Open-pit mines are also known as opencast mines. Both terms refer to the extraction of rocks or minerals by excavating earth to create pits rather than sinking shafts and digging tunnels.

⁷ The Daily Star: *Rehabilitation issue makes it a tough task*,

<http://www.thedailystar.net/2006/08/29/d6082901159.htm>

⁸ the Arabic term for “schools”.

⁹ The Daily Star: *Rehabilitation issue makes it a tough task*,

<http://www.thedailystar.net/2006/08/29/d6082901159.htm>

¹⁰ BBC News: *Bangladesh coal divides region*, <http://news.bbc.co.uk/2/hi/business/5080386.stm>

Environmental Impact Assessment Report prepared by the Asia Energy Corporation and granted environmental clearance for the mining operation.¹¹

In order to gain the consent for the project from local communities, Asia Energy reportedly distributed colour televisions, cash, cloths and blankets to affected populations.¹² Furthermore, Asia Energy also reportedly refused to be bound by the 1894 Land Acquisition Act which regulates land acquisition and/or expropriation by the Government, and demanded the adoption of special laws in order to avoid the obligation to obtain the free, prior and informed consent of the affected communities.¹³

On 31 August 2006, five days after large and violent demonstrations against the Phulbari project, the Junior Minister for Food and Relief declared that the Government had revoked all existing agreements with Asia Energy and that a moratorium had been imposed on all open-pit mining in Bangladesh. On the same day, Asia Energy declared that it had received no official communication to that effect, and that the position of the Government remained to be clarified.¹⁴ In practice, coal mining remains an important element in Bangladesh's development strategy: on 17 November 2007, the Coal Policy Review Committee adopted a proposal encouraging partnerships between the Government and foreign firms engaged in mining in order to promote investment in and develop of the coal sector. The Committee also suggested strengthening the existing Bureau of Mineral Development so that it could deal more efficiently with foreign companies in leasing transactions and indicated its intention to establish coal-based power plants in rural areas.¹⁵

Local resistance to the project and violence against protesters

“What will happen to us if we are forced to move from here? What will happen to our livelihoods? I don't want us to live like this. Our mosques and holy places and the places we were born will be destroyed. What will happen to the graveyards of our ancestors?”

75-year-old man, resident of Phulbari sub-district¹⁶

Resistance to the proposed Phulbari project is widespread in the areas. On 26 August 2006, an estimated 50 to 100,000 demonstrators, mainly farmers and indigenous people, protested against the project.¹⁷ At least five demonstrators were killed and about fifty others reportedly injured and taken to hospital after the police and the Bangladesh Rifles (BDR) opened fire on demonstrators.¹⁸ The exact death toll as a result of the shooting remains unclear, and may be

¹¹ Asian Indigenous and Tribal Peoples Network, http://www.aitpn.org/IRQ/vol-I/issues-2-3/story01.htm#_ftnref4

¹² The Daily Star: *Cancellation of Phulbari Coal Project demanded*, <http://www.thedailystar.net/2006/08/24/d608241004111.htm>

¹³ Asian Indigenous and Tribal Peoples Network, http://www.aitpn.org/IRQ/vol-I/issues-2-3/story01.htm#_ftnref6

¹⁴ Asian Indigenous and Tribal Peoples Network, http://www.aitpn.org/IRQ/vol-I/issues-2-3/story01.htm#_ftnref4

¹⁵ *Government Prime Role Recommended in Coal Mining*: <http://phulbariresistance.blogspot.com/2007/11/govts-prime-role-recommended-in-coal.html>

¹⁶ BBC News: *Bangladesh coal divides region*, <http://news.bbc.co.uk/2/hi/business/5080386.stm>

¹⁷ Bangladesh News - Phulbari Coalmine Killing, 28 August 2006, <http://www.bangladeshnews.com.bd/2006/08/28/phulbari-coalmine-killing-thousands-defy-ban-stage-protest/>

¹⁸ The people were identified as: Tariqul Islam (24 years-old), Ahsan Habib (35), Osman (24), Raju (8) and Chunnu. Asian Indigenous and Tribal Peoples Network, http://www.aitpn.org/IRQ/vol-I/issues-2-3/story01.htm#_ftnref4

as many as ten - it was reported that the BDR dumped some of the dead bodies.¹⁹ Furthermore, the Bangladeshi *Daily Star* newspaper reported that, according to eye-witnesses, BDR personnel threatened Magistrate Abdul Aziz with a gun in order to make him sign the authorization to open fire on the protesters.²⁰ Neither the Government nor the Asia Energy Corporation have taken any responsibility for these events.

Under the Emergency Rule declared by Bangladesh's military government in January 2007, fundamental civil rights have been suspended and public protest banned.²¹ These Emergency Rules effectively remove the possibility of the populations affected by the Phulbari mine engaging in peaceful protest, and OMCT expresses its strong concern that, should such protest nevertheless take place, they will be met with further and possibly more extreme violence on the part of the police and security forces.

Despite the violent suppression of public protest, resistance to the project remains high. On 15 December 2007, representatives of the sub-districts of Phulbari and neighbouring Birampur, Nababganj and Parbatipur wrote to the president and executive Directors of the Asian Development Bank expressing their concern that the project will "increase the poverty of the local population as well as cause environmental disaster".²² In this letter they claim that the social impact analysis carried out misrepresented the nature of public consultations around the project and that consultations emphasised the potential benefits of the project while failing to provide information on the negative impact. Furthermore, the community representatives express concern that only minimal information was provided in Bengali regarding the environmental impact of the project and that, to their knowledge, the environmental impact assessment has been neither translated nor summarised in the local language. They also underline that other media must be employed to communicate with a population of which approximately 60 per cent is illiterate. Additionally, they express serious concerns that land compensation and resettlement plans are insufficient to meet the losses likely to be incurred by local populations as a result of the mine, and that Asia Energy/GMC's claim that 50,000 persons will be directly affected (and hence entitled to compensation) is a significant underestimation.

Economic Social and Cultural Rights

Bangladesh acceded to the International Covenant on Economic, Social and Cultural Rights on 5 October 1998, and consequently the Government of Bangladesh has the duty to ensure the protection, promotion and enjoyment of these rights for all its citizens. The Phulbari mine project jeopardises the human rights of thousands of people due to the mass evictions and destruction of agricultural land it will require and to the pollution that will result from the extraction activities. In particular, OMCT is concerned that the mine will seriously compromise the rights to health and to an adequate standard of living (including access to housing, land, adequate food and clean water) of those affected.²³

¹⁹Bangladesh News: *Phulbari Coalmine Killing*, 28 August 2006

<http://www.bangladeshnews.com.bd/2006/08/28/phulbari-coalmine-killing-thousands-defy-ban-stage-protest/>

²⁰The Daily Star: *Magistrate forced to give firing order*,

<http://www.thedailystar.net/2006/08/30/d6083001107.htm>

²¹<http://jurist.law.pitt.edu/paperchase/2007/01/bangladesh-media-restrictions-under.php>

²² see "Phulbari communities write to ADB President and Executive Directors",

<http://banglapraxis.wordpress.com/2007/12/19/phulbari-communities-write-to-adb-president-and-executive-directors/>

²³ *The Basic Principles and Guidelines on Development-based Evictions and Displacement* prepared by the Special Rapporteur on adequate housing clearly define forced evictions as a violation of human rights, *Basic principles and guidelines on development-based evictions and displacement*, A/HRC/4/18 5 February 2007

OMCT also wishes to underline the comments of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, Rodolfo Stavenhagen, who has expressed his concerns that the resources of indigenous communities are being appropriated and utilised, without prior consent, by powerful economic consortia, and that this “is currently one of the most controversial issues involving indigenous people, the State, and private enterprises, and often also the international financial institutions.”²⁴ In addition, the recent UN Declaration on Indigenous Peoples' Rights states that, “indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”²⁵

The role of financial investors

According to the information received, UBS, RAB Capital and Barclays financial institutions all have an interest in GCM, the sole owner of the Asia Energy Corporation and the Phulbari Coal Project. In particular, UBS is the second largest listed shareholder, owning 11.39% of GCM.²⁶

OMCT regrets the lack of transparency demonstrated by UBS in responding to civil society queries regarding its involvement in the Phulbari project. In response to questions on its position, the Bank denied that it had any strategic interest in the company and, noting that “it does not comment on potential or specific client relations or transactions or its investments in any particular company” indicated that its purchase of GCM shares “may or may not” have been carried out on behalf of a third party or parties.²⁷ OMCT calls upon UBS, as a leading financial institution operating in the global market, to lead by example in establishing a more transparent system of accountability, assessing the human rights and environmental impact of potential investments and assuming responsibility for investments in activities that breach international law and violate human rights.

Requested actions

*Please write to the **Government of Bangladesh** asking it to:*

- Instigate a thorough independent investigation into the human and environmental impact of the Phulbari coal mine project, ensuring the full and informed participation of all local communities. Make the findings of this investigation available in a public report (including appropriate language versions) and abide by the recommendations of this report. Request assistance from the UN Office of the High Commissioner for Human Rights to help ensure that the investigation is in conformity with international standards.
- Impose a moratorium on any other open-pit mining in Bangladesh, as initially announced on 31 August 2006, until the full impact on human rights and the environment of this activity has been assessed.
- Fully respect international human rights standards in any subsequent mining activity at Phulbari or elsewhere. This includes engaging in meaningful prior consultation with affected populations, ensuring that they are fully informed of the project proposals and

²⁴ A/HRC/4/32, 27 February 2007

<http://daccessdds.un.org/doc/UNDOC/GEN/G07/110/99/PDF/G0711099.pdf?OpenElement>

²⁵ UN Declaration on the Rights of Indigenous Peoples - Article 10,

<http://daccessdds.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf?OpenElement>

²⁶ as of 15 November, 2007

²⁷ see <http://www.banktrack.org/index.php?show=news&id=138>

their own rights in this regard, and providing fair and adequate compensation for loss of land, housing or livelihood where displacement is unavoidable. Ensure in all such cases an adequate and appropriate resettlement programme.

- Ensure that the proposed coal policy review strictly adheres to international human rights standards and to international principles relating to forced evictions and indigenous peoples.
- Lift the restrictions on public demonstrations imposed under emergency rule and take all necessary steps to prevent future episodes of violence by police and security forces against persons defending their human rights.

*Please write to **Global Coal Management Resources Plc** asking it to:*

- Suspend activities in Phulbari until a thorough, independent and fully-consultative investigation into the proposed project's human and environmental impact has been conducted and abide by the recommendations resulting from this investigation.
- Fully respect the land rights, resources and livelihood of all local communities affected by any subsequent mining activity, and provide fair and adequate compensation wherever appropriate.
- Take all necessary measures to minimise the environmental impact of mining activities and avoid the pollution of watercourses.
- Comply fully with national laws and international human rights standards in all aspects of its activities, in particular as regards the adverse effects of these activities on indigenous and local communities. Only carry out operations subsequent to a full human rights impact assessment, and having fulfilled, *inter alia*, the legal requirement to engage in meaningful prior consultation with persons affected.

*Please write to **UBS, RAB Capital and Barclays** asking them to:*

- Call for a thorough independent investigation into the human and environmental impact of the Phulbari coal mine project with the meaningful input of local communities.
- Use their financial influence in Global Coal Management Resources Plc. to ensure that the company abides by the recommendations issuing from the independent investigation and to make certain that it complies fully with national laws and international human rights standards.
- Carefully evaluate the impact of their current investments on the enjoyment of human rights around the world, and include a clear human rights impact assessment in future investment decisions.
- Promote greater transparency in their financial transactions.

*Please write to the **Asian Development Bank** asking it to:*

- Recognise the discontent of the majority of the local population at the manner in which the preparatory phases of the Phulbari project have been conducted and insist on the production of a comprehensive human rights and environmental impact study with the full and informed participation of all local communities as a fundamental condition for financial support. Continue to monitor the human rights situation in Phulbari and surrounding sub-districts should the project be approved.

OMCT also asks the UN Special Rapporteur on the human rights and fundamental freedoms of indigenous people, the UN Special Representative on the issue of human rights and transnational corporations and other business enterprises, and the UN Special Rapporteur on adequate housing to monitor closely developments as regards the Phulbari coal mine project.

List of addresses

Government of Bangladesh and other Bangladeshi institutions
[...]

Please also write to the Bangladeshi Embassy in your country.

The Mining Company
[...]

Financial Interests
[...]

The Asian Development Bank
[...]

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.

Geneva, 21 December, 2007

OMCT ACTION FILE (PHL 121207.ESCR)
Addressing the economic, social and cultural root causes of violence

Your action is called for in the Sibuyan Island case

Mining activity on Sibuyan Island, Romblon Province, the Philippines, must be halted to prevent further killings and violence

The peaceful opposition by local communities and indigenous people to mining that violates their rights and endangers their way of life on the Filipino Island of Sibuyan has been met with violence resulting in the killing of some 17 persons, including the recent fatal shooting of the leader of a protest movement by a security guard of the Sibuyan Nickel Properties Development Corporation on 3 October 2007.

Respect for the rights of local communities inscribed in Philippine law, notably the 1997 Indigenous Peoples' Rights Act, has been overridden by the application of the 1995 Mining Law designed to promote foreign investment. This has resulted in many illicit mining activities and increased opposition of the populations directly concerned.

To prevent further violence and killings, the International Secretariat of the World Organisation Against Torture (OMCT) calls on the **Government of the Philippines** to halt mining activities on Sibuyan Island and to establish an independent commission to review respect for the rights of the local population, to seek ways to protect their rights in the future. OMCT recommends calling on the UN Special Rapporteur on the human rights and fundamental freedoms of indigenous people to assist the independent commission.

OMCT also calls on **mining corporations** and their partners and owners to carry out their activities in strict respect for the human rights - economic, civil, cultural, political and social - of the populations affected by their activities and establish control mechanisms that ensure the respect for those rights and ongoing dialogue with the populations concerned.

OMCT further calls on the **European Union** to ensure human rights are respected in the implementation of the 2007-2013 EU-Philippines Country Strategy Paper.

This report has been prepared in close consultation with Philippine non-governmental organisations.

The mining situation on the island

Sibuyan Island is an island in the Romblon Province, south of Manila, in the Philippines. The island enjoys global importance thanks to its flora and fauna, including the fact that 33 per cent of the island (44,500 hectares) is covered by forest and has been declared a national park. The island has a population of more than 50,000 inhabitants and is the home of the Sibuyanons Mangyan Tagabukid indigenous group of some 1,500 individuals living in two separated areas. Agriculture and fishing are crucial sources for their economic development.²⁸

The first mining establishment on the island was approved in July 2006. Recently, the Australian company Pelican Resources (PRL),²⁹ under the guise of small-scale mining

²⁸ <http://www.cmln-sea.org/nations.php?id=21>

²⁹ <http://investing.businessweek.com/research/stocks/snapshot/snapshot.asp?symbol=PEL.AX>

operations, established a large-scale nickel mining plant on the island.³⁰ The result is a joint venture with the Sibuyan Nickel Properties Development Corporation, a consortium of mining companies. Furthermore, one of the world's largest mining companies, BHP Billiton, has secured an agreement with the holders of the project that will supply 500,000 tones of laterite nickel per annum. The agreement will initially last for 5 years and with the possibility of a an extension of further 8 years.

The liberalization policy undertaken by the Government of the Philippines is aimed at increasingly attracting foreign investment and the 1995 Mining Code was conceived for this specific purpose.³¹ Specifically, the Mining Code allows greater foreign ownership, and provides for repatriation of profits and tax breaks in favour of international mining companies. Indeed, it was described by the *Mining Journal* as “among the most favourable to mining to be found anywhere”.³² Foreign companies themselves were invited to help draft the law during a workshop held on the occasion of the 1993 Pan Asian Mining Congress.³³

According to the Island's residents, up to 6 rivers would be affected by the new mining investments; in this respect, indigenous peoples in the island will be directly affected, although they hold a certificate of ancestral domain title covering almost 20 per cent of the island.³⁴ Last year 8,000 people marched to the mining site to express their disagreement.³⁵

The Sibuyanons Against Mining Movement also reports that a further 13 mining sites have been planned on the island.³⁶ Many of the residents of the island are opposing the projects.³⁷ A report of a fact finding mission conducted in August 2006 and led by the British Member of Parliament and former Minister, Ms. Clare Short,³⁸ highlighted that provincial government and the companies involved are ignoring the needs of local communities. The mission pointed out that the mining projects are taking place with little or no public consultation, and despite the protests and the opposition of the majority of the Island's inhabitants to such projects.³⁹

Following the recent violent events, including the case in question, residents of Sibuyan Island and other groups are now demanding the withdrawal of mining operations and the removal of all permits to explore and mine on Sibuyan. The people of Sibuyan are afraid that private security guards will use force and violence again in the future.⁴⁰ Indeed, as reported by

³⁰ http://www.manilastandardtoday.com/?page=felMaragay_oct29_2007

³¹ <http://www.austrade.gov.au/Mining-to-the-Philippines/default.aspx>

³² <http://www.newint.org/issue299/light.htm>

³³ http://www.piplinks.org/indigenous_rights/indigenous_rights.htm

³⁴ “Mining in the Philippines : Concerns and Conflicts (Report of the Fact Finding Mission, July-August 2006)” http://www.iucn.org/themes/ceesp/Wkg_grp/Seaprise/Mining%20in%20the%20Philippines%20-%20Concerns%20and%20Conflicts.pdf

³⁵ http://www.alyansatigilmina.org/index.php?option=com_content&task=view&id=185&Itemid=37

³⁶ <http://www.minesandcommunities.org/Action/press1670.htm>

³⁷ http://www.manilastandardtoday.com/?page=felMaragay_oct29_2007

³⁸ The Fact Finding mission was organized by: CEESP (Commission on Environmental, Economic and Social Policy), the Irish Centre for Human Rights, the Society of St. Columban , and PIPLinks (Philippines Indigenous Peoples Links). On 25 January 2007, the former UK Minister for International Development, Clare Short, currently Member of the UK Parliament, has launched a critical report on the destructive mining practices in the Philippines, following a fact-finding mission, led by the UK MP, in the Philippines, in July -August 2006.

³⁹ “Mining in the Philippines : Concerns and Conflicts” (Report of the Fact Finding Mission, July-August 2006) http://www.iucn.org/themes/ceesp/Wkg_grp/Seaprise/Mining%20in%20the%20Philippines%20-%20Concerns%20and%20Conflicts.pdf

⁴⁰ “Murder in paradise: green groups in arms”. *The Inquirer*, 6 October 2007

the Filipino NGO Kalikasan and mentioned above, so far 17 killings related to the people's opposition to mining projects in their respective areas have taken place.⁴¹

The killing of the anti-mining activist

OMCT has learned that on 3 October 2007, hundreds of anti-mining activists were protesting in Sitio Olango in Barangay España, San Fernando, Sibuyan Island. The protest was aimed at opposing the mining activities in the area; during the demonstrations Armin Marin, one of the activists, was killed by a gunshot. Marin, 42 years old, was a former member of the environment group WWF-Philippines and a municipal councillor of San Fernando town in Romblon.

Reportedly, Mario Kingo, a member of the private security guards of Sibuyan Nickel Properties Development Corporation, was inside the company jeep holding a gun. Following a heated confrontation with the security guards, Marin, who was leading the protest, was shot in front of the temporary office of the mining firm.⁴²

The dynamics of the killing are tainted by contradictions and conflicting versions.

Police filed a murder case against Mario Kingo; according to this report, Kingo claimed self defence, explaining that when driving the firm's jeep, the path was obstructed by the rally held by Marin and other protesters. The gun used by Kingo - a 38 caliber - was then sequestered, and it was subsequently found that two bullets had been used. Witnesses say that they heard three gunshots.⁴³ According to the version of the events advanced by the Sibuyan Nickel Properties, Marin died accidentally, and Kingo was attacked by the rally's participants. Conversely, WWF, quoting witnesses, stated that "the jeep driver held Armin with his left hand, while he pointed a gun at the councilor's mouth with his right hand".⁴⁴ The police regional director, Louie Palmera, stated that Kingo was also charged with contravening the gun ban that had been established by the Commission on Election.⁴⁵

Irrespective of the exact dynamics of the event, OMCT expresses its serious concern that an individual engaged in a legitimate and peaceful protest was killed by a firearm, all the more since the killing occurred during the above mentioned gun ban.

Legal context

Indigenous peoples' rights are protected and guaranteed by the Filipino law. Indeed the 1997 Philippines' Indigenous Peoples' Rights Act (IPRA), is shaped on the provisions of the draft of what is now the UN Declaration on Indigenous Peoples' Rights. Undeniably, on paper, IPRA provides for the free, prior and informed consent of indigenous peoples; furthermore, it foresees mechanisms to halt projects that do not have the explicit consent of the communities they affect. However, in concrete terms, these provisions are systematically undermined by, *inter alia*, the 1995 Mining Code, which in many cases offers mining permits on those indigenous lands in theory protected under the IPRA. Indeed, the Mining Code hinders the proper application of the IPRA.

⁴¹ <http://bulatlat.com/2007/10/green-groups-condemn-killing-anti-mining-advocate-romblon>

⁴² <http://www.infomine.com/news/headline/welcome.asp?NewsID=69339>

⁴³ http://www.alvansatigilmina.org/index.php?option=com_content&task=view&id=185&Itemid=37

⁴⁴ http://newsinfo.inquirer.net/inquirerheadlines/nation/view_article.php?id=92896

⁴⁵ The Commission for the Elections established a gun ban in view of the Synchronized Barangay (village) and Sangguniang Kabataan (youth council) elections on the forthcoming 29 October 2007. The Philippine National Police (PNP) is the competent authority for the implementation of the ban.
http://www.comelec.gov.ph/announcements/resolutions/2007/res_8298.html

The British NGO Survival International described the 1995 Mining Code as “the major current threat to the future of tribal people in the Philippines”. Mining activities not only have a high environmental impact, but also represent, for the poorest people of the country, a threat to their livelihood and lands.⁴⁶ OMCT wishes to draw the attention to the provisions of the Mining Code that are of particular concern in this respect:⁴⁷

- 100% of the foreign ownership is allowed (previously there was a limitation up to 40%).
- A corporation may claim an area up to 200 Blocks (1 block = 81 hectares) onshore and up to 400 block offshore, while individuals face the restriction of 20 blocks in one province and 40 within the country.
- Companies can repatriate all profits and are guaranteed against expropriation by the State. Tax holidays are allowed.
- The Government commits itself to ensure the removal of all obstacles to mining, including settlements and farms.

The implementation of the Mining Code is also in contradiction with Section 16 of Article II of the 1987 Constitution of the Philippines; “The State shall protect and advance the right of the people to a balanced and healthy ecology in accord with rhythm and harmony of nature”.

Indigenous peoples communities and organisations have been struggling for their socio-economic rights for many years. However, due to the lack of political influence, as well as the failure of the competent agencies to apply the law, cases are repeatedly decided in favour of mining companies. In addition, not all communities are aware of their rights and their remedies; many of them lack legal means to file a complaint. In many cases companies and government bodies have claimed they met the requirement of free and prior consent, however, later investigations showed that the majority of the populations affected opposes the mining activities. In this respect, government’s agencies continue to fail to register or record opposing positions and these consequently remain unacknowledged.⁴⁸

Mining activities’ impact on economic, social and cultural rights

OMCT is concerned that, even though on paper, law in the Philippines defends indigenous peoples’ economic, social and cultural rights, mining still represents a concrete threat to indigenous peoples’ lands, since many mineral deposits lie on indigenous territories, and hence to their livelihoods and well being.

OMCT is also concerned that economic policies aimed at promoting investment in mineral extraction are frequently neither balanced with the human rights of communities involved, nor are in line with the right to basic necessities such as clean air, safe water and unpolluted soil. The absence of adequate protection leads communities to struggle for their rights. Indeed, communities resist development projects that destroy their traditional economy, community structures and cultural values. This, in turn, can provoke violent reactions by security forces hired by mine owners against the objecting communities, including harassment, ill-treatment, arbitrary arrest, torture and forced disappearances.

OMCT, in particular, expresses its deep concern at the killing of Armin Marin that took place in a general situation of insecurity, protest and discontent resulting from the poor

⁴⁶ http://www.piplinks.org/development_issues/philippines_report.pdf

⁴⁷ <http://www.mgb.gov.ph/policies/Republic%20Acts/RA%207942.htm>

⁴⁸ “Breaking Promises, making profits” A Christian Aid and PIPLinks Report (2004)
http://www.piplinks.org/indigenous_rights/indigenous_rights.htm

implementation of mining policy in the Philippines. It is an example of the violent consequences of the mining policy of the Philippines and of the unscrupulous promotion of mining at the cost of the social, economic and cultural rights of people concerned.

Requested action

Please write to the Philippine authorities (see addresses in A below) asking them:

Regarding the killing of Armin Marin to:

- Shed light on the circumstances of the event and start and complete a prompt and genuine investigation aimed at achieving accountability;
- Provide remedies and redress for the family of the victim;
- Take all necessary steps in order to prevent similar cases occurring in the future.

Regarding the situation on Sibuyan Island and in the Philippines in general to:

- Halt immediately all mining activities on the island until procedures are in place to ensure respect for the human rights of those living on the island;
- Establish an independent commission to review respect for the rights of the local population in connection with mining projects and to seek ways to protect their rights in the future and consider calling on the UN Special Rapporteur on the human rights and fundamental freedoms of indigenous people to assist the independent commission;
- Stop issuing mining licenses until adequate and viable legislation, along with monitoring mechanisms to protect the environment and the economic, social and cultural rights of the indigenous peoples and others concerned have been established;
- Enforce the requirement of the free, prior and informed consent of affected communities, as provided by the IPRA, and investigate cases where this obligation has been violated, neglected or inadequately respected;
- Revise the 1995 Mining Act or draft alternative legislation on mining policy and prepare the revision or new legislation through a process that ensures the effective participation of the communities that will be affected, including indigenous peoples;
- Ensure that an equitable share of the revenues of mining projects go to the local communities concerned, once the community itself has expressed clear and unquestionable consent;
- Ensure respect for human rights, including labour rights, women's rights and property rights and ban the involuntary resettlement of people linked to mining operations.

Please write to the mining corporations and their partners and owners and the Philippines mining association (see addresses in B below) asking them to:

- Carry out their activities in strict respect for the human rights - economic, civil, cultural, political and social - of the populations affected by their activities, with particular concern for the rights of indigenous peoples as set forth in United Nations instruments;
- Establish mechanisms to ensure the respect for those rights that guarantee an ongoing and structured dialogue with the populations concerned;
- Publish periodic reports on measures taken to ensure respect and to promote dialogue with the concerned populations.

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 these issues. Please refer to the code on the cover page in contacting us on this matter.

OMCT will be following-up and reporting on the responses to the recommendations contained in this Action File.

Addresses

A. Philippine authorities

[...]

B. Mining corporations and their partners and owners and the Philippines mining association

[...]

Please also write to the Embassy of the Philippines in your country.

Geneva, 12 December 2007

OMCT ACTION FILE: SDN 301107.ESCR
SUDAN: ONGOING VIOLENCE AGAINST COMMUNITIES RESISTING DAM
CONSTRUCTION IN THE NORTHERN NILE VALLEY

The construction of the Merowe and Kajbar Dams in Northern Sudan must be suspended to prevent further killings and violence

The construction of two large-scale hydropower dams at Merowe/Hamadab and Kajbar in the Northern Nile Valley in *Sudan* has led to repeated violent clashes between local communities and security forces and resulted in a number of civilian deaths.

The International Secretariat of the World Organisation Against Torture (OMCT), on the basis of information received from the Sudan Organisation Against Torture (SOAT), a member of the SOS-Torture Network, condemns these events and expresses its concern that violent episodes will continue or, indeed, intensify, so long as government policy concerning these infrastructure projects disregards their impact on the economic, social and cultural rights of the communities affected.

In the light of events highlighted by SOAT, OMCT also expresses grave concerns at the efforts of the Sudanese authorities to suppress community protest and at their ongoing intimidation and harassment of community members opposed to the projects. The fact that fundamental issues of concern for communities have not been adequately addressed creates a real risk of radicalisation of some community members and of their taking up arms.

At the heart of the disputes between local groups and government authorities lie community concerns around the right to an adequate standard of living, to adequate housing and to fair compensation for the houses and fertile agricultural lands they must leave to make way for the reservoirs. Local communities are further concerned about the lack of transparency in the planning process. Construction of the dams is coordinated by the Dam Implementation Unit (DIU) which, it is reported, often takes key decisions unilaterally, neither consulting nor informing the communities affected. Offices of the DIU have been repeatedly targeted for violence by local communities.

To prevent further violence and killings, OMCT calls upon the *Government of Sudan* to suspend the Merowe and Kajbar hydro-electric projects until their impact upon the human rights of the communities affected have been independently assessed. It also calls upon the Government to fully respect the human rights of protesters and ensure that force is not employed to suppress legitimate protest, and to cease forthwith the harassment and intimidation of community activist and others opposed to the projects.

Further, OMCT calls upon *States* involved in the projects to ensure that the work of their national companies does not negatively impact the human rights of the people affected by the dam developments.

The Merowe Dam

The Merowe Dam,⁴⁹ at Hamadab on the fourth cataract of the Nile in Northern Sudan, some 350km north of Khartoum, is currently the largest hydropower dam under development in Africa, at a reported initial cost of US\$1.2 billion.⁵⁰ The extensive foreign investment in this project reflects the improved creditworthiness of Sudan as a result of the country's oil exports. The project receives funding from the China Import Export Bank, the Arab Fund for Economic and Social Development, the Saudi Fund for Development, the Oman Fund for Development, the Abu Dhabi Fund for Development and the Kuwait Fund for Arab Economic Development. The main contractors involved in the project are: China International Water and Electric Corporation and China National Water Resources and Hydropower Engineering Corporation (for construction and hydromechanical works); Lahmeyer International, Germany (planning, project management and civil engineering); Alstom, France (generators and turbines); and Harbin Power Engineering Company and Jilin Province Transmission and Substation Project Company, China (transmission system extension). In Sudan, projects such as this are overseen by the powerful Dam Implementation Unit (DIU) a body directly accountable to the President, and one notorious for its lack of transparency. The DIU's brief extends to ensuring security in and around dam construction sites, and as such it enjoys the same powers in these areas as the national security and police forces.

The contracts for the Merowe Dam were signed in 2002 and 2003, and work began in early 2004. It is scheduled for completion in 2009, when it is estimated that the reservoir will cover an area of 476 square km.⁵¹ Construction of the dam requires the displacement of some 55 to 60,000 people who occupy small villages on the fertile banks and islands of the Nile. Traditionally, these small-scale farmers have derived their livelihood from growing millet, wheat and vegetables and cultivating date palms on the river banks, and have relied on the flooding of the Nile for irrigation and nutrients. Of the population affected by the dam, the Manasir make up some 68 per cent, the Amri account for 25 per cent, and the Hamadab represent about 7 per cent.

The Government of Sudan has identified resettlement sites for the affected communities and provided financial compensation. Relocation of the Hamadab community to the El Multaqah resettlement site – a desert location - was started as early as 2003, however opposition to the project grew when the first phase of resettlement began to reveal shortcomings. These included the level of compensation offered by the Government for loss of assets (and loss of date palms in particular), the provision of infrastructure in the new settlements, the poor fertility of the land in the resettlement area (the DIU has helped to clear sand, but the quality of the land remains poor) and the serious implications of this for the livelihoods of the displaced communities. A promised irrigation system, for which the Government had undertaken to provide a free supply of water for two years, was not operational.⁵²

⁴⁹ Merowe is a city about 40km downstream from the construction site.

⁵⁰ Bosshard, Peter and Nicholas Hildyard, "A critical Juncture for Peace, Democracy and the Environment: Sudan and the Merowe/Hamadab Dam Project. Report from a Visit to Sudan and a Fact-Finding Mission to the Merowe Dam Project 22 February-1 March 2005", International Rivers Network/The Corner House, May 2005.

⁵¹ Bosshard, Peter and Nicholas Hildyard, "A critical Juncture for Peace, Democracy and the Environment: Sudan and the Merowe/Hamadab Dam Project. Report from a Visit to Sudan and a Fact-Finding Mission to the Merowe Dam Project 22 February-1 March 2005", International Rivers Network/The Corner House, May 2005.

⁵² For further details see, Bosshard, Peter and Nicholas Hildyard, "A critical Juncture for Peace, Democracy and the Environment: Sudan and the Merowe/Hamadab Dam Project. Report from a Visit to Sudan and a Fact-Finding Mission to the Merowe Dam Project 22 February-1 March 2005", International Rivers Network/The Corner House, May 2005.

All these factors have seriously compromised the capacity of the Hamadab community to derive a livelihood from agricultural activity. Indeed, according to a survey conducted in early 2005 by the International Rivers Network (IRN), the poverty rate in villages increased subsequent to relocation because farmers were no longer able to produce sufficient produce to sell due to the quality of the land. Cultivation of vegetables is particularly difficult, with the result that diet has also been affected.

The Amri community faces a similar situation. By January 2007, just over half the Amri had been moved to Wadi El Muqadam in the Bayouda Desert, and they, like the Hamadab, have complained about the poor soil and the ineffectiveness of the irrigation system. Furthermore, there was reportedly no housing allocated to some 800 displaced families, with the result that they had to find shelter elsewhere. Indeed, the UN Special Rapporteur on adequate housing indicates that thousands of people in the Merowe area were relocated in 2006, and that some remain homeless.⁵³

The Manasir community is due for relocation at the end of 2007. This community rejected the relocation site proposed by the Government and has initiated a self-help project. In June 2007, community members began construction of two villages in an area chosen by them on the shore of the Merowe reservoir.

These relocation experiences have generated serious concerns among the affected communities, concerns that the Government has consistently failed to address. The democratically selected committees representing the Hamadab, Amri and Manasir communities have been sidelined by the DIU, resulting in a still greater sense of frustration. This – together with lack of information and consultation - has heightened tensions and provoked public demonstrations and even the threat to take up arms against the Government. The Government, in turn, has resorted to violent oppression of community protest and arbitrary arrest of community leaders.

Episodes of violence associated with the Merowe Dam development include:

- 29 November 2005: security forces attempted to arrest protesters and search houses on Sherri Island on the Nile, in the Manasir area. This led to scuffles, and the DIU offices in the area were set on fire. Large demonstrations against the dam authorities then took place on the island.⁵⁴
- April 2006: members of the Amri community were involved in violent clashes with security forces when the DIU attempted to carry out a long-delayed survey of relocation requirements. Three civilians were killed and 12 wounded on 22 April when the army moved into the Amri area and opened fire on a community protest against the survey. Subsequently the Government set up a committee to investigate the incident, but to date OMCT and SOAT are unaware of any information having been made available regarding its outcome.

⁵³ “UN Expert Urges Sudan to Respect Human Rights of Communities Affected by Hydro-Electric Dam Projects”, United Nations Press Release from Miloon Kothari, UN Special Rapporteur on Adequate Housing, Geneva 27 August 2007.

⁵⁴ reported by International Rivers Network and the Cornerhouse, “Urgent Call for a Negotiated Agreement To End the Violence in the Merowe/Hamadab Dam-Affected Areas”, 30 November 2005, www.irn.org/programs/merowe/index.php?id=051130appeal.html

- 7 August 2006: the authorities closed the gates of the Merowe Dam without warning and more than 100 Amri families from the island of Kouk and the village of Shakoura were forced to abandon their homes because of the rising waters. The affected families were temporarily left without food or shelter.⁵⁵
- March 2007: during a rally in the town of Abu Hamad, some members of the Manasir community reportedly announced that they would take up arms against the Government. One week later armed police moved into the Manasir area to arrest those who had called for armed resistance. Members of the community reportedly surrounded some 20 armed vehicles and police and held them hostage for over 24 hours until a provisional settlement with the authorities in Khartoum was reached.
- 29 March 2007: six Khartoum-based representatives of the Manasir community were arrested in the capital and detained by National Security in Kober Prison for almost two months without charge.
- 6 May 2007: students belonging to the Manasir community organised a demonstration in Khartoum to protest against the detention of the six community representatives. This demonstration was reportedly dispersed by police using teargas and rubber bullets.

The Kajbar Dam

The Kajbar Dam, another element in the Government of Sudan's strategy to develop the country's hydroelectric capacity, is budgeted to cost US\$200 million. The project, located on the third cataract of the Nile, some 650km north of Khartoum and 250 km west of the Merowe Dam at Hamadab, is co-funded by the Chinese and Sudanese governments, with China providing 75 per cent of financing. A further two dams are being planned between Kajbar and the Egyptian border (at Dal, on the second cataract of the Nile, and Shirake on the fifth).⁵⁶

The planning stage of the Kajbar Dam has been completed and construction is due to begin.⁵⁷ At least 10,000 persons belonging to the Mahas, a Nubian community living in more than 30 villages on the fertile land that flanks the Nile, are expected to be displaced as a consequence of this development. The Mahas are strongly opposed to the project and resist the idea of relocation. They, like other Nubians, also express concern that the project threatens important Nubian archaeological sites, in particular the ruins around the city of Kerma, the first Nubian capital. Opposition to the project is coordinated by the Popular Committee Against the Building of the Kajbar Dam, a group of democratically elected community representatives.⁵⁸

⁵⁵ "UN Expert Urges Sudan to Respect Human Rights of Communities Affected by Hydro-Electric Dam Projects", United Nations Press Release from Miloon Kothari, UN Special Rapporteur on Adequate Housing, Geneva 27 August 2007.

⁵⁶ Reliable sources indicate that the DIU started geotechnical studies on the site at Dal on completion of those at Kajbar.

⁵⁷ Difficulty in identifying the precise stage of the project exemplifies the lack of transparency on the part of the DIU.

⁵⁸ This Committee was established in the mid-1990s with representatives from 27 counties around Kajbar. It was re-activated in November 2006 after the DIU started preparatory works at Kajbar. In the last six months, two more Popular Committees Against the Kajbar Dam were established in the Dongla and Karma areas. On 26 November 2007 a meeting was held to establish a fourth Popular Committee in the Halfa and Sekoot areas after heavy equipment began to arrive at the site of the proposed dam at Dal. A further decision was taken to found a higher Popular Committee Against Building Dams in Nubian Lands on the basis of these four committees.

In preparation for the start of construction, the Kajbar area has been increasingly militarised, and an army camp has been established close to Sebu - one of the villages that would be submerged by the dam - in order to protect Chinese workers and machinery from violence.

As in the case of the Merowe Dam, there have already been a number of serious incidents associated with the project:

- 24 April 2007: a large demonstration against the Kajbar Dam was broken up by police who fired tear gas and live ammunition and used batons against protesters.
- 13 June 2007: security forces in Farraig Village opened fire on a 5,000-strong demonstration against the dam, killing four and seriously injuring 13 others. The National Intelligence Service subsequently carried out the arbitrary arrest of nearly three dozen Nubian leaders and at least five journalists, two lawyers and a university lecturer who attempted to travel to the area to cover the violence.
- Following the events of 13 June, more government troops were deployed in the area. Subsequently women have reported sexual harassment (both verbal and physical), and men have reported other forms of harassment, including having their water pumps thrown into the Nile.⁵⁹
- 20 July, 2007: Mr Osman Ibrahim, spokesperson of the Popular Committee against the Kajbar Dam was arrested in the early morning at his home in Farraig village. No warrant was presented for his arrest.⁶⁰ SOAT sources indicate that he was transported some 600km to the Dabak Prison in north Khartoum, where he was detained until 19 August.
- 27-29 August 2007: nine members of the Committee against the Building of the Kajbar Dam were arrested. Eight of these activists were released on 13 September 2007. On the same dates in August, a number of other members of the Committee – including Mr Osman Ibrahim - were arrested and shortly after released in a strategy described by SOAT as “continuing intimidation exercised by the security apparatus through a number of ‘brief’ arrests and detentions targeting members of the Committee.”⁶¹
- 17 November 2007: two independent journalists who denounced the abusive arrests of their colleagues following the shootings of 13 June in Farraig were detained in Obdurman Prison by a Khartoum court for 11 days.⁶²

As with Merowe, those who oppose the dam claim that communities were neither consulted on nor adequately informed about the construction of the dam. It is reported that when members of the Popular Committee Against the Kajbar Dam travelled to Khartoum in May 2007 to lobby and gather information on the project, it was not received by the DIU. OMCT is concerned that this disregard on the part of the Sudanese authorities for the views and opinions of those

⁵⁹ These incidents were reported by Rescue Nubia, “Kajbar Facts Sheet”, www.rescuenumibia.org/beware.html

⁶⁰ Sudan Organisation Against Torture, “New arrest following Kajbar dam incident”, Human Rights Alert: 23 July 2007.

⁶¹ Sudan Organisation Against Torture, “Sudan arrests Kajbar dam activists”, Human Rights Alert: 4 September 2007

⁶² See Urgent Appeal SDN 002/1107/OBS147 issued on 28 November 2007 by the Observatory for the Protection of Human Rights Defenders on the basis of information provided by SOAT.

communities affected by the development may lead to growing support for groups that advocate armed resistance and to a degeneration of the security situation in this part of the country, with serious implications for the civilian population.

Economic, social and cultural rights and violence

The UN Special Rapporteur on adequate housing, Mr. Miloon Kothari, has expressed deep concern at the situation of the communities affected by the projects in the Merowe/Hamadab and Kajbar areas.⁶³ In a statement issued on 27 August 2007, he indicated that large-scale forced evictions may be imminent in the Merowe/Hamadab area as water levels rise. Those affected have claimed that they received no warning that the level of the reservoir would be raised and that Government authorities have provided no assistance since their houses were destroyed.

OMCT and SOAT wish to lend their support to the position of the UN Special Rapporteur on adequate housing who has emphasised that these projects “cannot, according to international human rights instruments, under any circumstances, be planned and implemented without effective involvement of the affected populations and at the expense of the human rights of more than 60,000 people, including women, children and the elderly.”⁶⁴ The Special Rapporteur underlined that, given the opposition of the communities affected, moving forward with these projects in the present circumstances would lead to “large-scale forced evictions and further violence”.⁶⁵

Requested Action

i) Please support the UN Special Rapporteur on adequate housing by writing to the Sudanese Government (address list A) asking it:

- to take all necessary measures to ensure the safety and adequate housing of persons living in the area affected by the Merowe Dam.
- to facilitate access for human rights monitors to conduct an independent eviction-impact assessment mission, and to suspend the hydro-electric dam projects in Merowe/Hamadab and Kajbar until the results of these impact assessments are known.

Also ask the Sudanese Government:

- to fully respect the human rights of protesters and ensure that force is not employed to suppress legitimate protest.
- to cease the harassment and intimidation of community activist and others opposed to the dam projects.
- to defuse tensions in the affected areas by initiating meaningful mediation procedures and reducing the military presence.
- to ensure adequate and real representation of and participation by local communities in the projects should these proceed and, in particular, to furnish all necessary information

⁶³ See “UN Expert Urges Sudan to Respect Human Rights of Communities Affected by Hydro-Electric Dam Projects”, United Nations Press Release from Miloon Kothari, UN Special Rapporteur on Adequate Housing, Geneva 27 August 2007.

⁶⁴ “UN Expert Urges Sudan to Respect Human Rights of Communities Affected by Hydro-Electric Dam Projects”, United Nations Press Release from Miloon Kothari, UN Special Rapporteur on Adequate Housing, Geneva 27 August 2007.

⁶⁵ “UN Expert Urges Sudan to Respect Human Rights of Communities Affected by Hydro-Electric Dam Projects”, United Nations Press Release from Miloon Kothari, UN Special Rapporteur on Adequate Housing, Geneva 27 August 2007.

on these projects and provide appropriate fora in which community views can be expressed and taken into account.

- to address the concerns expressed by members of the affected communities with regard to compensation and relocation, and ensure that the projects present no threat to the enjoyment of community members' economic, social and cultural rights, including the right enshrined in article 11 of the International Covenant on Economic, Social and Cultural Rights to an adequate standard of living, including adequate food, clothing and housing, and to the improvement of living conditions.
- to give due consideration to the impact of the Kajbar Dam on the possibility of the Mahas community, and Nubians in general, to enjoy and have access to their cultural heritage.

ii) Please write to the Governments of China, Germany, France (address list B) and other States concerned asking them:

- to ensure that the work of their national companies does not - directly or indirectly - negatively impact the human rights of the people affected by the dam developments.

iii) Please write to the companies involved in dam developments in Sudan (address list C) asking them:

- to ensure that their activities do not - directly or indirectly - negatively impact the human rights of the people affected by these developments.

Addresses

List A: Government of Sudan

[...]

Please also write to the Embassy of Sudan in your country.

List B: Governments of China, Germany and France

[...]

Please also write to the appropriate embassy in your country.

List C: Companies involved in dam developments

[...]

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.

Geneva, 30 November, 2007

IND 041007.ESCR
VIOLENCE AGAINST AND HARASSMENT OF DALIT VILLAGERS INVOLVED
IN PEACEFUL PROTEST

The International Secretariat of the World Organisation Against Torture (OMCT) requests your **URGENT** intervention in the following situation in **India**.

Description of the situation

OMCT has received information from reliable sources regarding the situation of the inhabitants of **Kolathur**, a village located on coastal backwaters in the Chithambur Panchayat, Cheiyur Block of Kancheepuram District in Tamil Nadu State, India.⁶⁶

OMCT expresses its strong concern that, in attempting to speak out against the impact of an illegally-located aquafarm on their health and economic status, the villagers of Kolathur have been subjected to police violence and harassment and have had false charges of a serious nature brought against them by the owner of this farm. OMCT is also concerned that the villagers may be subjected to further harassment and violence should they continue to contest the legality of the aquafarm. Finally, OMCT expresses its concern that pollution from this aquafarm is compromising the villagers' full enjoyment of their economic, social and cultural rights, and specifically those to an adequate standard of living and the highest attainable standard of health.

The majority of the 4000 or so residents of the Kolathur village are *Dalits*.⁶⁷ The *Dalit* community has lived in Kolathur for over 4 generations. With a few exceptions, all the families of the village are landless. Men work as sharecroppers, or as seasonal daily wage earners in nearby salt pans or on farms. They and their families are therefore economically vulnerable to any allocation of cultivated land to non-agricultural purposes. Fishing shrimp and crabs in the backwaters surrounding the village has traditionally been used as a means to supplement agricultural activities, and most residents of Kolathur rely on both fishing and farming to sustain themselves. Fishing is carried out by the women of the village, who employ a technique that involves their partial immersion in the backwaters.

Land originally used by the villagers of Kolathur for sharecropping was sold by their landlords for development of the Chinna Aqua industrial aquafarm, which began shrimp production in 2004. This farm, located on the coastal backwaters that border Kolathur, discharges untreated wastewater from the ponds directly into these backwaters. During rains, water from the shrimp ponds spills over into adjoining agricultural land cultivated by the villagers. Villagers indicate that the shrimp farm has not only caused loss of agricultural productivity and salination of groundwater, it has also provoked a range of health complaints - such as itching, skin diseases and deteriorating eyesight - among the women who fish the polluted backwaters. In May 2007, an international fact finding team organised by the Pesticide Action Network Asia and Pacific (PAN AP), Tamil Nadu Women's Forum (TNWF) and the People's Coalition on Food Sovereignty (PCFS) visited Kolathur village. Medical doctors and experts on aquaculture who formed part of this Mission found that the skin and

⁶⁶ OMCT also acknowledges the support of People's Watch - Tamil Nadu, member of the SOS-Torture network, in the preparation of this appeal.

⁶⁷ The *Dalit* community is made up of the lowest castes in Indian society and constitutes an extremely vulnerable group that experiences severe discrimination throughout the country. While the caste system is now illegal under Indian law, it continues to exert a strong *de facto* influence on Indian society.

eye disorders experienced by the women who fish the backwaters were consistent with the effects of chemicals commonly used in and released from Indian aquaculture ponds.⁶⁸ The team also observed bright yellow effluent seeping from the aquaculture ponds into the surrounding backwaters.

The women of Kolathur not only face medical costs as a result of the health conditions produced by the polluted water, they are also able to spend less time fishing than in the past. They therefore catch less, sell less and have less money with which to buy food for their family. Moreover, the pollution is reported to have a direct impact on the number of crabs and shrimp living in the backwaters, making it still more difficult to make a living of any kind from these waters. The villagers express concern at the failure of the District Administration to investigate the impact of the shrimp aquaculture on their livelihoods and health or to take appropriate action.

In April 2005, after more than a year of petitioning and protesting against the shrimp farm, some 2000 villagers took steps to draw attention to their situation by blocking the high-speed expressway that flanks Kolathur. This action provoked a police baton charge in which villagers – including women - were beaten and verbally abused. The International Fact Finding Mission in 2007 reported that, “[r]ather than investigate the complaints of the villagers, the Police and District Authorities have used violence and harassment to suppress the local struggle.”

Shortly afterwards, the owner of the Chinna Aqua shrimp farm brought charges of attempted murder and poisoning the water of the aquafarm against 47 villagers from Kolathur. Specifically, on 13 June 2005, 17 villagers were charged with rioting and mischief by killing or maiming cattle, etc. (FIR U/S. 147 and 429). Seven villagers were additionally charged with threatening to cause death or grievous hurt, etc. (FIR U/S. 147, 429 and 506 IPC). A further thirteen villagers were not only charged with the above offences, but also had additional serious charges brought against them: rioting armed with a deadly weapon; voluntarily causing hurt; endangering life or the personal safety of others; house-trespass; and mischief causing damage to the amount of fifty rupees or more (FIR 147, 148, 323, 336, 448, 427, 429 and 506(2)). A number of villagers were also charged with abetment (109 IPC/3/BBB D). Mr P. Ravi, elected head of the *panchayat* (village government), stood accused in all cases.

As a result of the charges brought against them, the villagers have had to make regular appearances in Madurandagam Court. This incurs both direct legal costs and indirect costs associated with travel to and from the court and absence from work. In August 2007 alone, they had to appear in court on five different occasions (3, 10, 13, 24 and 27 August). On 15 September 2007, Judge Shanti of the Mudurandagam Court ruled that there was not sufficient evidence to support the allegations of attempted murder and poisoning of the shrimp ponds made against the villagers by the owner of Chinna Aqua. These charges were dropped and 47 villagers were acquitted. Other charges against 24 villagers remain.

⁶⁸ While women who work in the water consistently complain of skin problems, and some also mention problems with eyesight and urinary infections, an earlier fact finding mission, conducted in September 2006 and incorporating environmentalists, child welfare activists, human rights activist, advocates, professors and representatives of the Tamil Nadu Women’s Forum and Tamil Nadu Dalit Women’s Movement, stated that of 48 girls and 64 boys attending the local primary school (and hence not engaged in fishing activities), only one child was suffering any form of skin disease.

Background information

Shrimp aquaculture practices

Shrimp aquaculture has developed rapidly in India's coastal areas with concomitant concerns regarding both its environmental impact and its implication for those whose living and health is affected by this activity. In Tamil Nadu, it is estimated that 4,455 ha. of land have been developed for shrimp farming. In Andhra Pradesh, as many as 78,702 ha. are under shrimp production.⁶⁹

Shrimp farmers dig ponds close to the coast so they can fill them with a mixture of ocean water and freshwater, the latter normally drawn from boreholes. It is standard practice for the farmers to add pesticides and fertilizers to shrimp farm waters. The use of chemicals (for prevention or treatment of disease) and chemotherapeutants (as disinfectants) is discouraged under shrimp farming guidelines, while the use of antibiotics is strictly prohibited.⁷⁰ Clean water must be pumped into the ponds every day, while polluted water is evacuated. If the proper measures required by law are not taken, this waste water will go back into the ground or into surrounding water courses, with significant implications for the ecology of open water systems. The brackish water can also affect the growth of plants and trees and, indeed, the villagers of Kolathur have noted a decline in the productivity of the soil around the farm.

The legal context

In December 1996, the Indian Supreme Court outlawed shrimp aquaculture in the country's Coastal Regulation Zone (CRZ). CRZ Notification was issued in 1991 using the provisions of the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1986. It comprises coastline up to 500m from the high tide line (on the landward side) as well as the land between the low tide line and the high tide line. It also comprises land within 100 metres of estuaries, creeks and tidal-influenced water such as backwaters. The Supreme Court ruling ordered the demolition of illegal shrimp culture ponds before 31 March 1997 and instructed local police officials to enforce this direction. The Supreme Court instructed that, "Aquaculture industry/ shrimp culture industry/ shrimp culture ponds which have been functioning/ operating within the coastal zone as defined by the CRZ Notification [...] shall be liable to compensate the affected persons on the basis of the 'polluter pays' principle." It also prohibited any subsequent establishment of shrimp aquaculture ponds on agricultural land, mangroves, mud flats, salt pans and flood plains.

In order to oversee these rulings, the Supreme Court ordered the constitution of a specific authority: "The authority shall, with the help of expert opinion and after giving opportunity to the concerned polluters assess the loss to the ecology/environment of the affected areas and shall pay compensation to individuals/families who have suffered because of the pollution and shall assess the compensation to be paid to the said individuals/families. The authority shall further determine the compensation to be recovered from the polluters as cost of reversing the damaged environment." The Supreme Court further directed that "[...] any aquaculture activity including intensive or semi-intensive which has the effect of causing salinity of soil; or the drinking water of wells and/or by the use of chemical feeds increases shrimp or prawn production with consequent increase in sedimentation which, on putrefaction is a potential health hazard, apart from causing siltation turbidity of water courses and estuaries with detrimental implication on local fauna and flora shall not be allowed by the aforesaid authority."

⁶⁹ 2001 figures. Figures from the Guidelines for Regulating Coastal Aquaculture indicate a total of 150,000 ha under shrimp farming by the end of 2004, producing about 120,000 tonnes of shrimp per year.

⁷⁰ Guidelines for Regulating Coastal Aquaculture, Government of India, 2005, paras 11.3-11.7

In pursuance of the Supreme Court ruling, an Aquaculture Authority was set up by the Ministry of Environment and Forests in February 1997. The statutes of the Authority (which was reconstituted by an Act of Parliament in 2005⁷¹), stated that every application for registration of an aquaculture activity should be vetted by a district level committee, headed by the District Collector (the chief executive at district level), and a state-level committee headed by the Fisheries Secretary before being sent to the Aquaculture Authority for approval. One of the explicit functions of the Authority is to ensure that agricultural lands, salt pan lands, mangroves, wet lands, forest land, land for common village purposes and the land meant for public purpose shall not be used or converted for construction of shrimp culture ponds.

In 2005, a set of “Guidelines for Regulating Coastal Aquaculture” was issued under the Coastal Aquaculture Authority Act. These Guidelines incorporate mandatory elements, *inter alia* that shrimp farms: should not be located on agricultural land; should be located at least 300 metres beyond any village or hamlet with a population of over 500 persons; should maintain 100m distance from the nearest drinking water sources; and should not be located across natural drainage canals or areas for flood drainage. The mandatory guidelines also state that, if using common property resources like creeks, canals, sea etc, care should be taken that the shrimp farming activity does not interfere with any other traditional activity such as fishing.⁷² Finally, the Guidelines are explicit in the approach shrimp farm owners should adopt in case of community conflict:

*Shrimp farm owners/managers should respect the community rights and needs and in case of any conflicts arising always attempt to solve the problem in amicable ways for ensuring harmony in the community and sustainability of the shrimp farms. They should cooperate with the community and other sectoral users of the coastal resources, in common efforts for improving environmental conditions and community welfare.*⁷³

The status of the Chinna Aqua shrimp farm

The Chinna Aqua shrimp farm received a licence to operate from the Aquaculture Authority in March 2004. This licence was granted despite the fact that the aquafarm violates the 1996 Indian Supreme Court Ruling regarding the establishment of shrimp aquaculture ponds on agricultural land. Furthermore, the activities of the farm result in salinity of surrounding soil, have an impact upon local marine life and present a significant health hazard to the local population. All of these are grounds identified by the Supreme Court to prohibit aquaculture activity. The aquafarm also contravenes the 2005 mandatory guidelines on coastal aquaculture, most notably in that it is located on a floodplain, it discharges untreated effluents into the surrounding backwaters and damages traditional fishing activities.

The licence for the Chinna Aqua shrimp farm expired in 2007. Despite the farm’s clear lack of conformity with India’s aquaculture regulations, recent information indicates that the aquafarm continues to function.⁷⁴

⁷¹ In 2005, responsibility for the regulation of aquaculture, including environmental regulation, was moved to the Ministry of Agriculture.

⁷² Guidelines for Regulating Coastal Aquaculture, Government of India, 2005, para 14.9

⁷³ Guidelines for Regulating Coastal Aquaculture, Government of India, 2005, para 19.2

⁷⁴ Information as of September 2007

The economic, social and cultural rights of the villagers of Kolathur

OMCT is concerned that, in the context of the activity of the Chinna Aqua shrimp farm, the Government of India is failing to meet its obligations to protect the economic, social and cultural rights of the villagers of Kolathur, specifically by failing to take measures to prevent third parties from polluting the water in the areas.

Article 11 of the International Covenant on Economic, Social and Cultural Rights establishes the right to an adequate standard of living. The water around Kolathur is a crucial element in securing the livelihood of the villagers, and the depletion of the natural population of shrimp and crab compromises the villagers' ability to gain a living by work. Indeed, more generally, OMCT is concerned that economic pressure in India to convert agricultural land and mangroves to shrimp farming will add to the economic precariousness of many poor sharecroppers.

The right to an adequate standard of living also includes the right to food. In the case of Kolathur, the villagers have had their food sources reduced as a direct result of water pollution from the shrimp farm. The effluent from the shrimp farm, in causing salination of groundwater sources, has also compromised the villagers' right to water. This right entitles everyone "to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses."⁷⁵ Safe water should be free from hazardous substances that could endanger human health, and should be of a colour, odour and taste that is acceptable to users.

Furthermore, the pollution associated with the shrimp farm effluents and its effects on those who spend any length of time in this water compromise the villagers' right to enjoy the highest attainable standard of health (Article 12). Finally, under Article 2 of the International Covenant, everyone is entitled to enjoy the rights enshrined in this Covenant without discrimination. In the case of the villagers of Kolathur, however, their situation both derives from and is exacerbated by their socio-economic vulnerability as *Dalits*, their lack of political voice and the obstacles they face in obtaining justice as a result of discrimination.

Vulnerability to violence and harassment

Marginalisation and discrimination also lies at the root of the violence and harassment to which the villagers of Kolathur have been subjected. In the absence of effective channels of complaint and faced by inaction on the part of the responsible authorities, the villagers resorted to passive protest. This was met in turn by police violence and abuse. A number of villagers then had false charges brought against them by the owner of the shrimp farm. Bringing false charges, particularly against individuals belonging to marginalised or discriminated groups is a common form of harassment in India, and the Criminal Justice Administration System fails to address this issue sufficiently. The most serious charges against the villagers of Kolathur were dismissed in September 2007, however others are still pending. OMCT is concerned to ensure that the villagers of Kolathur, and other marginalised communities in similar situations, are no longer subjected to this form of treatment.

⁷⁵ Committee on Economic, Social and Cultural Rights, General Comment No 15 : The Right to Water, para 12 b.

Actions required

Please write a letter to the authorities in India urging them to:

- i) Dismiss all remaining unsubstantiated charges against the villagers of Kolathur and ensure that the villagers' costs in this regard are fully met.
- ii) Ensure that future pacific protest is met neither with police violence nor with false charges against the villagers.
- iii) Apply the 1996 Supreme Court ruling and the 2005 mandatory guidelines to the Chinna Aqua Shrimp Farm.
- iv) Authorise an independent assessment of the impact of the Chinna Aqua Shrimp Farm on the health and socio-economic wellbeing of the villagers of Kolathur and on the environment in which they live.
- v) Address all negative impacts of the farm on the villagers of Kolathur, provide appropriate compensation to those whose health and livelihoods have been affected by the illegally located farm and ensure that the villagers' traditional way of life is allowed to continue.

Furthermore, in light of the general concerns regarding the impact of the shrimp farming industry in India, please request the Indian authorities to:

- vi) Apply all relevant legislation regulating aquaculture, and in particular the 1996 Supreme Court ruling and the 2005 mandatory guidelines in all areas affected by aquaculture activities and ensure that the Indian Aquaculture Authority effectively enforces these regulations.
- vii) Stop all illegal shrimp farming operations.
- viii) Meet all its obligations under the International Covenant on Economic, Social and Cultural Rights, including the obligation that all economic, social and cultural rights are enjoyed without discrimination of any kind, including as to social origin, property, birth or other status.

Addresses

[...]

Please also write to the Embassy of India in your country.

Geneva, 4 October 2007

Kindly inform us of any action undertaken quoting the code of this appeal in your reply.