

Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and the Special Rapporteur on the rights of indigenous peoples

REFERENCE: AL
IND 4/2015:

26 March 2015

Dear Mr. Reddy,

We have the honour to address you in our capacities as Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and Special Rapporteur on the rights of indigenous peoples pursuant to Human Rights Council resolutions 25/17 and 24/9.

Further to an allegation letter from the Special Rapporteur on Indigenous Peoples dated 6 April 2009 (IND 5/2009) and your Government's response to it dated 24 June 2009, we wish to bring to the attention of your Government further information we have received, referred to events in the years since your kind response of June 2009, and regarding the ongoing construction of the Mapithel dam under the Thoubal Multi-Purpose Hydroelectric Project in the State of Manipur and related evictions, threatening the right to an adequate standard of living, including food and housing, and the way of living of members of several tribal communities. The information is pertinent given that construction is scheduled to be completed later this year (2015).

According to the information received:

The construction of the Mapithel dam over Thoubal River in the district of Ukhurul in Manipur was approved by the Planning Commission of the Government of India in May 1980. The construction work began in 1990 and it is reported that 80 percent of the construction has been completed so far.

Reportedly, the completion of the Mapithel dam will submerge 778 hectares of agricultural land and 595 hectares of forest land, which will lead to the submergence of six villages inhabited by 'tribal' communities, namely the Lumphong, Phayang, Chadong, Lamlai Khullen (now Ramrei), Lamlai Khunou (now Ramrei lower) and Lamlai Monbung villages. In addition, it will adversely affect other villages, notably the upstream villages of Shangkai Kuki, Zalenbung, Thawai Kuki, Thawai (now Thoyee) Tangkhul, Sharkaphung, Riha and the downstream villages of TC Pokpi, Nongdam Kuki and Nongdam Tangkhul. The

construction is considered to threaten the survival of approximately 10,000 inhabitants who will be forcefully displaced from their homes and land and deprived from their sources of livelihood, with 80 percent of the affected villages dependent on the paddy fields and surrounding forests for their subsistence. Reports suggest that the decision to build the dam was made without the free, prior and informed consent of the individuals and communities living in the villages that were going to be affected.

It is alleged that the provisions for resettlement and rehabilitation under the 1993 Memorandum of Agreed Terms and Conditions (MOATC) signed between the Government of Manipur and some village representatives are considered unsatisfactory and have not been fully respected. For instance, not all of the affected villages were covered by the MOATC, including downstream communities. The MOATC included terms for the transfer of the land owned by the communities including compensation, as well as conditions for the reconstruction of houses and joint identification of land for displaced families due to submergence. The MOATC provided that the named communities be compensated by 1995, together with the interest owed. However, compensation payments proceeded in March 1996, a year late, and in an inconsistent manner. This resulted in the inability of the affected communities to acquire alternative farming sites or sources of livelihood. Moreover, it is reported that the payment of interest on compensation amounts was refused by the Government. Reportedly, the value of the land has not been revised since 1993.

After widespread protests from the affected communities against the Government's resettlement and rehabilitation process, the government of Manipur established an Expert Review Committee in January 2008 composed of State authorities and experts, as well as village representatives. The Committee was tasked with reviewing the resettlement and rehabilitation plans and with assessing the socio-economic, environmental, health and cultural rights impacts of Mapithel dam. Allegedly, the Committee failed to conduct a holistic impact assessment of the Mapithel dam and the resettlement and rehabilitation measures have not been revised by the Committee hitherto. Information regarding the final report of this Committee has not been provided.

Furthermore, in February 2011, the Government of Manipur withdrew from the Expert Review Committee after seven rounds of talks with the affected communities, and constituted, in September 2011, a newly formed body named "Mapithel Dam Multipurpose Project Displaced Villages Communities (MDMPDVC)" with which the Government signed an agreement on rehabilitation measures, without consulting the affected villages. Also, an office memorandum of 13 June 2011 and a cabinet memorandum of 24 September 2011 on resettlement and rehabilitation issues were adopted respectively by the Irrigation and Flood Control Department (IFCD) and the Government of Manipur. It is reported that these memorandums distorted the situation of the affected peoples by limiting the resettlement and rehabilitation measures to certain villages while

disregarding others. In this regard, the Guwahati High Court issued a stay order on 25 April 2012 to delay the cabinet memorandum of the Government of Manipur and ruled that the agreement signed between the Government of Manipur and MDMPDVC is void.

In violation of this stay order, in September 2012, the Government of Manipur allegedly formed a "Joint Verification Team" composed of officials of IFCD, Deputy Commissioner of Ukhrul District and Tribal Department of the Government of Manipur, excluding village representatives. In October 2012, the Team, reportedly accompanied by security forces, forcefully commenced a verification process in order to identify households affected by the construction in the villages of Lamlai Khunou and Chadong, despite the protests of the members of the affected villages. It is reported that the verification process was conducted with the inclusion of fictitious names with some children coerced into impersonating couples, including persons who had never resided in the villages. Allegedly, the Government refused to provide a list of beneficiaries of resettlement and rehabilitation measures.

Moreover, the National Green Tribunal halted the project of the Mapithel dam on 20 November 2013 and is still studying the matter to decide whether the construction is in violation of national laws, such as the 1980 Indian Forest Conservation Act and the 2006 Forest Rights Act. The Ministry of Environment and Forest granted approval for the final Stage II Forest Clearance for Mapithel dam on 31 December 2013.

From January 2015, it is reported that the IFCD and the Government of Manipur started blocking the Thoubal River and filling up the Mapithel Dam reservoir. This has already led to the submergence of an extensive portion of the agricultural land, grazing ground, and forest areas of Louphon and Chadong villages, as well as the drying up of parts of the Thoubal river, immediately downstream of the Mapithel dam, such as in Tumukhong, Itham, Moirangpurel and further down in Thoubal District. Allegedly, there is a serious risk of water shortage and the villagers can no longer fish and collect sand-stone carried downstream by the river, both in upstream and downstream portions, which have been their main economic sources. Apparently, the ongoing filling up of the Mapithel dam reservoir has been undertaken with the deployment of security forces against the opposition of the affected villages.

Concern is expressed that the members of tribal villages along the Thoubal River have faced, and will continue to face, violations of their right to an adequate standard of living, including food and adequate housing, and their rights as indigenous peoples, as a result of the ongoing construction of Mapithel dam and the shortcomings of the resettlement and rehabilitation plans.

In connection with above alleged facts and concerns, please refer to the **Reference to international law Annex** outlining the applicable international human rights instruments and standards that we would like to recall.

Since it is our responsibility under the mandate provided by the Human Rights Council to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide details of any measures taken to ensure the enjoyment of the right to an adequate standard of living, including housing and food, and rights of indigenous peoples, in particular, for those individuals and communities facing involuntary resettlement as part of the construction of the dam and submergence of the villages.
3. Please provide details of the resettlement plans of the Government of Manipur. In particular please explain when and how many persons living in the affected villages have been, and will be, displaced from their lands and to which regions of the country. Please offer updates on the plans of the Government to resettle and by what means and particularly changes since 2009.
4. Please provide details of any national legislation, policies or programmes directly relevant to development-related involuntary resettlement. In particular, please provide information on the specific ways in which existing international standards on the right to adequate housing has been implemented in this context by the local, subnational and central governments.
5. Please provide full details of measures taken to ensure the right to information and meaningful consultation with the affected villagers and how their opinions and free prior and informed consent are reflected in the progress of the construction of the dam and the resettlement process. Please provide further information about the final report of the Expert Review Committee report and steps taken in follow-up to their work.
6. Please provide details as to what legislative or other authority the decision to proceed with the dam construction has been based upon. Please also provide details as to the reasons given not to comply with court orders about halting the construction of the dam.
7. Please provide information on any social and environmental impact assessment(s) of the Mapithel dam conducted by the Government of Manipur. Also please explain how the recommendations emanating from these instruments have been taken into account and incorporated in revised programmes and plans.

8. Please provide information on any other measures undertaken by the authorities since the previous communication sent by the Special Rapporteur on Indigenous Peoples on 6 April 2009.

We would appreciate a response within sixty days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Mr. Reddy, the assurances of our highest consideration.

Leilani Farha

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

Victoria Lucia Tauli-Corpuz

Special Rapporteur on the rights of indigenous peoples

Annex

Reference to international human rights law

In connection with the above concerns, we would like to remind your Government of its obligations under various international human rights instruments, in particular the International Covenant on Economic, Social and Cultural Rights to which India is a party since 10 April 1979, and more specifically article 11.1 recognizing the right of everyone to an adequate standard of living for himself and his family, including food and housing, and to the continuous improvement of living conditions. This article must be read in conjunction with article 2.2 of the Covenant which provides for the exercise of any right under the Covenant without discrimination of any kind.

The Committee on Economic, Social and Cultural Rights in its General Comment No. 4 has stressed that the right to adequate housing should not be interpreted in a narrow or restrictive sense such as merely having a roof over one's head; rather, it should be seen as the right to live somewhere in security, peace and dignity. This General Comment outlines the following aspects of the right to housing: (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy.

Furthermore, according to the Committee's General Comment No. 7 on forced evictions, paragraphs 15 and 16, procedural protections are essential in relation to forced evictions, including, among others, genuine consultation, adequate and reasonable notice, alternative accommodation made available in a reasonable time, and provision of legal remedies and legal aid. In paragraph 17, the Committee further emphasizes that where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.

We also wish to call your attention to the Basic Principles and Guidelines on Development-based Evictions and Displacement, prepared by a former Special Rapporteur on adequate housing, which provides guidance on the States' obligations before, during and after development-based evictions.

As the Special Rapporteur on adequate housing has underlined in her report to the Human Rights Council (A/HRC/28/62), subnational and local governments have fundamental responsibilities for implementing human rights, notably the right to adequate housing. Local governments have critical responsibilities not only with respect to the prevention of evictions but also for the implementation of positive measures required for the progressive realization of the right to adequate housing. Under international human rights law, human rights obligations extend to all levels of government. This means government authorities at all levels must exercise their authority consistently with the right to adequate housing. Local government is closest to community needs and therefore can play a central role in bringing to light the most critical housing needs and ensuring effective responses.

Pertaining to the rights of indigenous peoples, we would like to draw your Government's attention to the UN Declaration on the Rights of Indigenous Peoples, adopted by the Human Rights Council on 13 September 2007, in particular article 26 which stipulates that indigenous peoples have the right to the lands, territories and resources traditionally owned and occupied by them as well as the right to develop and control them.

We would also like to bring Your Government's attention to article 10 of the UN Declaration on the Rights of Indigenous Peoples 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".(art. 10).

In its General recommendation XXIII on the rights of indigenous peoples, the Committee on the Elimination of Racial Discrimination further reinforced the rights of indigenous peoples during its 51st session in 1997, HRI/GEN/1/Rev.7. The Committee called upon States to "recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories."