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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
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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 extreme poverty and human rights.

REFERENCE: AL Housing (2000-9) Poverty (1998-11)
IND 25/2012

21 December 2012

Excellency,

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 extreme poverty and human rights pursuant to Human Rights Council resolutions 15/8 and 17/13.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning **the potential impact that a proposed expansion of the East Parej Open Cast Coal Mine may have on the enjoyment of various human rights of affected communities (approximately 228 families) in Jharkhand state.**

According to the information received:

The villages Agarva Tola, Dudmitya Tola and Fakodih in the Ramgarh district, Jharkhand state, India, are located in the vicinity of the East Parej Open Cast Coal Mine, operated by Central Coalfields Limited, India.

According to reports received, on 26 October 2012, representatives of the mining company, Central Coalfields Limited, surveyed 70 households in the villages of Agarva Tola, Dudmitya Tola and Fakodih, for the purpose of acquiring their homes to facilitate the expansion of the existing mine. The residents were informed that their houses will be demolished within one month. Reportedly, two additional similar visits to these villages occurred subsequently.

Reportedly, these evictions will impact 228 families (and approximately 1200 persons). We are also informed that many of the affected families are farmers, pastoralists or indigenous peoples, who require access to land in order to sustain their livelihoods. Reportedly they did not receive any information about compensation and/or relocation options.

According to information received, over 1,000 people from surrounding villages have already been displaced in previous years by activities associated with the East Parej Open Cast Coal Mine. Reportedly, the affected households belong to marginalized communities, including scheduled tribes according to the Indian Constitution and Dalits. We are also informed that these communities have been resettled in sites which lack infrastructure, access to water, education and health services, and livelihood and employment opportunities. Reportedly, they have become increasingly impoverished since they have been evicted.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the applicable international human rights norms and standards and, in particular, to article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) – which India acceded to on 10 April 1979 – which states that “the States Parties to present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions” and requires States parties to “take appropriate steps to ensure the realization of this right.”

With respect to the right to adequate housing, the Committee on Economic, Social and Cultural Rights stressed in its General Comment No. 4 that the right to housing should not be interpreted in a narrow or restrictive sense such as merely having a roof over one's head; rather, it should be seen as the right to live somewhere in security, peace and dignity. With “due priority to those social groups living in unfavorable conditions,” the right to housing includes guaranteeing: (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. The Committee also added that “the right to housing should be ensured to all persons irrespective of income or access to economic resources.”

As stated in resolutions 1993/77 and 2004/28 of the Commission on Human Rights, forced evictions constitute gross violations of a wide range of internationally recognized human rights and large-scale evictions may only be carried out under exceptional circumstances and in full accordance with international human rights law. According to the General Comment No. 7 of the Committee on Economic, Social and Cultural Rights:

“15. Appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognized in both the International Covenants on Human Rights. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those

affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.”

“16. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. 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.”

In view of this, we wish to recall the existence of the Basic principles and guidelines on development-based evictions and displacement (contained in document A/HRC/4/18) that aim at assisting States in developing policies and legislations to prevent forced evictions at the domestic level. Your Excellency’s Government may find useful in the current circumstances the sections of the guidelines that focus on State obligations prior to, during and after evictions. Paragraph 60 notes in particular that “Cash compensation should under no circumstances replace real compensation in the form of land and common property resources. Where land has been taken, the evicted should be compensated with land commensurate in quality, size and value, or better.”

We would also like to draw the attention of your Excellency’s Government to the provisions of article 2(1) of the ICESCR, which obligates each member State to ensure the immediate satisfaction of, the very least, minimum essential levels of all economic, social and cultural rights, including: basic sustenance, essential primary health care, basic shelter and housing and basic forms of education, for all members of society (General Comment 3, para. 10).

In relation to the impact of business activities on human rights, we would like to remind your Excellency’s Government that corporations, as well as States, have specific obligations and responsibilities in relation to human rights. The Guiding Principles on Business and Human Rights (A/HRC/RES/17/31), unanimously endorsed by the United Nations Human Rights Council in 2011, are relevant to the impact of business activities on all human rights, including the rights to adequate housing and food, as well as on extreme poverty. As stated in principle 13, the responsibility to respect human rights requires that business enterprises avoid causing or contributing to adverse human rights impacts through their own activities, that they address such impacts when they occur, and that they must seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations. This corporate responsibility to respect human rights should be seen conjointly with the State duty to protect against human rights abuses within its territory and/or jurisdiction by third parties, including business enterprises. This requires that States take appropriate actions to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.

We also recall that “[w]hen investments involving large-scale transactions of tenure rights, including acquisitions and partnership agreements, are being considered, States should strive to make provisions for different parties to conduct prior independent assessments on the potential positive and negative impacts that those investments could have on tenure rights, food security and the progressive realization of the right to adequate food, livelihoods and the environment” (Guideline 12.10, Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, endorsed by the Committee on World Food Security on 11 May 2012). In this regard, we also refer to the guidance provided for the preparation of human rights impact assessments set out in the “Guiding principles on human rights impact assessments of trade and investment agreements” (A/HRC/19/59/Add.5).

It is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts summarized above accurate?
2. Have complaints been lodged by local communities?
3. Has a human rights impact assessment been carried out regarding the project to expand the East Parej Open Cast Coal Mine? If so, who undertook such an assessment and could you please provide us with the conclusions of the assessment? If any potential impacts were identified, were measures considered to prevent such impacts and provide adequate remedies before authorization was given to expand the mine? What alternatives were discussed in relation to the expansion of the mine?
4. Has there been any consultation with the persons threatened with eviction? If so, has this happened once, or in an ongoing manner? What have been the outcomes of any consultation processes?
5. What mechanisms have put in place to ensure transparency and access to information on the expansion project by those potentially affected as well as civil society in general?
6. What measures have been foreseen to ensure that the persons threatened with eviction will not become homeless? What has been foreseen in terms of relocation? If a site has been designated for the relocation, please provide details on the exact location, including details on the area and quality of land, access to public services and livelihood sources. If indigenous peoples will be relocated, please describe any measures to obtain their free and informed consent prior to such relocation.
7. What has been foreseen in terms of compensation, including alternative land commensurate in quality, size and value, or better, for those threatened with eviction?

We would be most grateful to receive an answer within 60 days. We undertake to ensure that the response of your Excellency's Government will be taken into account in our assessment of the situation and in developing any recommendations that we may make for your Excellency's Government's consideration pursuant to the terms of our respective mandates. Additionally, we undertake to ensure that the response of your Excellency's Government is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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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

Maria Magdalena Sepúlveda Carmona

Special Rapporteur on extreme poverty and human rights