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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.¹

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*.² 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 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.³ The team also observed bright yellow effluent seeping from the aquaculture ponds into the surrounding backwaters.

¹ OMCT also acknowledges the support of People's Watch - Tamil Nadu, member of the SOS-Torture network, in the preparation of this appeal.

² 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.

³ 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.

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.

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.⁴

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.⁵ 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

⁴ 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.

⁵ Guidelines for Regulating Coastal Aquaculture, Government of India, 2005, paras 11.3-11.7

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."

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 2005⁶), 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.⁷ 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.*⁸

The status of the Chinna Aqua shrimp farm

⁶ In 2005, responsibility for the regulation of aquaculture, including environmental regulation, was moved to the Ministry of Agriculture.

⁷ Guidelines for Regulating Coastal Aquaculture, Government of India, 2005, para 14.9

⁸ Guidelines for Regulating Coastal Aquaculture, Government of India, 2005, para 19.2

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.⁹

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." 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.¹⁰

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.

⁹ Information as of September 2007

¹⁰ 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

- Justice Rajendra Babu, Chairperson, National Human Rights Commission of India, Faridkot House, Copernicus Marg, New Delhi 110 001, Tel: +91 11 230 74448, Fax: +91 11 2334 0016, Email: chairnhrc@nic.in.

- Shri Manmohan Singh, Prime Minister of India, Prime Minister's Office, Room number 152, South Block, New Delhi, Fax: +91 11 2301 6857.

- Shri Shivraj Patil, Union Minister of Home Affairs, Ministry of Home Affairs, 104-107 North Block, New Delhi 110 001 India, Fax: +91 11 2309 2979.

- Sharad Pawar, Minister of Agriculture and Minister of Consumer Affairs, Food & Public Distribution, Room No. 120, Krishi Bhawan, New Delhi - 110001 India, Fax: +91 11 2338 4129 / 2338 8165.

- Justice K. G. Balkrishnan, Chief Justice of India, Supreme Court, Tilak Marg, New Delhi -1, Fax: +91 11 233 83792, Email: supremecourt@nic.in

- H.E. Mr. Swashpawan Singh, Ambassador Extraordinary and Plenipotentiary Permanent Representative to the United Nations (Geneva), Rue du Valais 9 (6ème étage), 1202 Geneva, Tel: +41 22 906 86 86, Fax: +41 22 906 86 96, Email: mission.india@ties.itu.int

- Mr. Dipak Chatterjee, Ambassador, Embassy of India in Brussels, 217 Chaussée de Vleurgat, 1050 Brussels, Belgium, Fax: +32 (0)2 6489638 or +32 (0)2 6451869

- Justice A.K. Rajan, Chair, Aquaculture Authority (Government of India), Shastri Bhavan Annexe, 26 Haddows Road, Chennai - 600 006, India, Fax : 91-44-8216552

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.