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Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante

Addendum

Communications to and from Governments*

* The present report is circulated as received.

Contents

I. Introduction

1. The present addendum to the report of the Special Rapporteur on the human rights of migrants contains, on a country-by-country basis, summaries of general and individual letters of allegations and urgent appeals transmitted to Governments between 1 April 2010 and 15 March 2011, as well as replies received between 11 May 2010 and 10 May 2011. Observations made by the Special Rapporteur have also been included where applicable.

2. The Special Rapporteur receives information alleging violations of the human rights of migrants from national, regional and international non-governmental organizations, as well as intergovernmental organizations. The Special Rapporteur responds to information received and considered to be reliable on alleged violations of the human rights of migrants, by writing to the Government and others actors concerned, either together with other special procedure mandates or independently, inviting comments on the allegation, seeking clarification, reminding them of their obligations under international law in relation to the human rights of migrants and requesting information, where relevant, on steps being taken by the authorities to redress the situation in question. The Special Rapporteur urges all Governments and other actors to respond promptly to his communications and, in appropriate cases, to take all steps necessary to redress situations involving the violation of the human rights of migrants.

3. The Special Rapporteur recalls that in transmitting allegations and urgent appeals, he does not make any judgement concerning the merits of the cases, nor does he support the opinion of the persons on behalf of whom he intervenes. The Special Rapporteur draws attention to the fact that the issues reflected in this addendum are not representative of the wide range of issues encompassed by the human rights of migrants.

4. Owing to restrictions on the length of documents, the Special Rapporteur has reduced when necessary the details of communications sent and received. To the extent possible, the Special Rapporteur continues to follow up on communications sent and to monitor the situation where no reply has been received or where questions remain outstanding.

5. During the period under review, the Special Rapporteur transmitted 25 communications to the Governments of 16 countries: Angola, Bangladesh, Egypt, France, India, Kuwait, Libyan Arab Jamahiriya, Mexico, Moldova, Myanmar, Nepal, Saudi Arabia, Sweden, Switzerland, Thailand and United Kingdom of Great Britain and Northern Ireland.

6. 13 responses to these communications were received to the communications transmitted by the Special Rapporteur. The Special Rapporteur regrets that some Governments failed to respond and urges them to do so, and thanks those which took the time and made the effort to provide replies, which are reflected in the present report.

II. Communications sent and replies from Governments

Angola

Communication sent

7. On 3 March 2011, the Special Rapporteur, together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on violence against women, its causes and consequences sent a letter of

allegation to the Government concerning the alleged mass deportations of large numbers of nationals to the Democratic Republic of the Congo (DRC).

8. According to the information received, over the last decade, there have been mass expulsions by Angolan authorities of migrants. It is estimated that in 2010, 25 778 migrants have been expelled from Angola (Congolese nationals and other African migrants), including 823 unaccompanied children, 975 malnourished children, and 946 pregnant women. These expulsions seem to be largely targeted at those involved in informal diamond mining (prohibited even for Angolan citizens) in Northern Angola, especially in the province of Lunda Norte but also in Malanje and Uije provinces. While some of the deportees did not have legal residence in Angola, others reportedly possessed residence permits. It was alleged that persons expelled from Angola have been victims of serious human rights violations committed by Angolan law enforcement and security officials in the expulsion process. These include sexual violence (in 2010, over 1357 cases of sexual violence have been reported), torture and other cruel, inhuman and degrading treatment.

9. It was further reported that most of the expelled persons from Angola were forcibly returned to the DRC. From 14 October to 5 November 2010, some 6,621 people reportedly arrived in two areas of the DRC's Western Kasai province, while 322 people arrived in the Tembo area of Bandundu province. According to reports received, from 20 to 26 December 2010 at least 673 expulsions have been registered upon their arrival by the Congolese DGM (Direction Générale de Migration), of whom 316 men, 331 women and 26 children. It was also alleged that physical mistreatment and sexual violence, including rape, by the Angolan military and police have accompanied some of the expulsions.

10. It was further reported that Angolan migration officials in civil service uniforms (la police de Défense des Frontières Angolaise, DFA, or "chacals") allegedly raided towns in Malanje, Lunda Norte and Uije identifying foreign nationals (men, women and children) based on their inability to speak Portuguese and the visibility of a vaccination scar (BCG vaccine administered only to Congolese in the 1980s to prevent tuberculosis). These Congolese and other migrants were allegedly taken to military detention centers (women in vehicles, men on foot) for a variable period of between 4 days to a few weeks (exact lengths of detention unverified). Migrants were arrested regardless of whether they possessed legitimate documentation confirming they were in regular stay, and many were not given the opportunity to inform relations of their arrest, detention and expulsion. Detainees were searched, beaten and then placed in underground and windowless cells; men, women and children were not separated. During the day detainees were subjected to forced labour (e.g. cutting of trees and fetching of water) and to sexual violence, including rape, at night. After detention, the Congolese were escorted, unbeknownst to the Congolese border officials, on foot through the bush by the Angolan military in small groups of 20-50 people. After reaching a remote border area of the bush, the officers reportedly fired gun shots into the air to incite the Congolese to disperse. Two cases of death were reported: one from a stray bullet and another from cardiac arrest following the dispersal.

11. It was also alleged that in the detention centers of Corva and Musuku, the detainees were stripped of their clothing and subjected to invasive anal and vaginal searches for diamonds and other objects of value. It was reported that out of the 322 people expelled, 99 women – 14 of whom were pregnant – (out of 119), 15-17 men (out of 150), and 2 girls (out of 33 boys and 22 girls) suffered sexual violence, including rape. Four women became pregnant and an unknown number may have contracted HIV/AIDS. Some women reported being gang raped by 7-10 men in one night. Pregnant women reported having to lie down in holes dug in the sand for their bellies before being raped. One woman reported being raped with her baby in the room, and reported another case where a woman was raped in front of her adolescent child.

12. It was reported that more recently, in December 2010, the Angolan security forces intervened several times in the Kalonda mines. It was alleged that in these incidents, the Angolan forces fired live bullets resulting in deaths. Reportedly, other persons drowned while attempting to flee by jumping into the Tshikapa river. It was also alleged that 629 people (369 men, 140 women and 120 children) had been detained for one week in small cells then expelled to DRC on 21 and 22 December 2010 from the Kabungu, Kandjaji, Mayenda, Kamako, Kabwakala, Kavumbu and Tshisenge border gates.

13. It was finally reported that there were at this moment 5000 people being detained in Angola awaiting deportation without due regard to the risk they face should they be returned to the Democratic Republic of Congo.

14. The Special Rapporteurs asked the Government of Angola for its observations concerning the accuracy of the alleged facts, the complaints lodged about the alleged violations including sexual and gender violence, the existing legal framework and implementation procedures applied to migrants in detention and those deported, the compatibility of these measures with international standards and steps that were taken with a view to halting further expulsions and the conditions in which these were conducted.

Reply from the Government

15. By letter dated 30 March 2011, the Government informed that an Inter-ministerial committee coordinated by the Ministry of Foreign Affairs and integrated by the Ministries of Home Affairs, Defense, Justice and the Office of the Attorney General of the Republic has been formed to look into the allegations of human rights violations by the National Army and police against citizens of the DRC. The Government mentioned that the final results of the investigations will be communicated as soon as the Inter-ministerial committee has completed its work.

Reply from the Government

16. By letter dated 12 April 2011 the Government of provided a non-official translation of a letter addressed on 22 March 2001 to the attention of the High Commissioner for Human Rights in which it informed that the President expressed concern about allegations of human rights violations in Angola during the process of repatriation of illegal immigrants to their countries of origin.

17. The Government further stated that repatriation of citizens in situations of illegal immigration in Angola is performed in accordance with laws in effect in the Republic of Angola, which application does not target specific groups of foreign citizens but rather only immigration control by Angolan authorities, within the context of preserving sovereignty and political/social stability.

18. Being attentive to the concern about the facts, the first step taken by the President was to establish a Multidisciplinary Commission assigned the task of on-site investigating of evidence regarding the allegations. The Multidisciplinary Commission visited the provinces of Luanda Norte, Cabinda and Zaire where, in conjunction with the pertinent local authorities, the actual situation was verified.

19. During the visit, the Multidisciplinary Commission held a meeting with the border authorities at the Kamaco Post of the Democratic Republic of the Congo (DRC), and determined that no facts exist that prove the allegations in your letter, but rather the condition of constant violations of the Angolan border by DRC citizens.

20. In other locations visited by the Commission, the authorities reported that they became aware of the allegations through official means and, with regards to cases of sexual abuse, they reported that they had only one isolated case of rape by a member of the armed

forces against a female DRC citizens in Luanda Norte, which was already addressed through the courts.

21. During the visit to the Province of Cabinda, the Commission also held a meeting with the border authorities at the Yema Post of the DRC, where likewise no evidence was detected. However, the authorities in Cabinda indicated that they were rather concerned about the high rate of illegal immigration from the Democratic Republic of Congo, which brings along with it criminal acts and consequences that are harmful to the Angolan economy. They also reported that there have been cases of pregnant Congolese immigrants who want to give birth in public Angolan hospitals, where they end up by abandoning a large number of newborns.

22. The Government finally stated that it considered the allegations unclear and inaccurate, and that President would continue with the formalities until completion of the verification process that is expected to be performed this time with the presence of the Resident United Nations Coordinator in Angola, UN Agency representatives operating on site and the appropriate DRC authorities.

Observations

23. The Special Rapporteur thanks the Government for its replies and remains interested to receive further information on the measures taken in relation to the alleged perpetrators of the rape case in Luanda Norte

Bangladesh

Communication sent

24. On 8 April 2010, the Special Rapporteur, together with the Special Rapporteur on the right to food, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health sent a letter of allegation to the Government concerning the situation of unregistered Rohingya asylum-seekers, refugees and migrants in Bangladesh.

25. According to the information received, thousands of Rohingyas in Myanmar have sought refuge in Bangladesh and the majority resided in Cox's Bazar. 28,000 of these are recognized as prima facie refugees by the Government of Bangladesh, and live in official camps. However, an estimated 220,000 others remained unregistered and largely unassisted. Without official recognition, unregistered Rohingyas are not permitted to receive official relief. There were further reports of a spate of new arrivals that are forced to live as irregular migrants and are vulnerable to exploitation and abuse.

26. Unregistered Rohingya asylum-seekers, refugees and migrants in Bangladesh are victims of high levels of violence and attempts at deportation reportedly carried out by both state and non state actors. Violent attacks by law enforcement agencies against unregistered Rohingya asylum-seekers, refugees and migrants, who had settled outside the two official refugee camps in Cox's Bazar District, reportedly started on 2 January 2010. Allegedly, more than 500 Rohingyas were arbitrarily arrested in January; some of those arrested were pushed back across the Myanmar border and others were charged under immigration legislation and sent to prisons in Bangladesh. Police raids started in Cox's Bazar town, initially targeting Rohingya rickshaw pullers. In June and July 2009, local authorities were said to have demolished shelters and forcibly removed inhabitants in an attempt to clear a space around the perimeter of the official camp at Kutupalong.

27. Due to what appears to be a violent attacks on the Rohingya presence in the country, in the recent weeks around the time the communication was sent, had seen thousands of unregistered Rohingya asylum-seekers, refugees and migrants, moving into a makeshift camp (outside two official refugee camps in the Cox's Bazar district). Since October 2009, the makeshift camp had grown by 6,000 people, with 2,000 of these arriving in January 2010 alone. As the numbers swell, nearly 29,000 people were living in severely inadequate conditions with no infrastructure to support them, limited access to adequate nutrition [and to water and sanitation facilities, and therefore at serious risk of ill health].

28. While thousands of Rohingya are settled and have lived in the local community for many years, they were reportedly perceived as a burden on the already scant resources and viewed as a threat to the local job market as they provide cheap labor to employers. Their unpopularity is fuelled by the local media, and local politicians. According to one report, a xenophobic campaign had been being orchestrated by Anti-Rohingya Committees formed and allegedly funded by the local political elite, voicing their hostility to the Rohingya presence more loudly than ever and demanding that the Government take action against the Rohingya. Announcements had been disseminated by loudspeakers in villages and towns ordering the Rohingya to leave and also threatening locals harbouring them with arrest and prosecution. The local media act as a vehicle for anti-Rohingya propaganda.

29. Serious concerns were raised in relation to the impact of the violent attacks on the access to food of the residents of the makeshift camp. The Rohingya population in the makeshift camp is critically food insecure and a significant number of children suffer from acute malnutrition. According to the information received, factors contributing to this situation include a dramatic increase of the unregistered Rohingya population in the makeshift camps, a general lack of access to food relief rations and to livelihood opportunities as well as their inability to leave the camp for fears of being victims of ongoing violence against them. Further, access to food for the registered refugees in the adjacent Kutupalong refugee camp may also have been affected as they often share their meagre food relief rations with unregistered refugees.

30. The Special Rapporteurs asked the Government for its observations concerning the accuracy of the facts, the measures to protect migrants and to ensure humanitarian assistance in the makeshift camp, the long-term plans which have been developed for the inhabitants of these unofficial/makeshift camps, the measures taken to investigate, prosecute and provide reparations for victims of alleged incidents of violence targeting members of the Rohingya community in these districts, the measures taken in order to prevent the recurrence of such violent incidents, the measures which were being taken to curb the xenophobic campaign by local media and local politicians targeting members of the Rohingya community, the measures which have been taken by relevant authorities to solve the problem of food insecurity for the Rohingya community of the makeshift camp and to assure the availability of, and accessibility to, food for this population and the measures which were being taken to ensure that members of the Rohingya community have access to healthcare services, goods and facilities, given that their exclusion from such services may impair their enjoyment of the right to health.

Observations

31. The Special Rapporteur regrets not having received a reply from the Government regarding the above-mentioned communication.

Communication sent

32. On 15 October 2010, the Special Rapporteur, together with the Special Rapporteur on trafficking in persons, especially women and children, the Special Rapporteur on contemporary forms of slavery and the Special Rapporteur on the sale of children, child

prostitution and child pornography sent a letter of allegation to the Government concerning an estimated 70,000 child bonded labourers, who work in the so-called "rat mines" of Jaintia Hills, which is located in the North Easter State of Meghalaya, India.

33. According to the information received, an estimated 70,000 bonded child labourers from Nepal and Bangladesh work at the so-called "rat mines" of Jaintia Hills, Meghalaya State, India. The mines are reportedly known as such, because of the narrow and crude holes dug into the hills where only children can pass. It was estimated that about 40,000 children from Bangladesh and 30,000 children from Nepal work at the mines. In most cases, the children were allegedly purchased by middlemen or abducted or sold by gangs in Nepal and Bangladesh to the mining mafia in Meghalaya. The children were allegedly sent to the mines after their parents accepted money from middlemen engaged in child trafficking. The price for a child varies from 50 to 75 US dollars. It was claimed that everyday, trucks transporting coal to Bangladesh return with children, who are lured into the mining industry with the promise of better wages and living conditions. The children are in debt bondage situations, as they are not paid for their work in some cases so that they repay with their labour the price for which they were bought. In other cases, the children are given half wage compared to adults, which leave them with very little money to survive on as expenses for their good are deducted from their wages.

34. The working conditions at the mines were allegedly hazardous, unhygienic, cruel and inhuman. The children are threatened not to disclose their identity to anyone they meet and they have no freedom to move from the premises of the mines. The working hours are long and the children have no rest from the day break to the nightfall. They have no means to communicate with the outside world, let alone their families. The children are not provided with any safety equipment and are only given shovels or pickaxes to extract coal or limestone. Further, it appeared that deaths of children are common due to the unsafe working conditions at Jaintia Hills and often remain unreported. According to the information received, human skeletons were recovered beneath a pile of coal in the mine in Jaintia Hills and it has been verified that they were the remains of children who lost their lives due to suffocation in the mine shafts or in other accidents during the mining operations.

35. The information received also suggested that the children live in very poor conditions. They reportedly lived in huts made with plastic sheets and there are no proper sanitary facilities. There is a lack of safe drinking water and proper sewage system. Although many people fall ill due to the poor living conditions, there are no medical facilities available near the mines.

36. It was alleged that girls are also often bought by the owners of the rat mines and subject to sexual exploitation. They are exploited not only by mine owners, but also managers, other older workers and even truck drivers. There was also information suggesting that some children are trafficked further from the mines to the cities for sexual exploitation.

37. The Special Rapporteurs asked the Government for its observations concerning the accuracy of the alleged facts, the full details of any actions or investigations undertaken to identify the Bangladeshi children working at the "rat mines" and to verify their working conditions, the cooperation arrangements with the Indian authorities to facilitate the rapid identification of the Bangladeshi children working at the "rat mines", the details, and where available the results, of any investigation, judicial or other inquiries which may have been carried out in relation to individuals who are implicated in trafficking or selling the Bangladeshi children to the "rat mines" and keeping them in bonded labour, the current policies and the preventive and awareness-raising measures undertaken to prevent human trafficking, sale of children and sexual exploitation of children in Bangladesh and whether the victims or the families of the victims have access to adequate procedures of

compensation for damages from those legally responsible for the trafficking in children, the sale of children, sexual exploitation of children, and the use of bonded labour.

Reply from the Government

38. By letter dated 29 October 2010, the Government informed that the contents of the communication have been duly noted and forwarded to the concerned authorities in Bangladesh for necessary inquiry and actions.

Egypt

Communication sent

39. On 9 April 2010, the Special Rapporteur together with the Special Rapporteur on extrajudicial, summary or arbitrary executions sent a letter of allegation to the Government regarding the killing of three migrants on the Egyptian border with Israel.

40. According to the information received, the three migrants were shot dead by Egyptian border guards at the Sinai border. On 27 March 2010, two African migrants were reportedly shot as they attempted to cross the border. On 29 March 2010, a 26 year old Eritrean man was reportedly also shot as he attempted to cross the border. Two other migrants were injured in the same incident.

41. These killings are of particular concern as they appear to be part of a broader pattern of extrajudicial executions by Sinai border guards of African migrants, with 12 such killings reported to have already occurred in 2010. According to reports received, 69 migrants had been killed by border guards since 2007. Information received alleged that the Egyptian Government has failed to conduct investigations into any of these killings. The killings appear to be part of an attempt to stem the flow of illegal migrants across the border.

42. The Special Rapporteurs asked the Government for its observations concerning the accuracy of the facts, the details, and where available results, of any police investigation and judicial or other inquiries carried out in relation to the shooting of migrants at the Sinai border, the full details of any disciplinary action and prosecution undertaken with regard to police officers found responsible, whether compensation has been provided to the families of the victims, and what broader steps, if any, were being taken to address unlawful use of force by police.

Observations

43. The Special Rapporteur regrets not having received a reply from the Government regarding the above-mentioned communication.

Communication sent

44. On 8 December 2010, the Special Rapporteur, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on trafficking in persons, especially women and children sent an urgent appeal to the Government regarding the fate of approximately 260 migrants from Eritrea, Sudan and Ethiopia who were held hostage by “traffickers” in Sinai. 6 Eritrean hostages had been already murdered by these traffickers.

45. According to the information received, approximately 260 migrants from Eritrea, Sudan and Ethiopia had been held hostage for over a month in Sinai near the Israeli border. The information received suggested that the place of hostage is likely to be the city of Rafah near the Israeli border, and the migrants were reportedly held in purpose-built

containers. The hostages were allegedly held in extremely degrading and inhumane conditions. It was reported that they were bound by chains around their ankles, deprived of adequate food and given salty water to drink, and subjected to beating and ill-treatment by extreme methods, including the use of electric shocks.

46. It was reported that the traffickers were demanding a payment of US$8,000 per person as a condition of release and ongoing journey to Israel. On 28 November 2010, three Eritrean hostages had been reportedly killed by gunshot, after their family members confirmed that they were unable to make the payment to the traffickers. On 29 November 2010, another three Eritrean hostages had reportedly died after being beaten with sticks and tortured by the traffickers for attempting to escape. It was also alleged that nine hostages were seriously injured, ten suffered from serious diseases and there are several pregnant women among the hostages. It was alleged that while this case was reported to the police, they have not commenced any investigation or taken any action.

47. These allegations were reported in light of information suggesting that Sinai has become a major centre for people trafficking by highly organized crime syndicates. Reports indicated that migrants are often trafficked through Sinai desert to Israel, particularly for the purpose of commercial sexual exploitation. Migrants were also allegedly exploited in the hands of traffickers during their journey and subjected to violence and abuse, including rape, sexual assault, use of electric shocks, branding with hot metals and beatings. Concerns have been further raised that the migrants currently held hostage may include trafficked persons. In addition, it was concerned that despite the information indicating the existence of organized traffickers in Sinai, the law enforcement authorities allegedly failed to take any action to address this issue.

48. The Special Rapporteurs asked the Government for its observations concerning the accuracy of the alleged facts, the details, and where available the results, of any investigation carried out in relation to the migrants who were held hostages in Sinai as well as steps taken to ensure the safety of the hostages, the details, and where available the results, of any investigation carried out in relation to the alleged murder of the six Eritrean migrants and the details of any measures undertaken to combat and prevent crimes committed by traffickers in Sinai.

Observations

49. The Special Rapporteur regrets not having received a reply from the Government regarding the above-mentioned communication.

France

Communication envoyée

50. Le 23 avril 2010, le Rapporteur spécial, conjointement avec le Rapporteur spécial sur le droit à l'éducation et la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme a envoyé une communication concernant la situation de MM. Claude Didier et Rémi Riallan, directeurs d'écoles dans le département de l'Isère et de Mme Claudia Chiaramonti et de M. Colin Sanchez, directeurs d'écoles dans le département de Vaucluse, ainsi que sur la mise en œuvre du logiciel de données « Base-élèves premier degré» au sein de l'Education nationale. MM. Didier et Riallan ont fait l'objet d'une lettre d'allégations envoyée au Gouvernement de votre Excellence par la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme, le Rapporteur spécial sur les droits de l'homme des migrants, et le Rapporteur spécial sur le droit à l'éducation le 10 décembre 2009.

51. Selon les nouvelles informations reçues, le 30 mars 2010, à l'issue d'une réunion de la Commission administrative paritaire départementale, MM. Didier et Riallan auraient été démis de leurs fonctions de directeurs d'écoles par l'inspectrice d'académie de l'Isère suite à leur refus d'enregistrer les élèves de leurs établissements dans le fichier informatique Base élèves premier degré. Il est allégué que leur refus serait motivé par le fait que la Base élèves premier degré, créée par l'arrêté du 20 octobre 2008, serait contraire au droit des enfants et de leurs familles au respect de leur vie privée. Il fut également allégué qu'un blâme aurait été infligé à Mme Chiaramonti et M. Sanchez par l'inspecteur d'académie de Vaucluse pour les mêmes motifs.

52. Des craintes furent exprimées quant au fait que les retraits de postes de MM. Didier et Riallan et les blâmes infligés à Mme Chiaramonti et M. Sanchez soient liés à leurs activités non violentes de promotion et de protection des droits de l'homme, notamment du droit au respect de la vie privée. Des craintes furent également renouvelées quant à la conservation de données nominatives des élèves pendant une durée de trente-cinq ans, et du fait que ces données pourraient être utilisées pour la recherche des enfants de parents migrants en situation irrégulière ou pour la collecte de données sur la délinquance.

Réponse reçue du Gouvernement

53. Dans une lettre datée du 9 juillet 2010, le Gouvernement a donné les informations suivantes :

1. Rappel général concernant la « Base élève 1er degré » et la protection des données pouvant être considérées comme sensibles

54. La « Base élèves 1er degré » est un traitement de données à caractère personnel dont la finalité est d'assurer la gestion administrative et pédagogique des élèves du premier degré (enfants âgés entre 3 et 11 ans) et de permettre, après anonymisation, un suivi académique et national des statistiques et indicateurs.

55. Au niveau des écoles maternelles, élémentaires et primaires, la gestion administratives et pédagogique des élèves recouvre leur inscription, leur admission, leur radiation, leur affectation dans les classes, leur passage dans une classe supérieure.

56. Le traitement « Base élèves 1er degré » a fait l'objet, le 24 décembre 2004, d'une déclaration auprès de la Commission nationale de l'informatique et des libertés (CNIL), conformément à l'article 23 de la loi n° 78-17 du 6 janvier 1978 modifiée relative à l'informatique, aux fichiers et aux libertés, avant son déploiement à titre expérimental dans une centaine d'écoles de cinq départements au cours de l'année 2005.

57. Cependant, l'enregistrement dans « Bases élèves 1er degré » de données relatives à la nationalité de l'élève, à sa date d'arrivée en France, à sa langue et culture d'origine, ainsi qu'à ses besoins éducatifs particuliers, avait pu susciter, dans l'esprit de certains enseignants ou parents d'élèves, l'inquiétude que l'application soit utilisée à d'autres fins que la seule gestion des effectifs scolarisés.

58. Deux déclarations modificatives sont intervenues, les 19 février 2008 et 3 décembre 2008, pour tenir compte des craintes qui se sont exprimées à l'occasion de la mise en œuvre expérimentale de la version initiale de l'application « Base élèves 1er degré ». Ces inquiétudes n'ont plus lieu d'être puisque toutes les données évoquées au paragraphe précédent ont été supprimées de la base.

59. L'application ainsi modifiée, dans sa version définitive conforme à l'arrêté du 20 octobre 2008, a été généralisée fin 2008 à l'ensemble du territoire national.

60. Cet arrêté, joint, restreint les données enregistrées dans la « Base élèves 1er degré » aux seuls éléments suivants : l'identification et les coordonnées de l'élève et de ses

responsables légaux, ainsi que celles des autres personnes à contacter en cas d'urgence ou autorisées à prendre en charge l'élève à la sortie de l'école, la scolarité de l'élève (dates d'inscription, d'admission et de radiation, classe, niveau, cycle) et les activités périscolaires (garderie, études surveillées, restaurant et transport scolaire).

61. Il convient de noter que la CNIL a délivré au ministère de l'éducation nationale un récépissé, tant pour la déclaration nationale du traitement que pour les déclarations modificatives. Elle a, par ailleurs, effectué plusieurs vérifications sur le fonctionnement de la « Base élèves 1er degré » et fait figurer sur son site un « mode d'emploi » tendant à clarifier les informations qui circulent à son sujet, qu'elle-même qualifie de « plus ou moins exactes ».

62. Le Conseil d'Etat devrait prochainement confirmer la légalité du traitement au moins dans sa versions actuelle sur requête présentée par une directrice d'école et un parent d'élève. A ce titre, il convient de noter que le juge des référés du Conseil d'Etat a rejeté la demande de suspension de l'arrêté créant le traitement « Base élèves 1er degré » présentée par les deux mêmes requérants.

2. Observations sur les faits mentionnés

a) Les mesures prises à l'égard des directeurs d'école

63. Le Gouvernement confirme que, dans les cas où les directeurs d'école, mis en demeure de renseigner la « Base élèves 1er degré », ont persisté dans leur refus de se conformer à cette instruction, l'inspecteur d'académie compétent a pu prendre à leur encontre des décisions disciplinaires ou de retenues sur traitement pour service non fait.

64. En effet, la qualité de fonctionnaire des directeurs d'écoles publiques leur impose de respecter les dispositions de la loi n° 83-634 du 13 juillet 1983 modifiée portant droits et obligations des fonctionnaires et celles du décret n° 82-122 du 24 février 1989 modifié relatif aux directeurs d'école dont les fonctions, définies à l'article 2 de ce décret, recouvrent précisément la gestion administrative et pédagogique des élèves. Cette jurisprudence constante du Conseil d'Etat est bien entendu reprise par les tribunaux administratifs, notamment dans deux récents jugements, en date du 3 décembre 2009, du tribunal administratif d'Orléans (n° 0703052 et n° 0702611).

65. Ainsi, un directeur d'école ne peut refuser de mettre en œuvre une instruction individuelle émanant de son autorité hiérarchique directe, en l'espèce l'inspecteur d'académie, directeur des services départementaux de l'éducation nationale (IA-DSDEN). Ce principe constant a été précisé dans un arrêt du Conseil d'Etat, en date du 17 octobre 1962 (section – Sieur Princeteau – publié au recueil des décisions, page 556).

66. Dans le département de l'Isère, Mmes Heurtier et Arthaud, MM. Didier, Riallian et Duckit, directeurs d'école, ont reçu un courrier, en date du 9 novembre 2009, dans lequel l'inspecteur d'académie, directeur des services départementaux de l'éducation nationale leur demandait de procéder à la saisie dans la « Base élèves 1er degré » des données relatives aux élèves de leur école. Ce courrier leur indiquait, qu'ils seraient remplacés pour leur permettre d'effectuer cette mission et que l'absence de saisie serait considérée comme service non fait justifiant une retenue de salaire de cinq trentièmes. Il convient de noter que ce courrier faisait état de plusieurs courriers antérieurs dans lesquels l'inspecteur d'académie avait déjà rappelé aux directeurs concernés les responsabilités leur incombant au regard de la saisie obligatoire des données dans la « Base élèves 1er degré ».

67. Dès lors que l'inspecteur d'académie, directeur des services départementaux de l'éducation nationale de l'Isère, a transmis aux directeurs d'école concernés une lettre demandant de mettre à jour « Base élèves 1er degré » pour une date déterminée et leur a indiqué son intention d'engager une procédure qui pouvait déboucher sur un retrait

d'emploi de directeur, une telle lettre doit être considérée comme ayant le caractère d'une mise en demeure de nature à permettre une retenue financière à compter de l'échéance.

68. S'agissant de Mmes Artaud et Heurtier, ainsi que de M. Duckit, ils ont uniquement fait l'objet d'une retenue sur leur traitement. Il s'agit d'une mesure purement comptable qui se borne à tirer les conséquences de l'inaccomplissement par l'agent de son service. Une telle mesure entre dans le champ d'application de l'article 4 de la loi n° 61-825 du 29 juillet 1961 portant loi de finances rectificative dont il résulte que le traitement d'un fonctionnaire peut être réduit « en l'absence de service fait ». Elle est, par ailleurs, conforme à la jurisprudence constante du Conseil d'Etat qui avait considéré, dans un arrêt du 14 novembre 1994 (n° 83880 – inédit au recueil des décisions) que « le droit à rémunération des fonctionnaires est subordonné à l'exécution d'un service fait ; qu'en l'absence de service fait, l'autorité administrative était tenue de suspendre le traitement de la personne concernée, sans que cette décision revête le caractère d'une sanction disciplinaire ». Dans deux arrêts récents (n° 320035 du 16 décembre 2009 et n° 330073 du 17 mars 2010 – inédits au recueil des décisions), le Conseil d'Etat a rappelé le caractère indivisible du trentième du traitement mensuel appliqué en cas de service non fait par un fonctionnaire.

69. Aucun retrait d'emploi n'a été envisagé à leur égard par l'inspecteur d'académie, directeur des services départementaux de l'éducation nationale de l'Isère pour les raisons suivantes : Mme Artaud a fait savoir à l'autorité académique qu'elle transmettait à l'inspecteur de l'éducation nationale de sa circonscription les fiches de renseignements remplies par les responsables légaux de ses élèves et Mme Heutier est admise à faire valoir ses droits à la retraite à la rentrée scolaire de septembre 2010. Quant à M. Duckit, les dispositions du décret du 24 février 1989 précité ne lui ont pas été appliquées dans la mesure où il n'est chargé que d'une seule classe et n'avait pas été nommé dans un emploi de directeur, l'article 1er de ce décret réservant une telle nomination aux instituteurs ou professeurs des écoles assurant « la direction des écoles maternelles et élémentaires de deux classes et plus ».

70. Outre cette mesure comptable qui a concerné les cinq directeurs précités, il est avéré que le cas de MM. Didier et Riallan, respectivement directeurs d'écoles de deux et cinq classes, a été soumis à l'examen de la commission administrative paritaire départementale de l'Isère (CAPD) qui s'est tenue le 30 mars dernier en vue de se prononcer, en raison de leur refus de remplir leurs obligations, sur le retrait de leur emploi de directeur. Préalablement à cette réunion, chacun des directeurs a été invité à consulter son dossier individuel, ce qu'ils ont fait, l'un et l'autre, en présence d'un représentant syndical et de leur avocat. Compte tenu de l'avis de la CAPD, l'autorité académique a informé les intéressés de sa décision de procéder au retrait de leur emploi de direction et les a invités à participer à la procédure de changement d'affectation de l'éducation nationale pour demander un poste d'enseignant en vue de la rentrée scolaire 2010, ce qu'ils ont fait.

71. La procédure mise en œuvre par l'autorité académique respecte strictement les dispositions réglementaires fixées à l'article 11 du décret du 24 février 1989 précité qui dispose que : « Les instituteurs nommés dans l'emploi de directeur d'école peuvent se voir retirer cet emploi par l'inspecteur d'académie, directeur des services départementaux de l'éducation nationale, dans l'intérêt du service, après avis de la commission administrative paritaire départementale unique compétente, à l'égard des instituteurs et des professeurs des écoles ».

72. La décision de retrait de l'emploi de direction à MM. Didier et Riallan est donc réglementairement fondée. Elle ne constitue pas, par ailleurs, une mesure disciplinaire mais une mesure prise « dans l'intérêt du service », notion conforme à la jurisprudence du Conseil d'Etat (arrêt n° 88993 du 27 janvier 1993 – Ministre de l'éducation nationale c/ Mlle Gaujac).

73. Le cas de M. Le Gall, qui avait également refusé de renseigner la « Base élèves 1er degré » avait été réglé, avant la rentrée scolaire de septembre 2009, dans les mêmes conditions que ceux de MM. Didier et Riallan.

74. Pour ce qui concerne Mme Claudia Chairamonti et M. Colin Sanchez, affectés dans une école à classe unique et assurant les fonctions de directeur d'école, à la suite de leur refus d'effectuer la saisie des données relatives à leurs élèves dans la « Base élèves 1er degré » depuis la rentrée scolaire de septembre 2009, l'inspecteur d'académie, directeur, directeur des services départementaux de l'éducation nationale du Vaucluse, leur a infligé un blâme, qui est une sanction disciplinaire, pour « refus persistant d'appliquer les instructions de leur hiérarchie », respectivement par décisions des 10 décembre 2009 et 2 avril 2010.

75. Chacune de ces décisions avait été précédée de courriers dans lesquels l'autorité académique rappelait aux intéressés les obligations leur incombant au regard de cette saisie obligatoire, telles qu'elles résultent de la loi n° 83-634 du 13 juillet 1983 modifiée. L'inspecteur d'académie, directeur des services départementaux de l'éducation nationale du Vaucluse, qui est compétent pour prendre cette sanction l'a prise en tenant compte du manquement manifeste des intéressés au devoir d'obéissance hiérarchique prévu à l'article 28 de la loi n° 83-634 du 13 juillet 1983 précitée qui dispose que tout fonctionnaire « doit se conformer aux instructions de son supérieur hiérarchique, sauf dans le cas où l'ordre donné est manifestement illégal et de nature à compromettre gravement un intérêt public », ce qui n'était pas le cas en l'espèce.

76. En conclusion, les directeurs cités dans les deux lettres adressées par les Rapporteurs spéciaux n'ont nullement été victimes de leur engagement pour la défense des droits de l'homme, lesquels n'étaient nullement menacés. Certains ont fait l'objet de mesures comptable et administrative qui leur ont été appliquées à la suite de leur refus d'accomplir les missions afférentes à leurs fonctions alors que les rasons qu'ils mettaient en avant pour justifier cette abstention n'étaient nullement fondées au regard d'une quelconque atteinte aux droits et libertés fondamentaux de la personne humaine. D'autres ont fait l'objet d'une mesure administrative, classique en droit français, qui prend acte de leur refus d'accomplir les missions afférentes à leurs fonctions.

b) Concernant le dépôt de recours par les directeurs d'école concernés

77. Les directeurs d'école en cause dans le département de l'Isère ont déposé des recours devant le tribunal administratif de Grenoble. A ce jour, la seule décision intervenue est l'ordonnance en date du 9 juillet 2009 par laquelle le juge des référés a rejeté la requête de M. Le Gall qui l'avait saisi à la suite de son retrait d'emploi de direction. En revanche, la juridiction ne s'est pas encore prononcée sur le fond.

78. S'agissant de la procédure en cours devant le Conseil d'Etat précitée, le Conseil d'Etat devrait effectivement se prononcer prochainement. Le juge a procédé à une enquête à la barre pour vérifier plusieurs points. Une réponse a par ailleurs été récemment apportée à deux mémoires en intervention volontaire émanant d'organisations syndicales.

3. Concernant la compatibilité de l'arrêté du 20 octobre 2008 avec la loi n° 78-17 du 6 janvier 1978 modifiée

79. L'arrêté du 20 octobre 2008 est un acte réglementaire qui respecte les exigences de la loi n° 78-17 du 6 janvier 1978.

80. Les seules données à caractère obligatoire qui sont enregistrées visent, comme il a été dit plus haut, à assurer la gestion des élèves et à établir un suivi des effectifs dans l'ensemble des écoles. Une notice d'information annexée à la fiche de renseignements est remise par le directeur d'école aux parents.

81. S'il est vrai que le 1er alinéa de l'article 38 de la loi du 6 janvier 1978 permet aux personnes physiques de s'opposer, pour des motifs légitimes, à ce que des données qui les concernent fassent l'objet d'un traitement, le dernier alinéa de ce même article prévoit que ce droit peut être écarté par une disposition expresse de l'acte autorisant le traitement, ce qui est le cas en l'espèce : l'article 9 de l'arrêté du 20 octobre 2008 dispose que « le droit d'opposition prévu à l'article 38 de la loi du 6 janvier 1978 ne s'applique pas au traitement prévu par le présent arrêté ».

82. La faculté de permettre aux responsables légaux des élèves d'exercer leur droit d'opposition à l'enregistrement des données obligatoires précitées a été écartée pour éviter de compromettre les finalités assignées à la « Base élèves 1er degré » qui constitue un outil de pilotage des moyens alloués à l'enseignement du premier degré.

83. A ce titre, toutes les données à caractère personnel enregistrées font l'objet d'une procédure d'anonymisation préalablement au traitement statistique qui est mis en œuvre au niveau des rectorats et des services centraux du ministère en vue d'établir, en termes d'effectifs, des constats de rentrée et de prévisions pour la rentrée scolaire suivante. Cette procédure est conforme à l'article 6 de l'arrêté du 20 octobre 2008.

84. Par ailleurs, la conservation des données à caractère personnel enregistrées n'est nullement de trente cinq années comme l'évoque le rapport. La durée maximum de conservation de ces données n'excède pas, en tout état de cause, le terme de l'année civile au cours de laquelle l'élève n'est plus scolarisée dans le premier degré (article 5 de l'arrêté du 20 octobre 2008).

4. Concernant la scolarisation des enfants étrangers

85. Le Gouvernement rappelle que la France accueille dans ses écoles publiques tous les enfants présents sur le territoire national, quelle que soit la situation de leurs parents au regard du droit de séjour.

86. Les données à caractère personnel enregistrées dans la « Base élèves 1er degré » sont donc strictement identiques pour tous les enfants, nonobstant leur nationalité, laquelle ne fait pas partie des données enregistrées dans l'application.

87. Par ailleurs, l'ensemble des données est transmis aux seuls destinataires prévus dans cet arrêté. Ce n'est que dans le cadre d'une procédure judiciaire que d'autres personnes pourraient y avoir accès, sur réquisition du juge judiciaire.

Observations

88. Le Rapporteur special remercie le Gouvernement pour sa réponse.

Communication envoyée

89. Le 11 mars 2011, le Rapporteur spécial a envoyé une communication au Gouvernement concernant la situation des étrangers placés dans les zones d'attente pour les personnes en instance, et plus particulièrement celle de l'aéroport Roissy CDG, la ZAPI 3.

90. Selon les informations reçues, une zone d'attente est un espace physique, créé par la loi du 6 juillet 1992 qui s'étend « des points d'embarquement et de débarquement à ceux où sont effectués les contrôles des personnes », selon l'article L. 221-2 du Code de l'entrée et du séjour des étrangers et du droit d'asile (CESEDA). Concrètement, cet espace correspond à la zone sous douane dont l'accès est limité. Il existe une centaine de zones d'attente en France métropolitaine et en Outre-mer, dont celle de l'aéroport Roissy CDG, la ZAPI 3. La durée maximale de maintien en zone d'attente est de vingt jours. En 2009, la durée moyenne de maintien à Roissy aurait été de 2,75 jours. Sont placées dans ces zones d'attente les étrangers se présentant aux frontières et appartenant à l'une des trois catégories

suivantes : les personnes « non-admises », qui ne remplissent pas les conditions nécessaires pour accéder au territoire français, les personnes « en transit interrompu », qui ne remplissent pas les conditions nécessaires pour poursuivre leur voyage vers un pays étranger et les personnes sollicitant leur admission sur le territoire au titre de l'asile. En 2009, 84,87% des placements en zone d'attente se seraient effectués en ZAPI 3.

91. Tout étranger maintenu en zone d'attente devrait se voir reconnaitre les droits énumérés par l'article L. 221-4 du CESEDA, soit le droit de demander l'assistance d'un interprète et d'un médecin, le droit de communiquer avec un conseil ou toute personne de son choix et le droit de quitter à tout moment la zone d'attente pour toute destination située hors de France. Or, leurs droits ne leur seraient pas toujours notifiés au moment de leur placement en zone d'attente, ce qui accentuerait leur angoisse, déjà grande du simple fait d'être placé dans un lieu d'enfermement.

92. Outre cette absence de notification automatique des droits dont doit jouir tout étranger maintenu en zone d'attente pour les personnes en instance, un certain nombre de préoccupations concernant leur situation avaient été soulevées. Tout d'abord, fut soulevé le problème lié à l'absence de permanence d'avocats en zone d'attente. Cette présence serait pourtant déterminante, en particulier en ce qui concerne la demande d'entrée au titre de l'asile, puis l'exercice d'un recours contentieux contre la décision de refus prévu par l'article L. 213-9 du CESEDA et enfermé dans un délai extrêmement court de 48h, ce recours étant très technique et nécessitant l'aide d'un juriste qualifié.

93. Selon les informations reçues, il y aurait également eu des cas de violences policières (insultes, propos à tendances racistes, coups, bastonnade etc.). Ces violences se seraient produites généralement en aérogare, soit au moment de l'arrivée, soit lors de tentatives d'éloignement.

94. Il fut également rapporté un certain nombre d'éléments concernant la situation des mineurs étrangers se présentant seuls aux frontières françaises. Tout d'abord, ils subiraient le même sort que les adultes : jusqu'à vingt jours d'enfermement destinés à permettre à la police aux frontières de préparer leur renvoi. Ensuite, il fut rapporté que, pour certains mineurs isolés étrangers placés en zone d'attente en 2009, aucun administrateur ad hoc n'aurait été désigné. Aussi, les services de la Police de l'air et des frontières (PAF) demanderaient, lorsqu'ils ont un doute sur la minorité d'un étranger maintenu compte tenu de son aspect physique, une expertise médicale basée sur un examen osseux alors qu'un tel examen serait dénué de toute force probante et pourrait au mieux ne fournir qu'une estimation très approximative de l'âge. Cette suspicion s'appliquerait même à ceux qui sont en mesure de présenter un document d'état civil bien que l'article 47 du Code civil dispose que « tout acte de l'état civil des Français et des étrangers fait en pays étranger et rédigé dans les formes usitées dans ce pays fait foi ». De plus, il fut rapporté qu'à plusieurs reprises, des mineurs auraient été refoulés vers leur pays de provenance, alors même qu'il n'y aurait aucune garantie qu'ils n'y soient pas livrés à eux-mêmes une fois arrivés à destination.

95. Furent également rapportés divers cas de refoulement d'individus, soit vers le pays de provenance, soit vers le pays d'origine, malgré le fait que ceux-ci aient mentionné des craintes pour leur vie ou leur sécurité. En 2009, par exemple, il a été rapporté que des Sri lankais d'origine tamoule ainsi que des Guinéens auraient été renvoyés après avoir été placés en zone d'attente. Plusieurs témoignages avançaient aussi que certaines des personnes ayant fui leur pays d'origine, se seraient retrouvées, à leur retour forcé, dans des situations parfois plus graves. Il fut aussi rapporté le fait que la PAF n'aurait aucun contrôle sur ce qu'il peut advenir de la personne à son arrivée et sur la remise des documents lorsque celle-ci a été refoulée sans escorte et confiée à la compagnie aérienne, en charge de prévenir les autorités du pays de renvoi et des documents de voyage de l'étranger, qui doivent lui être restitués.

96. Aussi, selon les informations reçues, il y aurait eu plusieurs cas d'étrangers refoulés à partir des aérogares directement, sans être passés par les zones d'attente. Dans de tels cas, les individus concernés auraient tout ignoré de la procédure leur étant appliquée et n'auraient pas eu connaissance de leurs droits. Furent alléguées notamment des violations du droit au jour franc, selon lequel tout étranger faisant l'objet d'un refus d'entrée peut, s'il en exprime clairement la volonté, refuser d'être rapatrié avant l'expiration d'un jour franc (article L. 213-2 du CESEDA). Furent également alléguées des violations du droit à un interprète ainsi que diverses humiliations subies dans l'enceinte des aérogares.

97. Enfin, des préoccupations furent exprimées concernant la pratique du « visa de retour ». Dans une note interne du 25 mai 2009, le directeur central adjoint de la police aux frontières aurait adressé à ses services une note interne, non publiée, ordonnant « l'exigence stricte du visa consulaire pour tous les titulaires d'une Autorisation Provisoire de Séjour non prévue par la loi et d'un récépissé de première demande de titre de séjour qui souhaitent pénétrer dans l'espace Schengen après en être sorti ». La conséquence directe de cette note aurait été l'impossibilité pour les personnes concernées de quitter temporairement le territoire et de pouvoir revenir librement. Si elles sortaient du territoire, elles devaient obtenir un « visa de retour » qu'elles étaient supposées demander aux autorités consulaires françaises à l'étranger.

98. Bien que le 21 septembre, le ministre de l'Immigration ait publié une nouvelle circulaire n'imposant plus ce « visa de retour » pour les titulaires de certaines catégories d'Autorisation Provisoire de Séjour, le problème resterait entier pour les titulaires de récépissés de première demande de titre de séjour, et d' « APS asile ». Selon les informations reçues, entre le 25 mai et le 25 août 2009, 58 personnes auraient été placées en zone d'attente de Roissy au motif de l'absence de visa de retour. Entre le 25 août et le 5 septembre, 13 personnes dans cette situation auraient été placées en ZAPI 3.

99. Le Rapporteur spécial a demandé au Gouvernement de lui faire part des observations concernant la véracité des faits tels que relatés, si tel n'était pas le cas des enquêtes menées pour conclure à leur réfutation, des plaintes éventuellement déposées et des suites données, la façon dont il met en œuvre les instruments internationaux ratifiés par la France, notamment le Pacte international relatif aux droits civils et politiques, la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants et la Convention européenne des droits de l'homme concernant les étrangers maintenus en zone d'attente pour les personnes en instance, et notamment en ZAPI 3, et enfin la façon dont il applique la jurisprudence de la Cour européenne des droits de l'homme ainsi que celle de ses plus hautes juridictions, que sont le Conseil d'Etat et la Cour de cassation en ce qui concerne les étrangers maintenus en zone d'attente pour les personnes en instance, et notamment en ZAPI 3.

Observations

100. Le Rapporteur spécial regrette de n'avoir pas reçu de réponse à la communication mentionnée précédemment.

India

Communication sent

101. On 15 October 2010, the Special Rapporteur, together with the Special Rapporteur on trafficking in persons, especially women and children, the Special Rapporteur on contemporary forms of slavery and the Special Rapporteur on the sale of children, child prostitution and child pornography sent a letter of allegation to the Government concerning

an estimated 70,000 child bonded labourers, who work in the so-called "rat mines" of Jaintia Hills, which is located in the North Eastern State of Meghalaya, India.

102. According to the information received, an estimated 70,000 bonded child labourers from Nepal and Bangladesh work at the so-called "rat mines" of Jaintia Hills, Meghalaya State, India. The mines are reportedly known as such, because of the narrow and crude holes dug into the hills where only children can pass. It was estimated that about 40,000 children from Bangladesh and 30,000 children from Nepal work at the mines. In most cases, the children are allegedly purchased by middlemen or abducted or sold by gangs in Nepal and Bangladesh to the mining mafia in Meghalaya. The children were allegedly sent to the mines after their parents accepted money from middlemen engaged in child trafficking. The price for a child varies from 50 to 75 US dollars. It was claimed that everyday, trucks transporting coal to Bangladesh return with children, who are lured into the mining industry with the promise of better wages and living conditions. The children are in debt bondage situations, as they are not paid for their work in some cases so that they repay with their labour the price for which they were bought. In other cases, the children are given half wage compared to adults, which leave them with very little money to survive on as expenses for their good are deducted from their wages.

103. The working conditions at the mines are allegedly hazardous, unhygienic, cruel and inhuman. The children are threatened not to disclose their identity to anyone they meet and they have no freedom to move from the premises of the mines. The working hours are long and the children have no rest from the day break to the nightfall. They have no means to communicate with the outside world, let alone their families. The children are not provided with any safety equipment and are only given shovels or pickaxes to extract coal or limestone. Further, it appears that deaths of children are common due to the unsafe working conditions at Jaintia Hills and often remain unreported. According to the information received, human skeletons were recovered beneath a pile of coal in the mine in Jaintia Hills and it has been verified that they were the remains of children who lost their lives due to suffocation in the mine shafts or in other accidents during the mining operations.

104. The information received also suggested that the children live in very poor conditions. They reportedly live in huts made with plastic sheets and there are no proper sanitary facilities. There is a lack of safe drinking water and proper sewage system. Although many people fall ill due to the poor living conditions, there are no medical facilities available near the mines.

105. It was alleged that girls are also often bought by the owners of the rat mines and subject to sexual exploitation. They are exploited not only by mine owners, but also managers, other older workers and even truck drivers. There was also information suggesting that some children are trafficked further from the mines to the cities for sexual exploitation.

106. It was reported that there is a lack of interventions in this matter by the State Government. Although the Government of Meghalaya issued a draft mining policy on 24 September 2009, the policy did not refer to problems with the rampant use of child labour in the mines in the State. It was also alleged that there are only 10 labour inspectors in the State of Meghalaya and two in the region where Jaintia Hills is located, which is inadequate to enforce the labour standards. It was claimed that this case was reported to the state authorities, but no action has been taken. To date, the case was allegedly brought to the attention of the Social Welfare Department and the Labor Department of Meghalaya on 1 December 2009 and on 24 May 2010. It was also reported to the Governor of the State of Meghalaya on 19 May 2010 and to the Planning Commission in New Delhi on 15 May 2010. Further, the case was also reported to the National Commission for Protection for Child Rights on 18 February 2010 and they have apparently commenced an investigation of the case.

107. The Special Rapporteurs asked the Government for its observations concerning the accuracy of the alleged facts, the full details of any actions or investigations undertaken to identify the children working at the "rat mines" and to verify their working conditions, any cooperation arrangements with the Nepalese or Bangladeshi authorities to facilitate the rapid identification of the children working at the "rat mines", the details, and where available the results, of any investigation, judicial or other inquiries which may have been carried out in relation to individuals who are responsible for selling and trafficking the children to the "rat mines" and keeping them in bonded labor in this case, whether the Government of Meghalaya has fully considered the use of child labour at the "rat mines" in drafting mining policies, if not whether such information will be taken into account before the policy is finalized, the current policies and the preventive and awareness-raising measures undertaken to combat human trafficking, sale of children and sexual exploitation of children in India and finally whether the victims or the families of the victims have access to adequate procedures of compensation for damages from those legally responsible for the trafficking in children, the sale of children, sexual exploitation of children, and the use of bonded labour.

Observations

108. The Special Rapporteur regrets not having received a reply from the Government regarding the above-mentioned communication.

Kuwait

Communication sent

109. On 3 May 2010, the Special Rapporteur, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion sent a letter of allegation to the Government concerning the alleged arrest and detention of 33 Egyptian nationals, as well as forced deportation of some of these concerned nationals.

110. According to the information received, 33 Egyptian citizens lawfully residing and working in Kuwait were arrested by the Kuwait State Security on 8 and 9 April 2010. It was alleged that their arrests were connected to their involvement in the "National Association for Change", a political group founded by the Egyptian opposition candidate, Dr. Mohammad Al-Baradei.

111. The first round of arrests took place on 8 April 2010. Three Egyptian nationals were arrested and detained after they attended a meeting of Al-Baradei supporters at a local café. Then on 9 April 2010, 30 Egyptian nationals were arrested by the State Security while they were gathering in front of the Sultan Center supermarket and restaurant in Al-Samia to discuss the arrests which took place on 8 April 2010. The arrest and detention of these 33 Egyptian nationals had been reportedly carried out pursuant to Kuwait's law prohibiting non-citizens from participating in processions, demonstrations, or public gatherings in Kuwait.

112. 17 of those arrested had been reportedly deported to Egypt on 10 April 2010. There were concerns about the safety of those who were deported, in light of reports that more than 90 demonstrators calling for political reforms in Egypt, including supporters of Dr. Mohammad Al-Baradei, have been subjected to violence and arrested by the Egyptian security forces in the month of April.

113. The Special Rapporteurs asked the Government for its observations concerning the accuracy of the alleged facts, whether or not some of the Egyptian national arrested were still in detention and faced risks of deportation to Egypt, if so the details of such detainees, including their names, age and whereabouts, the measures undertaken to ensure that the

Egyptian nationals who had been deported did not face a risk of torture upon their return to Egypt, the existing legal framework, policies and regulations to ensure that the immigration and law enforcement officials duly respect the international human rights standards concerning the arrest procedures and the use of force, the measures or efforts undertaken to implement such a legal framework, policies and regulations in practice, the measures taken to ensure that migrants' rights to freedom of expression and freedom of association are respected in accordance with the international human standards and whether the victims or the families of the victims have access to effective remedies, including compensation for damages resulting from the arbitrary arrest and detention.

Observations

114. The Special Rapporteur regrets not having received a reply from the Government regarding the above-mentioned communication.

Communication sent

115. On 12 November 2010, the Special Rapporteur, together with the Special Rapporteur on contemporary forms of slavery sent a letter of allegation to the Government concerning the abuse and exploitation of migrant domestic workers in Kuwait, including non-payment of salaries, excessively long working hours without rest, incidence of physical and sexual abuse, denial of adequate food and medical care, and confiscation of passports.

116. According to the information received, it was alleged that there were more than 660,000 migrant domestic workers in Kuwait, mostly from Asia and Africa, of whom the majority are women. Once in Kuwait, these workers find themselves vulnerable to abuse in a system that leaves them with almost no effective legal protection.

117. Common complaints of migrant domestic workers are nonpayment of salaries for months at a time, excessively long working hours without rest, and incidents of physical and sexual abuse. For example, S.R., a 33–year-old domestic worker from Kurunegala, Sri Lanka, worked from 6 am to midnight and had no days off during her employment for five months. Her employer often beat her on the head and she suffered from severe headaches as a result. S.R. was not allowed to go outside on her own and her employer's husband threatened that he would accuse her of stealing a valuable watch if she ran away. Her employer also demanded that she work for nine months without any salary on the basis that S.R. owed her 530KD (US$1830) which she paid to the recruitment agent.

118. It was also reported that migrant domestic workers are often denied adequate food and medical care. For instance, A.M., an Ethiopian domestic worker, was routinely forced to work for 18 hours a day without rest and provided only with one piece of bread and one glass of tea for breakfast, a little rice and one piece of bread for lunch and nothing for dinner. P.L., a domestic worker from Sri Lanka, was allegedly denied medical care when she was injured by a heavy steel chair falling on her head. Instead, she was forced to continue to work for one week while black blood ran from her nose.

119. It was also alleged that employers often confiscate passports of migrant domestic workers and use the passports as a method of control by refusing to return them when workers tried to leave their employers. While the Ministry of Labor decree banned confiscation of passports by employers, this prohibition does not apply to the domestic sector and this practice was reportedly widespread. Furthermore, employers reportedly restricted domestic workers' freedom of movement by locking them inside the home and denying them unsupervised rest days.

120. It was further alleged that migrant domestic workers who leave their job without their employer's permission, even those fleeing abuse, may face immigration charges with criminal penalties, indefinite detention, and deportation. The Aliens' Residence Law

requires employers to report workers who are absent for more than a week to the police. Any migrant domestic workers lacking appropriate documentation and registered as "absconded" with the police pursuant to this law may face criminal and financial penalties of up to six months in prison and KD600 (US$2060). Thus, domestic workers who seek to exercise their right to freely terminate employment are treated as criminals in Kuwait's penal system. For example, it was alleged that M.T., a 19-year-old domestic worker from Ethiopia, worked in five houses where she had been refused pay, denied adequate rest, and was beaten by her employers. After escaping her last employer, she was arrested and spent over three months in various police detention centers.

121. In addition, it was reported that the legal framework and institutions in Kuwait are inadequate to address these violations of human rights of migrant domestic workers. Kuwait's kafala (sponsorship) system, which requires employers to act as "sponsors" of workers' legal residency and employment in Kuwait, is alleged to shield employers from legal responsibility to respond to charges of nonpayment, forced labor or abuse by allowing them to petition immigration authorities to cancel workers' legal residency at any time. Domestic workers' rights are allegedly further compromised by the lack of protection under labour law. While the new Law No. 6 Governing Labor in the Private Sector was enacted in February 2010 to strengthen protection for privately employed workers by restricting working hours to eight hours per day, providing for paid maternity leave, end-of-service payments, and access to Labor Ministry dispute resolution mechanisms, domestic workers are still not covered by this new law. While the Kuwaiti government in 2006 revised the standard contract that agencies, employers, and domestic workers are legally required to sign during the process of recruiting a domestic worker, it is said to lack the more comprehensive protections that other private sector employees receive and remains poorly enforced.

122. It was further reported that administrative complaint resolution is said to be ineffective. Although embassies direct workers' employment complaints first to the Domestic Workers' Department for dispute resolution, the department cannot compel employers to attend dispute resolution hearings, nor can it evaluate the complaint and impose an equitable solution. For nonpayment and other breach of contract claims, the current standard domestic labor contract provides that any disputes arising under its provisions should be referred to a Kuwaiti court. Workers who were victims of crimes and those who considered pursuing civil legal claims after failing to resolve their cases through the Domestic Workers Department have reported practical and financial concerns that discouraged them from doing so. These included the length of time involved in filing a claim; high filing fees and limited access to legal services; lack of accommodation and employment opportunities during the review period; difficulty substantiating their claims with evidence that would convince a court given the lack of witnesses or poor police investigations; and mistrust of the legal system.

123. The Special Rapporteurs asked the Government for its observations concerning the accuracy of the alleged facts, the measures undertaken to ensure that kafala (sponsorship) system is not used to shield employers who abuse and exploit migrant domestic workers, whether it intended to enact specific law which provides labour protection to domestic workers and to repeal provisions of laws which negatively affect the human rights of migrant domestic workers, such as those prohibiting "absconding" of migrant domestic workers and restricting the workers' freedom to choose their residence and employment, the measures undertaken to ensure accountability of employers who violate employment conditions stipulated in contracts with domestic workers, the measures undertaken to address difficulties faced by migrant domestic workers to seek redress, such as limited access to legal assistance, the measures undertaken to strengthen the capacities of Domestic Workers' Department and Kuwaiti Courts to ensure that they have an adequate power and resources to hear and resolve complaints by migrant domestic workers in an efficient and

effective manner and any facilities and services available to migrant domestic workers who escape from abusive employers.

Reply from the Government

124. The Government responded in March 2011 and provided information on the communication sent on 12 November 2010.

125. The Government mentioned that the Ministry of Interior — acting within the limits of its responsibilities — has spared no effort to preserve the rights of domestic workers in Kuwait and to keep pace with social and humanitarian developments in this regard, including as follows:

(a) Article 8 of Ministerial Decision No. 617 of 1992, as amended, provides: "The employment bureau shall draw up a tripartite contract between the bureau itself, the sponsor and the domestic worker or person of equivalent status, defining the obligations and rights of each party (the wages of the domestic worker or person of equivalent status, the bureau's commission, annual leave, working hours, provision of suitable accommodation, treatment in case of illness, compensation for injuries incurred in the workplace and other obligations). The contract shall accord with the model contract issued by the General Immigration Department and shall be used when applying to recruit or re-employing a domestic worker or person of equivalent status. The sponsor shall present this contract when requesting a work visa or when following the procedure to acquire a residency permit. The director of the bureau shall register the full commercial name on all the supporting documents produced by the bureau."

(b) Article 11/2 of the same Ministerial Decision stipulates that a bureau's permit shall be revoked if the permit-holder demands recompense from a domestic worker or person of equivalent status in exchange for recruiting or employing him or her. The permit will likewise be revoked, in accordance with article 11/11, if the bureau issues recruitment or employment contracts that are not in conformity with the contracts prepared by the General Immigration Department.

(c) Article 12 bis stipulates that a bureau's permit shall be temporarily suspended in a number of cases, including where the owner fails (without a valid excuse) to contact the Domestic Workers' Office when requested to do so in order to discuss a complaint made against him or her or fails (again, without a valid excuse) to receive domestic workers or persons of equivalent status when they arrive in the country or to collect them promptly from the airport.

126. In addition, there are other provisions favourable to domestic workers contained in the Ministerial Decision. The above-mentioned model contract (contract of employment for domestic workers) is a tripartite contract (bureau, sponsor, worker) and contains a number of clauses beneficial for the worker, including the following:

(a) The bureau has an obligation to return the remains of the third party to his or her country of origin, if the person dies of an illness during the bureau's period of sponsorship and prior to the date on which he or she was to have begun working for the second party.

(b) The sponsor has an obligation to supply the third party with suitable and appropriately-equipped accommodation, and food and clothing necessary for a dignified life, and access to treatment in State hospitals.

(c) The sponsor has an obligation to pay the worker the agreed monthly wage (which must not be less than 40 Kuwaiti dinars (KD) a month). A receipt signed by the third party (the worker) shall serve as proof of payment.

(d) The sponsor is responsible for compensating the worker for injuries incurred in the workplace, in accordance with the Kuwaiti Civil Code.

(e) The sponsor has an obligation to repatriate the third party at the conclusion of the contract period, unless the contract is renewed.

(f) The sponsor is not allowed to have the worker work for anyone else for as long as the contract is valid and cannot employ the worker other than for the specific purpose for which he or she was recruited or in any work degrading to human dignity.

(g) In the event of the worker's death, the sponsor has an obligation to pay two months' wages to the worker's beneficiaries in addition to the wages for the month in which he or she died. Sponsors are likewise obliged, at the family's request, to return the remains of such workers to their country of origin at their (the sponsors') own expense, unless the death is due to an illness preceding the date of commencement of employment.

(h) Such workers are required to work 48 hours a week.

(i) Such workers are entitled to one day's rest every week and are allowed to spend that time with their family.

(j) The workers are entitled to be paid for overtime for working over and above the above-mentioned hours.

(k) The workers are entitled to a month's paid annual holiday and have the right to depart for two months' holiday at the end of two years' work. They are likewise entitled to a return ticket, unless the departure is definitive, in which case they are entitled to a one-way ticket to their home country.

(l) The passport is a personal document which the worker has the right to keep.

127. Furthermore, paragraph 3 of the general provisions of the aforementioned contract stipulates: "In the event of any dispute between the parties to this contract, the parties shall refer to the Domestic Workers' Office and apply Kuwaiti law to all matters not expressly mentioned in the contract." In this regard, the Government points out that a worker coming to work in Kuwait is only to work for the second party (the sponsor) in accordance with the terms of the aforementioned tripartite contract of employment. If the worker absconds from work with that sponsor, without justification this will be deemed a breach of contract that may lead to cancellation of the worker's residency permit with the sponsor and, consequently, to his or her departure from the country.

128. The Government also mentions article 14/2 of the Foreigners' Residence Act, which stipulates that workers who leave their employer will have their residency permit revoked from the date they left the work and will be required to leave the country within a period to be defined by the Ministry of Interior, but which must not exceed three months, unless they obtain a new residence permit before the end of that period.

129. Article 24 bis of the same Act stipulates: "Without prejudice to a more severe penalty decreed by another statute, a penalty of imprisonment for up to 3 years and/or a fine of up to 3,000 dinars shall be imposed on anyone who helps a foreigner to obtain a visitor's or residency permit in exchange for money or benefits, or the promise thereof." "The penalty shall be doubled, if the offender repeats the crime within five years from the date of being convicted." "A penalty of a term of up to 1 year's imprisonment and/or a fine of up to 1,000 dinars, shall be imposed on anyone who obtains such a permit in return for the offer of money or benefits, or the promise thereof." (It should be noted that workers are bound by the Foreigners' Residence Act; the preamble to the contract of employment makes reference to the Act.)

130. In the case of a complaint or an infraction of the law, it is the Domestic Workers' Office which handles the complaint or refers the lawbreakers to the investigative authorities and thence to the courts for judgement, which — as it always does — serves the truth in this matter.

131. Moreover, the Domestic Workers' Office will, if the situation so requires, place restrictions on sponsors, such as revoking visas or sponsorship.

132. The Government also stated that, as concerns incidents of physical or sexual abuse, Act No. 16 of 1960, promulgating the Criminal Code, as amended, part III deals with offences against the person in the following terms:

- Chapter I: Offences against the person:
    - Murder, injury, violence and abuse
    - Endangerment
    - Abortion
    - Kidnapping, detention and the slave trade
- Chapter II: Offences against honour and reputation:
    - Illicit carnal knowledge and indecent assault
    - Adultery
    - Incitement to debauchery, prostitution or gambling
    - Insult and slander
- Chapter III: Financial offences:
    - Theft, fraud, breach of trust, etc.

133. The Government further stated that article 166 of the Kuwait Constitution guarantees the right to bring legal action, stipulating that: "The right of recourse to the courts is guaranteed to all people. The law stipulates the procedures and conditions for the exercise of this right." It goes without saying that "in administering justice, judges are not subject to any authority. No interference whatsoever is allowed with the conduct of justice. The law guarantees the independence of the judiciary ..." (Constitution, art. 163).

134. In addition to the above, the current legislation in the country and the regulations and decisions issued in implementation thereof, as well as the terms of employment contracts, all serve to guarantee domestic workers' rights. Moreover, apart from the guaranteed right of recourse to the courts, the proudly independent Kuwaiti judiciary knows no authority in its administration of justice save the Constitution and the law, and any party can resort to the law to demand their rights. The competent authorities furthermore bring all criminals to justice.In addition, the Government notes that the reported information came from certain individuals referred to only by their initials. There was no indication that the second party had been heard. It is therefore inappropriate — given the lack of complete information — to take what those individuals said as being true, just as it is inappropriate to make generalized judgements.

135. To conclude, the Government mentions Ministerial Decision No. 1054, issued in 2011 to facilitate matters for the foreign workforce in the country. The decision provides that, without prejudice to any travel bans issued by the competent authorities, foreigners who do not hold a residency permit or whose period of residency has ended are exempted from the penalties and fines prescribed by the Foreigners' Residence Act, if they leave the country between 1 March 2011 and 30 June 2011. They furthermore have permission to return to the country in accordance with the relevant legal procedures. Moreover, people

who express a desire to be granted residency in the country and are ready to pay the fine without submitting the matter to the investigative authorities are allowed to pay the fine and then regularize their situation, if they satisfy the conditions established for residency. All this is spelled out in the above-mentioned Ministerial Decision.

Observations

136. The Special Rapporteur thanks the Government for its response

Libyan Arab Jamahiriya

Communication sent

137. On 2 September 2010, the Special Rapporteur, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment sent a letter of allegation to the Government concerning a large number of foreign nationals on death row, some of whom had reportedly suffered torture or other forms of ill-treatment, and the alleged failure to meet international standards for fair trial.

138. According to the information received, as of May 2009, there were over five hundred individuals on death row in Libya, and approximately fifty percent of them were foreign nationals. Many of them were reportedly from sub-Saharan countries such as Chad, Niger, Nigeria, Sudan and Somalia. It was alleged that Libyan courts impose death sentences in trials which do not meet the international standards and foreign nationals are particularly discriminated against in court proceedings. They were reportedly often not provided with interpretation or translation assistance during legal proceedings when they do not speak or understand Arabic. Further, they were allegedly not given access to representatives of their own consular or diplomatic authorities. In addition, it was reported that foreign nationals on death row are disadvantaged vis-à-vis Libyan nationals, as they generally have limited financial resources to seek pardon from the next-of-kin of alleged victims through qisas (financial compensation for the family of the murder victim) and diya (retribution for murder). They also do not have family members in Libya who can assist them to negotiate qisas and diya, and may be less familiar with the system.

139. To illustrate these allegations, the following cases of two foreign nationals in death row who had reportedly suffered torture and whose trials did not meet international standards had been brought to the attention of the Government:

140. Ms. Juliana Okoro, a Nigerian national, was arrested in 2000 on a murder charge. According to reports received, while she was held in the Bab Abu Gashir Police Station in Tripoli, Ms. Okoro was regularly beaten with her hands tied behind her back during eighteen days. Allegedly, she did not have access to a lawyer until two or three years after the arrest and was not provided with an interpreter during any of the court hearings. She was sentenced to death and her sentence was confirmed on appeal by the High Court in 2008. As of May 2009, Ms. Okoro is on death row.

141. Mr. Haroun Mohamed Saleh Awwal**i**, a national of Niger, was arrested on immigration charges in 2004 and transferred to Misratah Detention Center where a murder took place. After the incident, he was transferred to another detention centre where he was reportedly beaten with an electric cable to force him to “confess” the commission of the murder. He was also allegedly forced to thumb print a document that he was not able to read. According to the information received, Mr. Haroun Mohamed Saleh Awwali was not provided with a translator during his trial and did not understand the proceedings. He was subsequently found guilty of the murder at the Misratah Detention Centre and is on death row as of May 2009.

142. In this context, it was of particular concern that 18 individuals, including nationals of Chad, Egypt and Nigeria, were reportedly executed on 30 May 2010 after they were convicted of premeditated murder.

143. The Special Rapporteurs asked the Government for its observations concerning the accuracy of the alleged facts, the statistical who were currently on death row, including the number, nationalities, locations and crimes for which they have been sentenced to death row, the information on the current status of Ms. Juliana Okoro and Mr. Haroun Mohamed Saleh Awwali and the judicial proceedings which determined their sentences, the measures taken to ensure that their fair trial guarantees were fully respected, as well as any measures to assist them in seeking amnesties from the families of the alleged victims, whether they have been allowed to contact their consular or diplomatic authorities of their states of origin, the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries that might have been carried, any prosecutions which might have been undertaken, the details of the 18 foreign nationals who were executed on 30 May 2010, including their names, nationalities and crimes they were convicted of, any measures taken to ensure that their fair trial guarantees were fully respected, as well as any measures to assist them in seeking amnesties from families of the alleged victims and all measures undertaken to ensure consular protection in the case of the 18 foreign national who were executed on 30 May 2010.

Reply from the Government

144. By letter dated 23 November 2010, the Government informed that claims that all those who receive death sentences are placed on death row have absolutely no basis in fact. The fact that an individual has been sentenced to death by a (criminal) court of first instance does not necessarily mean that he or she will be placed on death row, as death sentences must go through the following stages:

(a) Death sentences are handed down by the criminal courts. By law, they must be reviewed by the Supreme Court;

(b) The Supreme Court carries out a comprehensive review of a death sentence and either confirms the verdict of the court of first instance or annuls it and returns the case to the same court for a retrial before a new set of judges. The verdict is then reviewed by the Supreme Court another time;

(c) A death sentence confirmed by the Supreme Court must be endorsed by the High Judicial Council before it can be carried out.

145. The Government further informed that a large number of death sentences that go through this process are quashed at appeal. Retrials are held and many convicted persons have their sentences commuted to prison terms, including life imprisonment; sometimes, they are even acquitted.

146. At all stages and levels of proceedings following the original trial, even when a final verdict has been pronounced or confirmed by the High Judicial Council, persons sentenced to death may still be reprieved and have their sentence commuted to life imprisonment, if the victim's next of kin relinquish their right to retribution, or if the High Judicial Council grants them a special pardon subject to a range of conditions. In other words, death sentences imposed by first instance courts are frequently annulled by the Supreme Court or lawfully commuted when the victim's next of kin relinquish their right to retribution.

147. Of the 34 persons whose sentences have been confirmed after going through all stages of proceedings and who now face execution, only 12 are foreign nationals. Two of those foreign nationals managed to escape from prison before their sentences were carried out and international warrants and red notices have been issued for their arrest.

Furthermore, the death sentence imposed on an Iraqi national was suspended after he claimed that the next of kin had relinquished their right to retribution. Investigations are now under way to confirm the veracity of the claim. Attached is a list of persons who have been sentenced to death and whose cases have gone through all stages of proceedings.

148. The Government provided information on the case of Ms. Juliana Okoro, a Nigerian national, and Mr. Haroun Mohamed Saleh Awwali, a national of Niger, mentioned in the allegation letter:

149. For Ms. **Juliana Okoro,** born 1980, a Nigerian national, together with six other Nigerians, Ms. Okoro was accused of stabbing to death Mr. Musa Tubel, a Nigerian national, and of kidnapping Mr. Patrick Uzu, also a Nigerian national; with the assistance of an interpreter, Ms. Okoro was interviewed on 5 September 2000. She was questioned by the Office of the Public Prosecutor in the presence of an interpreter. Ms. Okoro was then tried in a criminal court, which appointed a lawyer from the People's Advocacy Department, who defended her free of charge. The court held over 30 sittings, in response to various petitions from the defence.

150. Ms. Okoro's defence lawyer attended court with her until she was sentenced to death on 15 April 2008. At most court sessions, including the most important hearing on 18 March 2008, Ms. Okoro was assisted by an interpreter approved by an expert body. Her lawyer lodged an appeal against the death sentence before the Supreme Court, where the case is still being considered. Contrary to the information in the allegation letter, this case is filed as Souq Al-Juma police station, not Bab bin Gashir police station, case No. 646/2000. The case file does not contain any allegations by the accused or her defence counsel about beatings or torture;

151. Concerning the case of Mr. **Haroun Mohamed Saleh Awwali**, who goes by the name Ama, a national of the Niger, born 1977, together with six co-nationals, Mr. Haroun Mohamed Saleh Awwali was charged in Misurata case No. 657/2005 with premeditated murder, robbery and forming a criminal gang in order to commit robbery. On the date of the incident in question, the gang attacked a shop and tied up and smothered the shop security guard before stabbing him to death. The guard was held down until he died. Once the investigation had been completed, Mr. Awwali was brought before a criminal court, which assigned a lawyer to defend him. Following a public trial, the court sentenced Mr. Awwali and other defendants to death. Mr. Awwali speaks Arabic fluently and did not request the assistance of an interpreter. Moreover, the court did not consider that such assistance was required, although it has called upon interpreters to assist defendants who speak Hausa.

152. In court, Mr. Awwali did not claim that he had been beaten or tortured, although three other defendants in the case did file petitions with the court on this ground. Having considered the petitions, the court ordered those persons to be examined by a forensic medical examiner. Throughout the proceedings, Mr. Awwali admitted the charges against him. The counsel for Mr. Awwali filed an appeal for cassation with the Supreme Court. Mr. Awwali did not submit any proof of having reached a settlement with the victim's next of kin to allow for his sentence to be commuted, even though the victim was a foreign national and not a Libyan citizen.

153. The Government further claimed that the allegation letter provided no details with regard to the claims that the two persons were tortured. It did not specify where the torture occurred, who filed the complaint, who is alleged to have committed the torture and under whose auspices (the security or prison services) the torture allegedly occurred. The allegations made in the letter were therefore nothing more than hearsay. There is no evidence to show that a complaint of this kind was actually made and therefore it is impossible to follow up on this communication or to provide information on the results of

investigations carried out in connection with this matter. In this regard, it should be noted that the investigating authority, namely, the Office of the Public Prosecutor, receives, addresses and investigates communications or complaints about torture and deprivation of liberty. It prosecutes individuals when there is sufficient evidence against them and files all cases in which an offender cannot be prosecuted for lack of evidence. In accordance with the procedures described above, the Office of the Public Prosecutor resolved seven cases of torture in the period spanning 2009 and the first six months of 2010. Moreover, it resolved 63 out of 66 cases of deprivation of liberty that were brought to its attention. These statistics are testimony to the seriousness with which the Office of the Public Prosecutor deals with cases of torture and deprivation of liberty and ensures that the perpetrators of such offences are duly punished. (Attached is a copy of the official statistics.)

154. Death sentences imposed on 9 foreign nationals, rather than 18, as was stated in the allegation letter, were carried out on 31 May 2010. The Government attached documentation detailing the number, names and nationalities of those executed. On the date of the executions, the death sentence imposed on Mr. Mustafa Ismail Mohamed Mulaa, a Ghanaian national, was suspended following a request, transmitted via the Ghanaian consulate, for a one month stay of execution while attempts were made to obtain the consent of the victim's next of kin to relinquish their right to retribution. The consent was only given after the time limit had expired.

155. Finally, in communiqué No. 9.76.95, dated 20 January 2010, issued by the Director of the General Administration for Relations and Cooperation of the General People's Committee for Justice, on informing States' consulates and diplomatic missions of the execution of their nationals, the consular affairs section of the General People's Committee for External Liaison and International Cooperation was informed of all executions of foreign nationals that were carried out on 30 and 31 May 2010.

Observations

156. The Special Rapporteur thanks the Government for its reply, but nevertheless remains concerned about the application of the death penalty in Lybia.

México

Comunicación enviada

157. El día 15 de Septiembre de 2010 el Relator Especial y el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias enviaron una carta de alegación señalando a la atención del Gobierno la información recibida con respecto a la matanza de **72 migrantes indocumentados** – 58 hombres y 14 mujeres - cuyos cuerpos fueron descubiertos el día 24 de agosto en un rancho ubicado a las afueras del municipio de San Fernando, en el Estado de Tamaulipas, cerca de la frontera norte de México.

158. Según las informaciones recibidas a partir del testimonio brindado por uno de los sobrevivientes de origen ecuatoriano, se habría corroborado que 75 personas migrantes indocumentados de diversos países de Centro y Sudamérica, quienes se habrían dirigido hacia la frontera norte del país, habrían sido plagiadas por una célula de la delincuencia organizada, trasladadas a una finca y acribilladas por negarse a ser extorsionadas y reclutadas por parte de los criminales. Los delincuentes se habrían identificado como miembros de la organización criminal de Los Zetas. Según la información recibida, las víctimas quienes habían sido secuestradas por el grupo criminal eran de El Salvador, Guatemala, Honduras, Ecuador y Brasil.

159. Este no sería un caso aislado, en mayo de 2010, 55 cadáveres de migrantes hubieron sido hallados en una mina abandonada al sur de la Ciudad de México, y en julio de 2010,

51 cadáveres de migrantes hubieron sido encontrados en un campo cerca de la ciudad de Monterrey. Además, según la Comisión Nacional de Derechos Humanos, los grupos criminales habrían secuestrado a 9.758 migrantes tan solo de septiembre de 2008 a febrero de 2009, un número que solo incluye los casos detectados. Las acciones de secuestro a personas migrantes se dirigirían no sólo a solicitar rescate sino a someterlos a condiciones de explotación laboral y sexual, y para fines ilícitos.

160. Los Relatores Especiales solicitaron información sobre la exactitud de lo s hechos; los resultados de cualquier tipo de investigación que respecto al caso se haya llevado a cabo; el señalamiento sobre cualquier diligencia judicial implementada al respecto, así como cualquier tipo de sanciones penales, disciplinarias o administrativas. Igualmente, se solicito información relativa las medidas adoptadas para garantizar la seguridad de las alegadas victimas en el caso; a las acciones tomadas para prevenir la repetición de situaciones similares a la alegada y, de existir, las medidas de compensación adoptadas.

Respuesta del Gobierno

161. En una carta fechada 28 de septiembre 2010 el Gobierno respondió a esta carta de alegaciones.

162. En relación a los asesinatos de los 72 migrantes centro y sudamericanos en el municipio de San Fernando, Tamaulipas el 22 de agosto de 2010 el Estado mexicano ha dispuesto de todos los recursos materiales y humanos para atender, a través de distintas dependencias federales y del estado de Tamaulipas, los trabajos para la identificación de los cuerpos de las victimas y la integración de la averiguación para el castigo de los responsables.

163. Con motivo del hallazgo de los cuerpos el 24 de agosto pasado, se inició la averiguación previa 354/2010, por parte de la agencia del Ministerio Público Investigador de San Fernando, dependiente de la Procuraduría General de justicia del Estado de Tamaulipas (PGJ Tamaulipas). En primera instancia se practicaron las diligencias correspondientes: fe cadavérica, autopsia, recolección de evidencias para prácticas de pruebas de ADN, prueba de balística, fotografía, certificados de defunción expedidos por los médicos legistas, inscripción de las actas de defunción de las personas que lograron ser identificados ante la oficialía del Registro Civil de Reynosa, Tamaulipas.

164. Con base en informes rendidos por peritos de la materia, no se pudieron practicar los exámenes de alcoholemia, *rodizonato de sodio y dactiloscopia* debido al avanzado estado de descomposición en que fueron encontrados los cuerpos. El procedimiento que se siguió para lograr identificar a algunos de los cadáveres fue revisar entre sus pertenencias para verificar si portaban algún documento con el cual se pudieran identificar las víctimas, lográndose la identificación de varios de ellos y una vez hecho lo anterior, con las limitaciones que se tenía en ese momento, se comunicó ala Secretaría de Relaciones Exteriores para que por los conductos diplomáticos procediera a comunicarlos a los países de origen de las víctimas. Asimismo, por considerar el asunto de la competencia de la Procuraduría General de la República (Crimen organizado), la Procuraduría local solicitó la atracción del caso a esa institución federal.

165. Una vez que atrajo el asunto, y al momento de recibir los cuerpos y los expedientes elaborados por la Procuraduría General de Justicia del Estado de Tamaulipas, la PGR instrumentó una serie de acciones para avanzar en la identificación de las victimas. En ese sentido, peritos de la Dirección General de Coordinación de Servicios Periciales de la PGR practicaron diferentes estudios a los cadáveres (entre las que se incluyeron la necropsia, dactiloscopia, fotografía, antropología forense, odontología forense, genética). También tomaron muestras de ADN de los cuerpos. Cabe resaltar que personal de la Comisión

Nacional de los Derechos Humanos (CNDH) participó como observador en la práctica de las necropsias.

166. En la relación con la identificación de personas post mortem, la PGR utiliza el "Protocolo Modelo para la Investigación Forense de Muertes sospechosas de haberse producido por Violación de los Derechos Humanos". Dicho protocolo fue elaborado por expertos en materia de antropología forense y medicina legal y tiene como objetivo brindar al profesional de las ciencias forenses y criminalística, lineamientos prácticos para documentar y analizar cadáveres frescos, en descomposición o esqueletizados, para determinar signos de tortura o abuso físico.

167. Este modelo de protocolo cuanta con un apartado denominado "Investigación forense sobre cadáveres frescos", en el que se establecen diversas técnicas, a saber: exámenes generales; examen buco-dentario; dactiloscopia: exámenes radiológicos; exámenes de genética forense.

168. Las autoridades mexicanas han facilitado todo lo necesario para la identificación de los cuerpos y, de acuerdo con la práctica internacional, ha sido responsabilidad exclusiva de las autoridades de los países involucrados (Brasil, Ecuador, El Salvador, Guatemala Honduras y la India), corroborar la identificación de los mismos. Con ese propósito, sus respectivos gobiernos han realizado las pruebas de ADN a posibles familiares de las víctimas, a fin de coordinar con la PGR el cruce de información genética que pueda ser de utilidad para identificar a las víctimas.

169. Por su parte, desde que la Secretaría de Relaciones Exteriores (SRE) fue notificada del caso (24 de agosto) y con base en los primeros testimonios del joven ecuatoriano (quien logró sobrevivir a los hechos a pesar de tener una herida de bala), señaló que entre las víctimas se encontraban nacionales de Brasil, Ecuador, El Salvador, Guatemala, Honduras y la India, la Cancillería se dio a la tarea de notificar de esta situación a las Embajadas de los citados países para coordinar acciones relativas a la plena identificación de cadáveres y posterior repatriación de los mismos. Este proceso sigue en marcha.

170. Dichas representaciones diplomáticas transmitieron a los posibles familiares de las víctimas desde sus respectivas Cancillerías. Las declaraciones del sobreviviente de origen ecuatoriano fueron en su mayoría confirmados (29 de agosto de 2010) con el testimonio del segundo sobreviviente de nacionalidad hondureña, quien resultó ileso. La identidad de dicho sobreviviente se ha mantenido en reserva para la eficacia de la investigación.

171. En ese sentido, con el apoyo de la PGR, la SER coordinó dos visitas a Reynosa, Tamaulipas (26 y 28 de agosto de 2010), para que diplomáticos de Brasil, Ecuador, El Salvador, Guatemala y Honduras, además el Viceministro de Relaciones Exteriores de Honduras y un funcionario de Derechos Humanos de la Cancillería de El Salvador, pudieran iniciar las acciones para confirmar la nacionalidad de los migrantes fallecidos.

172. En el primer viaje (25 de agosto de 2010), la delegación de Ecuador, acompañada por personal de la SER y de la Procuraduría General de la República (PGR), pidió desplazarse a Matamoros para entrevistarse con el ciudadano ecuatoriano y conocer su estado físico y mental.

173. En el segundo viaje (28 de agosto), la delegación de Honduras, encabezada por el Vicecanciller Alden Rivera, anunció haber identificado a 16 de sus nacionales; Brasil comentó que podía haber entre dos o tres brasileños; Guatemala opinó que se podrían identificar cinco de sus nacionales entre las víctimas; por su parte Ecuador, por testimonios del sobreviviente, estimaba que se podía haber cinco de sus nacionales, y El Salvador no anunció un número exacto ya que esperaba a sus expertos en criminología. Cabe señalar que durante las visitas señaladas, las autoridades consulares recibieron apoyo para su traslado y acompañamientos por parte de elementos de la Policía Federal.

174. Asimismo, se celebraron en la SER tres reuniones entre autoridades federales, del estado de Tamaulipas y representantes diplomáticos de los países cuyos nacionales pudieran estar entre las víctimas, con el propósito de aclarar dudas y proporcionar mayor información sobre las investigaciones en torno a los hechos y respecto a los trabajos para identificación de los cadáveres. En dichas reuniones han participado, por parte de México, funcionarios de la Presidencia de la república; del Instituto Nacional de Migración; de las Secretarías de Gobernación, de marina, de Seguridad Pública y de Relaciones Exteriores; de la Procuraduría General de la República y del Gobierno del Estado de Tamaulipas.

175. En la primera reunión (27 de agosto de 2010) los funcionarios de la PGR indicaron que hasta ese momento se habían identificado a 31 de los 72 cuerpos y proporcionó una lista con posibles nombres. De igual manera informaron sobre lo procedimientos que se realizaron para la identificación de las víctimas y plantearon la conveniencia de acordar mecanismos de cooperación que permitan validar de manera expedita las identidades de las mismas.

176. En la segunda reunión (30 de agosto de 2010), se entregó a cada embajada un paquete de cinco cuadernillos, elaborados por las autoridades judiciales de Tamaulipas, con información de las 31 víctimas identificadas y de las 41 sin identificar.

177. Durante la tercera reunión (2 de septiembre de 2010), se informó sobre el desarrollo de las investigaciones y se explicaron las técnicas periciales para avanzar en la plena identificación de los cuerpos. La PGR entregó a las Embajadas información sobre el primer proceso de identificación de cadáveres.

178. En atención a la solicitud de asistencia jurídica activa del 3 de septiembre la PGR remitió a los gobiernos de los países involucrados, un disco compacto que contiene los datos de las huellas decadactilares de 46 cuerpos que no habían sido identificados hasta este momento; lo anterior con la finalidad de que dichos países crucen esa información con sus bases de datos e intentar así la identificación de los cuerpos.

179. El primero de septiembre fueron repatriados 16 cuerpos de nacionales hondureños identificados en Reynosa, Tamaulipas, por las autoridades de Honduras. En tanto, el 5 septiembre salieron para El Salvador 11 cuerpos de nacionales de ese país. En ambos casos, el traslado estuvo a cargo del la Secretaría de la Defensa Nacional.

180. Al 8 de septiembre del año en curso, de los 72 cuerpos hallados, 27 han sido identificados por las autoridades de Honduras y El Salvador, mientras que para los 45 cuerpos restantes aún prosiguen los trámites de identificación en coordinación entre la PGR y autoridades de los países involucrados.

181. La institución encargada de la investigación de los hechos es la PGR una vez que atrajo el caso a solicitud de la PGJ-Tamaulipas. Personal de la CNDH acudió a San Fernando par constatar parte de las diligencias ministeriales relacionadas con la integración de la averiguación previa.

182. Cabe señalar que el 23 de agosto de 2010, después de un enfrentamiento entre gente armada y elementos de la Marina-Armada de México, se detuvo a una persona de origen mexicano, plenamente identificado como partícipe de los hechos, tanto por el sobreviviente ecuatoriano, como por el sobreviviente hondureño. Asimismo, en el enfrentamiento en que se detuvo a esta persona, fueron abatidos otros tres presuntos delincuentes.

183. Por otro lado, el 30 de agosto de 2010, la marina localizó los cuerpos sin vida de tres hombres y dos mujeres, de los cuales los tres hombres fueron también identificados por el sobreviviente hondureño como copartícipes de los hechos delictivos. Es decir, se contaba con siete presuntos responsable vinculados al homicidio de los 72 migrantes. Uno asegurado bajo custodia de la Procuraduría y seis más fallecidos.

184. El pasado 3 de septiembre, personal de Marina, durante un recorrido al Suroeste de San Fernando, Tamaulipas, aseguró a cuatro presuntos delincuentes, así como armamento de alto calibre y tres vehículos, entre otras cosas. Asimismo, encontró una fosa con dos cadáveres y liberó a tres personas que se encontraban en poder de los delincuentes, en días posteriores, en recorridos de la Marina por la zona, fueron asegurados otros tres presuntos integrantes del crimen organizado.

185. Estas personas aseguradas en días recientes, al parecer forman parte de la estructura operativa autodenominada "Los Zetas", la que hasta ahora, se presume, llevó a cabo el homicidio de los 72 migrantes en San Fernando, Tamaulipas. Lo que se desprende, entre otras cosas, de sus primeras declaraciones.

186. Estos presuntos delincuentes fueron puestos a disposición de la Procuraduría General de la República por su probable participación en los hechos referidos. Esta detención permitirá esclarecer lo ocurrido en San Fernando, Tamaulipas, y significa un paso importante para poner freno a la impunidad en las agresiones a los migrantes perpetradas por el crimen organizado. La PGR continúa con las investigaciones y la debida integración de los expedientes respectivos, a fin de poner a todos los responsables a disposición de la justicia.

187. Asimismo, la Secretaría de Gobernación (SEGOB) seguirá impulsando las acciones de coordinación necesarias con los gobiernos de los estados, a fin de enfrentar de manera integral los abusos cometidos contra los migrantes. Por otro lado, la CNDH, ante la gravedad de los hechos, radicó de oficio el expediente CNDH/2010/4688/Q.

188. Esta es la fase en la que se encuentra la investigación a un mes de lo ocurrido, por lo que es prematuro hablar de sanción penal, disciplinaria o administrativa a los supuestos culpables, lo que desde luego tendrá lugar una vez que INCIE el juicio respectivo, así como de compensación para las familias de las víctimas.

189. La agencia del Ministerio Público encargado de la investigación, integrará un estudio de riesgo sobre los testigos de los hechos ocurridos. Una vez analizado el riesgo se determinará el mecanismo de protección de los testigos que deba implementarse.

190. Con fecha de 26 de agosto de 2010 la CNDH emitió dos oficios solicitando medidas cautelares. El primero, dirigido a la Secretaría de Seguridad Pública Federal, con la finalidad de garantizar la integridad del migrante ecuatoriano sobreviviente, así como para que se tomen las medidas necesarias a fin de evitar la consumación de hechos violentos de difícil o imposible reparación, que puedan afectar sus derechos humanos. Dicha petición fue debidamente atendida, lo que conllevó a que la División de Seguridad Regional de la Policía Federal implementara rondines en el nosocomio en el que se encontraba recibiendo atención médica el migrante sobreviviente.

191. El segundo, dirigido a la Procuraduría General de Justicia del estado de Tamaulipas, en el cual se solicita preservar todo tipo de indicios que se obtengan en el lugar de los hechos, así como aquellos datos que se permitan la identificación de los cadáveres.

192. Para la debida atención médica y recuperación del ecuatoriano sobreviviente, fue traslado al Hospital de la Marina en Matamoros, Tamaulipas, lugar en el que se resguardó su seguridad por elementos de la Marina Armada de México. Posteriormente fue traslado a su país de origen. Todos los trayectos y estancias del ciudadano ecuatoriano se realizaron bajo estrictas medidas de seguridad proporcionadas por el gobierno mexicano.

193. Por lo que hace al sobreviviente de nacionalidad hondureña, se encuentra bajo resguardo del Ministerio Público de la Federación en calidad de testigo, del cual para preservar su seguridad e integridad no se aportan mayores datos. Por lo que respecta a lo protección de testigos de hechos similares, se destaca que México llevó a cabo

modificaciones legislativas a novel constitucional y ha trabajado en diversos proyectos de legislación sobre protección a testigos.

194. De esta manera, el 18 de junio de 2008 fue publicado en el Diario Oficial de la Federación el decreto que reforma, adiciona y deroga diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, entre las cuales destaca la reforma el artículo 20 constitucional que contempla la protección a víctimas, ofendidos, testigos y en general a todos los sujetos que intervengan en un proceso penal, y que señala, en su apartado B intitulado "De los derechos de toda persona imputada", fracción III, párrafo segundo lo siguiente: "La ley establecerá beneficios a favor del inculpado, procesado o sentenciado que preste ayuda eficaz para la investigación y persecución de delitos en materia de delincuencia organizada".

195. A su vez, el apartado "C" fracción V, párrafo segundo del mismos artículo establece que: "El Ministerio Público deberá garantizar la protección de víctimas, ofendidos, testigos y en general todas los sujetos que intervengan en el proceso. Los jueces deberán vigilar el buen cumplimiento de esta obligación".

196. Tomando en cuenta que para la debida procuración de justicia los servidores públicos requieren de testimonios verídicos, eficaces y oportunos, que permitan identificar a los probables responsables estableciendo un vínculo entre éstos y el delito, es necesario que existan las condiciones para que los testigos rindan su declaración sin ser vulnerables a la presión que sobre ellos, sus familiares y personas cercanas, ejerce la delincuencia, de tal forma que no se prive a los órganos de procuración de justicia de elementos probatorios claves para el enjuiciamiento criminal. Los testigos deben permanecer libres de actos de intimidación.

197. Dentro del marco de las reformas señaladas anteriormente, el gobierno de México ha trabajado en diversos proyectos de legislación sobre protección a testigos. De esa manera, participó en los trabajos para la creación de una "Ley Modelo sobre Protección a Testigos", promovida por la Oficina contra Droga y el Delito de Naciones unidas (ONUDD) y la Organización de Estados Americanos.

198. A partir de dichos esfuerzos se han elaborado otros proyectos de legislación como por ejemplo un proyecto de ley sobre la materia elaborado por el estado de Chihuahua. Asimismo, actualmente se encuentra en estudio para su eventual aprobación en la Cámara de Diputados, una iniciativa de reforma sobre el tema que nos ocupa, la cual es compatible con las reformas del artículo 20 constitucional y las disposiciones de la *Ley Federal Contra la Delincuencia Organizada*, así como con los estándares internacionales existentes sobre la materia.

199. Dicha legislación permitirá establecer una protección efectiva a testigos y personas que colaboran en la investigación de personas relacionadas con organizaciones criminales, al mismo tiempo dotará al ministerio Público de la federación de instrumentos para garantizar la protección de víctimas, ofendidos, testigos y en general todos los sujetos que intervengan en la investigación.

200. Con la finalidad de promover las modificaciones de disposiciones normativas y prácticas administrativas que constituyen o propician violaciones a los derechos humanos, el 21 de mayo de 2009, la CNDH emitió la recomendación general 16 sobre el plazo para resolver una averiguación previa, la cual fue dirigida al Procurador General de la República, el Procurador de Justicia Militar y los Procuradores Generales de justicia de los estados.

201. En sus observaciones, la CNDH indicó que los agentes del Ministerio Público, a fin de garantizar una adecuada procuración de justicia, deben cumplir en el desarrollo de su

labor con diligencias mínimas, entre las que destaca dictar las medidas de auxilio y protección a las víctimas del delito y los testigos.

202. El 22 de marzo de 2010, en el marco de una audiencia pública celebrada en la Comisión Interamericana de Derechos Humanos "Situación de los derechos humanos de los migrantes en tránsito por México", el Estado mexicano se comprometió a presentar un informe sobre las acciones que ha emprendido para atender el fenómeno del secuestro de personas migrantes y la protección de sus derechos humanos.

203. El informe del estado mexicano sobre secuestro, extorsión y otros delitos cometidos contra personas migrantes en tránsito por territorio mexicano fue presentado a la CIDH el 18 de julio de 2010.

204. Dicho informe incluye las acciones realizadas por el gobierno federal para proteger y garantizar los derechos de las personas migrantes en tránsito por México. En dicho informe se presenta un plan de acción integral que orientará la labor del Estado mexicano para tal propósito. El plan incluye el fortalecimiento de las acciones ya instrumentadas en el último año por las autoridades federales y locales competentes, entre las que destaca la actuación inmediata y articulada de las autoridades de seguridad pública y de procuración de justicia, en estrecha coordinación con la Secretaría de Gobernación y con información de la Secretaría de Comunicaciones y Transportes.

205. El gobierno de México, comprometido con la elaboración e instrumentación de una política pública específica, ordenada y consistente, que aborde la problemática del secuestro de personas migrantes en territorio nacional de manera integrada, está trabajando en la instrumentación que permitan garantizar la seguridad de los migrantes y combatir el secuestro y otros delitos relacionas, tales como la extorsión y otras violaciones a sus derechos fundamentales.

206. Esta nueva estrategia de colaboración interinstitucional tiene cinco componentes; prevención, visibilidad de las víctimas a través del acceso efectivo a la justicia, combate frontal al delito, atención a los migrantes víctimas del delito y fortalecimiento de la cooperación internacional. Algunos de los componentes ya se encuentran en marcha y otros se encuentran en proceso de implementación en el corto y mediano plazo.

207. El Estado mexicano, asumiendo su compromiso con la elaboración e implementación de una política pública integral que atienda la problemática que enfrentan las personas migrantes en su tránsito por territorio nacional, y a fin de reforzar la política de Estado implementada en la materia, diseño la Estrategia Integral para la Prevención y el Combate al Secuestros de Migrantes. Dicha estrategia inició el 31 de agosto de 2010, cuyos objetivos son: Primero, atender el fenómeno del secuestro de migrantes de manera integral y eficaz, combatiendo con toda la fuerza del Estado Mexicano a las bandas del crimen organizado que vulneran la integridad de las personas. Segundo, consolidar la participación de los tres órdenes de gobierno en el combate y persecución del delito y la atención a las víctimas, así como de todos los actores en la prevención del delito, fomentando la denuncia y brindando atención adecuadas a las víctimas. Tercero, sumar esfuerzos internacionales e interinstitucionales, tanto con los países y comunidades de origen de los migrantes, como con los de destino, para salvaguardar sus derechos y respetar su dignidad humana. Cuarto, incorporar la valiosa labor de las redes civiles de atención a migrantes y las comisiones de derechos humanos, de manera que la labor del gobierno pueda contar con la participación de la sociedad civil organizada.

Líneas de acción:

208. Primero, firma de convenios. Se celebrarán convenios específicos con los gobiernos estatales, mismos que buscarán la implementación de acciones puntuales de atención y apoyo a migrantes víctimas del delito por parte de las autoridades más cercanas, así como

una mejor coordinación con el gobierno federal. El objetivo es firmar convenios con los estados que son parte de los principales corredores de migrantes.

209. Segundo, implementación de un plan operativo, con un importante componente de inteligencia. Con la colaboración de la Secretaría de Comunicaciones y Transportes (STC) y otras instancias. Lo anterior con miras a desmantelar a las bandas de la delincuencia organizada que actúan a lo largo de las rutas migratorias. Se contempla, un monitoreo más estrecho de las vías férreas.

210. Tercero, plan de comunicación para prevenir, informar y concientizar dirigido tanto a la población en México, incluyendo a los migrantes que estén dentro de nuestro territorio, así como a la población de países emisores. Se considera promover la cultura de la denuncia; informar a migrantes víctimas de algún delito sobre sus derechos y obligaciones, sin importar su calidad migratoria y llevar a cabo campañas de prevención en México y países de origen.

211. Cuarto, actualización del procedimiento para la detención de secuestradores e integración de averiguaciones previas, que contempla la sistematización del intercambio de información entre autoridades para la atención de delitos cometidos contra migrantes; establecimientos de procedimientos de operación para la presentación de denuncias, atención a víctimas e integración de las averiguaciones previas, y la revisión de la cooperación operativa entre autoridades para combatir fenómenos delictivos.

212. Quinto, establecimiento de mecanismos de atención especial a víctimas extranjeras, lo cual vislumbra: brindar apoyos a las víctimas del delito, canalizándolas a las dependencias y entidades correspondientes; garantizar el respeto a los derechos humanos de los migrantes durante su permanencia en las estaciones migratorias; brindar atención médica a las víctimas del delito mientras estén alojadas en las estaciones migratorias; regularizar la estancia de aquellas víctimas de secuestros que obtuvieron una forma migratoria FM3 por razones humanitarias; y gestionar apoyos para la construcción de albergues para las víctimas de secuestro. En ese contexto, se han promovido mecanismos efectivos de coordinación, como un componente esencial de la política de prevención y combate del Estado mexicano, tal como se señala a continuación:

213. Convenio Marco de colaboración para la prevención y combate al secuestro de migrantes. En virtud de lo anterior, el 31 de agosto de 2010, Secretaría de Gobernación, la Procuraduría General de la República el Instituto Nacional de Migración y la Comisión Nacional de los Derechos Humanos, suscribieron el "Convenio Marco de Colaboración para la Prevención y Combate al Secuestro de Migrantes", en el cual se establecen compromisos entre las partes para realizar e impulsar, en el ámbito de sus respectivas competencias, diversas estrategias y acciones coordinadas, con la finalidad de prevenir y combatir este delito, en el marco de la promoción del respeto a los derechos humanos.

214. Convenios con las entidades federativas para la atención a migrantes víctimas del delito. Adicionalmente, tomando en consideración las zonas de mayor incidencia de este delito y con mayor número de migrantes en situación de vulnerabilidad, el 3 de septiembre de 2010 se firmaron los "Convenios Específicos para Garantizar el Goce, Protección y Ejercicio de Garantías Constitucionales Relacionadas con Medidas de Atención y Apoyo a favor de Extranjeros Víctimas del Delito, con los gobiernos de los estados de Chiapas, Campeche y Tabasco y las respectivas Comisiones Estatales de Derechos humanos.

215. El objeto de cada convenio específico es establecer los mecanismos de coordinación necesarios entre las partes a fin de garantizar a los extranjeros víctimas del delito, que manifiesten su interés en formar parte del procedimiento penal respectivo, el goce y ejercicio de las garantías que les confiere la Constitución Política de los Estados Unidos Mexicanos, los tratados internacionales de los que México es parte, los ordenamientos legales y demás disposiciones aplicables; así como coadyuvar en persecución de los delitos

de los que son víctimas los migrantes extranjeros, en el ámbito de sus respectivas competencias.

216. La Secretaría de Gobernación coordina la celebración de convenios específicos con otros gobiernos de las entidades federativas para diseñar e implementar acciones coordinadas en materia de atención y apoyo a víctimas del delito de origen extranjero, -entre los que se encuentran los migrantes víctimas de secuestro-, así como una mejor coordinación con el gobierno federal.

217. En dichos instrumentos, se prevé la colaboración cercana del Instituto nacional de Migración y las Procuradurías locales a fin de promover el intercambio de información sobre las redes criminales y el acceso efectivo de las víctimas al sistema de justicia y a los mecanismos de atención y apoyo médico y psicológico.

218. En fecha próxima se firmará el "Convenio Específico con los Estados de Veracruz, Tamaulipas y Oaxaca", y se continuará con el resto de las entidades federativas que forman parte de la ruta de los migrantes.

219. Convenio de colaboración Subprocuraduría de Investigación Especializada en Delincuencia Organizada (SIEDO) de la Procuraduría General de la República y el Instituto Nacional de Migración.

220. El convenio de colaboración SIEDO-INM ya fue acordado por las instancias que en él participan y se firmará en fecha próxima, una vez que se agote el procedimiento de dictamen en términos de las disposiciones jurídicas aplicables.

221. El contenido del instrumento contempla facilitar la atención e investigación de hechos probablemente constitutivos de delito en los que se encuentren involucrados migrantes, incluyendo la presentación de denuncias; la canalización de víctimas para su atención tutelar, asistencial, preventiva, médica y psicológica; la oportuna puesta a disposición de detenidos; así como la formulación y ratificación de querellas para el inicio, integración y determinación y determinación de las averiguaciones previas correspondientes.

222. Módulo de monitoreo de agresiones en contra de personas migrantes: Una política pública sólo puedo ser verdaderamente eficaz si se articulan esfuerzos y si tiene la apertura y los canales de comunicación apropiados para aprovechar la labor de vigilancia, de participación crítica y de apoyo, que es propia a los organismos especializados en derechos humanos y a la sociedad civil organizada.

223. En ese sentido, ante el creciente número de delitos de alto impacto cometidos contra migrantes extranjeros en territorio mexicano, el gobierno de México reconoce la necesidad de contar con datos estadísticos con una periodicidad definida relativos a la población migrante agredida, a los agresores, al tipo de agresión cometida, a los lugares en que se cometen los ilícitos, a la frecuencia y temporalidad en que ellos ocurren.

224. Por ello, la SEGOB impulsa un sistema computarizado para la sistematización y seguimiento de los casos de personas migrantes víctimas. Además de la participación gubernamental, se busca la colaboración de los albergues que se encuentran en territorio mexicano, Comisiones Estatales de Derechos Humanos y CNDH. Dicho sistema incluye – entre otros – los siguientes aspectos: tipo de agresiones recibidas, lugar y fecha en que se cometió cada agresión, quiénes cometieron el ilícito, *modus operandi* de los delincuentes, la circunstancia de le migración (solo o acompañado; indocumentado o no), datos del lugar de confinamiento, si se procede, datos sobre su liberación y vista a alguna autoridad (federal, estatal o municipal).

225. Aunado a lo anterior, se promueve la inclusión de un módulo especializado en secuestro de migrantes en ka Encuesta sobre Migración en la Frontera Norte de México

(EMIF-N). la EMIF es un proyecto conjunto del Consejo Nacional de Población (CONAPO), la Secretaría del Trabajo y Previsión Social (STPS), el Instituto Nacional de Migración (INM) y el Colegio de la Frontera Norte (COLEF).

226. Mecanismo interinstitucional para prevenir agresiones en contra de las personas migrantes. El estado mexicano impulsa la planeación, ejecución y seguimiento de acciones de prevención, difusión, concientización y capacitación que atienden la problemática de las personas migrantes. A fin de llevar a cabo lo anterior, se contempla la participación de la sociedad civil nacional e internacional, consulados, CNDH y Comisiones Estatales. De las primeras acciones a implementar se destaca: Carteles, folletos, campaña de denuncia, campaña de difusión de los derechos humanos de las personas migrantes, programa de sensibilización sobre los derechos humanos de las personas migrantes dirigido a autoridades ministeriales y policiales de los tres niveles de gobierno de la ruta migratoria.

227. Adicionalmente, la SEGOB promueve una campaña informativa al interior del territorio, cuyo objetivo es promover la cultura de la denuncia, difundir los derechos de las personas migrantes e informar sobre las funciones que tienen las autoridades mexicanas, en materia de auxilio a las víctimas del delito en territorio nacional, sin importar su calida migratoria.

228. Atención especial a víctimas: El gobierno mexicano trabaja a fin de incorporar a diversas dependencias del sector social, a organismos de la sociedad civil y albergues, al esfuerzo de atención a víctimas, tanto en territorio nacional como en los países de origen. Aunado a lo anterior, se contempla brindar apoyo para la construcción de un albergue para la atención a migrantes víctimas de secuestro.

229. Por otro lado, la CNDH, a través de la Quinta Visitaduría General, cuanta con un programa de acompañamiento y apoyo a los albergues que dan atención a migrantes, mediante el cual se brinda capacitación sobre derechos humanos de los migrantes, se elabora material de difusión y se brinda atención a víctimas del delito.

230. A raíz de los hechos perpetrados el 22 de agosto en San Fernando, Tamaulipas, el gobierno mexicano reitera su compromiso para garantizar el pleno respeto de los derechos humanos de los migrantes y sus familias.

231. De manera inmediata a los hechos, el gobierno mexicano ha brindado todo el apoyo a los Estados concernidos a efecto de facilitar la plena identificación de las víctimas, ha fortalecido los operativos de vigilancia en la zona y ha dado inicio a las averiguaciones correspondientes.

232. En este sentido, las distintas autoridades del gobierno federal han actuado, conforme a sus competencias, a fin de esclarecer el delito y castigar a los responsables de este lamentable suceso que, por su magnitud, plantea nuevos retos a la región en su conjunto. Destaca la elaboración de una estrategia integral para atender la problemática de los fenómenos delictivos que afectan a los migrantes.

233. Cabe destacar que el secuestro, la trata, los homicidios y otros fenómenos delictivos en contra de personas migrantes son parte de una problemática regional y deben ser atendidos también desde un enfoque de cooperación internacional.

Observaciones

234. El Relator Especial agradece la información proporcionada por el Gobierno en relación a la comunicación, pero lamenta que la respuesta del Gobierno no hace mención de la Ley Federal de Responsabilidad Patrimonial del Estado que establece las responsabilidades legales del Estado Mexicano en caso de delitos cometidos por funcionarios públicos y agentes de la distintas entidades de cuerpos policiales.

Comunicación enviada

235. El 19 de enero de 2011, el Relator Especial, junto con el Presidente del Grupo de Trabajo sobre las desapariciones forzadas o involuntarias, el Relator Especial sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes; y la Relatora Especial sobre la situación de los defensores de los derechos humanos, enviaron un llamamiento urgente en relación con la desaparición de un grupo indeterminado de migrantes y posteriores amenazas y actos de hostigamiento contra el Padre Solalinde y sus colaboradores en el "Albergue de Migrantes Hermanos en el Camino de la Esperanza", un refugio para migrantes gestionado por la Pastoral católica de Movilidad Humana de la Diócesis de Tehuantepec, estado de Oaxaca, del cual el Padre Solalinde es director. Dicho albergue proporciona ayuda humanitaria a los migrantes extranjeros que transitan por Ciudad Ixtepec, Oaxaca.

236. Según la información recibida, el día 16 de diciembre, aproximadamente 250 migrantes de América Central, viajaron en un tren de carga cruzando la parte sur del Estado de Oaxaca. Este tren atraviesa el Estado de Oaxaca y en este tramo estaría gestionado por la empresa de participación estatal mayoritaria Ferrocarril del Itsmo de Tehuantepec, S.A. de C.V. por lo que sus operarios podrían ser considerados como funcionarios públicos. A las 20:00 horas de este día una operación llevada a cabo por la Policía Federal, el Ejército y el Instituto Nacional de Migración habría parado el tren y habría detenido a 92 personas (incluyendo 4 niños y 17 mujeres). Se informa que los que lograron escapar fueron victimas de intimidación y uso excesivo de la fuerza por parte de los agentes que participaron en el operativo, incluyendo insultos, amenazas y patadas.

237. Según los informes recibidos, aproximadamente 150 personas pudieron volver al tren, donde los operadores del mismo les habrían pedido dinero para seguir el viaje. Dado que la cantidad de dinero recibida habría sido considerada insuficiente, los operarios les habrían advertido a los migrantes que "habría problemas" más adelante. Aproximadamente 30 minutos más tarde el tren habría parado otra vez en Chahuite (Oaxaca) y hombres fuertemente armados no identificados habrían subido al tren, agrediendo y asaltando a varias personas y secuestrando a un número aproximado de 40 de ellas, incluyendo al menos un menor y 10 mujeres.

238. El día 18 de diciembre, algunos de los migrantes que viajaban en el tren habrían llegado al refugio de "Hermanos en el Camino" y habrían relatado los hechos tras lo cual el Padre Solalinde habría denunciado los secuestros y habría informado a las autoridades. Los operarios del tren no habrían reportado los sucesos ni habrían informado a las autoridades. La Secretaría de Gobernación, el día 21 de diciembre habría publicado un comunicado de prensa admitiendo que investigaba los hechos ocurridos citando incluso a los migrantes como testigos, a quienes se les habría proporcionado un visado humanitario y se habrían producido traslados a la Ciudad de México con el fin de proporcionar mayor protección y seguir con las investigaciones.

239. Se informo también que un número indeterminado de migrantes siguen sin ser encontrados y el Padre Solalinde junto con más activistas, habrían llevado a cabo el día 8 de enero una marcha a pie para llamar la atención sobre la vulnerabilidad de los migrantes en la parte sur de México. Tras estos hechos, las continuas amenazas que venían recibiendo el Padre Solalinde y sus colaboradores se habrían intensificado. Con anterioridad a estos hechos, el Padre Solalinde y sus colaboradores habrían recibido varias amenazas de muerte y habrían sido víctima de actos de hostigamiento. El mas reciente de estos actos habría tenido lugar el día 11 de noviembre de 2011, cuando un colaborador del refugio, el Sr. Alberto Donis Rodriguez, habría sido amenazado de muerte por un individuo presuntamente conectado con el crimen organizado y las maras que operan en la zona. Ese mismo día, el Padre Solalinde habría recibido información indicando que grupos armados y con conexiones políticas estarían interesados en su muerte. En abril de 2010, la Comisión

Interamericana de Derechos Humanos emitió medidas cautelares a favor del Padre Solalinde y sus colaboradores. Según se informa, gran parte de estas medidas cautelares no habrían sido aplicadas o serían insuficientes.

240. Se expreso grave preocupación por la integridad física y psicológica de los migrantes afectados por los sucesos referidos y, en especial, por el hecho de que un número indeterminado de los mismos se encuentre aun en paradero desconocido. Asimismo, se expresa preocupación por la seguridad y la integridad física y psicológica del Padre Solalinde y de sus colaboradores en el Albergue de Migrantes Hermanos en el Camino de la Esperanza debido a las alegaciones recibidas indicando que las amenazas en su contra se habrían intensificado tras los hechos referidos. Se solicito en particular información acerca del destino y paradero de los migrantes que continuarían desaparecidos, sobre la situación de los 92 migrantes que habrían sido detenidos por la policía y el Instituto Nacional de Migración, y sobre cualquier medida adicional que se haya tomado para garantizar la seguridad física y psicológica del Padre Solalinde y sus colaboradores en el "Albergue de Migrantes Hermanos en el Camino de la Esperanza".

Observaciones

241. El Relator Especial lamenta no haber recibido una respuesta de parte del Gobierno con respecto a la comunicación mencionada.

Myanmar

Communication sent

242. On 7 October 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights in Myanmar and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a letter of allegation to the Government concerning serious violations of human rights committed at the Thai-Myanmar border against migrants who were deported to Myanmar from Thailand.

243. According to the information received, an increasing number of migrants from Myanmar living in Thailand were being deported to Myanmar, which receives four hundred deportees per month at the Ranong-Kawthaung checkpoint. Informal checkpoints have also been developed at various points along the Moei River.

244. It was alleged that the authorities present at the checkpoints were requesting money ranging from 1'000 baht to 1'600 baht (approximately $30 to $50) from the migrant workers in exchange for their release. Reports indicated that those who cannot pay the fees are sent to border camps where they are subject to beatings and other cruel, inhuman or degrading treatment, which may amount to torture, or forced labor. In February 2010, a 17-year-old Burmese worker was reportedly tortured and executed by the authorities at the checkpoint known as "Zero Gate" at the south of the Thailand-Burma Friendship Bridge. The boy reportedly attempted to escape after being told he would be sent to a forced labour camp if he did not pay fees to secure his release.

245. There were also reports that girls were being sold to brothels or to brokers while boys are being conscripted, if they are unable to pay the fees to secure their own release. As an illustration, in December 2009, a 17-year-old girl was reportedly sold to a broker who paid 1'800 baht ($60) to secure her release from the checkpoint and took her back to Mae Sot. The broker then sold her for 2'000 baht ($67) to a man who raped her twice and pressured her to marry his friend.

246. It was further reported that Myanmar's authorities had closed Zero Gate due to the abuses allegedly committed. However, the information received suggested that the informal

deportation processes were still being carried out especially during the night through other checkpoints, including those known as Gate 10 and Gate 16 near Mae Sot.

247. The Special Rapporteurs asked the Government for its observations concerning the accuracy of the alleged facts, the details of any investigations, judicial or other inquiries which have been carried out in relation to these cases, the investigations or inquiries if they have taken place, as well as any measures undertaken to hold the perpetrators accountable, the details of any measures undertaken to ensure the safety and security of migrant workers of Myanmar's citizenship who are deported from Thailand, how it exercises oversight of informal checkpoints and ensures that human rights of deportees are respected during the repatriation procedures and the details of any measures undertaken to prevent and combat trafficking in persons during the repatriation procedures.

Reply from the Government

248. By letter dated 8 November 2010, the Government provided the following information.

249. The Governments of the Union of Myanmar and Thailand have officially established the two border crossing points at Myawaddy-Mae Sot and Kawthaung-Ranong in 1997. Since 2002, the government has established an official camp at Myawaddy and received a total of 28,721 Myanmar migrants workers from Thailand and after verification process they were sent back to their respective domicile on the government's expenses and the government has not received any repatriation through illegal channel.

250. On 30 March 2004, Myanmar acceded to the United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons. In 2005, Myanmar enacted Anti-Trafficking in Persons Law in line with the standards of the Protocol to address effectively the human trafficking issues. Since 2005, 469 human trafficking cases have been identified and 1690 offenders have been prosecuted. The 1344 trafficking victims have been rescued and assisted.

251. The Central Body for Suppression of Trafficking in Persons was formed as a national mechanism to combat human trafficking and since 2001, the authorities have organized a number of public awareness. In 2007, the 5 year National Plan of Action to Combat Trafficking in Persons was introduced and the follow up actions have been implemented for enforcement measures.

252. The allegations of receiving four hundred deportees per month at Ranong-Kawthaung checkpoint and asking for money from migrant workers in exchange for their release are totally untrue. On 1 September 2010, Myanmar side has received five Myanmar citizens who were informally repatriated by the Thai side at Ranong-Kawthaung checkpoint and the authorities have collected a total of 1,000 Kyat for border-crossing fees and they were sent back to their own regions on 5 September 2010. The Myanmar authorities have not received any complaint about the torture of a 17 year old Myanmar worker at Zero Gate and the report of the girls who were being sold to brothels or to brokers.

253. The Government has consistently taken all necessary measures to combat human trafficking while taking into account of the guaranteeing the rights and safety of women and children. Whenever any complaint about violence and human trafficking emerges the government has undertaken systematic investigations and prosecuted the perpetrators.

Observations

254. The Special Rapporteur thanks the Government for its reply.

Nepal

Communication sent

255. On 15 October 2010, the Special Rapporteur, together with the Special Rapporteur on trafficking in persons, especially women and children, the Special Rapporteur on contemporary forms of slavery and the Special Rapporteur on the sale of children, child prostitution and child pornography sent a letter of allegation to the Government concerning an estimated 70,000 child bonded labourers, who work in the so-called "rat mines" of Jaintia Hills, which is located in the North Eastern State of Meghalaya, India.

256. According to the information received, an estimated 70,000 bonded child labourers from Nepal and Bangladesh work at the so-called "rat mines" of Jaintia Hills, Meghalaya State, India. The mines are reportedly known as such, because of the narrow and crude holes dug into the hills where only children can pass. It was estimated that about 40,000 children from Bangladesh and 30,000 children from Nepal work at the mines. In most cases, the children are allegedly purchased by middlemen or abducted or sold by gangs in Nepal and Bangladesh to the mining mafia in Meghalaya. The children were allegedly sent to the mines after their parents accepted money from middlemen engaged in child trafficking. The price for a child varies from 50 to 75 US dollars. The children are in debt bondage situations, as they are not paid for their work in some cases so that they repay with their labour the price for which they were bought. In other cases, the children are given half wage compared to adults, which leave them with very little money to survive on as expenses for their good are deducted from their wages.

257. The working conditions at the mines are allegedly hazardous, unhygienic, cruel and inhuman. The children are threatened not to disclose their identity to anyone they meet and they have no freedom to move from the premises of the mines. The working hours are long and the children have no rest from the day break to the nightfall. They have no means to communicate with the outside world, let alone their families. The children are not provided with any safety equipment and are only given shovels or pickaxes to extract coal or limestone. Further, it appears that deaths of children are common due to the unsafe working conditions at Jaintia Hills and often remain unreported. According to the information received, human skeletons were recovered beneath a pile of coal in the mine in Jaintia Hills and it has been verified that they were the remains of children who lost their lives due to suffocation in the mine shafts or in other accidents during the mining operations.

258. The information received also suggested that the children live in very poor conditions. They reportedly live in huts made with plastic sheets and there are no proper sanitary facilities. There is a lack of safe drinking water and proper sewage system. Although many people fall ill due to the poor living conditions, there are no medical facilities available near the mines.

259. It was alleged that girls are also often bought by the owners of the rat mines and subject to sexual exploitation. They are exploited not only by mine owners, but also managers, other older workers and even truck drivers. There is also information suggesting that some children are trafficked further from the mines to the cities for sexual exploitation.

260. The Special Rapporteurs asked the Government for its observations concerning the accuracy of the alleged facts, the full details of any actions or investigations undertaken to identify the Nepalese children working at the "rat mines" and to verify their working conditions, any cooperation arrangements with the Indian authorities to facilitate the rapid identification of the Nepalese children working at the "rat mines", the details, and where available the results, of any investigation, judicial or other inquiries which may have been carried out in relation to individuals who are implicated in trafficking or selling the Nepalese children to the "rat mines" and keeping them in bonded labour, the current

policies and the preventive and awareness-raising measures undertaken to prevent human trafficking, sale of children and sexual exploitation of children in Nepal and whether the victims or the families of the victims have access to adequate procedures of compensation for damages from those legally responsible for the trafficking in children, the sale of children, sexual exploitation of children, and the use of bonded labour.

Observations

261. The Special Rapporteur regrets not having received a reply from the Government regarding the above-mentioned communication.

Republic of Moldova

Communication sent

262. On 28 September 2010, the Special Rapporteur sent a letter of allegation to the Government concerning requirements of permission to emigrate from Moldova.

263. According to the information received, paragraph 33 of the Government Decision No. 376 of 6 June 1995 (published in the Official Gazette No. 347 on 24 August 1995) states that "Moldovan citizens, foreigners and stateless persons legally residing in Moldova who want to move abroad should present the notarized declaration of parents remaining on the territory of Moldova confirming lack of certain unenforced legal obligations (in case of parent's death, the certificate of death); the notarized declaration of spouses remaining on the territory of Moldova (if they have minors from this marriage), confirming lack of certain unenforced legal obligations; and the notarized declaration of ex-spouses remaining on the territory of Moldova (if they have minors from this marriage), confirming lack of certain unenforced legal obligations".

264. It was alleged that these requirements above-mentioned have hindered persons to leave the country and are not in conformity with provisions of the International Covenant of Civil and Political Rights and other relevant international human rights law.

265. Reports indicated that although these rules would appear to serve a legitimate aim, the counterfactual case – inability to secure the notarized documents as required – would nullify impermissibly the right to leave any country including one's own. Cases of such profile were reported.

266. It was furthermore alleged these requirements to leave the country are exacerbated by the fact that illegal crossing of the border remains a criminal offence in Moldova.

267. The Special Rapporteur asked the Government for its observations concerning the accuracy of the alleged facts, why persons have been refused any form of permission to leave the country or any travel document, based on the rules summarized above and the way it ensures compliance with article 12 (2) of the International Covenant on Civil and Political Rights and related relevant international law.

Reply from the Government

268. By letter dated 30 March 2011, the Government provided the following information.

269. Human rights protection is of an utmost priority for the Government. In this respect, the right to free movement of people is protected by the international instruments mentioned so far and Art. 27 of the Constitution. However, the above mentioned freedom does not represent an absolute right with no legal limitations upon it.

270. In this context, accordingly to the Paragraph 3 of the Article 2 of the Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, the right

to free movement cannot be subject of any other limitations, except those envisaged by law and necessary measures are allowed in a democratic society, from a perspective of the interests of national security or public safety, for the maintenance of "public order", crime prevention, protection of public health or morality, or for the protection of the rights and freedoms of the others.

271. As provided by Article 54 of the Constitution, the exercise of certain rights and freedoms may be subject to restrictions recognized and accepted by the international law and practice, such as in the following cases: the defense of national security, of public order, health or morals, of citizens rights and freedoms, the carrying of investigations in criminal cases, preventing the consequences of a natural calamity or a technological disaster, against disclosure of confidential information or guarantee the authority and impartiality of justice.

272. The conditions imposed by the provisions of section 33 of the Regulation on the manner of granting and issuing of identity documents, approved by Government Decision no. 376 of 06 June 1995, could be seen as being imposed to protect the legitimate rights and freedoms of others.

273. In this sense, the State authorities might impose certain conditions in which the exercise of freedom of movement may be restricted, but they must not be disproportionate to the pursued aim.

274. It is also important to have an effective protection mechanism against abuses. In this context, the illegal actions of public authorities can be contested in the administrative judicial procedure.

275. It is worth mentioning that there are no refusal of cases for Moldovan citizens in order to leave the country for permanent residence abroad.

276. Taking into account the necessity of establishing a legal framework for free movement of citizens, providing a complete, uniform and continuous regulation in this area, the Government, on the basis of national plans for harmonization of Moldovan legislation with the EU regulatory framework, undertakes the necessary measures in order to achieve this objective.

277. A good example in this regard is the adoption by the Moldovan Parliament of the *Law on aliens' regime in the Republic of Moldova No. 200 of 16.07.2010* (published on 24.09.2010 in the Official Monitor No. 179-181, Article 610, which shall enter into force 24.12.2010); its standards also correspond to the provisions of the International Covenant on Civil and Political Rights, adopted by the Law for ratifying the Optional Protocol to the International Covenant on Civil and Political Rights No. 260 of 06.12.2007.

278. It is also necessary to note that once the *Law on aliens' regime in the Republic of Moldova No. 200 of 16.07.2010* shall come into effect, the Government will submit proposals to the Parliament in order to bring the legislation into force, including the Government Decision No. 376 of 06.06.1995, in accordance with above mentioned Law.

Observations

279. The Special Rapporteur thanks the Government for its reply.

Saudi Arabia

Communication sent

280. On 19 August 2010, the Special Rapporteur sent a letter of allegation to the Government concerning information received showing a pattern of widespread exploitation

of migrant workers in the Kingdom of Saudi Arabia, including non-payment of wages and confiscation of passports, thereby restricting the workers' freedom of movement, access to medical care, and their right to effective remedies. Reports suggested that the sponsorship ("kafala") system, which ties migrant workers' residency permits to their employers, is one of the root causes of such abuses. In addition, the Labour Courts were allegedly slow and cumbersome, which makes it significantly difficult for migrants with limited resources to obtain effective remedies. To illustrate these allegations, the following cases have been brought to the attention of the Government.

281. According to the information received Mr. James Braun, a Canadian national who was working as an English teacher at a local university in Al-Ahsa, was dismissed by his employer, Al-Shabaka Training Establishment on 30 November 2008. He sued his employer in the lower court in Al Hofuf in December 2008, claiming that the dismissal was unfair. In April 2009, the court held in his favour, ruling that the dismissal was unfair and the employer was ordered to pay him his full salary until the end of his contract in June 2009 in the amount of SR120,000. The decision was appealed by his employer to the Labour Court in Riyadh and was still ongoing to date due to delays occurred in the meantime. The first hearing originally scheduled in November 2009 was postponed for three months because no translator was provided by the court, although he was assured that a translator would be provided for him on the day. The hearing rescheduled on 23 January 2010 was again postponed for another three months, allegedly because he arrived late for the hearing. On 21 April 2010, Mr. Braun and his translator appeared for the third hearing. However, the judge refused to examine Mr. Braun's case and postponed the hearing for another three months. As a result of these delays, Mr. Braun has not received any salaries or compensation for the last 19 months or so.

282. Mr. Yasser Younes Abdelhady Hoseen, an Egyptian national working as a general sales manager for Elkaply Ltd., was dismissed on 21 June 2010 without notice. On 22 June 2010, he filed a complaint to the Labour Office in Riyadh. However, the Labour Office allegedly informed him that they would only review his complaint after four to six months. Mr. Hoseen also filed a case in the Labour Court, but the Court allegedly did not register his complaint and told him to come back after three months. In addition, Mr. Hoseen contacted the Egyptian consular authorities, but he was informed that they could not do anything for him. It was alleged that the company still owes some of his salaries and is in possession of his passport, which prevents him from leaving the country. Since his dismissal, he has not been able to obtain employment or access medical insurance, due to the sponsorship system.

283. Mr. H.M. Sarath Permarsiri, a Sri Lankan national, was a heavy vehicle driver at Al Wathaniya Poultry Transport for 2 years and 7 months. On 25 December 2009, he was killed in a motor vehicle accident during the course of his employment. However, his widow has not yet received any compensation or her deceased husband's salaries for the month of December 2009.

284. Migrant workers employed by Jadawel International at the Dhahram and Riyadh compounds have not been paid their full salaries since November 2009. Further, their passports were allegedly confiscated by Jadawel International and at least 28 of the workers in Dhahram were trapped in their residential compound, as their residence permits have not been renewed by Jadawel International and they were unable to leave the compounds for fear of arrest. The reports also indicated that the migrant workers are unable to seek medical attention, due to the lack of valid residence permits. It was reported that many migrant workers at the Riyadh compound were in the same situation and Jadawel International allegedly threatened the migrant workers that their food would be withheld and they would be summarily deported if they communicated with the media or human rights organizations. On 12 April 2010, at a meeting with the migrant workers at the

Dhahram compound, Jadawel International reportedly agreed to pay the arrear salaries and to renew the residence permits of the workers. Subsequently, Jadawel International reportedly paid the migrant workers one month's salary on 31 July 2010 and promised the workers that another month's salary will be paid. These commitments have yet to be met by Jadawel International.

285. The Special Rapporteur asked the Government for its observations concerning the accuracy of the alleged facts, the details, and where available the results, of any investigation, judicial inquiry or any other inquiries carried out in relation to the above cases of Mr. James Braun, Mr. Yasser Younes Abdelhady Hoseen, Mr. H.M. Sarath Permarsiri and Jadawel International, the labour law framework which protects migrant workers from abuses, such as a non-payment of wages, confiscation of passports and non-renewal of residence permit, the details of how the Government monitors and prosecutes such abusive employers, the measures undertaken to ensure that Labour Courts adjudicate complaints in an impartial, independent, efficient and effective manner, regardless of citizenship or nationality of the claimant and any efforts undertaken to assist migrant workers in accessing the justice system in a meaningful manner.

Reply from the Government

286. By letter dated 30 March 2011, the Government indicated the following:

287. Concerning Mr. James Braun:

288. This Canadian National, who was working as an English teacher for Al-Shabaka Training Establishment under contract to King Faisal University in Al-Ahsa, filed a complaint with the Labour Office in the governorate of Al-Ahsa against his employer, Al-Shabaka Training Establishment, for unfair dismissal. After making an unsuccessful attempt to reach an amicable settlement between the two parties to the contractual relationship, the Labour Office referred the case file, in accordance with article 214 of the Labour Law, to the Commission of First Instance for the Settlement of Labour Disputes in the governorate of Alahsa which, after hearing the case, handed down Decision No. 37/430 on 16/2/2009. However, the rulings of that decision were not deemed satisfactory by the two parties to the dispute, who therefore lodged an appeal against the decision with the High Commission for the Settlement of Labour Disputes in Riyadh in accordance with article 216 of the Labour Law. The latter Commission, in turn, examined the case and set a number of dates for hearings which the worker failed to attend. The Commission finally handed down Decision No. 1861/1/1431 AH on 8/1/2010 upholding clauses 2, 3 and 4 of the said decision of the Commission of First Instance, modifying clause 1 thereof to read "Al-Shabaka Training Establishment has an obligation to pay the statutory entitlements of the worker, James Braun, in respect of his separation from service indemnity (amounting to 4,982 riyals) and his leave due (amounting to 9,298 riyals), and rejecting all other claims. On 11/11/2010, the two parties were given a copy of the Commission's decision, which further indicated that Mr. Braun had been dismissed on the ground of his unsatisfactory professional conduct and indiscipline, which the Establishment substantiated on the basis of his employment contract, clause 4 of which stipulated that, in regard to management and supervision, "Al-Shabaka shall manage the teacher's working and leave schedule and the University Canada West shall supervise his teaching performance in class".

289. According to the report of the Vice-President of the University Canada West: "Mr. Braun has demonstrated a lack of professional commitment towards his students and King Faisal University and, furthermore, seems unable or unwilling to respect the authority and the powers vested in his superiors. In short, these breaches provide grounds for his immediate dismissal". It is evident from the above that the case was closed with the delivery of the decision of the Higher Commission for the Settlement of Labour Disputes insofar as its ruling was final, definitive and not subject to objection or appeal (under article

225 of the Labour Law, “neither of the opposing parties shall be entitled to bring before this Commission or any other judicial body a dispute on which a final decision has been handed down by one of the Commissions specified in this Chapter”

290. Concerning Mr. Yasser Younes Abdelhady:

291. On 26/5/2010, this Egyptian national filed a complaint with the Labour Office in the Riyadh region. Having attempted, to no avail, to reach an amicable settlement between the two parties which failed to agree, the Labour Office therefore referred the case, on 6/7/2010, to the Commission of First Instance for the Settlement of Labour Disputes in the Riyadh region which, in this connection, handed down Conciliation Decision No. 206 dated 13/1/2010 on the basis of which the worker received 9,844 riyals before the Commission of First Instance and the dispute between the parties was deemed to be ended.

292. Concerning Mr. Sarath Permarsiri:

293. Although a search has been made for the case of this Sri Lankan national, no record containing the name of this worker or the name of the company has been found.

294. Concerning workers employed by Jadawel International, the Government informed of the following:

295. This case related primarily to the late payment of their salaries, as a result of which they filed a complaint with the Lanour Office in the governorate of Al-Khobar on 23/6/2010. Their complaint was examined at the time by that Office’s Inspection Department which succeeded in conciliating the workers and the company, thereby ending this dispute.

296. With regard to the Special Rapporteur’s request for information on the Labour Law framework which protects migrant workers from abuses, such as non-payment of wages, confiscation of passports and non-renewal of residence permits, and details of how the Kingdom’s Government monitors and prosecutes such abusive employers.

297. First of all, the Kingdom has reservations concerning use of the expression “migrant workers” insofar as such workers in the Kingdom of Saudi Arabia are bound by a contractual relationship with their employer for a specified period of time. Moreover, the rights of workers are guaranteed in the Labour Law, article 61 of which stipulates as follows:

298. The employer shall not require a worker to perform forced labour, nor shall he withhold all part of a worker’s wage without judicial authorization. He shall treat his workers with due respect and shall refrain from any utterance or act prejudicial to their dignity or their religion.

299. The employer shall allow his workers adequate time to exercise their rights as provided for in this Law, without any deduction from their wages in respect of such time, and shall be entitled to regulate their exercise of this right in a manner non-detrimental to the progress of the work.

300. Article 90 of the Labour Law further stipulates that: “The worker’s wage and any amount to which he is entitled must be paid in the country’s official currency and the wage must be paid during working hours and at the place of work in accordance with the following provisions: “The wages of workers on a monthly wage shall be paid once a month.”

301. Under article 40, paragraph 1, of the Labour Law: “The employer shall bear the costs of recruitment of non-Saudi workers, the fees for the issuance and renewal of residence and work permits and any fines for delay therein, the fees in respect of change of occupation, departure and return, as well as the worker’s return ticket to his home country

on the termination of the contractual relationship between the two parties." If any of the parties to the contractual relationship defaults on its obligations and commitments to the other parties, the latter are entitled to bring proceedings to claim those rights. Chapter XIII of the Labour Law makes provision for labour inspection to ensure the proper application of the Law.

302. With regard to the Special Rapporteur's request for information on any measures undertaken to ensure that Labour Courts adjudicate complaints in an impartial, independent, efficient and effective manner, regardless of the citizenship or nationality of the claimant.

303. In their judicial functions, the Commissions for the Settlement of Labour Disputes operate independently of the Ministry of Labour and no one is permitted to interfere in their work since the Kingdom's judiciary is an independent authority as stipulated in article 46 of the Basic Law of Governance ("The judiciary shall be an independent authority and, in their administration of justice, judges shall be subject to no authority other than that of the Islamic Shari'a"). The Islamic Shari'a, which is the Kingdom's Constitution, guarantees this impartiality, without any discrimination, since everyone is equal before the law.

304. With regard to the request for information on any efforts undertaken by the Kingdom's Constitution to assist migrant workers in accessing the justice system in a meaningful manner.

305. The Ministry of Labour is showing concern to keep workers informed and, to this end, has issued guidelines for expatriates coming to work in the Kingdom of Saudi Arabia. The Labour Law and its Implementing Regulations are posted, in several languages, on the Ministry's website to make it easier for all workers to consult them and ascertain their rights and obligations. Printed versions thereof can also be obtained free of charge in all parts of the Kingdom, art ports of entry and from the Kingdom's embassies abroad.

Observations

306. The Special Rapporteur thanks the Government for its reply.

Suisse

Communication envoyée

307. Le 13 août 2010, le Rapporteur spécial, conjointement avec le Rapporteur spécial sur les formes contemporaines de racisme, de discrimination raciale, de xénophobie et de l'intolérance qui y est associée et le Rapporteur spécial sur la liberté de religion ou de conviction a envoyé une communication concernant la consultation populaire du parti politique de l'Union Démocratique du Centre (UDC) sur la politique d'asile et des étrangers.

308. Selon les informations reçues, le parti politique de l'UDC aurait lancé une consultation populaire sur le thème de la politique à l'égard des étrangers. Dans le cadre de cette campagne politique, un journal accompagné d'un questionnaire aurait été distribué aux ménages suisses. Les réponses au questionnaire seraient analysées par l'UDC et lui permettront d'en tirer son programme politique en vue des élections fédérales de 2011.

309. Dans le journal et le questionnaire distribués par l'UDC, plusieurs thèmes seraient abordés, notamment ceux relatifs à l'accord de libre circulation des personnes avec l'Union Européenne et à l'augmentation du nombre d'étrangers en Suisse; à la naturalisation des étrangers; aux prestations sociales offertes aux étrangers; à la présence d'enfants étrangers dans les écoles suisses; à la criminalité commise par les étrangers; à la présence de l'Islam en Suisse; et au nombre croissant de demandes d'asile.

310. En guise d'introduction au questionnaire, le Président de l'UDC, M. Toni Brunner, affirmait que « la Suisse a un problème évident avec les étrangers vivant dans le pays. De nombreuses Suissesses et de nombreux Suisses ne se sentent plus à l'aise ou se sentent même menacés dans leur propre pays ». Il déclarait également que « nous autres gens de l'UDC, nous voulons que le problème des étrangers soit réglé rapidement et complètement ».

311. Dans le journal analysant les thèmes susmentionnés, l'UDC affirmerait à propos de « la proportion excessive d'étrangers vivant en Suisse », qu'il « n'est pas acceptable que l'identité suisse soit minée par des naturalisations en série et des flots migratoires ». En ce qui concerne l'éducation, l'UDC serait d'avis que « les enfants suisses sont entravés dans leur développement par une présence excessive d'étrangers dans les classes d'école ». Sur le thème de l'«islamisation de la Suisse », l'UDC indiquerait que « durant les 30 ans écoulés [1980 à 2009], la proportion de musulmans en Suisse a environ octuplé et que les immigrants musulmans « ont une conception du droit et de l'ordre qui est incompatible avec l'ordre juridique suisse, avec nos lois et nos règles démocratiques ». Quant à la question de l'asile, l'UDC soulignerait que « le développement des demandes d'asile en provenance d'Erythrée commence à poser un grave problème. L'ancienne Commission de recours en matière d'asile avait en effet interdit en décembre 2005, le renvoi des objecteurs de conscience érythréens. Depuis, la Suisse serait submergée de jeunes hommes qui prétendent être des objecteurs de conscience érythréens ».

312. Les Rapporteurs spéciaux ont demandé au Gouvernement de leur faire part des observations concernant la véracité des informations telles que relatées, les réactions et mesures éventuelles adoptées par le Gouvernement et les mesures prises visant à favoriser l'harmonie et la tolérance entre étrangers et la population suisse et à prévenir les manifestations de racisme, de discrimination raciale, de xénophobie et de l'intolérance qui y est associée, y compris à l'égard des membres des minorités religieuses.

Réponse reçue du Gouvernement

313. Dans une lettre datée du 8 septembre 2010, le Gouvernement a donné les informations suivantes.

314. Toutes les sociétés doivent aujourd'hui faire face à une accélération de la diversité dans tous les domaines. Les dynamiques liées à la globalisation peuvent conduire à un climat de tensions identitaires, susceptibles d'êtres exploitées politiquement. Ces confrontations sont le signe de démocraties vivantes.

315. En Suisse, les instruments de la démocratie directe, à laquelle participent tous les groupes de la population, permettent aux thèmes les plus controversés d'être discutés sur la scène publique. Une grande transparence est ainsi assurée dans le débat politique afin de trouver des solutions pratiques et constructives. Il s'agit là d'une règle fondamentale de toute démocratie.

316. La « consultation populaire » du parti de l'Union Démocratique du Centre (UDC) à laquelle est fait allusion dans la lettre d'allégation est une enquête qui se propose de recueillir pour le compte de ce parti l'avis de la population sur le système de l'asile et de l'intégration des migrants, en posant des questions rhétoriques qui reflètent la position de ce parti. Il ne s'agit pas d'une initiative du Gouvernement suisse.

317. En Suisse, les étrangers représentent 21,7% de l'ensemble de la population résidante permanente. La Suisse affiche l'une des proportions d'étrangers les plus élevées d'Europe. Dans son rapport du 5 mars 2010 sur l'évolution de la politique d'intégration de la Confédération, le Conseil fédéral stipule que : « Comparées à celles d'autres pays européens, les données telles que l'intégration sur le marché du travail, la participation à la

formation ou la ségrégation spatiale montrent que, dans les domaines sociale et économique, la politique d'intégration suisse peut globalement être qualifiée de réussie ».

318. Le Conseil fédéral porte une attention particulière aux questions migratoires et à la politique d'intégration : « Entrée en vigueur le 1er janvier 2008, la loi fédérale sur les étrangers (LEtr) pose pour la première fois, à l'échelle fédérale, les grandes lignes d'une politique d'intégration étatique, à mettre en œuvre aux niveaux de la Confédération, des cantons et des communes. D'une part, la politique d'intégration repose sur une politique d'encouragement à grande échelle, qui s'inscrit en premier lieu dans les structures existantes des domaines les plus significatifs pour la politique d'intégration ; elles sont regroupées sous le terme de « structures ordinaires » et couvrent, par exemple, l'école, la formation professionnelle, le marché du travail ou le domaine de la santé. La politique d'intégration prévoit aussi des mesures complémentaires spécifiques comme l'encouragement des connaissances linguistiques, l'intégration professionnelle, le conseil et l'information. D'autre part, elle pose des exigences d'intégration en droit des étrangers : respect de la Constitution fédérale, de la sécurité et de l'ordre publics, volonté d'acquérir une formation et de travailler, connaissances d'une langue nationale. A cet égard, le Conseil fédéral a proposé de nouvelles mesures dans le cadre du contre-projet à l'initiative sur le renvoi. Ces dernières années, la Confédération, les cantons et les communes ont entrepris les démarches nécessaires à la mise en œuvre de cette politique ».

319. En Suisse, la politique migratoire s'articule autour des trois axes que sont la garantie du bien-être de la population, la solidarité envers les victimes de persécutions et le maintien de la sécurité pour tous, étrangers et autochtones. Le thème transversal de l'intégration touche chacun de ces trois axes

320. Concernant la question relative aux mesures prises visant à prévenir les manifestations de racisme, de discrimination raciale, de xénophobie et de l'intolérance, le Conseil fédéral a réitéré à plusieurs reprises son engagement contre toutes les formes de discriminations et continuera à prendre clairement position contre racisme et la xénophobie. La norme constitutionnelle interdisant toute discrimination pour cause d'origine, de race, de langue et de conviction religieuse (art. 8 Constitution fédérale ; art. 19 et 20 du Pacte II) se traduit au niveau du code pénal par l'article 261bis CP, respectivement l'article 171c du Code pénal militaire (Discrimination raciale).

321. Ces dispositions, dont l'application relève de la responsabilité et de la compétence des organes de la justice pénale, punissent celui qui aura publiquement incité à la haine ou à la discrimination envers des personnes ou un groupe de personnes en raison de leur appartenance raciale, ethnique ou religieuse, de même que celui qui aura probablement porté atteinte à la dignité humaine ou qui lui aura refusé une prestation destinée à l'usage public, ainsi que quiconque aura propagé publiquement une idéologie raciste visant à rabaisser ou à dénigrer de façon systématique les membres d'une race, d'une ethnie ou d'une religion, ou qui aura dans le même dessein organisé, encouragé ou pris part à des actions de propagande. Par ailleurs, la liberté de religion est inscrite à l'article 15 de la Constitution fédérale, qui protège la liberté de conscience et de croyance ainsi que la liberté de culte, cette dernière étant comprise à la fois comme une composante et une émanation de la liberté de conscience et de croyance.

Observations

322. Le Rapporteur special remercie le Gouvernement pour sa réponse.

Communication envoyée

323. Le 9 décembre 2010, le Rapporteur spécial, conjointement avec Rapporteur spécial sur les formes contemporaines de racisme, de discrimination raciale, de xénophobie et de

l'intolérance, a envoyé une lettre d'allégation au sujet de la votation populaire qui s'est déroulée le 28 novembre 2010.

324. Selon les informations reçues, l'initiative populaire « Pour le renvoi des étrangers criminels (Initiative sur le renvoi) » du 15 février 2008 proposée par l'Union Démocratique du Centre, a été approuvée par 52, 9 % des votants lors du scrutin du 28 novembre 2010. Ladite initiative stipule que « [les étrangers] sont privés de leur titre de séjour, indépendamment de leur statut, et de tous leurs droits à séjourner en Suisse: a) s'ils ont été condamnés par un jugement entré en force pour meurtre, viol, ou tout autre délit sexuel grave, pour un acte de violence d'une autre nature tel que le brigandage, la traite d'êtres humains, le trafic de drogue ou l'effraction; ou b) s'ils ont perçu abusivement des prestations des assurances sociales ou de l'aide sociale. Le législateur précise les faits constitutifs des infractions visées à l'al. 3. Il peut les compléter par d'autres faits constitutifs. Les étrangers qui, en vertu des al. 3 et 4, sont privés de leur titre de séjour et de tous leurs droits à séjourner en Suisse doivent être expulsés du pays par les autorités compétentes et frappés d'une interdiction d'entrer sur le territoire allant de 5 à 15 ans. En cas de récidive, l'interdiction d'entrer sur le territoire sera fixée à 20 ans. Les étrangers qui contreviennent à l'interdiction d'entrer sur le territoire ou qui y entrent illégalement de quelque manière que ce soit sont punissables. Le législateur édicte les dispositions correspondantes ».

325. En outre, selon les informations reçues, dans le cadre de la campagne menée en vue de la votation du 28 novembre 2010, l'Union Démocratique du Centre (UDC) aurait eu recours à l'affichage publicitaire qu'elle aurait utilisé en 2007 à l'occasion du lancement de ladite initiative populaire. Il s'agirait de la publicité visuelle représentant trois moutons blancs sur un drapeau suisse basculant un mouton noir hors du drapeau. De même l'UDC aurait également eu recours à une affiche publicitaire suggérant que les criminels étrangers ne seraient pas renvoyés et que les autorités suisses accorderaient la naturalisation à des criminels. L'affiche concernée représenterait un homme portant la barbe, une chaîne argentée et une camisole, dont les yeux sont barrés par une large bande noire. L'image s'accompagnerait du texte suivant : « Ivan. S., violeur et bientôt suisse ? ».

326. Par ailleurs, des craintes avaient été exprimées sur le fait que l'initiative ainsi rédigée contreviendrait aux engagements internationaux du Gouvernement de votre Excellence, notamment les accords de libre circulation conclus avec l'Union Européenne. De même, des préoccupations avaient été exprimées quant au caractère automatique des expulsions qui priverait ainsi le juge de toute marge d'appréciation.

327. Les Rapporteurs spéciaux ont demandé au Gouvernement de leur faire part des observations concernant la véracité des informations telles que relatées, si tel était le cas, quelles ont été les réactions et mesures éventuelles adoptées par le Gouvernement en relation avec les faits, les mesures que le Gouvernement entend prendre en vue de garantir que la mise en œuvre de l'initiative sur le renvoi ne contrevienne pas à ses obligations internationales en matière de droits de l'Homme, notamment aux principes de non discrimination et d'égalité devant la loi tels que consacrés dans la Convention internationale sur l'élimination de toutes les formes de discrimination raciale, les mesures que le Gouvernement entend prendre en vue de garantir que la mise en œuvre de l'initiative sur le renvoi ne contrevienne pas à ses obligations internationales relatives à la libre circulation des personnes, et à l'indépendance et au pouvoir d'appréciation du juge pénal et enfin les mesures prises par afin de promouvoir la tolérance, la compréhension et le dialogue mutuel entre les personnes étrangères et de diverses origines vivant en Suisse ainsi que les mesures prises afin de prévenir les manifestations de racisme, de discrimination raciale, de xénophobie et de l'intolérance qui y est associée, notamment à l'égard des personnes étrangères en Suisse.

Réponse reçue du Gouvernement

328. Dans une lettre datée du 15 février 2011, le Gouvernement a donné les informations suivantes.

329. Toutes les sociétés modernes doivent aujourd'hui faire face à une accélération de la diversité dans tous les domaines. En Suisse, comme partout ailleurs en Europe, les dynamiques liées à la globalisation peuvent conduire à un climat de tension identitaire, susceptible d'être exploité politiquement. Ces confrontations sont cependant le signe d'une démocratie vivante à laquelle participent tous les groupes de la population. Le système de démocratie directe permet, par le biais de référendums lancés contre des lois votées par le Parlement et d'initiatives émanant du peuple et proposant des modifications constitutionnelles, de discuter même de thèmes controversés sur la place publique. La démocratie directe oblige les citoyens actifs à se déterminer concrètement. Il est démontré qu'elle n'a pas entrainé d'abus à caractère raciste, même aux moments les plus difficiles de l'histoire européenne.

330. Toutefois, il est constaté que c'est précisément pendant les campagnes précédant une votation que s'expriment des positions très divergentes. Les parties prenantes sont donc appelées, dans ce contexte en particulier, à procéder à un arbitrage minutieux entre liberté d'opinion, protection contre la discrimination et protection de la société suisse contre une propagande favorisant la haine.

331. Il est confirmé qu'une initiative populaire visant le renvoi des citoyens étrangers qui auraient commis un crime grave a été acceptée en vote populaire le 28 novembre 2010. En ce qui concerne la campagne de l'UDC à laquelle il est fait allusion dans la lettre d'allégation, il est vrai que des affiches conformes à la description donnée ont été placardées dans toutes les régions de la Suisse. Les actes à caractère potentiellement raciste commis dans l'espace public étant poursuivis d'office, il appartient, le cas échéant, aux tribunaux de juger si ces affiches sont condamnables. La Cour suprême du Canton de Zürich a décidé dans un arrêt que les affiches ne violaient pas la norme interdisant la discrimination raciale. Il n'a pas été fait appel de cet arrêt devant le Tribunal fédéral.

332. A ce jour, les tribunaux ont privilégié la confrontation politique ouverte plutôt qu'une application rigoureuse de l'interdiction. Les Arrêts rendus correspondent à l'opinion du Conseil fédéral, selon laquelle la confrontation publique a plus d'impact, à long terme, qu'une condamnation par le juge. Par ailleurs, cette attitude est cohérente avec la jurisprudence constante de la Cour européenne des droits de l'Homme qui souligne l'importance particulière de la liberté d'expression dans une société démocratique et qui n'accepte guère des restrictions de cette liberté dans le débat politique.

333. Contre l'avis du Conseil fédéral et du Parlement, l'initiative populaire « Pour le renvoi des étrangers criminels » a été acceptée le 28 novembre 2010 par le peuple et les cantons, avec 52,9 % des voix. Une disposition transitoire de la Constitution fédérale prévoit un délai de cinq ans pour l'adaptation de la législation.

334. L'initiative vise à ce que les étrangers condamnés pour certains délits ou qui ont perçu abusivement des prestations des assurances sociales ou de l'aide sociale soient privés de tous leurs droits à séjourner en Suisse et soient expulsés. Par ailleurs, les personnes concernées doivent être frappées d'une interdiction d'entrer sur le territoire et punies si elles contreviennent à l'interdiction d'entrée ou entrent illégalement en Suisse d'une autre manière.

335. Le vote reflète un sentiment d'inquiétude qu'éprouvent les citoyens vis-à-vis de la population étrangère, des sentiments qu'il faut prendre au sérieux. D'après le résultat du scrutin, la majorité des votants estime donc nécessaire de prendre des mesures contre les

étrangers qui séjournent en Suisse et commettent des infractions. La volonté exprimée à cette occasion doit à présent être respectée.

336. En décembre 2010, la ministre de la justice suisse a mis sur pied un groupe de travail, chargé de présenter un rapport sur la transposition dans la loi des nouvelles dispositions constitutionnelles. Son mandat implique notamment d'élucider les aspects touchant au droit international public. Ce groupe de travail doit s'attacher également à définir précisément et à compléter, le cas échéant, la liste des infractions susceptibles d'aboutir à un renvoi. Il est dirigé par le professeur Heinrich Koller, ancien directeur de l'Office fédéral de la justice : c'est donc une personnalité hautement qualifiée qui a été choisie pour accomplir cette tâche ardue. Le groupe de travail compte également deux représentants du comité d'initiative, deux représentants des cantons et deux représentants de l'administration fédérale. Il devra remettre son rapport en juin 2011.

337. Comme tout processus législatif ordinaire, le Conseil fédéral, enverra ensuite un projet en consultation aux parties intéressées, puis soumettra un message et un projet de loi au Parlement.

338. Il est encore impossible à l'heure actuelle de savoir quelle sera précisément la solution adoptée. Les travaux sont en cours. Le gouvernement fera tout ce qui est en son pouvoir pour que le Parlement adopte une loi qui tienne compte tant de la volonté exprimée dans les urnes que des obligations internationales de la Suisse. En vertu de la Constitution fédérale, tous les organes des pouvoirs publics sont tenus, dans le cadre de leur activité de législation et d'application du droit, de respecter le droit international (art. 5, al. 4 Cst.). La Suisse est un partenaire fiable, qui respecte ses engagements internationaux. Le gouvernement fera en sorte qu'il en soit toujours ainsi.

339. L'accord sur la libre circulation des personnes revêt une grande importance pour la Suisse et pour son économie en particulier. Soumis au peuple, il a été accepté par une nette majorité des votants et sa reconduction a été approuvée à diverses reprises. Le gouvernement veillera à ce que la Suisse puisse continuer de respecter les obligations de cet accord. Force est de constater toutefois que l'accord en question ne prévoit pas de droit illimité à la libre circulation des personnes et que les Etats signataires disposent d'une certaine marge d'appréciation. Cela veut dire notamment que la nouvelle disposition constitutionnelle est compatible avec l'accord sur la libre circulation des personnes pour autant qu'il s'agisse d'infractions graves, qu'il existe un risque de récidive et qu'un examen au cas par cas soit effectué dans le respect du principe de proportionnalité.

340. L'acceptation des initiatives pour le renvoi des étrangers criminels et l'initiative pour l'interdiction de la construction de minarets en Suisse a engendré une discussion au niveau interne. En complément à son rapport du 5 mars 2010 sur le lien entre droit international et national, le Conseil fédéral est actuellement en train d'étudier des mesures qui pourraient assurer une meilleure compatibilité entre droit constitutionnel et droit international.

341. Il est nécessaire de rappeler par ailleurs qu'une grande majorité des étrangers vivant en Suisse sont bien intégrés. La coexistence se passe bien dans l'ensemble. La population étrangère résidant en Suisse apporte une contribution importante à la vie économique, sociale et culturelle. Ensemble, le gouvernement et les cantons redoubleront d'efforts pour favoriser l'intégration des étrangers vivant en Suisse.

342. En Suisse, les étrangers représentent 21,7 % de l'ensemble de la population résidante permanente. La Suisse affiche l'une des proportions d'étrangers les plus élevées d'Europe. Dans son rapport du 5 mars 2010 sur l'évolution de la politique d'intégration de la Confédération, le Conseil fédéral stipule que : « Comparées à celles d'autres pays européens, les données telles que l'intégration sur le marché du travail, la participation à la

formation ou la ségrégation spatiale montrent que, dans les domaines sociale et économique, la politique d'intégration suisse peut globalement être qualifiée de réussie ».

343. Le Conseil fédéral porte une attention particulière aux questions migratoires et à la politique d'intégration : « Entrée en vigueur le 1er janvier 2008, la loi fédérale sur les étrangers (LEtr) pose pour la première fois, à l'échelle fédérale, les grandes lignes d'une politique d'intégration étatique, à mettre en œuvre aux niveaux de la Confédération, des cantons et des communes. D'une part, la politique d'intégration repose sur une politique d'encouragement à grande échelle, qui s'inscrit en premier lieu dans les structures existantes des domaines les plus significatifs pour la politique d'intégration ; elles sont regroupées sous le terme de « structures ordinaires » et couvrent, par exemple, l'école, la formation professionnelle, le marché du travail ou le domaine de la santé. La politique d'intégration prévoit aussi des mesures complémentaires spécifiques comme l'encouragement des connaissances linguistiques, l'intégration professionnelle, le conseil et l'information. D'autre part, elle pose des exigences d'intégration en droit des étrangers : respect de la Constitution fédérale, de la sécurité et de l'ordre publics, volonté d'acquérir une formation et de travailler, connaissances d'une langue nationale. A cet égard, le Conseil fédéral a proposé de nouvelles mesures dans le cadre du contre-projet à l'initiative sur le renvoi. Ces dernières années, la Confédération, les cantons et les communes ont entrepris les démarches nécessaires à la mise en œuvre de cette politique ». Les mesures prises pour la mise en œuvre de la LEts depuis début 2008 ont permis de progresser également dans la mise en œuvre des recommandations acceptées par la Suisse durant son Examen périodique universel de mai 2008.

344. En Suisse, la politique migratoire s'articule autour des trois axes que sont la garantie du bien-être de la population, la solidarité envers les victimes de persécutions et le maintien de la sécurité pour tous, étrangers et autochtones. Le thème transversal de l'intégration touche chacun de ces trois axes.

345. Concernant la question relative aux mesures prises visant à prévenir les manifestations de racisme, de discrimination raciale, de xénophobie et de l'intolérance, le Conseil fédéral a réitéré à plusieurs reprises son engagement contre toutes les formes de discriminations et continuera à prendre clairement position contre le racisme et la xénophobie. Pour adhérer à la CERD en 1994, la Suisse a modifié son Code pénal en y inscrivant l'article 261bis qui rend punissable toute incitation au racisme dans l'espace public. Cet article a été accepté par le peuple le 25 septembre 1994. La norme constitutionnelle interdisant toute discrimination pour cause d'origine, de race, de langue et de conviction religieuse (art. 8 Constitution fédérale ; art. 19 et 20 du Pacte II) se traduit au niveau du code pénal par l'article 261bis CP, respectivement l'article 171c du Code pénal militaire (Discrimination raciale). Ces dispositions, dont l'application relève de la responsabilité et de la compétence des organes de la justice pénale, punissent celui qui aura publiquement incité à la haine ou à la discrimination envers des personnes ou un groupe de personnes en raison de leur appartenance raciale, ethnique ou religieuse, de même que celui qui aura publiquement porté atteinte à la dignité humaine ou qui lui aura refusé une prestation destinée à l'usage public, ainsi que quiconque aura propagé publiquement une idéologie raciste visant à rabaisser ou à dénigrer de façon systématique les membres d'une race, d'une ethnie ou d'une religion, ou qui aura dans le même dessein organisé, encouragé ou pris part à des actions de propagande

Observations

346. Le Rapporteur special remercie le Gouvernement pour sa réponse.

Sweden

Communication sent

347. On 27 September 2010, the Special Rapporteur sent a letter of allegation to the Government concerning migrant workers from Southeast Asia who were hired to pick berries in Northern Sweden.

348. It was reported that in early August 2010, a group of 200 Chinese migrant workers put down their buckets and refused to continue picking the berries, near the community of Storuman in northern Sweden.

349. The workers, hired by a Chinese company to pick wild berries, felt that they had been given false promises, notably that the conditions of work and the promised wages were much lower upon arrival in Sweden than they had agreed to initially. Besides wanting to go home, the workers have allegedly demanded better economic compensation.

350. It was also reported that after the protest by the Chinese berry pickers, another group of pickers started their own strike in another northern town, Nordmaling. According to the information received, some 50 Vietnamese workers stopped working and walked away from their lodgings a few days later after the initial protest.

351. It was further reported that during the late summer months (July-August), thousands of seasonal workers are recruited from the poor rural areas of South East Asia and brought to Sweden by chartered planes. This year, there were allegedly 8000 migrant workers from Thailand and some 1000 from Vietnam and China. These migrant workers have taken a substantial economic risk by borrowing money for the journey to Sweden. This journey and the work of berry picker is a gamble that might result in great profits or, in a worse case scenario, debts that could take many years to pay off.

352. It was alleged that since a couple of years there had been disputes concerning wages, taxes, charges from employers for travel and lodgings, housing and working conditions and maltreatment by supervisors and bosses.

353. Allegedly, in 2009, Vietnamese berry pickers feeling cheated by their employers went on strike. In 2010, guaranteed minimum wages and other deals were supposed to be in place, in the hopes of a more peaceful season.

354. It was finally alleged that partly as a result of the debate about the working and housing conditions of the migrant berry pickers, there has developed a predominantly negative image concerning these migrant workers among the local inhabitants of the regions concerned, initiating of xenophobia.

355. The Special Rapporteurs asked the Government for its observations concerning the accuracy of the alleged facts, the details and where available the results, of any investigation, judicial or other inquiries which may have been carried out in relation to these cases, the details of the current legal framework, regulations and policies which apply to migrant workers who are hired to pick berries, the details of how the Government ensures that third parties, including private employers, respect and protect the rights of the concerned migrant workers under its jurisdiction, and the details of any measures or steps undertaken or intends to undertake to ensure that such a legal framework, regulations and policies comply with the international human rights standards and are implemented in a manner which protects and promotes the human rights of migrants.

Observations

356. The Special Rapporteur regrets not having received a reply from the Government regarding the above-mentioned communication.

Thailand

Communication sent

357. On 8 September 2010, the Special Rapporteur, together with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a letter of allegation to the Government concerning the negative impact of the NV process on the human rights of migrants in Thailand and concerning arbitrary arrest of migrants accompanied by excessive use of force by law enforcement authorities, poor conditions of detention, and mass deportation of migrants. The Special Rapporteur was particularly concerned about reports indicating that migrants from Myanmar may be especially vulnerable to serious violations of human rights if returned to their country of origin.

358. According to the information received, there were approximately 300,000 reported migrant workers who failed to enter the NV process by the extended deadline of 31 March 2010 and an estimated 1 million unregistered migrant workers who were ineligible for the NV process. These migrant workers are deemed as migrants with irregular status and particularly vulnerable to arbitrary arrest, violence, abuse, discrimination and exploitation by the police, military and immigration officers. The police reportedly stopped migrants randomly to check their migrant workers' card and arbitrarily arrest them if they are unable to produce it. They may be asked to pay money ranging from 200 to 8'000 baht or more to the police in exchange for their freedom, either when they are stopped by the police or when they are in police custody. It was reported that even migrants who are registered and hold a valid migrant workers' card are often arrested for failing to carry their cards with them at all times, despite the fact that many employers commonly withhold these cards.

359. It was also alleged that migrants who attempted to flee arrest were often subjected to severe physical assault by the police. For instance, it was reported that Maung Kyi, an irregular migrant worker from Myanmar who was arrested by the Border Patrol Police on 5 August 2008, was severely beaten by the police officers after he attempted to escape from the Police's moving truck. Further, the fear induced by the threat of being arrested and subjected to violence had allegedly resulted in a number of cases where migrants drowned to death as they tried to flee from police officers. On 8 March 2010, two young sisters from Myanmar, Nyo Nyo San, 20 years old, and Myint Myint San, 12 years old, drowned while trying to escape a police raid of their living quarters near Klong Cork Mu, Tambon Patong, Amphur Kathu, Phuket Province. The police officers at the scene reportedly did not offer any assistance to the victims and used guns to threaten other migrants who tried to save them.

360. It was further reported that this pattern of arbitrary arrest, violence, abuse and exploitation of migrants was exacerbated by the Prime Minister's order of 2 June 2010 issued to set up a Special Centre to Suppress, Arrest and Prosecute Alien Workers Who Are Working Underground (No.125/1223). The Centre is mandated to suppress, arrest and prosecute "alien workers who illegally entered the Kingdom of Thailand and are working underground". The Centre's mandate is implemented through five regional working committees, which consist of police, army, navy and other government officials who may carry out raids, arrests and detention of migrant workers. This order, allegedly aimed at arresting, detaining and deporting the approximately 1.3 million migrant workers with irregular status, was issued despite intensive domestic and international media interest and intervention from Thailand's National Human Rights Commission in March and April 2010, expressing strong concerns and a need to reconsider the NV policy from a human rights perspective.

361. Pursuant to this order, approximately 830 migrant workers (346 Myanmarese, 172 Laotian, 307 Cambodian, 2 Vietnamese, 1 Nigerian, 2 Iranian and 1 Indian) were reportedly arrested between 16 and 19 June 2010 in Metropolitan Police Regions 1-9 alone. The information received also indicated that hundreds of migrants have been arrested in the following provinces between 16 and 24 June 2010:

(a) 135 migrants (103 Myanmarese, 20 Cambodian, 12 Laotian) in Mahachai, Samut Sakorn Province;

(b) 99 Cambodian migrants in Sai Kaew Province;

(c) 629 migrants (390 Myanmarese, 71 Laotian, 165 Cambodian, and 3 Vietnamese) in Region 1 Pathum Thani;

(d) 111 Cambodian migrants in Songkhla Province; and

(e) 713 migrants (264 Myanmarese, 46 Laotian and 403 Cambodian) in Samut Prakarn Region 1.

362. It was further reported that the arrest of migrant workers from Myanmar, regardless of whether or not they hold migrant workers' cards, had dramatically increased in Mahachai in the month of August. It was further alleged that the arrested migrant workers were increasingly subjected to violence and extortion in recent months since the Prime Minister's order of 2 June 2010 came into effect.

363. Arrested migrants were reportedly held in Immigration Detention Centers ("IDC") pending deportation. The conditions of detention at some IDCs are believed to be poor and not meeting adequate sanitary and hygienic standards. Given the increasing number of arrest of migrants subject to deportation, some IDCs reportedly became particularly overcrowded and lack sufficient sanitary facilities for the detainees. Further, it was alleged that female migrants are often subject to sexual abuse and harassment by law enforcement officers during detention.

364. Further, it was reported that, in Ranong for instance, there were an increasing number of cases where irregular migrants had been detained by the police at their work sites and/or transferred to local police stations, and later being released by the police once the irregular migrants' employers have paid police officials approximately 2'500 baht. These reports suggested a systematic abuse of official powers, including the "sale" of irregular migrants to various brokers who then transfer the migrants back to their worksites for fees or who "resell" or traffic the individuals to various employers in the fishing and domestic services industries.

365. Many of the arrested migrant workers were reportedly deported to their countries of origin. In this connection, it was particularly concerning that the arrested migrant workers from Myanmar were deported to their country of origin by boat through informal checkpoints controlled by the Democratic Karen Buddhist Army ("DKBA"). The information received suggested that DKBA demanded fees from the deportees at the checkpoints in exchange of their freedom and those who cannot pay are subjected to beating and forced labour until they pay. It was alleged that in some cases, the beating was so severe that it amounted to torture and other cruel, inhuman and degrading treatment.

366. The Special Rapporteurs asked the Government for its observations concerning the accuracy of the alleged facts, the details of any investigations, judicial or other inquiries which have been carried out in relation to the conduct of law enforcement officials who allegedly demand bribes from migrants or their employers, the results of such investigations or inquiries if they have taken place, and any disciplinary measures undertaken against officials who are found liable, the way the Government ensures that each case of arrest and deportation is examined individually and carried out in accordance with international

human rights standards, the details of laws and policies governing the use of force by law enforcement officials, whether any investigations, judicial or other inquiries have been carried out in relation to the above mentioned incident on 5 August 2008, the details, and where available the results of any investigations, medical examinations, judicial or other inquiries carried out in relation to the allegations of torture and ill-treatment, and in particular the above mentioned incident on 8 March 2010 involving the two girls from Myanmar, Nyo San and Myint San, the full details of any prosecutions which have been undertaken, whether or not the Government has explored alternative measures to detention of migrants and if so, reasons why such alternative measures have not been exercised, the details of any measures undertaken to ensure that conditions of detention fully respect international human rights standards, the measures undertaken to ensure the safety and human rights of Myanmar's migrant workers who were deported to their country of origin, as well as the safety of their family members and the details of any long-term plans to address the situation of Myanmar's migrant workers who were unable or ineligible to complete the NV process, as well as the arrival of new migrants from Myanmar.

Observations

367. The Special Rapporteur regrets not having received a reply from the Government regarding the above-mentioned communication.

Communication sent

368. On 15 February 2011, the Special Rapporteur, together with the Special Rapporteur on contemporary forms of slavery and the Special Rapporteur on trafficking in persons, especially women and children sent a letter of allegation to the Government concerning the alleged trafficking of migrant workers from Myanmar and Cambodia for the purpose of labour exploitation on fishing boats.

369. According to the information received, Mr. Kyaw Kyaw, a 25 year-old man from Pa An in Karen State, Myanmar, came to Mae Sot, Thailand in April 2009 to work in agriculture. In September 2009, he met a broker who offered him 8,000 baht (US$266) in cash and recruited him for a job which would earn 5,000 baht (US$166) a month. Mr. Kyaw Kyaw asked the broker about the nature of the work, but the broker did not answer him. Mr. Kyaw Kyaw was then sold to work in a fishing boat, which usually travelled in the Rayong sea area. He worked on the fishing boat for 10 months from November 2009 to August 2010. The conditions of work on the fishing boat were allegedly very harsh. He was required to catch fish every three or four hours all day and thus could not get any adequate rest. During these months, he did not receive any salary for his work. When the boat reached a harbor every 15 days, Mr. Kyaw Kyaw had to beg for 500 baht (US$16) from the manager of the boat so that he could buy food. After working on the boat for 10 months, he asked the manager to give him 3,000 baht (US$99) so that he could go to a karaoke bar. When the manager reluctantly gave him the money, he managed to run away from the boat.

370. In addition to Mr. Kyaw Kyaw's case, a number of cases which point to a pattern of trafficking of migrant workers for labour exploitation in the fishing industry, particularly in a coastal town of Mahachai in the Samut Sakhon province have been reported. The migrant workers reportedly enter Thailand for the purpose of employment with the help of brokers, only to realize that their job in Thailand is different from what they were promised. The migrants are often forced to work on fishing boats under debt-bondage conditions, as they owe their brokers fees for finding employment in Thailand and money for a variety of expenses, such as costs of transportation to Thailand. Deceptive and unfair payment practices, including non-payment of wages are a common feature in many cases. The migrants were further reported to perform long working hours without rest and in a

hazardous environment which put their health, safety and life at risk. They are also submitted to physical abuse if they complain to their employers.

371. The Special Rapporteurs asked the Government for its observations concerning the accuracy of the alleged facts, the details, and where available the results, of any investigation, judicial or other inquiries which may have been carried out in relation to Mr. Kyaw Kyaw and other migrants from Myanmar and Cambodia who are trafficked to work on fishing boats in Thailand for the purpose of labour exploitation, whether there was a labour inspection system in place which extends to the fishing industry and whether it has been used to properly identify victims of trafficking on fishing boats in Thailand, any cooperation arrangements with the authorities in Myanmar and Cambodia to prosecute and punish brokers who facilitate trafficking of migrant workers from Myanmar and Cambodia for the purpose of labour exploitation and whether the victims or the families of the victims have access to adequate procedures of compensation for damages from those legally responsible for the crime of trafficking and other exploitative practices.

Observations

372. The Special Rapporteur regrets not having received a reply from the Government regarding the above-mentioned communication.

Communication sent

373. On 15 February 2011, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent an urgent appeal concerning Mr. Charlie Diyu, a migrant worker from Myanmar who was detained on illegal immigration charge in a cell at the Police General Hospital in Bangkok, despite the fact that his work permit was still valid.

374. According to the information received, Mr. Diyu was a 33-year-old migrant worker from Myanmar who had worked at construction sites with temporary work permits. Around December 2010, he began to work for a new employer, Tara Rit-taeng of Pathum Thani, without informing the relevant authorities. On 9 January 2011, he was seriously injured at a construction site when a concrete wall fell on him at Charoen Pokphand's food processing plant in the Lat Lum Kaeo district of Pathum Thani. Mr. Diyu’s large intestine burst from his stomach and his left hip was broken. While he received medical attention at the state-run Pathum Thani Hospital, the hospital contacted the police upon realizing that he carried no identity card and could not pay his medical expenses of 70,000 to 80,000 baht, especially as Mr. Diyu’s employer or contractor has not provided any financial compensation to his injuries.

375. Mr. Diyu was held in custody at the Pathum Thani police station and then transferred to the Immigration Bureau on 31 January 2011. He stayed one night in the Immigration Bureau, where the conditions of detention were reportedly unhygienic and unsuitable for sick persons. During his detention, he was not given any medical care despite his medical conditions. On 1 February 2011, Mr. Diyu was transferred to the Police General Hospital, where he was shackled to his bed for 4 days. His detention in a locked cell at the Police General Hospital has made access to him difficult, including by his lawyers. Mr. Diyu is scheduled to be deported upon recovery on the basis that his work permit expired on 20 January 2011. However, on 8 February 2011, the Alien Workers Management Committee discovered that in fact, Mr. Diyu’s work permit is valid until 28 February 2011.

376. In view of the allegation according to which Mr. Diyu was transferred to the Police General Hospital, where he was shackled to his bed for 4 days, concern was expressed about the physical and mental integrity of Mr. Diyu. The Special Rapporteurs asked in

particular the Government to indicate the legal basis for Mr. Diyu's detention in the Immigration Bureau and in the cell of the Police General Hospital, how these measures were compatible with applicable international human rights norms and standards, particularly in light of his medical conditions, to provide information on the measures undertaken to ensure that Mr. Diyu is treated with humanity and with respect for the inherent dignity of the human person, whether Mr. Diyu will be allowed to remain in the country to be able to continue receiving the necessary medical care for his full recovery, as well as to claim reparation for the work accident he incurred, and the undertaken to ensure that Mr. Diyu and migrant workers in similar situations have access to adequate procedures for receiving compensation and/or rehabilitation.

Observations

377. The Special Rapporteur regrets not having received a reply from the Government regarding the above-mentioned communication.

United Kingdom of Great Britain and Northern Ireland

Communication sent

378. On 4 May 2010, the Special Rapporteur, together with the Special Rapporteur on contemporary forms of slavery, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on violence against women, its causes and consequences and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment sent a urgent appeal to the Government concerning Ms. Bita Ghaedi, a rejected asylum-seeker who is a national of Iran. Ms. Bita Ghaedi had exhausted most of the legal remedies available and allegedly received a deportation order to leave the United Kingdom of Great Britain and Northern Ireland on 20 April 2010. The deadline was postponed due to flight disturbances. Her deportation had been rescheduled to take place on 5 May 2010 at 19.00 hrs by flight BD931. In the meantime an additional fresh claim for review of her case was submitted by her solicitor on 20 April 2010. The judicial review of the fresh claim submitted was scheduled to take place on 21 July 2010.

379. According to information received, Ms. Bita Ghaedi is a national of Iran born on 10 September 1974. She allegedly fled Iran escaping from a forced marriage. She allegedly arrived in the United Kingdom on 2 October 2006. Upon her arrival in the United Kingdom, she claimed asylum on grounds of forced marriage in Iran. She had reportedly been forced into the marriage by her father in 2004 and remained in the forced marriage for approximately 2 years until she fled Iran. In addition, she allegedly faced physical and psychological maltreatment by her father, brother and uncle because she was having an extramarital affair with Mr. Hamid Saedi. After filing her asylum claim, Ms. Ghaedi was reportedly taken to Holloway prison for 45 days after which she was released for the consideration of her asylum claim. The reason for her detention was never clarified.

380. In November 2006, Ms. Ghaedi reportedly met Mr. Mohsen Zadshir, a British national with whom she began an informal domestic partnership in October 2008. As a result of her relationship with Mr. Zadshir, in 2007, Ms. Ghaedi become involved in political activities and began working as a political activist with Anglo-Iranian women in the United Kingdom. She also became a supporter of the British Peoples Mojehadin Organization of Iran (PMOI) and the National Council for the Resistance of Iran (NCRI). Ms. Ghaedi campaigned on behalf of the PMOI in the United Kingdom of Great Britain and Northern Ireland to draw attention to the situation of political prisoners and the execution of victims in Iran during a recent unrest.

381. On 16 August 2007, Ms. Bita Ghaedi's asylum claim was rejected by the Home Office and by the Court on 16 October 2007. As a consequence, on 4 December 2007, she attempted to commit suicide by taking an overdose, and was hospitalized. She was allegedly unconscious for three days and was discharged from the hospital on 2 January 2008. Her solicitor requested a revision of the case.

382. On 29 April 2009, she was allegedly detained and removal directions were set for 4 May on the grounds of her immigration status. On 3 May, Ms. Bita Gaedhi's solicitor submitted an application for a leave to remain and she was released on 17 June 2009 as her case was accepted for judicial review. She was allegedly detained again on 11 November 2009 and removal directions were set for 16 November. On the same date she reportedly began a hunger strike. On 16 November 2009 she was taken to Heathrow airport for deportation, but the deportation was canceled by judicial order allegedly on the grounds of the need for further time to review the case. On 2 December 2009 she was allegedly released on bail, conditional upon her presentation twice a week before the United Kingdom Border Agency (UKBA).

383. In January 2010, the UKBA authorities allegedly fixed 16 April 2010 as the date for the review of the conditions of her release. On 27 January 2010, she allegedly commenced another hunger strike after she was informed by Home Office solicitors that her claim has been rejected.

384. Given the health troubles associated with her hunger strikes, she was allegedly unable to comply with the condition of her release. Mr. Mohsen Zadshir periodically provided medical certificates to the UKBA to justify that it was impossible for Ms. Ghaedi to comply with the condition of her release. The most recent medical certificate is dated 23 March 2010 and justifies one month of sick leave. Her physical and mental health was weakened considerably to the point that she was unable to walk. Following friends' and medical practitioners' advice, she allegedly ended her hunger strike on 20 March 2010.

385. On 25 March 2010 Ms. Ghaedi's solicitor submitted a fresh claim, as the United Kingdom asylum procedure permits rejected asylum applicants to lodge a fresh claim and give the Government the prerogative of deciding whether or not the fresh submission is to be considered.

386. On 12 April 2010, Mr. Zadshir brought Ms. Ghaedi to UKBA authorities in a wheelchair, in order to bring her health condition to their attention, and present a request for the renewal of her release on bail, which was to be reviewed by 16 April 2010. UKBA authorities requested Mr. Zadshir and Ms. Ghaedi to return in the afternoon of 16 April 2010.

387. On 16 April 2010 around 6:30 a.m., Home Office authorities allegedly arrived at Ms. Ghaedi's place of residence with an ambulance, arrested her and detained her at Yarl's Wood. Mr. Zadshir reported that her health remains a concern while she is in detention.

388. Additional documentation was submitted to the Home Office by Ms. Bita Ghaedi's solicitor on 20 April 2010, who according to Mr. Zadshir would submit an application for urgent injunction to request to suspend Ms. Ghaedi's removal from the United Kingdom scheduled on 5 May 2010 pending the consideration of the judicial review of the fresh claim, which was scheduled to take place on 21 July 2010.

389. Her forcible removal from the United Kingdom was initially planned for 20 April 2010, but was postponed due to flight cancellations. Her deportation had been rescheduled to take place on 5 May 2010 at 19.00 hrs by flight BD931.

390. Information received indicated, if returned to Iran, M. Ghaedi might be subjected to cruel, inhuman or degrading treatment as a result of having abandoned a forced marriage and because of the resulting implications on family honour. Information received also

suggests, if returned to Iran, Ms. Ghaedi might encounter harassment, arrest or detention because of her political involvement with the PMOI while in the United Kingdom. Furthermore, her health might be at risk as her physical and psychological condition has considerably deteriorated, at least partly due to the possibility of being deported to Iran. Additionally, she considers that her rights to family and private life with her partner Mr. Zadshir, who is a British national, might also be infringed.

391. The Special Rapporteurs asked the Government for its observations concerning the accuracy of the alleged facts, the complaints that have been lodged by or on behalf Ms. Ghaedi to challenge the deportation order, the way the deportation of Ms. Ghaedi complied with all provisions mentioned and the measures taken in this particular case so as to ensure that Ms. Ghaedi will be free from cruel, inhuman or degrading treatment at her arrival to Iran.

Observations

392. The Special Rapporteur regrets not having received a reply from the Government regarding the above-mentioned communication.

Communication sent

393. On 20 October 2010, the Special Rapporteur, together with the Chairperson-Rapporteur of the Working Group on the use of mercenaries sent a letter of allegation to the Government concerning the death of Mr. Jimmy Mubenga during the course of his forced deportation from the UK to Angola, which involved a private security company.

394. According to the information received, Mr. Jimmy Mubenga, a national from Angola, who was being deported from the United Kingdom after losing a legal appeal to remain in the country, died 50 minutes after having boarded British Airways flight 77 at Heathrow airport on 13 October 2010.

395. It was alleged that Mr. Mubenga was sitting at the rear of the aircraft, surrounded by three guards working for the private security company G4S, which had been contracted by the UK Border Agency to escort deportees, when he started to resist his deportation and shouted that he did not want to go back to Angola.

396. According to reports, Mr. Mubenga was resisting his deportation and was asking for help from the other passengers, while the guards were forcing him on his seat, one man on top of him, which made it extremely difficult for Mr. Mubenga to breathe. Since the event, four passengers have reported to the media that they saw three security guards heavily restraining Mr. Mubenga, who they said consistently complained about his breathing.

397. It was alleged that the confrontation lasted around 10 minutes before Mr. Mubenga became silent. He was allegedly no longer breathing after that.

398. It was reported that the cabin crew did not intervene, nor ask for medical assistance. Only 20 minutes later, when the aircraft returned to the terminal, did a team of police officers and paramedics board the plane and passengers were asked to leave the plane.

399. The Special Rapporteurs asked the Government for its observations concerning the accuracy of the alleged facts, the details about the circumstances of Mr. Jimmy Mubenga's death and the status of the ongoing police investigation, medical examinations, and judicial or other inquiries, the details about the role of the three G4S employees involved in this incident, the training they have received regarding restraint methods and the monitoring mechanisms put in place by the UK Border Agency which has a contract with G4S to ensure compliance with international human rights standards, the full details of any prosecutions which have been undertaken and whether compensation has been provided, or would be envisaged, to the family of the victim.

Reply from the Government

400. By letter dated 8 December 2010, the Government provided the following information.

> 1) Mr. Mubenga was an Angolan national who was being deported from the United Kingdom on 12 October 2010 following a conviction for an offence which carried a term of imprisonment. Mr. Mubenga's appeal against deportation had been considered by the Courts on several occasions, but they had concluded that his deportation was in the public interest. The Courts considered Mr. Mubenga's rights under the European Convention on Human Rights (ECHR). Mr. Mubenga was being escorted by 3 escorts from a private company, G4S Care and Justice Services Ltd (G4S), under contract to the UK Government to return him to Angola. Restraint was used on board the flight by the escorts, following which Mr. Mubenga became ill and was taken to hospital, where he died.

401. The circumstances surrounding Mr. Mubenga's death are the subject of an on-going investigation by the police, which is expected to last several months. The three Detainee Escort Officers (DEOs) were arrested by the police on 18th October 2010, were interviewed and then released on police bail until 8th December 2010. They have not been charged with any offence at this stage. As a precautionary matter, they have been suspended from work pending the outcome of their investigation.

402. The post mortem on Mr. Mubenga's body was inconclusive as to the cause of death. A second post mortem was held and the police are awaiting the outcome of various tissue, organ and toxicology reports to try and establish the cause of death. The results were expected shortly. There would also have been an inquest by a coroner. That was not expected to take place until after the police have concluded their enquiries. The Prisons and Probation Ombudsman (PPO) was also conducting an investigation into the circumstances surrounding Mr. Mubenga's death. The investigation would not conclude or report before the police had completed theirs (as the latter takes primacy).

403. The Government stressed the fact that the PPO is independent of the UK Government. The terms of reference include a requirement to:

(a) Establish the circumstances and events surrounding the death, especially regarding the management of the individual by the relevant authority or authorities within remit, but including relevant outside factors.

(b) Examine whether any change in operational methods, policy, practice or management arrangements would help prevent a recurrence.

(c) In conjunction with the National Health Service (NHS) where appropriate, examine relevant health issues and assess clinical care.

(d) Provide explanations and insight for bereaved relatives;

(e) Assist the Coroner's inquest fulfil the investigative obligations arising under Article 2 of the European Convention on Human Rights (ECHR), by ensuring as far as possible that the full facts are brought to light and any relevant failing is exposed, any commendable action or practice is identified and any lessons from the death are learned.

404. Both the UK Border Agency and G4S are co-operating fully with both investigations.

405. The Government informed it was unable to comment further on the circumstances surrounding Mr. Mubenga's death nor on the allegations which have been made in the media, given the investigations which were under way. To do so may undermine the

integrity of those investigations and potentially interfere with the establishment of facts rather than allegation, justice and the rights of individuals.

UK Border Agency and Detention Services

406. The UK Border Agency is an executive agency of the Home Office and is responsible for securing the UK border and managing migration.

407. Detention Services is a Directorate within the UK Border Agency and has responsibility for:

(a) The UK Border Agency's immigration detention estate;

(b) The Agency's detention policy

(c) Escorting of immigration detainees, both in the UK and overseas where they are being deported

Use of Private Escorting Companies

408. The UK Border Agency has used private companies for detention and escorting services for many years. The total number of staff fluctuates with demand, but is around the 1000 mark. This is the first incident of an immigration detainee dying whilst under escort. The last incident of a similar nature was that of Mrs. Joy Gardener in 1993, a Jamaican deportee who was being restrained by police officers at her home in order to detain and return her to Jamaica. The circumstances were, however, very different to those of Mr. Mubenga.

409. G4S is the main contractor with the UK Border Agency to undertake the escorting of detainees. Two other companies, Serco Home Affairs and Molynes International Security, provide escorting services on an ad hoc basis in order to manage peaks in demand for services which G4S cannot supply.

410. The UK Border Agency signed a new escorting contract with Reliance Task Management Security Ltd on 22nd November 2010 following a competitive tender. The decision not to award the new contract to G4S was taken on 12 August 2010 and was in no way influenced by the death of Mr. Mubenga. G4S would continue to provide escorting services until the commencement of the new contract on 1st May 2011

Certification of escorts

411. Section 154 of the Immigration and Asylum Act 1999 requires that the Secretary of State certificates an individual to work as a Detention Custody Officer (DCO). Before an individual can be certificated, the Secretary of State must be satisfied that:

(a) He or she is a "fit and proper person" to undertake the duties of an escort; and

(b) He or she has been trained to an appropriate standard.

412. Before being certificated, therefore, the following checks are made:

(a) The individual has secured security vetting by the Home Office Departmental Security Unit (DSU);

(b) The individual has no unspent criminal convictions, is the subject of a criminal investigation or is the subject of any intelligence by the police which suggests he or she is unsuitable to work with vulnerable persons;

(c) The individual has undergone and passed a training course on working as a DCO, the contents of which are approved by the UK Border Agency, and covers human rights, race relations, diversity, control and restraint and first aid;

(d) Specifically with regards to restraint, officers receive a 5 day course, which is refreshed annually with a minimum of 8 hours training.

413. DCOs are issued with a letter of certification by the UK Border Agency which notifies them that the certificate will remain valid so long as they remain employed as a DCO (or for up to six months if they change employment) or when their security clearance expires. They are expected to maintain their training records throughout the time they are certificated, which includes annual refresher for control and restraint and every three years for first aid.

414. An officer's certification may be suspended at any time by the UK Border Agency's escorting contract monitor. It may be revoked by the Secretary of State. An individual's certification is reviewed once every five years.

Use of restraint by DCOs

Principles behind use of restraint

415. The Government stated it would prefer that those being removed from the UK leave compliantly. Indeed the vast majority do, are taken to the airport by escorts, placed on board an aircraft but travel alone.

416. However, where detainees have special requirements (e.g. they have a medical condition which may require treatment during the flight), they refuse to leave the UK compliantly, they pose a particular risk or are being removed on a flight chartered by the UK Border Agency, escorts are used. In the case of a detainee with a medical condition they are may be accompanied by a medical escort.

417. Even the majority of detainees being removed under escort because they refuse to leave the UK compliantly or otherwise pose a risk, leave compliantly. This is testament to the particular emphasis placed during training on using interpersonal and communication skills to persuade the individual to comply. Escorts go to great lengths to build positive relationships with detainees during the journey to the airport so as to reduce the likelihood of restraint having to be used.

418. However, where individuals refuse to comply, escorts are empowered to use restraint. Restraint may also be used to prevent individuals from harming themselves, others or property. Any use of restraint must, however, be justified and proportionate. Escorts' powers are set out in Paragraph 2 to Schedule 13 of the Immigration and Asylum Act 1999. The legal power is underpinned by a UK Border Agency operating standard on restraint. This is a public document which is available on the UK Border Agency's website. A copy has been provided for ease of reference.

419. The Government provided statistics on the number of incidents where restraint has been used compared the total number of persons removed from the UK.

Restraint techniques

420. Restraint techniques used are those which are approved by the National Offender Management Service and are set out in their Use of Force Manual, a restricted document as it would put at risk good order and discipline in our prisons and immigration removal centres if prisoners were to learn the techniques; it might also put the health and safety of our officers at risk. No use of restraint is considered to be without risk, but the National Offender Management Service was, however, undertaking a review of restraint techniques used by escorts on aircraft to see if they can be adapted in order to make them even safer. This review is part of a wider programme of work which came about following a report

published by Baroness Nuala O'Loan in March 2010 concerning the work of escorts contracted by the UK Border Agency (see below).

Use of aids to restraint

421. DCOs are authorised to use hand-cuffs if required to restrain an individual.

422. Those working as overseas escorts may also use a leg restraint, which takes the form of a Velcro strap placed between the knee and ankle. No other form of mechanical restraint is currently authorised for use. DCOs do not generally require permission from the UK Border Agency to use restraint in advance. They are, however, required to obtain authority for the use of leg restraints, from a senior UK Border Agency officer.

Reporting use of restraint

423. DCOs are required to submit a Use of Force Incident Report in all cases where restraint is used, including the use of handcuffs as a precautionary measure (referred to as "passive handcuffing"). The report requires officers to justify why restraint was used, the role of each member of the team in restraining an individual, and techniques applied. The report is submitted through the escorting contractors' own line management chain before being sent to the UK Border Agency's escorting contract monitor.

Complaints and Grievances

424. The UK Border Agency takes all complaints seriously and operates a comprehensive complaint system for those in detention. A copy of the procedures are set out in Detention Services' Order 13/2008, which is published on the UK Border Agency's website (www.ukba.homeoffice.gsov.uk) All complaints are submitted to the UK Border Agency in confidence, which oversees investigations. Service delivery complaints are investigated by the private sector contractor. Complaints regarding the conduct of staff (including DCOs) are referred in the first instance to the UK Border Agency's Professional Standards Unit (PSU).

425. Whilst detainees who are either complainants or witnesses may be interviewed before their removal, the submission of a complaint will not normally lead to the individual remaining in the UK until the outcome of the investigation. They are, however, encouraged to provide a forwarding or e-mail address for future correspondence and the decision whether or not to maintain their removal is taken on a case by case basis.

426. Any allegation which contains an element of criminality is referred by the PSU to the police; this includes obtaining a crime number. It is a matter for the police how such allegations are investigated in parallel to that by the PSU although the PSU liaises with the police throughout their investigation in order to record the outcome of the police investigation. Detainees who are dissatisfied with the outcome of a complaint investigation by the police, are advised to submit a complaint to the Independent Police Complaints Commission (IPCC).

427. Detainees who are dissatisfied with the outcome of an investigation by the PSU, are advise to refer the matter to the Prisons and Probation Ombudsman (PPO). Details of the role of the Ombudsman and how complaints are investigated are available on her website (www.ppo.gov.uk). It is open to our escort contract monitor to suspend the certification of a DCO at any time pending an investigation.

428. If a complaint is substantiated, it is open to the Secretary of State to revoke an individual's certification. However, we may, depending on the circumstances of the case, ask our contractors to take alternative courses of action, which include a requirement for an individual to undertake refresher training or for instructions and guidance to be amended

and re-issued to all staff. It is a matter for the contractor whether disciplinary action is brought against individuals following a complaint being substantiated or partially substantiated. However, any decision by the Secretary of State to revoke an individual's certification removes their legal powers to work as a DCO. The Secretary of State therefore has ultimate control over who works with detainees.

429. The Government also provided information on the number of complaints received over the last 2 years about treatment by escorts within the context of the total number of detainees who were escorted during their removal from the UK.

Oversight

UK Border Agency's escort monitor

430. The UK Border Agency has an escort monitor appointed in accordance with Schedule 13 to the Immigration and Asylum Act 1999. The monitor is, as the legislation requires, a Crown Servant, and works for the UK Border Agency.

431. The monitor is required to:

(a) Keep the escort arrangements under review and to report on them to the Secretary of State;

(b) From time to time inspect the conditions in which detained persons are transported or held in accordance with the escort arrangements;

(c) Make recommendations to the Secretary of State, with review to improving those conditions, whenever he considers it appropriate to do so; and

(d) Investigate and report to the Secretary of State on, any allegation made against an escort in respect of any act done, or failure to act, when carrying out their functions.

432. The monitor's role also includes ensuring that the UK Border Agency receives the level of service set out in its contract with G4S. She is supported by a commercial manager.

Independent Monitoring Board

433. An Independent Monitoring Board (IMB) is appointed by the Secretary of State to operate specifically at Heathrow Airport, from where the vast majority of detainees depart the UK. The Board is made up of lay persons, who are charged with reporting on the conditions in which detainees are held and the way they are treated by escorts. The Board reports annually to the Secretary of State and places a copy on its website (www.imb.gov.uk). Specifically with regards to the escorting of detainees, the Chair of the IMB, Mrs. Lou Lockhart-Mummery reported to *The Guardian* on 15 October: "We have never observed any bad practices."

HM Inspectorate of Prisons

434. Escorts are also subject to a programme of unannounced inspections by HM Inspectorate of Prisons in accordance with the Prisons Act 1952 (as amended by the Immigration, Asylum and Nationality Act 2006). It also has jurisdiction to inspect Immigration Removal Centres, residential and non-residential short-term holding facilities. Copies of the Chief Inspector of Prisons' reports are published on its website (www.justice.gov.uk/inspectorates/hmi-prisons).

Baroness Nuala O'Loan's investigation report

435. There have been accusations by a number of organisations, some of whom campaign against the Government's immigration policies, that detainees are systematically abused by escorts used by the UK Border Agency to enforce the removal of those who refuse to leave the country. The then Home Secretary appointed Baroness Nuala O'Loan to conduct an investigation into such claims, but her report, published in March 2010, concluded that there was no evidence to substantiate such this central claim.

Observations

436. The Special Rapporteur thanks the Government for its extensive and informative reply.