



# General Assembly

Distr.: General  
25 May 2010

English/French/Spanish only

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## Human Rights Council

Fourteenth session

Agenda item 3

**Promotion and protection of all human rights,  
civil, political, economic, social and cultural rights,  
including the right to development**

### **Report submitted by the Special Rapporteur on the human rights of migrants, Jorge A. Bustamante\***

Addendum

### **Communications sent to Governments and replies received**

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\* Owing to its length, the present report is circulated as received.

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## I. Introduction

1. Pursuant to Human Rights Council Resolution 8/10, the Special Rapporteur on the human rights of migrants is mandated, *inter alia*, to examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of migrants and to request and receive information from all relevant sources, including migrants themselves, on violations of the human rights of migrants and their families. In carrying out his mandate, the Special Rapporteur on the human rights of migrants may request, receive and exchange information on violations of the human rights of migrants with a variety of stakeholders including Governments, and is requested by the Human Rights Council to respond effectively to the information received.

2. This addendum to the report of the Special Rapporteur contains, on a country-by-country basis, summaries of communications addressed to Governments in the form of urgent appeals and letters of allegations between 7 March 2009 and 31 March 2010, as well as replies received until 10 May 2010. Observations made by the Special Rapporteur have also been included where applicable.

3. It is important to recall that communications sent to Governments contain only requests for information in situations that raise concern, but also very frequently address situations where information regarding certain facts and actions needs clarification. The establishment of constructive dialogue with Governments is a crucial element to this process, as Governments have the primary responsibility for the protection of all persons under their jurisdiction.

4. The Special Rapporteur would like to recall that in transmitting these allegations to Governments, he does not make any judgement concerning the merits of the cases, nor does he support the opinion and activities of the persons on behalf of whom he intervenes.

5. In this report, country specific communications sent and Government responses received are presented in their original language as received. However, the names of individual victims and alleged perpetrators have been replaced by initials in order to protect their privacy and to prevent further victimization as well as to avoid pre-judgement of the alleged perpetrators.

## II. Trends and observations

6. During the period under review, the Special Rapporteur sent a total of 26 communications on violations on the rights of migrants to 19 Member States. Of the communications that were sent, 17 were in the form of urgent appeals and the remaining were letters of allegations.

7. Communications were sent to the following countries: Angola, Australia, Bahrain, Burundi, République Démocratique du Congo, Czech Republic, Dominican Republic, Egypt, France, Italy, Kazakhstan, Kuwait, Mexico, Republic of Korea, South Africa, Spain, Thailand, United Arab Emirates, and Uzbekistan

8. The Special Rapporteur has continued to cooperate with other mandate-holders in his work. A total of 23 communications were sent jointly by the Special Rapporteur and the following special procedures mandate-holders:

- The Special Rapporteur on extrajudicial, summary or arbitrary executions;
- The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment;

- The Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia and related intolerance;
- The Special Rapporteur on freedom of religion or belief;
- The Special Rapporteur on violence against women, its causes and consequences;
- The Special Rapporteur on the sale of children, child prostitution and child pornography;
- The Special Rapporteur on trafficking in persons, especially women and children;
- The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression;
- The Special Rapporteur on the independence of judges and lawyers;
- The Special Representative of the Secretary-General on the situation of human rights defenders;
- The Independent Expert on minority issues;
- The Special Rapporteur on the right to education;
- The Chairperson-Rapporteur of the Working Group on Arbitrary Detention;

9. Only 17 of the 26 communications sent out, received a response from the concerned Governments. The Special Rapporteur would like to thank the Governments of Australia, Czech Republic, Dominican Republic, Egypt, Italy, Kazakhstan, Kuwait, Mexico, Republic of Korea, South Africa, Spain, Thailand, United Arab Emirates and Uzbekistan for their responses to his communications and their collaboration. He would also like to remind Governments that have not responded to do so, and to address all concerns raised in each communication.

10. The situations in which violations of the human rights of migrants are alleged to have occurred during the period under review, giving rise to the intervention of the Special Rapporteur, include allegations of:

### **III. Summary of communications sent to Governments (26) and replies received (17)**

11. This report includes a table providing a quick reference and overview of the exchange of communications between the Special Rapporteur on the human rights of migrants and Governments.

## Communications sent to Governments and replies received

### -Analytical summary list-

<i>Date</i>	<i>Country</i>	<i>Type of communication<sup>1</sup></i>	<i>Individuals concerned</i>	<i>Alleged violations / human rights issues</i>	<i>Government's response</i>
18.12.2009	Angola	JAL	Concerning a group of individuals	Detention and deportation of a large number of Congolese nationals to the Democratic Republic of Cogo, arbitrary detention, torture / ill treatment.	No
09.07.2009	Australia	JAL	- Mir Kazim Ali - Sunny Bajaj - Baljinder Singh - Rajesh Kumar	Recent attacks on Mr. Resham Singh, Mr. Mir Kazim Ali, Mr. Sunny Bajaj, Mr. Rajesh Kumar, Mr. Shравan Kumar, Mr. Baljinder Singh, who are all international students from India	28.10.2009
31.12.2009	Bahrain	AL	Muhammad, Naseer India	Exploitation of migrant workers in Bahrain, including the non-payment of wages and confiscation of passports, restriction of worker's freedom of movement and their capacity to access effective remedies, violation of rights of migrant workers.	No
22.01.2009	Burundi	AL	Group of individuals, 841 persons from different nationalities. Namely from DRC, Rwanda, Tanzania, Mali, Senegal, Kenya, South Africa.	Expulsion of foreigners, arbitrary detention, violation of private life.	No
31.12.2009	Democratic Republic of the Congo	AL	Group of individuals.	Expulsion of a group of individuals, ill treatment, arbitrary detention, mauvais traitements, détention arbitraires, theft,	No

<sup>1</sup> Type of Communication: UA: Urgent Appeal; JUA: Joint Urgent Appeal; LoA: Letter of Allegation; JLoA: Joint Letter of Allegation.

<i>Date</i>	<i>Country</i>	<i>Type of communication<sup>1</sup></i>	<i>Individuals concerned</i>	<i>Alleged violations / human rights issues</i>	<i>Government's response</i>
16.07.2009	Czech Republic	JUA	Bauyrzhan Imangaliev, aged 30, citizen of Kazakhstan, who is currently awaiting deportation from the Czech Republic to his country of origin.	extorsion. Violation of freedom of belief, persecution for religious reasons, violation of the right of voluntary return, torture.	No
31.07.2009		JUA	Mr Shakhzod Maksudov, aged 30, citizen of Uzbekistan	Violation of the right to be assisted by a lawyer, violation of independence of judges and lawyers, violation of human rights of migrants. Torture, ill treatment.	01.10.2009
26.10.2009	Dominican Republic	JAL	Group of individuals, migrants, from Haiti.	Discrimination, arbitrary detention, racism, collective deportation.	06.05.2010
02.12.2009	Egypt	JUA	Ms. Medhine, an Ethiopian asylum seeker Galila	The best interests of the child, discrimination on the ground of the irregular migration status of the child parents, detention conditions, Arbitrary deprivation of liberty, violation of the right to physical and mental integrity.	06.04.2010
10.12.2009	France	JUL	Mr Claude Didier, Mr Michel Duckit and Mr Rémi Ri Allan, Mr Jean-Yves Le Gall and Ms Elisabeth Heurtier and Patricia Arthaud.	Violation of a right to private life, violation of the right to education, discrimination.	No
31.12.2009	Italy	JAL	Development of legislation.	Violation of the rights of migrants, arbitrary detentions of migrants, violation of rights of migrants to marry, violation of right to birth, illegal expulsion.	31.03.2010
11.01.2010		JUA	Group of African migrant workers.	Rights of migrants; racism, racial discrimination, xenophobia and related intolerance against non-	09.03.2010

<i>Date</i>	<i>Country</i>	<i>Type of communication<sup>1</sup></i>	<i>Individuals concerned</i>	<i>Alleged violations / human rights issues</i>	<i>Government's response</i>
				citizens/criminalization of irregular migration and stigmatization of certain groups in detriment of their human rights' protection.	
20.10.2009	Kazakhstan	JUA	Boy, BI, national of Kazakhstan	Trafficking in persons, work in slave like conditions	20.12.2009
04.02.2010	Kuwait	JUA	Jakatia Pawa, 34-year old domestic worker from the Philippines.	Human rights violations of migrant workers, arbitrary execution, and torture, effective protection of woman against any act of discrimination	17.03.2010
15.10.2009	Mexico	JUA	A group of migrants living at the Casa del Migrante in Belen, Coahuila	Threats to the right to life and security of the person to a group of migrants living at the Casa del Migrante in Belen, Coahuila; xenophobic outbreaks and related intolerance against migrants	No
14.10.2009		JUA	Victor Alexander Melgar Lumus and six migrants	Summary execution and personal injuries to six migrants in Comitan, Chiapas.	10.05.2010
09.09.2009		JUA	Alejandro Solalinde Guerra; David Alvarez Vargas; Areli Palomo Contreras and other members of Alberge del Migrante Hermanos en el Camino.	Threats to the right to life and security of the person of migrants and defenders of the human rights of migrants; threats to freedom of expression.	10.05.2010
15.01.2010	Republic of Korea	JUA	Mr. Minod Moktan	Human rights violations of migrant workers, discrimination of migrant workers, arbitrary detention, and torture.	13.04.2010
11.12.2009	South Africa	JAL	3000 migrant workers in De Doorns, Western Cape Province	Xenophobic violence against migrants	03.05.2010

<i>Date</i>	<i>Country</i>	<i>Type of communication<sup>1</sup></i>	<i>Individuals concerned</i>	<i>Alleged violations / human rights issues</i>	<i>Government's response</i>
03.06.2009	Spain	JUA	Laura Bugalho	Arbitrary detention of a human rights defender of the rights of migrants	01.07.2009
02.02.2010	Thailand	AL	Migrant workers from Myanmar	Risks of collective expulsion of Myanmar's migrant workers from Thailand due to the failure to complete the nationality verification process	No
29.12.2009		JUA	Approximately 4,000 Lao Hmong	Forcible return of Lao Hmong from Thailand to Laos; Risks of torture.	12.01.2010
12.11.2009		AL	Migrant workers from Myanmar. With respect to the issues of workplace accidents, the following migrant workers from Myanmar who have been injured or killed as a result of workplace accidents and have not received compensation: Ms. Nang Noom Mae Seng; Mr. Sai Htun; Mr. Nai Khek Booma (or Ou Kin Zo); Mr. Nai Yuu; Mr. Nai Jam (or Aung Ngwe Ton); Ms. Nang Saw Wai (or Ka Zing).	Exploitation of and systematic discrimination against migrant workers from Myanmar in Thailand, particularly with respect to the effects of the nationality verification process and the impact of workplace accidents.	No
26.08.2009		JUA	A group of 78 individuals that arrived in Thailand on 26 January 2009 and who were subsequently transferred to the Immigration Detention Center (IDC) in Ranong, Thailand, including minors	Arbitrary detention of individuals from the Rohingya minority of Myanmar at the Immigration Detention Center in Ranong, Thailand; Lack of access to medical care in detention.	17.11.2009
16.11.2009	United Arab Emirates	JAL	Ms. Fatima Zahra Moussa, a Moroccan national	Violation of the right to effective remedy as a victim of trafficking in persons	16.11.2009



<i>Date</i>	<i>Country</i>	<i>Type of communication<sup>1</sup></i>	<i>Individuals concerned</i>	<i>Alleged violations / human rights issues</i>	<i>Government's response</i>
20.10.2009	Uzbekistan	JUA	Mr. B.I, aged 17, national of Uzbekistan and a resident of the Khiva town of the Khorezm region, Uzbekistan.	Trafficking of a child for the purpose of labour exploitation; sale of a child; worst forms of child labour, including slavery or practices similar to slavery.	25.11.2009

## Angola

### Communication sent to the Government on 18 December 2009

12. On 18 December 2009 the Special Rapporteur on the human rights of migrants 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 on Angola on the alleged detention and deportation of a large number of nationals to the Democratic Republic of the Congo (DRC).

13. According to the information received, since January 2009, collective deportations and expulsion of nationals of the DRC have taken place, reaching a peak in late August 2009. Overall, approximately 18,800 DRC nationals have been allegedly expelled from Angola; approximately 16,000 of them since late August 2009. The following are two instances that illustrate the human rights violations that often take place during these expulsions.

14. In May 2009, in the Ngazi settlement in Lunda Norte province, refugees, asylum-seekers and irregular migrant workers were subjected to ill-treatment, including gender-based violence, and deprived of their belongings. These violations were mostly perpetrated by Angolan security forces and intended to force them to return to the DRC.

15. Whereas most of the DRC nationals were expelled from the provinces of Lunda Norte and Lunda Sul, expulsions have also reportedly occurred in the territories of Soyo and Cabinda since early October 2009. Citizens of the DRC were detained and kept in very poor conditions prior to their expulsion. It appears that the administrative detention of asylum seekers is not subject to independent monitoring, and takes place without prior authorization from a judicial body. The detainees are most often denied access to legal counsel. In the context of the expulsions, many of them were subject to sexual violence at the risk of HIV transmission, body searches without minimum hygienic standards and theft.

16. In this respect, we note the initiative to create a Commission in late November 2009 to discuss this concern with the DRC authorities and the issuance on 13 October 2009 of a joint communiqué announcing the concerted cessation of expulsions and the political will to find sustainable solutions to the issue. In spite of these commitments, we received reports that expulsions have continued to occur, albeit at a lesser scale.

17. (...) we would be grateful for the Government cooperation and observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Have complaints been lodged about the alleged violations including sexual and gender violence?
3. Please provide information on the existing legal framework and implementation procedures applied to migrants in detention and those deported and how these measures are compatible with international standards.
4. Please provide information on steps that have been taken with a view to stopping the occurrence of this and similar situations, and in particular to fulfill the commitments undertaken in the joint communiqué issued on 13 October 2009.
5. Please provide information on the proposed establishment of a Commission to discuss the issue of collective deportations and expulsions of nationals of the DRC, including when it is likely to be established in practice and what functions it will perform.

## Australia

### Communication sent to the Government on 8 July 2009

18. On 8 July 2009, the Special Rapporteur on the human rights of migrants together with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance sent a letter of allegation to the government of Australia concerning recent attacks on Mr. RS, Mr. M.K.A, Mr. S.B, Mr.R.K., Mr. S.K, Mr. B.S., who are all international students from India.

19. According to the information received on 29 June 2009, Mr. R.S., an Indian Student from Della International College, was on his way back to Melbourne, after finishing his work in Cranbourne. He was sitting in Dandenong train station with one of his friend, when they were approached by two people. They started abusing Mr. R.S verbally with racist insults and then went away. They however came back with four or five people and with a pair of scissors. When they approached Mr. R.S. for the second time, they removed his turban and gave him a punch on his face. After this, they started kicking him. They also pulled his hair and started cutting them. Mr. R.S.friend was also beaten up. The police arrived and arrested three of the people.

20. Mr. M.K.A, an Indian student from the Victoria Institute of Technology in Melbourne, was attacked on the evening of 22 June 2009 when he was coming out of a hair saloon. He was walking near a railway station in eastern suburb of Melbourne when two men, wearing hooded jackets walked up to him and punched him without any provocation. They reportedly demanded money from him and when he resisted they attacked him on his right eye. He was admitted to a local hospital thereafter.

21. Mr. S.B., an Indian student from the Deakin University in Melbourne, was physically assaulted by two men as he was about to get into his car in Boronia on 12 June 2009. Reportedly, the two men came up to Mr. S.B. and asked him for money. They then slammed the car door onto the hands of Mr. B and punched him in the head and stomach and racially abused him.

22. On 24 May 2009, Mr. R.K., an Indian hospitality student in Sydney, was sitting on his bed in the front room of his rented house when an unknown person allegedly threw a small petrol bomb through his window. The explosion and subsequent fire left Mr. K with burns to a third of his body.

23. Mr. S.K., an Indian automobile engineering student in Melbourne, was stabbed with a screwdriver on 23 May 2009 when two teenagers arrived at a party. While the party was on, one of the two teenagers came in and asked Mr. K.to switch off the music. The teenager started to create problems and first refused to leave. After a few minutes, the two teenagers however left the party. Everyone got back inside and the music was turned on. Suddenly one of the teenagers came back but was stopped by Mr. K.. While both argued on the doorstep, the other teenager came out of the car with a screwdriver and stabbed Mr. S.K. The police, who were patrolling the area, reportedly caught the two teenagers.

24. Mr. B.S., an Indian student in Melbourne, was attacked on the night of 22 May 2009, when two men carrying weapons approached him and demanded money. As Mr. S. was searching through his bag to hand over his wallet, they stabbed him with a screwdriver in the abdomen. The attackers reportedly laughed while stabbing him and then fled the scene. Mr. S. was admitted to the Alfred Hospital thereafter.

25. Concern is expressed that all these attacks reflect a pattern of xenophobic violence in Australia over the recent months

26. (...)we would be grateful for the Government's cooperation and observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation and judicial or other inquiries which may have been carried out in relation to these cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please provide information concerning the measures that have been taken after the recent attacks to prevent the recurrence of these acts and to ensure the protection of members of ethnic minorities living in Australia.

**Reply from the Government to the communication sent on 8 July 2009**

27. On 28 October 2009, the Government of Australia replied to the communication sent on 8 July 2009, highlighting its commitment to ensuring that crimes committed against all persons within their jurisdiction, irrespective of race or any other characteristic of a victim or perpetrator, are investigated fully and prosecuted where possible. It also highlighted that in all Australian States and Territories there are restrictions on publication of the identity of juveniles involved in criminal court proceedings.

28. The Australian Government did not comment on pending court proceedings. However, it informed that the police arrested and charged three suspects in relation to the incidents involving Mr R.S. and provided details on their the proceedings involved the three suspects. In relation to the incidents involving Mr S. B. and Mr B. S., the Government highlighted that the victims reported the matter to the local police station. At the time of writing no offenders have been charged. However, investigations are continuing.

29. In relation to the incidents involving Mr R. K., the Government informed that a strike force has been established by the police force and a team of detectives is investigating the incident. It also informed that a number of statements have been taken from witnesses, and items have been seized for forensic examination but that no suspect or no suspects have been identified. The Government also provided information on the steps taken to investigate and find the possible offenders.

30. In relation to the incident involving Mr S.K., a 17 year old male was charged and remanded in custody on 24 May 2009. A committal hearing was scheduled to occur on 16 November 2009.

31. The Government of Australia also informed that following the incident referred to by the Special Rapporteurs which occurred in New South Wales, consultation was undertaken with the local community, the office of the Indian Consul General and the Community Relations Commission (Commission). The Government also explained that the Commission has responsibility for promoting community harmony, participation and access to services in order that the contribution of cultural diversity to New South Wales is celebrated and recognised as an important social and economic resource. It recognises multiculturalism as a deliberate public policy and takes proactive steps to ensure a cohesive and harmonious society and that the Chairperson and staff of the Commission have maintained regular contact and dialogue with the Consul General of India, members of the Indian community and the international student community through various forums and meetings. Moreover, in its response, the Government highlights the intense local community information campaigns that have been implemented and led by Local Area Commands, for example, in Rosehill and Harris Park, with the aim to provide personal safety and crime awareness information to students to reduce the risk of further crimes.

32. The Government also informed that the New South Wales government is implementing a number of measures to promote safety, and foster good police relations with international students, particularly Indian students. The New South Wales police force

policy and Programs command is developing a whole of organization approach to the safety needs of international students including Indian students.

33. In its response, the Government also informed about the establishment of the New South Wales of a number of measures aimed at providing greater protection to international students, as well as addressing broader concerns regarding education and support for international students in Australia. Those measures include the announcement, on 2 June 2009, by the Minister for Foreign Affairs in the Australian Parliament, of the establishment of a taskforce to coordinate the Government's efforts to address matters affecting the safety of international students in Australia across the Commonwealth and in collaboration with State and territory governments.

34. The Government also highlighted the importance of migration for their society in the following terms: "Australia has benefited from the contributions of the millions of migrants from around the world who have made Australia home and helped shape its unique national-identity. Today, there are over 21 million Australians. Australians speak more than 300 languages, including Indigenous languages, identify with more than 200 ancestries and observe a wide variety of cultural and religious traditions. Forty-five per cent of australioans are born overseas or have at least one parent who was born overseas. The Australian Government's migration program is carefully managed to provide maximum benefit for the Australian community. This helps the Government meet its social objectives and international obligations, as well as economic goals".

## **Bahrain**

### **Communication sent to the Government on 31 December 2009**

35. On 31 December 2009, the Special Rapporteur on the human rights of migrants sent a letter of allegation to the government of Bahrain concerning the exploitation of migrant workers in its territory, including the non-payment of wages and confiscation of passports, thereby restricting workers' freedom of movement and their capacity to access effective remedies. Migrant workers in the private sector are subject to various forms of abuse, including confiscation of identity documents, limited freedom of movement, and non-payment of wages or reduction in wages (see A/HRC/4/23/Add.2) Concern is expressed that this pattern of abuse still seems to persist in Bahrain.

36. According to the information received, on October 6 2009, Mr. Muhammad Naseer, an Indian citizen, alleged that his employer and sponsor had refused to pay him nearly four months of arrear wages and withheld his passport. When the employer had allegedly refused his request for arrear wages, Mr. Naseer sought the help of the Indian embassy and filed a formal complaint with the Labour Ministry, which called an arbitration meeting with the employer. The Labour Ministry advised him that he could either go to court to recover his wages, or get his passport back and leave the country. As the legal proceedings are reportedly costly and lengthy, Mr. Naseer was compelled to sign a settlement letter, written in English – a language that he does not understand – in which he waived all legal claims against his employer in exchange for his passport and authorization to leave the country. The Labour Ministry helped Mr. Naseer retrieve his passport. He returned to India on October 26, 2009, without receiving his arrears.

37. The same employer allegedly owes at least 29 workers arrear wages for three months. The employer allegedly tried to get the unpaid workers to sign documents affirming receipt of full payment, but the workers refused. In addition, the employer allegedly physically assaulted an employee who had requested the payment of arrear wages.

38. Information received also indicates that another company has not paid eight migrant workers for five months. The withholding of wages appears to be a widespread practice, as

evidenced by the demonstration outside the Indian Embassy in Manama on 24 October 2009, which was apparently organized by 38 migrant workers at another company who claimed that their employer had failed to pay them for five months.

39. I note that article 302 of the Bahraini penal code makes it illegal for an employer to withhold wages in full or in part and authorizes the Government to prosecute abusive employers. I also note that Bahraini legislation forbids employers from withholding the passports of their migrant workers. According to the information received, however, the practice of withholding wages and passports of migrant workers is reportedly widespread and the authorities rarely prosecute or take other action against employers in this respect. It is also alleged that the current arbitration system is unfair to migrant workers, for it favours employers who refuse to settle by arbitration and resort to litigation. Migrant workers, most of whom cannot afford legal fees or the loss of income, often have little choice but to accept highly unfavourable settlements in order to avoid litigation.

40. (...) I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the cases accurate?
2. Please provide details, and where available the results, of any criminal investigation, judicial inquiry or any other inquiries carried out in relation to employers who withhold wages and passports of migrant workers in breach of Bahraini law.
3. Please provide information on whether there are adequate complaint mechanisms available to and accessible by migrant workers and their family members in Bahrain in line with the recommendations of the Special Rapporteur on trafficking in persons contained in her report (A/HRC/4/32/Add.2). Please also provide information on any efforts undertaken by your Government to inform the migrant workers of the existence of such mechanisms.

## **Burundi**

### **Communication envoyée au Gouvernement le 22 janvier 2010**

41. Le 22 Janvier 2010, le Rapporteur spécial sur les droits de l'homme des migrants a envoyé une lettre d'allégation au gouvernement de Burundi sur les informations reçues concernant les conditions de vie des migrants en situation irrégulière qui se trouvent sur son territoire.

42. Selon les informations reçues, entre le 15 janvier et le 18 août 2009, la Police de l'air, des frontières et des étrangers aurait procédé au moins à l'expulsion dans des conditions parfois non conformes aux dispositions légales, de 841 personnes de différentes nationalités, en particulier des citoyens en provenance de la République Démocratique du Congo, du Rwanda, de la Tanzanie, du Mali, du Sénégal, du Kenya et de l'Afrique du sud.

43. Par la suite, sont énumérés les cas particuliers :

#### *Province de Bujumbura Mairie :*

- Jeudi et vendredi 15/16 janvier 2009 dans la commune de Bwiza : 108 personnes ;
- Mardi 20 janvier 2009 dans la commune de Buyenzi (de la 1<sup>ère</sup> à la 15<sup>ème</sup> avenue) : 107 personnes dont 72 de la RDC et 35 du Rwanda ;
- Vendredi 23 janvier 2009 dans la commune de Cibitoke, quartier Mutakura : 25 personnes (exclusivement des jeunes élèves rwandais en tenue scolaire qui se rendaient à l'école) ;

- Lundi 26 janvier 2009 dans la commune de Buyenzi (à partir de la 16<sup>ème</sup> avenue) : 66 personnes dont 50 de la RDC, 8 du Rwanda, 7 de la Tanzanie, et 1 d'Afrique du Sud ;
- Vendredi 30 janvier 2009 dans la commune de Bwiza : 96 personnes de nationalités congolaise, rwandaise, sénégalaise et malienne ;
- Lundi 2 février 2009 dans la commune de Cibitoke : 159 personnes dont 154 de la RDC, 4 du Rwanda et 1 de la Tanzanie.
- Vendredi 6 février 2009 dans la commune de Kamenge : 60 congolais.

*Province de Bujumbura rural*

- Jeudi 06 août 2009 dans la commune Mutimbuzi : 85 congolais dont 29 hommes, 32 femmes et 22 enfants tous de moins de 12 ans expulsés en RDC.

*Province de Bubanza*

- Samedi 08 août 2009 dans la commune de Gihanga : 18 personnes (6 rwandais et 12 congolais) expulsés au Rwanda et en RDC;
- Mardi le 18 août 2009, dans le secteur Karwema de la zone/commune Gihanga : 16 personnes (4 rwandais et 12 congolais) expulsées en RDC.

*Province de Cibitoke*

- Du lundi 03 au dimanche 16 août 2009 dans la commune Rugombo : 24 Congolais (13 hommes et 11 femmes), accompagnés de 43 enfants expulsés en RDC et 70 Rwandais (29 hommes et 41 femmes) expulsées au Rwanda.
- Mardi le 18 août 2009 dans la commune Rugombo : 7 Rwandais (4 hommes, 1 femme et 1 enfant) expulsés au Rwanda.

*Province de Kayanza :*

- 28 janvier 2009 : 4 rwandais ;

*Province de Kirundo:*

- 11 février 2009: 15 rwandais;

*Province de Gitega:*

- 10 février 2009: 1 ougandais, 7 congolais.

44. Au cours de ces expulsions, plusieurs irrégularités ont été dénoncées. Des enfants de moins de quatre ans, séparés de leur parents; des femmes allaitantes sans leur nourrisson confié aux voisins, des étrangers mariés à des burundais auraient été expulsés. Dans la plupart des cas, il n'aurait pas été donné de temps suffisant à l'expulsé pour qu'il puisse préparer son départ. Certains, nés et élevés au Burundi, n'auraient aucune adresse où se réfugier ni aucun contact à appeler dans leur pays d'origine.

45. De plus, lors des journées des 20, 23, 26, 30 Janvier et 2 Février, des enseignants auraient été arrêtés dans des établissements scolaires ainsi que des écoliers, bien qu'ils soient munis de leur carte d'identité. Des cartes d'identité auraient même été confisquées et/ou détruites.

46. je serais reconnaissant au Gouvernement de votre Excellence de me faire parvenir ses observations sur les points suivants, tels qu'ils s'avèrent pertinents au regard du cas soulevé :

1. Les circonstances des faits et les irrégularités relevées sont-elles avérées?

2. Est que de plaintes ont été présentes par de victimes ou dans leur nom?
3. Veuillez énoncer toute information concernant les garanties procédurales reconnus aux 841 personnes déportées conformément à la normativité internationale dont le Burundi fait partie.
4. Veuillez énoncer toute information supplémentaire apte à comprendre les procédures adoptées, les enquêtes mises en place ou d'autres démarches entamées pour faire face à cette situation de déportations collectives.
5. Veuillez fournir des informations détaillées sur le cadre juridique applicable à:
  - 5.1. Les procédures existantes pour vérifier l'identité des étrangers;
  - 5.2. Les déportations et le rapatriement
6. Veuillez fournir des informations détaillées sur le cadre juridique concernant la protection des droits de l'Homme des migrants, en mentionnant les différences, le cas échéant, entre la protection reconnue aux migrants en situation régulier et ceux en situation irrégulière
7. Veuillez fournir un cadre détaillé concernant les mesures législatives, administratives ou d'autre caractère qui ont été adoptées ou qui seront adoptées en vue de prévenir des futures violations similaires aux droits de l'homme des migrants.

## **République Démocratique du Congo**

### **Communication envoyée au Gouvernement le 31 Décembre 2009**

47. Le 31 Décembre 2009, le Rapporteur spécial sur les droits de l'homme des migrants a envoyé une lettre d'allégation au gouvernement sur les informations reçues concernant la situation des ressortissants angolais expulsés par les forces de l'ordre congolaises depuis le mois d'août.

48. Selon les informations reçues, Suite à l'expulsion par les autorités angolaises de ressortissants congolais, votre gouvernement aurait pris la décision d'expulser des nationaux angolais vivant sur le territoire de la République Démocratique du Congo. 39 000 ressortissants angolais auraient été expulsés depuis août 2009. Parmi ces personnes expulsées, des sources nous signalent la présence de familles avec enfants ainsi que des étudiants, des réfugiés et des demandeurs d'asile. Certains seraient des résidents de longue date. Depuis le mois d'octobre, de nouvelles expulsions auraient eu lieu sur les territoires de Kwilu-Ngongo et de Songololo. Il nous a été rapporté que, depuis le 6 octobre 2009, plus de 1000 ressortissants angolais dont des réfugiés auraient été raccompagnés à la frontière avec l'Angola.

49. De plus, des suspicions de mauvais traitement nous ont été exposées. Dans les camps de réfugiés de Kilueka et de Nkondo, des réfugiés de nationalité angolaise auraient subi des intimidations afin de les inciter à partir de la part de la population locale et impliquant la police congolaise. Des vols ainsi que des extorsions auraient été commis sur les réfugiés.

50. J'accueille avec satisfaction les garanties données par le Gouvernement de votre Excellence auprès du Haut Commissariat pour les Réfugiés d'arrêter les opérations d'expulsion ainsi que l'accord établi dans le Communiqué commun avec le Gouvernement angolais le 13 octobre 2009 afin d'arrêter conjointement les expulsions et de trouver une solution durable. Cependant, je me permets d'exprimer ma préoccupation concernant les conditions de vie des ressortissants angolais qui ont été expulsés du territoire de la République Démocratique du Congo ces derniers mois.



51. (...) je serais reconnaissant au Gouvernement de votre Excellence de me faire parvenir ses observations sur les points suivants, tels qu'ils s'avèrent pertinents au regard du cas soulevé :

1. Les faits tels que relatés dans le résumé du cas sont-ils exacts?
2. Veuillez fournir toute information sur le cadre légal en vigueur concernant les droits des migrants et dans quelle mesure celui-ci est en concordance avec les standards internationaux.
3. Veuillez fournir toute information sur les mesures prises par votre Gouvernement pour garantir la protection des réfugiés et le respect de leurs droits ainsi que la protection des demandeurs d'asile et de toutes les personnes expulsées, particulièrement les enfants et leurs familles.
4. Veuillez fournir toute information concernant la mise en œuvre des garanties données au Haut Commissariat pour les Réfugiés quant à l'arrêt des expulsions.
5. Veuillez fournir toute information concernant l'application dans les faits des engagements pris lors du Communiqué commun signé avec le Gouvernement angolais le 13 octobre 2009.
6. Veuillez fournir toute information concernant les mesures prises par votre Gouvernement pour protéger ses ressortissants de retour sur le territoire national de toutes exactions contraires à la dignité humaine.

## **Czech Republic**

### **Communication sent to the Government on 31 July 2009**

52. On 31 July 2009, the Special Rapporteur on the Human Rights of Migrants, together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Special Rapporteur on the independence of judges and lawyers, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent an urgent appeal to the government of Czech Republic concerning the situation of B.I., aged 30, citizen of Kazakhstan, who is currently awaiting deportation from the Czech Republic to his country of origin.

53. According to the information received, Mr. S. M. was arrested on 21 October 2008 without any explanation and taken to the main police criminal investigation department in Prague. There he was severely beaten and called "dirty and black foreigner". In the process, he was stripped of his clothes. As a result of the beatings, he kneeled down and begged the police to tell him why he had been arrested, to inform his consular authorities and to allow him access to a lawyer, but to no avail. Rather, the officers continued to beat him and forced him to sign some papers, which he did, despite the fact that everything was written in Czech, of which he has limited knowledge. As a result his head was bleeding and he felt the taste of blood in his mouth. The treatment continued on 22 October, when he received even stronger blows and his hands were handcuffed to a tube. The handcuffs were so tight he could not feel one of his hands.

54. It subsequently turned out that he and his brother were accused of having committed a murder. The brother was held in the neighbouring room, and Mr. S. M. could hear him beg for help. When he reiterated his request for a lawyer and an interpreter, one of the police officers took out a rifle and put it to his head, threatening to kill him. The policemen also allegedly indicated that foreigners were considered "shit and litter", so nobody would believe them, in case they decided to file any complaints. Once he had made a confession,

he was finally led to an office, where a defence lawyer was present. He said that he had nothing to do with the crime, but nobody listened to him.

55. The Special Procedures mandate holders expressed fear Mr. S. M. may be sentenced on the basis of evidence obtained under torture/ill-treatment.

56. (...)we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of Mr. Maksudov?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please indicate the legal basis for the arrest and detention of Mr. Maksudov and how these measures are compatible with applicable international human rights norms and standards as stipulated, inter alia, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.
5. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
6. Please indicate whether compensation has been provided to the victim or the family of the victim.
7. Please provide information on the practical implementation of the right of foreign nationals, regardless of their immigration status, to communicate with an official of their own State in the case of detention and the Czech Republic obligation to inform the foreign national of that right.

**Reply from the Government to the communication sent on 31 July 2009**

57. On 1 October 2009, the Government of the Czech Republic replied to the communication of 31 July 2009. The Government indicated that the first complaint against performed police action was received by the Ministry of Foreign Affairs from the Embassy of Uzbekistan in Austria, dated 27 March 2009, pursuant to the demand of Mr. S. M.'s parents asking for help against the arbitrary detention of their son. The Regional Police Directorate in Prague investigated this complaint. The result was that no violation of the law or service instruction had occurred during the actions performed by the police. The report of the investigation was sent to the attention of the Ministry of Internal Affairs on 27 May 2009. A second complaint was received from Mr. S. M. on 19 May 2009, regarding his dissent with the official action of four unnamed police officers who reportedly beat and kicked him, served him no food or drink and refused his request to call a lawyer on 21 and 22 October 2008. During the examination of this complaint, two other complaints by Mr. S. M. were received by the Regional Police Directorate of Prague on 30 July 2009. The first was addressed to the Ministry of Foreign Affairs and the second to the Ministry of Internal Affairs. The content was nearly the same as in the complaint from 19 May 2009. The result of the common investigation of all three complaints was that no police officer had treated the accused in a manner that was in violation of law or service instructions and that no reduction of the rights of the accused had occurred. Mr. S. M. was not subjected to physical cruelty, verbal assaults, threats or other similar acts. In addition, he was regularly served meals and drinks. Even the Municipal Court in Prague did not find any violation of the law in the actions performed by the police.

58. In its reply, the Government provided an explanation on the circumstances of the murder of a citizen of Belarus. According to the Government, there was a justified suspicion that Mr. S. M. and others had participated in the murder. The state attorney of the Metropolitan Prosecuting Attorney's Office in Prague approved their detention. On 21 October 2008, Mr. S. M. was detained in the parking of the Imperial Hotel in Prague, where he had been employed. In the course of his detention, holds and grasps were used, in accordance with Police Act No. 283/1991. He was also handcuffed due to his active resistance. Three other persons were also arrested. The investigation continued, and one of the detainees was released. The other men, including Mr. S. M., were handed over to the detention cell in the Regional Police Directorate. On 22 October 2008, the criminal prosecution began. The resolution to commence prosecution was handed over to Mr. S. M. in the presence of his appointed counsel. His interrogation was then conducted in the presence of his defending counsels and an interpreter. On 24 October 2008, through the resolution of the District Court Judge, Mr. S. M. was remanded in custody, and he was transferred to Remand Prison Pankrac, where he is currently detained.

#### **Communication sent to the Government on 16 July 2009**

59. On 16 July 2009, the Special Rapporteur on the Human Rights of Migrants, together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on freedom of religion or belief, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent an urgent appeal to the government of Czech Republic concerning the situation of Bauyrzhan Imangaliev, aged 30, citizen of Kazakhstan, who is currently awaiting deportation from the Czech Republic to his country of origin.

60. According to the information received, Mr. Imangaliev is awaiting deportation in the refugee camp "Bělá Jezová" in the Czech Republic together with his pregnant wife and two small children. He claimed that in his country of origin, Kazakhstan, he was subjected to persecution on the part of the authorities for religious reasons as a member of an independent Muslim community which is not controlled by the official religious structures in Western Kazakhstan. However, his asylum claim in the Czech Republic was recently rejected and the conclusions of the migration service of the Czech Republic, which made a decision on his deportation, reportedly failed to take into account that four of his Muslim associates who stayed in Kazakhstan were imprisoned under falsified charge. Also, some procedural violations have been reported, such as incorrect translations from Russian into Czech of interviews, which failed to reflect some of the accounts relevant to the asylum claims.

61. While still in Kazakhstan, Mr. Imangaliev reportedly was subjected to persecution on the part of the authorities for religious reasons, namely in connection with alleged extremist views. Between 1999 and 2005, he was regularly called in by the National Security Committee (KNB) and questioned. In 2005, he was held in custody in a KNB isolator in Atyrau on two occasions: In early 2005, he was suspended from handcuffs and beaten on his kidneys by the officers. In late 2005, he was held for five days without his family being notified. Several members of his religious community have been arrested in recent years and some are still in detention. There are reports of them being harassed by prison staff in order to force them to give up their religious convictions.

62. Mr. Imangaliev and his family subsequently fled from Kazakhstan and founded a human rights organization in Prague, Czech Republic, where demonstrations have repeatedly been organized to protest against the violations of freedom of religion or belief by Kazakh authorities, which may lead to reprisals by the latter, in case he is returned to Kazakhstan.

63. It appears that a large number of asylum seekers from Kazakhstan (222 persons, of whom 54 minors born in emigration) are currently at risk of involuntary return to Kazakhstan. All of them claim to have been persecuted by Kazakhstani authorities on the basis of their beliefs, which have been labeled as “extremism”.

64. With a view to the above allegations of torture of Mr. Imangaliev by the Kazakhstan National Security Committee, concern is expressed that he may yet again be at risk of torture in connection with accusations of membership in a radical religious group, if he is forcibly returned to Kazakhstan.

65. (...) we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Have complaints been lodged by or on behalf of Mr. Imangaliev or any other of the 222 asylum seekers?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.

## **Dominican Republic**

### **Comunicación enviada al Gobierno el 26 de octubre de 2009**

66. El 26 de Octubre de 2009, el Relator Especial sobre los derechos humanos de los migrantes junto con la Experta independiente sobre cuestiones de las minorías y el Relator Especial sobre formas contemporáneas de racismo, discriminación racial, xenofobia y formas conexas de intolerancia, envió una carta de alegación a la República Dominicana, para señalar a la atención del Gobierno, la información recibida en relación con presuntos abusos a trabajadores migrantes de origen haitiano.

67. Según la información recibida, el 4 de octubre de 2009, presuntos soldados entraron en una casa de Montecristi donde trabajadores migratorios de origen haitiano atendían una sesión de formación sobre los derechos laborales de los trabajadores migratorios conducida por la Asociación Solidaria de Trabajadores Migrantes de la Línea Noroeste (ASOMILIN). Veinticinco de estos trabajadores migratorios de origen haitiano habrían sido trasladados a la base militar de Montecristi. El día siguiente, el 5 de octubre de 2009, los habrían llevado a la ciudad frontera de Dajabón y posteriormente los habrían forzado a cruzar la frontera hacia Haití.

68. De conformidad con la información recibida, a los migrantes detenidos no se les habrían reconocido algunas de las garantías asociadas al debido proceso tales como la oportunidad de impugnar la legalidad de su detención o el tener acceso a un mecanismo para controvertir la decisión de expulsarlos a Haití. De igual manera, los trabajadores migratorios no habrían tenido acceso a un abogado ni a informarle a sus familiares sobre su situación. Los supuestos soldados les habrían impedido tomar sus objetos personales así como recibir los salarios que les adeudaban.

69. Se expresa profunda preocupación por la situación de estos veinticinco Haitianos expulsados y de sus familias dejadas en República Dominicana. De manera general, se expresa también preocupación por el tratamiento otorgado a las comunidades haitianas o de ascendencia haitiana en República Dominicana, que alcanzarían, de conformidad con estimativos de diversas fuentes, una población de aproximadamente un millón de individuos. En este contexto, la atención del Gobierno esta llamada sobre el reporte

conjunto del Relator Especial sobre Formas Contemporáneas de Racismo, Discriminación Racial, Xenofobia y Formas Conexas de Intolerancia y la Experta Independiente sobre Cuestiones de las Minorías (A/HRC/7/19/Add.5, A/HRC/7/23/Add.3), el cual hace referencia al prejuicio racial existente en el anti-haitianismo así como a las expulsiones y deportaciones. El reporte conjunto se refiere a deportaciones indiscriminadas y arbitrarias, y señala que las "deportaciones indiscriminadas y arbitrarias, [...] carecen de la protección que otorga el proceso con las debidas garantías. Ciudadanos dominicanos de ascendencia haitiana y haitianos residentes en el país desde hace tiempo tienen las mismas posibilidades que los inmigrantes recién llegados de ser deportados sin disponer de una ocasión adecuada para hacer valer las debidas diferencias. Las deportaciones se realizan tan rápidamente que no se informa a los familiares.". En dicho reporte conjunto, también se expresó preocupación sobre los procedimientos de expulsiones y deportaciones que "iban dirigidos especialmente contra personas de las que se sospechaba que eran "haitianos", una identificación que principalmente se basa en el color de la piel, sin hacer distinciones entre haitianos, dominicanos de descendencia haitiana y dominicanos negros desprovistos de cualquier vinculación con Haití".

70. (...) Agradeceríamos si el Gobierno de su Excelencia pudiera proporcionarnos información sobre los asuntos mencionados a continuación:

1. ¿Son exactos los hechos a los que se refieren las alegaciones?
2. ¿Fue presentada alguna queja por parte de la(s) víctima(s) o en su nombre?
3. Por favor proporcione información detallada sobre las garantías procesales reconocidas a cada una de las 25 personas anteriormente mencionadas, de conformidad con la normatividad internacional ratificada por la República Dominicana.
4. Por favor proporcione información sobre las disposiciones legislativas, administrativas o de otro carácter que han sido o serán adoptadas con miras a prevenir la ocurrencia futura de hechos similares.
5. Por favor proporcione información sobre las disposiciones legislativas, administrativas o de otro carácter en materia de protección de los derechos humanos de los trabajadores migratorios en República Dominicana.

#### **Respuesta del Gobierno a la comunicación enviada el 26 de octubre de 2009**

71. El 5 de mayo de 2010, el Gobierno de República Dominicana envió respuesta a la carta de alegación enviada el 26 de octubre de 2009, aceptando que el 4 de Octubre de 2009, fueron detenidos y conducidos a la Fortaleza San Fernando en la ciudad de Montecristi y luego trasladados a la Fortaleza Beller en la ciudad de Dajabón desde donde fueron repatriados a su país de origen, vía Oficinal Nacional de Migración veinticinco (25) nacionales haitianos que fueron sorprendidos reunidos en las inmediaciones del Batey Jaramillo, Provincia Montecristi por miembros des Destacamento Operativo de Inteligencia Fronteriza, después de haber recibido información vía nota confidencial de que una gran cantidad de nacionales haitianos se estarían organizando en la zona con la finalidad de recibir entrenamiento militar para llevar a cabo acciones subversivas.

72. En su respuesta, el Gobierno también informó que el encargado des Departamento Operativo de Inteligencia Fronteriza de la ciudad de Montecristi recibió instrucciones del Coordinador del Departamento de Inteligencia Fronteriza para que investigara en relación a que en el Batey Jaramillo, una gran cantidad de nacionales haitianos se estaban reuniendo presuntamente con fines subversivos. Aunque dichas alegaciones no fueron comprobadas, ya que se informó que la reunión de haitianos tenía como objetivo formar una junta de vecinos, los hombres que se encontraban en el lugar eran indocumentados y las autoridades

procedieron a su detención y a su posterior deportación. El Gobierno informó que en dicha reunión también participaban mujeres y niños, pero que solo detuvieron a los hombres y que ninguno le pidió hacer llamadas ni recoger pertenencias, ya que éstas quedaban en manos de sus esposas e hijos. Luego de estar en la Fortaleza, los ciudadanos detenidos hicieron llamadas a sus familiares, recibieron cena, sábanas y otros utensilios.

73. El Gobierno señaló igualmente que el 5 de octubre de 2009, la Oficina Nacional de Migración, recibió por parte de las fuerzas armadas, en el Punto Fronterizo de Dajabon, la cantidad de veintisiete personas de nacionalidad haitiana, presumiblemente ilegales en el territorio dominicano. Veinticinco de ellos declararon que no poseían documentación que avalase su estatus migratorio. Las autoridades gubernamentales procedieron a informarles sobre las disposiciones de la ley de Migración 285-04, con relación a la exigencia de la documentación migratoria que les permitiría permanecer en el territorio nacional; y que por esta razón, procedía la repatriación a su país de origen, conforme a lo establecido en la Ley 285-04 y por lo cual se procedió en consecuencia, a repatriar a esos veinticinco haitianos. A los dos que presentaron la documentación requerida, se les permitió permanecer en el país.

74. El Gobierno también informó que la Dirección General de Migración procedió a efectuar la repatriación en conformidad con la ley 285-04 (artículos 6, 17, 18, 65, 66, 67, 121.), y en función del derecho soberano reconocido en la Convención de Viena, en el pacto de los derechos Civiles y Políticos, en el Pacto Interamericano de los Derechos Humanos.

75. Finalmente, el Gobierno señaló que en investigaciones realizadas, el gobierno logró establecer que las medidas llevadas a cabo en estas fecha no fueron mas adecuadas en cuanto a la forma, por lo cual, y para evitar problemas futuros, el Gobierno esta en un proceso constante de mejora de los procedimientos de carácter migratorio en los operativos militares, con miras a garantizar el fiel cumplimiento de la Ley y el respeto de los derechos humanos de la población inmigrante ilegal.

## **Egypt**

### **Communication sent to the Government on 2 December 2009**

76. On 2 December 2009, the Special Rapporteur on the human rights of migrants together with the Chairperson-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 to the government of Egypt regarding Ms. Medhine, an Ethiopian asylum seeker, reportedly detained at El Quanater Prison, El Qaliubiya, Egypt.

77. According to the information received, Ms. Medhine fled Ethiopia with her baby, Galila, in April 2008 to seek asylum in Egypt. They travelled to Egypt by land via Sudan where they initially faced the risk of being deported to Ethiopia. At the Egyptian border, they were arrested by the Egyptian authorities for their irregular entry into the country and detained at El Quanater Prison. While there is no information on the date of the arrest, Ms. Medhine's sister in Australia learned of the arrest in August 2008.

78. It is reported that the conditions at El Quanater Prison are harsh. 25 to 30 persons are allegedly detained in one cell and asylum seekers are detained together with Egyptian inmates. The hygiene standards are not adequate and Galila suffered from diarrhea and vomiting for days. There is allegedly no medical care inside the prison and the prison officers did not seek external medical attention, despite the fact that Ms. Medhine requested them to seek medical attention for her child. As a result, Galila died in El Quanater Prison on 27 September 2009.

79. In June 2009, a complaint had been submitted to the High General Prosecutor, seeking orders to stop the deportation procedures against Ms. Medhine and Galila, as well as to release them from the prison. While the deportation procedures were successfully suspended, Ms. Medhine remains detained at El Quanater Prison to date. Although Ms. Medhine is an asylum seeker who is in need of international protection, she was denied any contacts with the outside world, including the United Nations High Commissioner for Refugees (UNHCR), until the Egyptian authorities finally granted UNHCR access to Ms. Medhine on 9 November 2009. Following the death of Galila, another complaint has been submitted to the High General Prosecutor requesting an investigation into her death. The Prosecutor is still investigating the case.

80. (...) we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary accurate?

Please provide details, and where available the results, of the investigation carried out in relation to the case of Ms Medhine.

2. Please provide details, and where available the results, of the investigation carried out in relation to Galila's death. In particular, please highlight any information indicating the cause of her death and the action taken by the relevant officials to prevent it.

3. Please provide information on the existing legal framework applied to non-citizens in detention, including asylum seekers.

4. Please describe the safeguards in place to ensure that the conditions of detention comply with the international standards, particularly with respect to access to medical care.

5. Please indicate the legal basis for the arrest and detention of Ms. Medhine and how these measures are compatible with applicable international human rights norms and standards as stipulated, inter alia, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

#### **Reply from the Government to the communication sent on 2 December 2009**

81. On 06 April 2010, the government replied to the communication sent on 2 December 2009. The response will be available in the next communication report to be issued by the Special Rapporteur on the Human Rights of Migrants as it is being translated from Arabic into English.

## **France**

#### **Communication envoyé au Gouvernement le 10 décembre 2009**

82. Le 10 décembre 2009, la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme, Rapporteur spécial sur les droits de l'homme des migrants, et de Rapporteur spécial sur le droit à l'éducation ont adressé une lettre d'allégation au gouvernement concernant la mise en œuvre d'un logiciel de données « Base-élèves premier degré » au sein de l'Education nationale dans lequel sont inscrites des données nominatives concernant les enfants scolarisés dans les établissements scolaires, et dont les directeurs d'écoles sont dans l'obligation d'y inscrire tous les élèves scolarisés dans leur établissement.

83. Selon les informations reçues, Le 9 octobre 2009, MM. Claude Didier, Michel Duckit et Rémi Ri Allan et Mmes Elisabeth Heurtier et Patricia Arthaud, directeurs et

directrices d'écoles dans le département de l'Isère, auraient reçu une lettre de l'inspection académique de leur département leur demandant d'enregistrer les élèves de leurs établissements dans le fichier informatique Base élèves premier degré, sous peine de sanction allant jusqu'au retrait de leur postes. Le courrier de l'inspection académique préciserait que cette saisie devait être effectuée au plus tard le 25 octobre 2009.

84. MM. Didier, Duckit et Rallian et Mmes Heurtier et Arthaud auraient déjà fait l'objet de sanctions disciplinaires en raison de leur refus d'appliquer l'arrêté du 20 octobre 2008 portant création de la Base élèves premier degré au motif que le fichier serait contraire au droit des enfants et de leurs familles au respect de leur vie privée. Plusieurs retenues de journées de salaire auraient été effectuées à l'encontre de ces directeurs. Par ailleurs, M. Jean-Yves Le Gall se serait vu retirer son poste de directeur et aurait été muté d'office pour les mêmes raisons.

85. Il est également allégué que plus d'un millier de plaintes auraient été déposées par des parents pour enregistrement illégal de leurs enfants dans la Base élèves premier degré. Le Conseil d'Etat aurait été saisi de cette question. Les requérants, ainsi que les directeurs d'école, demanderaient à ce que soient respectées les observations et recommandations récemment adoptées par le Comité des Nations Unies des droits de l'enfant.

86. Des craintes sont exprimées quant au fait que les mesures disciplinaires prises à l'encontre de ces directeurs et directrices d'école ainsi que les menaces de sanctions disciplinaires soient liées 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 sont également soulevées au sujet de 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.

87. (...)nous serions reconnaissants au Gouvernement de votre Excellence de ses observations sur les points suivants, tels qu'ils s'avèrent pertinents au regard du cas soulevé:

1. Les faits tels que relatés dans le résumé du cas sont-ils exacts ?
2. Une plainte a-t-elle été déposée par les directeurs ou en leurs noms ?
3. Veuillez indiquer la base légale des sanctions disciplinaires prises à l'encontre des six directeurs précités.
4. Veuillez indiquer dans quelle mesure les dispositions de l'arrêté du 20 octobre 2008 sont compatibles avec la Loi No. 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés et les standards internationaux en matière du droit au respect de la vie privée, contenus notamment dans le Pacte international relatif aux droits civils et politiques et la Convention relative aux droits de l'enfant.
5. Veuillez indiquer quelles sont les mesures prises afin que la mise en œuvre de la Base élèves premier degré n'ait pas d'implications négatives sur la jouissance du droit à l'éducation des enfants migrants en situation irrégulière. Veuillez indiquer quelles sont les mesures prises afin que la mise en œuvre de cette base n'incite pas les parents en situation irrégulière à retirer leurs enfants de l'école ou à refuser de les inscrire, de peur d'être expulsés du pays.
6. Veuillez indiquer les mesures prises pour mettre en œuvre les recommandations du Comité des droits de l'homme et du Comité des droits de l'enfant concernant le Base élèves 1<sup>er</sup> degré, en particulier s'agissant de l'anonymisation des données.



## Italy

### Communication sent to the Government on 11 January 2010

88. On 11 January 2010, the Special Rapporteur on the human rights of migrants together with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance sent an urgent appeal to the Government of Italy concerning xenophobic violence targeting African migrant workers in the town of Rosarno, Calabria.

89. According to the information received, on 7 January 2010, two African migrant workers returning from work were shot at with air guns by Italian men. In order to protest against this incident, the migrant workers took to the streets and demonstrated violently by setting fire to cars, smashing windscreens and attacking local shops. The police intervened in order to prevent the demonstrators from undertaking further violent acts.

90. On 8 January 2010, in reaction to the violent demonstrations by migrant workers and in order to drive them out of the area, some residents of Rosarno beat migrant workers with iron bars, shot at them, and intentionally run over them with cars. As a result, it has been alleged that more than 50 people were injured, including 18 police officers who intervened to stop the violence.

91. Following this incident, approximately 1400 migrants have been reportedly arrested and sent to the Bari and Crotona centers, including those in possession of residence permits and asylum seekers. According to the information received, the Italian authorities have begun deportations of migrants held at the Crotona centre at the midday on 11 January 2010.

92. (...) we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide information on any inquiries carried out into the xenophobic attacks carried out against migrant workers on 8 January 2010.
3. Please indicate whether the victims or the families of the victims have access to adequate procedures of compensation for damages resulting from the xenophobic violence described above.
4. What measures are being taken to prevent the resurgence of violence between local residents and migrant workers, both in immediate and long terms?
5. Please provide information on current conditions of migrants who have been arrested and sent to detention facilities, including Bari and Crotona centres. Please also provide information on long-term plans on how to accommodate the migrant workers concerned.
6. Please provide information on measures undertaken by your Excellency's Government in order to ensure that migrants who face a real risk of torture and cruel, inhuman or degrading treatment or punishment, or other violations of fundamental human rights are not expelled to countries where they face such a risk, in accordance with the principle of non-refoulement.

### Reply from the Government to the communication sent on 11 January 2010

93. On 9 March 2010, the Government of Italy replied to the communication dated 11 January 2010. In its response, the Government drew attention to the prompt intervention by

the Police, as well as the Public Prosecutor's office, who started investigations that are still ongoing.

94. With regard to the events, the Government confirmed that on 7 January 2010, between the towns of Rosarno and Gioia Tauro, unknown persons fired a few shots of compressed air gun against a group of foreign nationals of African origin. One of the migrant of Togolese origin reported a wound considered curable in 10 days. Following that incident, several Non-EU citizens protested by a roadblock. About 100 foreign nationals demonstrated across the streets of Rosarno. During the demonstrations, the protesters damaged parked cars, shop windows, signs, street furniture and garbage bins. Some residents were victims of the riots and had to resort to medical care. The Police managed to contain the protest and arrested five non-EU citizens. The prosecutor promptly promoted, in respect of the above five migrants, three separate judicial proceedings on the charge of aggravated resistance to public officers. On the same day, the Court of Palmi confirmed the arrest and ordered the remand in custody for all the above persons, while postponing the trial, upon request by the defence counsels.

95. On 8 January 2010, many residents of Rosarno reacted to such events by acts of violence against a large numbers of migrants. It was reported the occurrence of many incidents of aggression by blows with a steel bar, many cases of beatings, and even some assassination attempts by voluntarily investing or trying to overrun with cars or other means Non-EU migrants. During the same day and the day after - on 9 January 2010 - three Non-EU citizens, in two separate incidents, were hit by shotgun fired by unknown persons. There were also episodes of threats at gunpoint by unknown persons, against migrants who were asked to leave the houses where they were staying. The police arrested in three separate episodes three citizens of Rosarno; and the measure was promptly confirmed by the Court. Several judicial proceedings against unknown persons for the crimes of damage or injuries have been started. At the hospital emergency, there were some citizens and many Non-EU nationals, the most serious of whom were hospitalised.

96. The number of the above proceedings is expected to grow, as soon as notices of crimes arise from medical reports or complaints submitted by the victims. For the time being, the crimes to be ascertained, inter alia, refer to criminal association, attempted extortion, aggravated damage, use and illegal possession of weapons, aggravated injuries and other crimes. Investigations have already been delegated to the Police, Carabinieri and Guardia di Finanza that have provided investigators with additional resources. In fact, it was established an ad hoc taskforce working on a double-track: investigating both the individual conduct, and phenomena associated with and/or conducts systematically organized by groups, who may have planned and executed - possibly in a coordinated manner - retaliation and intimidation aimed to provoke the flee of migrant workers from the plain of Gioia Tauro. Investigations have been started also with regard to the illegal exploitation of migrants in the farms in the surroundings. Within this framework, a specific investigation has been launched to determine whether, in relation to the first episode of injury and other incidents of violence against migrants, it may be considered the aggravating circumstance concerning the crimes committed for purposes of discrimination or ethnic/racial hatred. By acquiring the video-tapes recorded by the street cameras, some valuable evidence has been collected. In fact, the prosecutor requested the Ministry of Interior to issue the special permit under Article 18 of the Unified Text on Immigration (Act No.286/1998), on behalf of five Non-EU nationals.

97. As for the number of migrants transferred by the Police in the Centres of Bari and Crotona, on 9 January 2010, they amounted to 758 - and not 1,400 individuals. At that time it was not clear how many of them were without a residence permit or applying for asylum in Italy.

98. More specifically, the Government of Italy indicated that following the Rosarno incidents, the Minister of Interior set up an ad hoc Taskforce to provide a complete and detailed picture of the situation and to identify the most suitable economic and social solutions for the area under reference. Further to contacts with relevant NGOs and International Organisations, the Taskforce arranged the immediate transfer of migrants to the Reception Centres in Crotona and Bari. A medical team carried out a thorough evaluation of the hygienic conditions of the buildings where migrants were living before such events, and also assessed their health conditions. In addition, inspections are taking place in all the enterprises of the area, which have employed Non-EU seasonal workers in the agriculture sector, so as to verify their compliance with the law. It is envisaged that the employer be compelled to ensure the availability of a proper accommodation for Non-EU workers. A similar initiative is being implemented in Castel Volturno (Caserta).

99. There were 428 Non-EU citizens at the Crotona Reception Centre who were partially identified by nationality. These people held the following legal status: a) 348 Non-EU citizens with a residence permit; b) 9 Non-EU citizens being under arrest; c) 20 Non-EU citizens recipients of an expulsion measure; d) 46 Non-EU citizens escaped without previous identification; e) 5 Non-EU nationals applying for asylum. Currently, only 8 asylum seekers are reported to be hosted in the above Reception Centre, while 6 other Non-EU citizens are held in a Identification and Expulsion Centre (C.I.E). 324 migrants were moved to the Reception Centre in Bari. Among them, 159 persons were reported to hold the residence permit, 14 were arrested due to non compliance with the order to leave the national territory, and the others have been held in the local C.I.E., with the exception of a Nigerian citizen, who was moved to the C.I.E. in Rome.

100. In order to prevent the recurrence of such a situation, the Minister of Interior proposed to improve the reception conditions, including housing for migrant workers, and more generally the integration of migrants. To this end, the Ministry of Interior is launching projects for the establishment of a vocational training Centre for migrants in Rosarno, besides significant requalification and renovation strategies for the surrounding under concern. Additional funding has been made available for this purpose from the Ministry of Interior and other sources. In particular, in Rosarno and in some neighbouring districts, specific projects are in progress, in order to improve the reception and integration of immigrants present in the area. The Rosarno district is also interested in a project funded by the European Social Fund, managed by the Ministry of Labour and aimed at setting up accommodations for foreign seasonal workers.

#### **Communication sent to the Government on 31 December 2009**

101. On 31 December 2009, the Special Rapporteur on the human rights of migrants together with the Special Rapporteur on the right to education sent a letter of allegation to the Government of Italy in connection with some of the legislative developments in Italy, including Law No. 94 of 15 July 2009 on public security ("the Security Law"), Law Decree no. 11/2009 of 23 February 2009 ("Law Decree"), Law no. 125 of 24 July 2008 ("Law no. 125"), and Law no. 155 of 31 July 2005 ("the Pisanu Law").

102. According to the information received, laws which may have a negative impact on the rights of migrants, including: (a) irregular migration status as an aggravating factor in sentencing; (b) the offence of illegal entry and stay; (c) the expulsion of aliens; (d) the extension of administrative detention for migrants; (e) restrictions on money transfer; (f) the modification of the Civil Code affecting irregular migrants' right to marry; and (g) restrictions on the right to birth registration.

(a) *Irregular migration status as an aggravating factor in sentencing*

103. Law no. 125 provides that when a person commits an offence while unlawfully present in the national territory, his or her unlawful presence will be deemed an aggravating factor in respect of sentencing. This may increase the period of imprisonment a person is sentenced to by up to one third. The imposition of a more severe punishment solely on the basis of a convicted person's legal status in the country is a subject of concern, as it may result in discrimination based on one's immigration status..

(b) *The offence of illegal entry and stay*

104. The Security Law introduced the offence of illegal entry and stay within the territory of the State. Under Article 1, Paragraph 16, the offender is subject to punishment by a penalty ranging from 5,000 to 10,000 Euros. While acknowledging the sovereign right of the State to regulate the entry and stay of aliens, please allow us to express concern about the effects of the criminalization of illegal entry and stay on the human rights of irregular migrants, which can further hamper access to, *inter alia*, education, health, housing, labour rights and the justice system, because of the fear of being denounced, imprisoned and ultimately deported. It has already been reported that many irregular migrants choose not to access health care even when their physical conditions demand medical attention, because of the fear that they would be reported by public officials and subsequently convicted of a crime. According to information received, the number of migrants seeking treatment in the main hospitals in Rome has decreased by 35%, following the approval of the Security Law. Furthermore, there are reports that mothers and children who required urgent medical attention have died, because they did not access hospitals or doctors for fear of being reported as illegal immigrants. The criminalization of illegal entry and stay also fuels anti-migrant sentiments, aggravating an acute social problem. The Security Law appears to be not in line with the commitments of States, *inter alia*, in the framework of the Durban Declaration and Plan of Action which highlighted the importance of creating conditions conducive to greater harmony, tolerance and respect between migrants and the rest of society in the countries in which they find themselves. As reiterated in the report of the Special Rapporteur on the human rights of migrants to the seventh session of the Human Rights Council (A/HRC/7/12) irregular migration should be regarded as an administrative offence and irregular migrants should not be treated as criminals.

105. According to Article 1, Paragraph 17 of the Security Law, the offence is adjudicated through a new fast-track procedure. This procedure, which is designed to be fast and informal, is conducted before a justice of peace and allows the public prosecutor to transfer the defendant to trial before a justice of peace within 15 days, if there are particular reasons of urgency or the accused person is not subject to detention measures. If the accused person is detained, the public prosecutor may send the defendant immediately before the justice of peace. In preparation of the defence, the defendant can request no more than 7 days, or 48 hours in case he or she is already detained or for reasons of urgency. We are concerned that the fast-track procedure diminishes the right of migrants to a fair trial guaranteed under Article 14 of the International Covenant on Civil and Political Rights (ICCPR), given the limited time available to prepare a defence.

(c) *Expulsion of aliens*

106. Article 1, Paragraph 22M of the Security Law envisages the administrative expulsion of persons for illegal entry or stay without the authorization of a criminal judge. An alien subject to expulsion may challenge the order of expulsion in a hearing before a justice of peace and the ordinary judge is only notified of the execution of expulsion. Concern is expressed that a migrant is not afforded the right to challenge his or her expulsion before a competent, independent and impartial tribunal established by law and

that the scope of review for the administrative expulsion is narrow, as the justice of peace is only asked to verify that all procedures have been duly complied with and that the person has been reported for the offence of illegal entry and stay.

107. In addition, Article 3(1) of the Pisanu Law allows for expulsion of aliens by decree of the Minister of the Interior or the prefect when the alien is suspected of terrorist activities. According to the information received, your Excellency's Government has expelled three Tunisian terrorist suspects pursuant to the Pisanu Law since June 2008, despite the ruling of the European Court of Human Rights (ECHR) to suspend the expulsion until the ECHR issues decisions on their claims that they would face torture or other mistreatment upon their return to Tunisia. Mr. Essid Sami Ben Khemais and Mr. Mourad Trabelsi were deported to Tunisia in June 2008 and December 2008 respectively. With regard to the case of Mr. Essid Sami Ben Khemais, the ECHR held on 24 February 2009 that Italy violated article 3 (prohibition of torture and inhuman or degrading treatment) and article 34 (right of individual petition) of the European Convention on Human Rights. Despite Court's interim measure to suspend the planned expulsion, it is reported that your Excellency's Government has forcibly expelled Mr. Ali Ben Sassi Toumi to Tunisia on 2 August 2009.

108. Concern is expressed about the expulsion procedures, which do not seem to guarantee the principle of *non-refoulement*. We also urge your Excellency's Government to provide for adequate safeguards to ensure that the State refrains from expulsion where there are substantial grounds for believing that an individual faces a real risk, following the removal, of torture and cruel, inhuman or degrading treatment or punishment or other violations of fundamental human rights, which seems not to be the case neither in the procedures for administrative expulsion under the Security Law nor in the expulsion procedures under the Pisanu Law. In light of these considerations, Article 1, Paragraph 22M of the Security Law also raises some concern, as it appears to favor and perpetuate the use of expulsion. Paragraph 22M requires the *Questore* (provincial police chief) to continue re-ordering expulsion where a person violates an order of expulsion, while the law in force before the amendments only sanctioned the person with detention.

(d) *The extension of administrative detention for migrants*

109. It is reported that the Law Decree significantly increases the maximum length of administrative detention. While the maximum period of detention was 60 days under the previous legislation, the Law Decree allows renewals of 60 days up to a maximum of 6 months by the justice of peace in cases of lack of cooperation of the irregular migrant or delays in obtaining the documentation from third countries that is necessary for repatriation. Concern is expressed that the length of the administrative detention is not proportionate to the objectives of such detention, particularly in light of reports that unaccompanied children are often subject to long administrative detention.

110. While the new maximum period of administrative detention is still in line with the European Union Return Directive which allows detention of irregular migrants for up to 18 months, we are concerned that the decision of your Excellency's Government to increase the maximum period of administrative detention from 60 days to 6 months appears to be inconsistent with the principle of non-retrogression, which requires the most careful consideration in the adoption of any deliberately retrogressive measure. In addition, we are concerned that the scope of review for administrative detention is limited, as the review processes are identical to those for administrative expulsion, which do not allow for a review on the merits. We would like to take this opportunity to recall the recommendation of the Special Rapporteur on migrants that detention should only be used as a measure of last resort and for the shortest possible time. (A/HRC/7/12).

(e) *Restrictions on money transfer*

111. Article 1, Paragraphs 20 and 21 of the Security Law imposes restrictive requirements on money transfer operations, which are often used by migrants to remit part of their income to their country of origin. The provisions require that in cases of non-EU nationals requesting to transfer money abroad the, money transfer agents must acquire and store for 10 years a copy of the resident permit. If the permit is missing, the agent must inform the local police within twelve hours. Failure to comply with this requirement may result in the cancellation of the agent's license. The new requirement may further foster a culture of denunciation vis-à-vis irregular migrants. We are also concerned that the requirements unduly interfere with the private and family life of migrants, given that the possibility of transferring earnings, assets and pensions is essential for many migrants whose families rely on their support.

(f) *Modification of the Civil Code affecting irregular migrants' right to marry*

112. Article 1, Paragraph 15 of the Security Law amends Article 116 of the Civil Code, which regulates the conditions for contracting marriage for aliens. Aliens will be obliged to present a document demonstrating the legality of their presence in Italian territory before they can enter into a marriage recognized by the Italian Republic, We are concerned that this requirement impairs the enjoyment of the right of irregular migrants to marry, as legal resident status becomes a prerequisite to the exercise of this right.

(g) *Restrictions of the right to birth registration*

113. Article 1, Paragraph 20 of the Security Law requires the presentation of a residence permit before the birth of a child can be registered. This effectively deprives the child of an irregular migrant of the right to personal identity and citizenship at the time of birth. According to information received, in the first six months of 2009 alone, there were at least 412 children who were born to parents without a residence permit and whose birth was hence not registered. While irregular migrant mothers are entitled to a residence permit for the entire period of pregnancy and for the first six months after a child is born pursuant to Article 19 of Law no. 125, this temporary permit does not seem to effectively facilitate the registration of irregular migrant children, as the permit is granted only if the applicant mother holds a valid passport or an equivalent document, which many of the irregular migrants do not have. The lack of registration may have grave consequences for the child, as he or she may be removed from his or her mother as an "abandoned" child and transferred to the social services by order of the Juvenile Court. In addition, concern is expressed about the right to education in light of this new legislation that would significantly add further barriers to the full realization of the right to education to all, including irregular or undocumented migrants.

114. Also according to the information received, on 6 May 2009, the Italian coast guard and naval vessels interdicted boat migrants on the high seas and forcibly returned them to Libya without conducting any screening procedures to determine whether they warranted international protection. The boat migrants were allegedly disembarked on a dock in Tripoli, Libya, where the Libyan authorities immediately apprehended and detained them. This program was apparently conducted on the basis of "The Treaty of Friendship, Partnership and Cooperation between the Italian Republic and Great Socialist People's Libyan Arab Jamahiriya" ("the Friendship Pact") concluded between Italy and Libya in 2008 which took effect on 3 March 2009 and called for "intensifying" cooperation between them in "fighting terrorism, organized crime, drug trafficking and illegal immigration". Pursuant to the Friendship Pact, your Excellency's Government reportedly transferred three patrol boats to Libya on 14 May 2009, which would be used in joint patrols in Libyan territorial water and international waters in conjunction with Italian naval vessels. The

program reportedly resulted in the interception and return of approximately 900 boat migrants to Libya within the first nine weeks of the commencement of the program. According to reports we received, the Italian naval personnel who intercepted boat migrants on the high seas on 1 July 2009 did not try to identify the migrants' nationalities or the reasons of their travel during the 12-hour interception and return operation. Allegedly, they did not offer food to people who had been at sea for four days and confiscated their personal effects including their passports and refugee certificates issued by the delegation of the United Nations High Commissioner for Refugees in Libya. It is also alleged that the Italian personnel used force, including electric shock batons and clubs, to forcibly transfer the migrants to the Libyan vessel, resulting in the hospitalization of six migrants. In this regard, we would like to recall the statement by the United Nations High Commissioner for Refugees on 14 July 2009, which expressed serious concern that your Excellency's Government's policy, "in the absence of adequate safeguards, can prevent access to asylum and undermines the principle of non-refoulement".

115. Also according to the information received, on 6 May 2009, the Italian coast guard and naval vessels interdicted boat migrants on the high seas and forcibly returned them to Libya without

#### **Reply from the Government to the communication sent on 31 December 2009**

116. On 31 March 2010, the Government of Italy replied to the communication sent on 31 December 2009. In its response, the Government highlighted the different types of stay permits available for non-EU nationals and mentioned a computer-based procedure that was introduced to ensure the prompt release of the stay permit. The Government also highlighted that in case of protection for victims of human trafficking, the permit can be released on the spot and explained that individuals from certain countries are not required to get a visa for tourism reason. The Government also informed that as of autumn 2009, a computer-based procedure was introduced to facilitate the regularisation of migrants, even without stay permit, involved in the informal labour sector. In few months, approximately 300.000 applications were submitted according to the information provided by the Government.

117. In connection with the so-called "security package", the Government explain it aims at curbing criminal behaviours of individuals and that no provision at all is envisaged against any community, group or class nor is linked to any form of discrimination and xenophobia: The Government also explained that the offence of illegal entry and stay in Italy, was introduced with the aim of reducing the mass flow of migrants illegally staying in Italy. It also highlighted that the aggravating circumstances, only apply to illegal migrants found guilty of a main crime. It further explained that such provision responds to the increasing trend, observed by the Italian judicial system, on the involvement of illegal or irregular migrants used as a workforce by the organized crime. Along these lines it has been introduced the detention penalty for those who rent apartments to illegal migrants.

118. The Government informed it aims at addressing, more effectively, the illegal immigration (and its possible connection with organized crime) and its negative effects on the society as a whole, including the hundreds of thousands of legal migrants. To this end, the Government also informed it has introduced the payment of a minimum tax and a test of the Italian Language as for the release or the renewal of the stay permit.

119. In its response, the Government also explain that in connection with children, the Law ensures that "any foreigner, born in Italy, who has resided legally and without any interruption, acquires the Italian citizenship at the coming of age, provided that s/he makes a declaration to this end, within one year". It highlighted that the rationale behind this provision is clear: the best interest of the child is saved in the event of omission or delays in the registration procedure by the parents. It is sufficient that the child concerned can prove

his/her stay, for instance by medical or school certificates. Accordingly, as for the birth declaration (birth register and civil status register), no residence-related document shall be produced as long as the submission of the declaration itself is sufficient.

120. The Government also mentioned in its response that it fully observes the relevant constitutional principles. No limitation to the right to health and to education has been introduced so far. The “security package” does not oblige physicians or school principals to denounce illegal migrants. It also explained that the domestic legislation envisages the judicial control over the order of expulsion adopted by the administrative authority. The request for validation of the order is submitted to the competent judge (justice of peace), within 48 hours. The judge may confirm the order within the following 48 hours. In case of expulsion, despite the ten-year prohibition to re-enter (“security package”), the foreigner may always return to Italy if a stay permit for family reunification is granted or s/he is regularly hired. Besides a Constitutional Court’s verdict (No. 376/00) has stipulated the prohibition of expulsion to the spouse of pregnant women, or to the parent of a six-month child.

121. In its response, the Government briefly commented on sections 1.01; 1.02; 1.04 and 1.05. It also explained that Italy adopted Law Decree No.144/2005, which was then converted into law by the so-called Pisanu Law (In brief, the law allows for increased surveillance and enhanced police powers to gather evidence in terrorism cases, for example DNA for purposes of identification). It also referred to the trend to replace the expulsion following the criminal conviction under Article 235 of the penal code with the so-called alternative measures to the detention penalty [specifically the transfer in a labour house, pursuant to Art. 216 of the penal code].

122. With specific regard to the reception procedures, as for the extension of the stay in the Identification and Expulsion Centre up to 6 months, in line with the EU Directive on return (by which the holding period may be extended to a maximum of 18 months), such a provision has been adopted with the aim of detecting the identity of the migrant without documents. In this regard, it has to be mentioned that it is the judge - and not the administrative authority - to be tasked with controlling whether it is necessary and legitimate to extend the stay. Such review will take place every 30/60 days. In terms of reception, the initial phase includes health-care services, cultural mediation, legal counselling, identification, examination of the relevant applications and, eventually, repatriation, only for those who are not entitled to stay in Italy. To this end, the Reception Centres have a capacity of 3.400 places. The Centres for the first-aid and reception (CPSA) with a 1.200-place capacity are placed in the locations most affected by landings from the sea, for instance in Lampedusa Island. There are thirteen Identification and Expulsion Centres (CIE) across the country with 1806 places. As for asylum-seekers, specific reception Centres (CARA) have a 2.083-place capacity. They are also intended for undocumented people, those who violate border controls, and foreigners detained because illegally staying in Italy. Specifically, as regards asylum-seekers, the decision on the asylum application, as a general rule, should take 35 days. After this deadline, if a decision is still pending, a renewable temporary residence permit is granted; and asylum-seekers can leave the Centre during the day. In line with the 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol, Italy has established a system for providing protection to refugees.

123. The Government also provides temporary protection measures to individuals who may not qualify as refugees under the 1951 Convention, which have to be renewed periodically and do not ensure future permanent residence. As for the asylum procedure, no modifications has been introduced by the security-package (which has introduced: a fine for the illegal entry or residence in Italy; while the aggravating circumstance under reference applies only if a crime has been perpetrated by the illegal migrant; the requirement to pass a



language test for the release of the stay permit; the extension of the stay in the CIE up to 180 days when the expulsion order or the return cannot be enforced, inter alia, to ascertain the identity or to acquire due travel documents).

124. The Government also informed that to date, Italy has translated all the EU asylum-related Directives. Within the EU framework Italy is also a party to the Dublin II Instruction, whose adherents generally transfer asylum applications to the first member country, in which the applicant was present. It also highlighted that within the EU framework, Italy has been developing “emergency resettlement” projects for vulnerable individuals, including unaccompanied minors, women at risk, victims of torture and of physical and sexual violence, the elderly, and people who have suffered a prolonged detention or with serious health diseases. As for minors, they cannot be deported unless the removal order applies to the entire family. As for unaccompanied minors, until the coming of age, they enjoy the full protection, including the right of access to education and health-care. Victims of trafficking are granted protection and assistance, regardless of their cooperation with the police. They are granted a special social protection permit, while attention is paid to ensure their voluntary assisted return to the country of origin.

125. Furthermore, the Government mentioned that Italy has signed 30 bilateral re-admission and cooperation agreements for the return of irregular migrants being entitled to international protection. These agreements are a useful tool to fight human trafficking and promote regular migration. It added that the integration of foreign nationals remains a key factor for social cohesion. Many projects are underway. In each Province there are Territorial Councils for immigration, which include immigrants representatives. For instance, a “Portal for Integration” is currently under implementation. It will be a useful multimedia instrument for supplying information and, at the same time, circulate all possible data for migrants inclusion within the Italian society, with a special focus on their rights and duties as well as their working opportunities in our country.

126. Finally the Government recall that in Italy regular migrant workers are fully protected and enjoy equal civil, economic, social and cultural rights. According to Italian legislation, the national collective contract of employment signed with organizations representing workers and associations of employers, aims at jointly pre-regulate the minimum economic and regulatory issues applicable to all workers, including migrant workers. Thus several social protection measures, including social benefits, are ensured to all migrant workers.

## **Kazakhstan**

### **Communication sent to the Government on 20 October 2009**

127. On 20 October 2009 the Special Rapporteur on the human rights of migrants together with the Special Rapporteur on trafficking in persons, especially women and children, the Special Rapporteur on the sale of children, child prostitution and child pornography, and the Special Rapporteur on contemporary forms of slavery sent an urgent appeal to the government concerning an Uzbek boy who was trafficked to Kazakhstan to work in a forced labor situation and whose whereabouts are currently unknown.

128. According to the information received, Mr. **B.I.**, aged 17, is a resident of the Khiva town of the Khorezm region, Uzbekistan. In May 2008, Mr. B.I and four young Uzbek men were recruited by Mr. Bakhtiyor Bekchanov, a citizen of Uzbekistan aged 56, to travel to Kazakhstan as labor migrants. Mr. Bekchanov promised them and their parents that he would take care of their employment in Kazakhstan. He also assured them that being the oldest in the group; he would look after the young men during their stay in Kazakhstan.

129. Upon their arrival in Kazakhstan, the young men were taken to a house of Mr. Nurlibek Mamatov, located in Zhalagash aul, Kizil-Ordinski oblast. Mr. Mamatov is a citizen of Kazakhstan and a member of the local council in Zhalagash aul. Mr. Bekchanov received \$5,000 from Mr. Mamatov in exchange of the young men and handed over their passports to Mr. Mamatov before he disappeared. The young men were forced to carry out a variety of work in Mr. Mamatov's house, including construction work. They were forced to work under harsh conditions and without appropriate food and compensation. Approximately two months after the young men left for Kazakhstan, Mr. Bekchanov appeared in Khiva. Bekzod's mother went to see Mr. Bekchanov to ask how her son was. Mr. Bekchanov assured the mother that all the young men were well and that they would soon be sending money they earned in Kazakhstan. However, Bekzod's mother never heard from her son, as all the young men were not given any opportunity to contact their families in Uzbekistan. The young men except Bekzod eventually managed to escape the house and return to Khiva.

130. In December 2008, B's mother lodged an appeal to the Department of Internal Affairs in the Khiva district and to the Embassy of the Republic of Kazakhstan in Uzbekistan to search for her son. However, she did not receive any responses from the authorities. Concerned for her son's safety and desperate to find him, she travelled to Mr. Mamatov's house in Zhalagash aul, Kizil-Ordinski oblast on 12 June 2009. When she arrived at Mr. Mamatov's house, he shouted at her in the Kazakh language, throwing the passports of the young Uzbek men who were forced to work in his house. He told her that B was taken by a Police Major named "Abdurakhmon" from Shimkent city in Yuzhno-Kazakhstanskaya oblast.

131. The Special Rapporteurs requested the Government's cooperation and observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the full details of any actions or measures undertaken to identify the whereabouts of Bekzod Ikramov and to ensure his safety and protection.
3. Have complaints been lodged by or on behalf of the alleged victims against Mr. Nurlibek Mamatov? Please provide the details of any actions taken against Mr. Nurlibek Mamatov in his alleged involvement in the crime of trafficking.
4. Please provide the details of any actions taken to ascertain the identity of "Abdurakhmon" and his role in the trafficking and disappearance of Bekzod, and in particular whether Bekzod is currently being held in captivity by him.
5. Please provide the details, and where available the results, of any other investigation, judicial or other inquiries which may have been carried out in relation to this case.
6. Please provide the details of any measures or actions undertaken by the Embassy of the Republic of Kazakhstan in Uzbekistan in response to the appeal submitted by Bekzod's mother.
7. Please indicate whether the victims or the families of the victims have access to adequate procedures of compensation for damages from those legally responsible.
8. Please provide information on the current policies and the preventive and awareness raising measures taken to tackle the issue of human trafficking in Zhalagash aul, Kizil-Ordinski oblast, Kazakhstan.
9. Please provide information on whether law enforcement agencies, especially the Police, Immigration, Border Guards and Labour Inspectors, have received

appropriate training on identification of victims of trafficking and protection of their human rights.

10. Please provide statistical information on prosecution of cases of trafficking in court, including the number of cases in which conviction has been secured.

#### **Reply from the Government to the communication sent on 20 October 2009**

132. On 20 December 2010, the Government replied to the communication sent on 20 October 2009 highlighting that the internal affairs organs of the Republic of Kazakhstan are currently conducting investigations in order to ascertain the facts regarding the economic exploitation of a citizen of the Republic of Uzbekistan by N.V. Manbayev (Mamatov), a citizen of the Republic of Kazakhstan. With a view to making a thorough and objective appraisal of the evidence and issuing a procedural ruling, the Office of the Procurator and the Department of Internal Affairs of the province of Kyzylorda are preparing a request to the law enforcement agencies of the Republic of Uzbekistan that they question B. I in order to fully clarify the circumstances of the case.

133. The Government also highlighted that the Criminal Police Committee of the Ministry of Internal Affairs of Kazakhstan received an application from Zulaikho Kalandarova and Nazhot, a human rights group based in Khorezm which belongs to the Rapid Response Group of Uzbekistan, for assistance in the search for B. I, born in 1991. It further added that the internal affairs agencies of Kazakhstan spearheaded the hunt for the missing person by undertaking criminal investigations and inquiries, and medical establishments likewise made some checks in an endeavour to establish his whereabouts.

134. In its response, the Government highlighted that pursuant to paragraph 27 of the Instruction concerning a unified procedure for conducting interstate searches for persons, which was approved by the decision of the Council of Ministers of Internal Affairs of the States Parties of the Commonwealth of Independent States of 7 September 2007, the above-mentioned application was forwarded to the Central Department for Criminal Investigation and Counterterrorism of the Ministry of Internal Affairs of Uzbekistan with a view to initiating investigations and an international search for B. I. At the same time an answer was sent to Nazhot and Z. Kalandarova. It further highlighted that the staff of the internal affairs agencies of Kazakhstan again contacted Nazhot in order to exchange information on B. I's whereabouts. According to a letter from Nazhot dated 3 December 2009, B. I was then at home (60 Shokhimardon Street, Shokhimardon community, Khiva district, province of Khorezm, Uzbekistan).

135. The Government also highlighted that it was established that, in May 2008, Bakhtiyar Bekchanov, a citizen of the Republic of Uzbekistan, approached them in order to propose the services of his 10-person "team" to work on building sites – to which N. Manbayev agreed. In June 2008 B. Bekchanov and his building team, minus B. I, who was then on another of N. Manbayev's building sites, received the sum of US\$ 3,000 and vanished without completing the building. B. I stayed on for two to three months. During that time he regularly spoke to his parents by telephone. He received food and clothing and did odd jobs. They did not subject him to pressure or force. In the autumn of 2008, B. Ikramov left the house and did not return. N. Manbayev tried in vain to find him. In the spring of 2009, B. I's mother came to the town of Kyzylorda to search for her son. On meeting her, N. Manbayev explained that B. I had worked for him and lived at his house, but that he did not possess any information regarding his current whereabouts. B. I did not lay a complaint with law enforcement agencies regarding any unlawful actions on the part of B. Manbayev or officials of the Department of Internal Affairs of South Kazakhstan or the province of Kyzylorda. The Government also provided information and contact details on Abdrakhman Kolebayevich Serkebayev, born in 1956 and highlighted that no information is available about any investigations, judicial or other inquiries in relation to

this case. According to information supplied by the Embassy of the Republic of Kazakhstan in Uzbekistan, it did not receive any complaints or applications from B. Ikramov's mother, or anyone else, in connection with this case at any point in 2008.

136. The Government also referred to some of the provision of the code of criminal procedure, notably article 163 and 162, paragraphs 1 and 2 and described the governmental structure in place to deal with human trafficking. .

137. In its response, the Government also highlighted it is gradually implementing plans to combat and prevent crimes related to human smuggling and have launched information campaigns to counter human trafficking. It further informed that in 2009, as a result of the latest steps, anti-trafficking units initiated criminal proceedings in 265 cases. The Government also provided extensive information on the activities and programmes being implemented in its territory.

138. Finally the Government informed that according to the statistical data supplied by the Legal Statistics Committee and in particular by the Office of the Procurator General on enforceable sentences for crimes under article 128 of the Criminal Code (human trafficking), the number of convictions was as follows: in 2007, three persons; in 2008, five persons; and in the first nine months of 2009, five persons. The number of convictions for crimes under article 133 of the Criminal Code (trafficking in minors) was as follows: in 2007, three persons; in 2008, one person; and in the first nine months of 2009, six persons.

## **Kuwait**

### **Communication sent to the Government on 4 February 2010**

139. On 4 February 2010, the Special Rapporteur on the human rights of migrants and Special Rapporteur on violence against women, its causes and consequences sent an urgent appeal to the government regarding the death sentence imposed on a Filipina domestic migrant worker and the widespread exploitation of migrant domestic workers in the country.

140. According to the information received, Ms. **Jakatia Pawa**, a 34-year old domestic worker from the Philippines, was sentenced to death on 13 April 2008 by a court of First Instance for the crime of murder of her employer's daughter. The death sentence was upheld by an appeal court on 16 June 2009. Reports suggest that Ms. Pawa has now exhausted the appeal process and the death sentence was confirmed last week. Ms. Pawa maintained throughout the court proceedings that she is innocent; stating that one of the victim's family members may have committed the murder because the victim was having an affair with a neighbour. Her lawyer also argued that there was no evidence proving that Ms. Pawa committed the crime.

141. The Special Rapporteurs requested the Government's cooperation and observations on the following matters:

1. Are the facts alleged in the above summary accurate?
2. Please provide details of the judicial proceedings which determined and upheld Ms. Pawa's sentence. Please also indicate measures taken to ensure the due process rights of Ms. Pawa have been fully respected.

### **Reply to the communication sent 4 February 2010**

142. On 17 March 2010 the Government provided a response to the urgent appeal sent on 4 February 2010. In its response, the Government highlights that the facts referred to are set forth in criminal case number 675/2007, annual register 40/2007 Mubarak AL-Kabir,

which stated that the aforementioned accused who was employed as a domestic by the family of the victim Dala Bassam Abd Al-Hadi AL-Nigi intended to take revenge against the victim on account of their many quarrels and their unwillingness to accept the scolding she received from the victim. She decided to kill her and prepared a large knife for the purpose as well as pair of nylon gloves to remove the traces left by her hand on the knife. Having waited until the victim, was in bed alone, she went to her bedroom at dawn and attacked her while she was asleep, stabbing her repeatedly until she was dead. According to the report of the forensic physician, the victim's death was attributable to stab wounds to the chest area.

143. The Government also highlights that the public prosecutor office issued a decision on 19 August 2007 to refer the accused to the criminal court on the charge of intentional and premeditated homicide of the victim. It added that on 13<sup>th</sup> April 2008, the criminal court decided adversarially to sentence the accused to death, relying on the factual testimony of witnesses, supported by the conclusions of the forensic physician's report on the victim, the findings of the criminal evidence report (Masrah Division), the result of the public prosecutor's office examination of the scene of the crime and the conclusions of the Medical committee's report. Its decision was endorsed by the appeal court's judgment of 15<sup>th</sup> June 2009 and in February 2010, the public prosecutor's office sent the above-mentioned criminal file to the deputy prime minister responsible for legal affairs, the minister of justice and the minister of religious endowments and Islamic affairs, requesting them to transmit it to his highness the Amir of the State of Kuwait so that he could consider whether to ratify the judgment imposing the death penalty on the above-mentioned accused.

## **Mexico**

### **Communication sent on 15 October 2009**

144. El 15 de octubre de 2009, el Relator Especial sobre los derechos humanos de los migrantes junto con el Relator Especial sobre formas contemporáneas de racismo, discriminación racial, xenofobia y formas conexas de intolerancia y la Relatora Especial sobre la situación de los defensores de los derechos humanos, enviaron un llamado de urgencia al Gobierno de México en relación con los presuntos atentados contra el derecho a la vida y la seguridad personal de los migrantes que residen en la Casa del Migrante de Belén, cerca de Saltillo en el Estado de Coahuila y el hostigamiento contra miembros del personal de dicha institución.

145. De conformidad con la información recibida, el 30 de septiembre del presente año, un joven de origen hondureño, de nombre Reyes Gustavo Ardón Alfaro, presuntamente asesinó a acuchilladas a Perla Judith Quintero Caballero, mujer saltillense de veintiséis años de edad e hirió de gravedad a Leslie Flores, quien era la empleada doméstica de la hoy occisa. El joven hondureño aparentemente se desempeñaba como pintor del negocio, propiedad de Perla Judith. Ha sido reportado que a partir de la ocurrencia de dicho caso, las personas migrantes han sido sujetos de actitudes xenofóbicas y discriminatorias y que el equipo de trabajo de la casa del migrante de Belén ha sido sujeto de hostigamiento por parte de algunos sectores de la sociedad civil y de los medios de comunicación. Así mismo, han sido reportados los siguientes presuntos acontecimientos: los días 2, 3 y 4 de octubre, algunos de los migrantes que habitan en la casa mencionada habrían sido objeto de agresiones verbales; el domingo 4 de octubre por la noche, presuntamente un migrante de origen hondureño habría sido golpeado en la estación del tren por dos individuos, quienes le dirían que se merecía dichos golpes por ser hondureño y porque un hondureño había asesinado a una mexicana; el 11 de octubre un grupo de entre 10 y 12 personas se habría acercado por la noche a la Casa del Migrante y habría roto y tirado al suelo el medidor de luz, interrumpiendo con ello el abastecimiento de energía eléctrica del lugar.

146. También se informa que a partir del 6 de octubre la población migrante que se alberga en la Casa del Migrante de Belén, habría disminuido por miedo represalias por parte de algunos grupos de la población de Saltillo.

147. Finalmente, según la información recibida, el 6 de octubre, el Congreso de Coahuila habría emitido un punto de acuerdo mediante el cual se solicita al Congreso de la Unión, "para que se realicen las propuestas de modificación a la Ley General de Población con la finalidad de regular en forma clara la situación de las llamadas casas del migrante, sin perjudicar los derechos humanos de los extranjeros que de un modo u otro transitan o radican en [México]." El Relator Especial sobre los derechos humanos de los migrantes lamenta que la respuesta del gobierno incluya una acción legislativa (la modificación de la Ley General de Población) que esta fuera de la competencia del Poder Ejecutivo, el cual si tiene competencia para actuar directamente sobre las medidas de protección de los derechos humanos a los que se refiere este llamado de urgencia.

148. Aunque la solicitud realizada al Congreso en dicho instrumento jurídico es de carácter general, se ha llamado nuestra atención sobre algunos de los elementos contenidos en la exposición de motivos del punto de acuerdo, en los que se difundirían elementos de intolerancia contra las casas de migrantes y los migrantes irregulares.

149. Los Relatores Especiales solicitaron información sobre los asuntos mencionados a continuación, siempre y cuando sean aplicables al caso en cuestión:

1. ¿Son exactos los hechos a los que se refieren las alegaciones descritas?
2. ¿Fue presentada alguna queja por parte de las víctimas o en sus nombres?
3. Por favor proporcione información detallada sobre las investigaciones iniciadas en relación con los casos de agresiones verbales y físicas y si han sido previstas medidas cautelares en el presente caso.
4. Por favor proporcione información sobre las diligencias judiciales y, las sanciones de carácter penal, en caso de que hayan sido adoptadas contra el o los presuntos culpables.
5. Por favor proporcione información sobre las disposiciones legislativas, administrativas o de otro carácter que han sido o serán adoptadas con miras a prevenir la ocurrencia futura de hechos similares así como los programas y políticas públicas en vigor para prevenir actos de intolerancia contra los y las migrantes.

#### **Communication sent on 14 October 2009**

150. El 14 de octubre de 2009, el Relator Especial sobre los derechos humanos de los migrantes junto con el Relator Especial sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes y el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, enviaron un llamado de urgencia al Gobierno de México en relación con el deceso de un migrante irregular y las lesiones personales ocasionadas a seis migrantes cerca de Comitán, en el estado de Chiapas.

151. De conformidad con la información recibida, el 18 de Septiembre, las fuerzas de seguridad mexicanas dispararon contra una camioneta pick-up que transportaba a siete migrantes irregulares de nacionalidades ecuatoriana y salvadoreña cuando cruzaban la frontera cerca de Comitán, en el estado de Chiapas.

152. Según la información proporcionada, el conductor de la camioneta pick-up en donde se transportaban los migrantes irregulares habría aminorado la marcha al acercarse a un control de seguridad, pero habría acelerado al ver la orden de alto de la Policía. Los agentes de control de seguridad habrían salido tras ellos y presuntamente habrían abierto fuego

contra el vehículo, que, alcanzado por reiterados disparos, habría dejado de funcionar a los pocos minutos.

153. Como resultado, uno de los siete migrantes, el señor Víctor Alexander Melgar Lemus, nacional de El Salvador, habría muerto y los seis restantes habrían resultado heridos. Tres de los migrantes sobrevivientes habrían escapado de las autoridades mexicanas después de los disparos ocurridos en un control militar. Los tres migrantes que habrían quedado a disposición de las autoridades mexicanas habrían sido interrogados por agentes de policía y militares y presuntamente reportarían haber sido pateados y golpeados con las culatas de sus armas. Uno de los migrantes habría sido golpeado directamente en una herida de bala. Dos de los migrantes se hallarían presuntamente bajo vigilancia policial en un hospital donde estarían siendo atendidos, y el otro, un ciudadano ecuatoriano, se hallaría recluido en espera de su repatriación.

154. Se teme por la seguridad de los migrantes que están recibiendo atención médica, frente a posibles acciones encaminadas a impedir la denuncia de violencia de carácter policial ya que, aunque la Comisión Nacional de Derechos Humanos de México habría abierto una investigación sobre los hechos, no se habrían iniciado investigaciones sobre el uso desproporcionado de la fuerza por parte de las autoridades de control policial. Se teme también que los migrantes sobrevivientes puedan ser repatriados a sus países de origen antes de que los hechos hayan sido completamente clarificados.

155. Los Relatores Especiales solicitaron información sobre los asuntos mencionados a continuación, siempre y cuando sean aplicables al caso en cuestión:

1. ¿Son exactos los hechos a los que se refieren las alegaciones descritas?
2. Por favor proporcione información detallada sobre las investigaciones iniciadas en relación con el caso, incluyendo los resultados de exámenes médicos, en caso de que se hubieran llevado a cabo.
3. Por favor proporcione información sobre las diligencias judiciales y, las sanciones de carácter penal, en caso de que hayan sido adoptadas contra el o los presuntos culpables.
4. Por favor proporcione información sobre las disposiciones legislativas, administrativas o de otro carácter que han sido o serán adoptadas con miras a prevenir la ocurrencia futura de hechos similares.
5. Quisiéramos agradecer al Gobierno de su Excelencia por la información detallada que ha proporcionado en su carta del 29 de abril de 2009 en relación con la muerte de Norma Dután Parrapi, Levis Clarisa Moina y Kevin Pérez Carias, otros tres migrantes aparentemente matados por la Policía Estatal Preventiva en Chiapas en enero de 2009 en circunstancias similares a las del deceso de Víctor Alexander Melgar Lemus. Preguntaríamos que se nos mantenga informando del progreso de las investigaciones y del proceso penal mencionado en la respuesta su Gobierno, del progreso de la queja iniciada por la Comisión Nacional de los Derechos Humanos, y de los esfuerzos para compensar las familias de los migrantes difuntos.

#### **Reply from the Government to the communication sent on 14 October 2009**

156. El 10 de Mayo de 2010, el Gobierno de México respondió al llamado urgente presentado el 14 de octubre de 2009, en relación con la muerte de Víctor Alexander Melgar Lemus, migrante salvadoreño así como a la situación de 6 migrantes centroamericanos. Al respecto, el Gobierno señaló que el 18 de septiembre de 2009, elementos de la policía preventiva de la Secretaría de Seguridad Pública y Protección Ciudadana del estado de Chiapas ubicados en un puesto de control en el municipio de Comitán de Domínguez, Chiapas, dispararon en contra de una camioneta de redilas por la negativa del conductor

para detenerse; posteriormente se supo que en dicha camioneta transportaba en la parte posterior a 7 migrantes indocumentados y armamento de uso exclusivo del Ejército mexicano. En el evento, el señor Melgar Lemus perdió la vida, y tres de los seis migrantes resultaron heridos.

157. El Gobierno también señaló que se mismo día, la Fiscalía de Distrito Fronterizo Sierra de la Procuraduría General de Justicia del estado de Chiapas, inició la averiguación previa 580/FS94-M4/2009 por los delitos de homicidio en agravio del señor Melgar Lemus (de nacionalidad salvadoreña) y lesiones en agravio de los señores Freddy Enrique Mancilla Mancilla (de nacionalidad salvadoreña), Gustavo Mallén Cela y Edgar Andreo Guncay Zuña (de nacionalidad ecuatoriana), la cual se encuentra integrada, entre otras, por las siguientes actuaciones: diligencia de identificación y entrega del cadáver; necropsias practicada por dos médicos peritos del servicio médico forense; informe de investigación rendido por la policía ministerial; constancia mediante la cual se solicitó al Subsecretario de Cooperación Internacional y Asuntos Migratorios del estado de Chiapas que por su conducto se informe a los representantes de los consulados de El Salvador y Ecuador los apoyos jurídicos y médicos brindados por las autoridades estatales a los migrantes indocumentados, así como lo relativo al traslado del cadáver a su país de origen.

158. De conformidad con la respuesta proporcionada, de las pesquisas realizadas durante las investigaciones se encontró en la parte posterior de la camioneta armamento de uso exclusivo del Ejército mexicano (delito Federal) lo que motivó que la Fiscalía remitiera la averiguación previa a la Procuraduría General de la República (PGR) para continuar con las investigaciones. La Comisión Nacional de los Derechos Humanos inició una queja la cual se encuentra en trámite ante la Quinta Visitaduría General.

159. Así mismo, el Gobierno señaló en su respuesta que la averiguación previa integrada por la PGR aún se encuentra en la etapa de análisis para emitir la determinación que conforme a derecho proceda. Igualmente señaló que la política exterior de México en materia de promoción y protección de los derechos humanos de los migrantes tiene como fundamento la universalidad de estos derechos, independientemente de la situación migratoria, el principio de la responsabilidad compartida, el fortalecimiento de la cooperación internacional y la no criminalización de la migración.

160. El Gobierno destacó igualmente el rol del Instituto Nacional de Migración (INM) y su "Programa de Reordenamiento de la Frontera Sur" que facilita la documentación y vigilancia de los flujos migratorios. También señaló que en el mes de marzo de 2008 el INM introdujo la Forma Migratoria para Trabajadores Fronterizos que permite el ingreso documentado de trabajadores de Guatemala y Belice para laborar en los estados de Chiapas, Campeche, Tabasco y Quintana Roo. Bajo este Programa se amplió la Forma Migratoria de Visitantes Locales, que otorga facilidades a los visitantes locales guatemaltecos, a fin de que la población transfronteriza pueda ingresar en tránsito local en los estados de Chiapas, Tabasco y Campeche. El Gobierno también destacó esfuerzos para asegurar que la repatriación de nacionales centroamericanos vía terrestre se lleve a cabo de manera ordenada, digna, ágil y segura, con base en acuerdos con Guatemala, El Salvador, Honduras y Nicaragua. De igual manera, destacó el convenio suscrito entre el Sistema para el Desarrollo Integral de la Familia Chiapas y la Comisión Mexicana de Ayuda a Refugiados y las labores del albergue para menores de edad de Sistema para el Desarrollo Integral de la Familia Chiapas, ubicado en el municipio de Tapachula, el cual se coordina con la delegación del INM que a su vez, cuenta con la estación migratoria modelo. Esta última tiene un área especializada en la atención de menores de edad, de tal forma que los niños, niñas y adolescentes son canalizados en cualquiera de las dos instancias, dependiendo de su edad y sexo.

161. Finalmente, el Gobierno señaló que en el mes de julio de 2008 entró en vigor la reforma a la Ley General de Población que despenaliza la migración indocumentada,



armoniza el orden jurídico con los tratados internacionales en la materia y contribuye a eliminar abusos contra migrantes indocumentados.

#### **Communication sent on 9 September 2009**

162. El 9 de septiembre de 2009, el Relator Especial sobre los derechos humanos de los migrantes junto con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión y la Relatora Especial sobre la situación de los defensores de los derechos humanos, enviaron un llamado de urgencia en relación con las amenazas contra el padre Alejandro Solalinde Guerra, el Sr. David Alvarez Vargas, la Sra. Areli Palomo Contreras y otros miembros del Albergue del Migrante Hermanos en el Camino. El padre Solalinde Guerra es director del Albergue del Migrante Hermanos en el Camino de la Esperanza y Coordinador de la Zona Sur de la Dimensión Pastoral de la Movilidad Humana de la Conferencia Episcopal Mexicana. El Sr. Alvarez Vargas es asistente en el mismo Albergue del Migrante. La Sra. Palomo Contreras es operadora del Registro Nacional de Agresiones a Migrantes y ayuda en el Albergue del Migrante Hermanos en el Camino de la Esperanza. El Albergue del Migrante Hermanos en el Camino brinda ayuda humanitaria a personas migrantes extranjeras que se ven obligadas a cruzar por México con el fin de llegar a los Estados Unidos de América. Además, el padre Solalinde Guerra ha denunciado públicamente en varias ocasiones las violaciones de derechos humanos presuntamente cometidas por miembros de la policía y de las fuerzas de seguridad en contra de los migrantes en México.

163. Con fecha del 7 de julio de 2008, la Relatora sobre la situación de los defensores de derechos humanos y el Relator sobre los derechos de las personas migrantes emitieron un llamamiento urgente al Gobierno Mexicano en relación con las agresiones en contra del padre Alejandro Solalinde Guerra.

164. Según las informaciones recibidas el 22 de julio de 2009, dos hombres no identificados, supuestamente pertenecientes a una banda de la delincuencia organizada denominada "Los Zetas", habrían allanado el Albergue del Migrante buscando a un grupo de migrantes que recibía ayuda del Albergue con la intención de secuestrarlos. Sin embargo los migrantes se habrían escondido.

165. El 21 de julio, cuatro hombres armados con pistolas habrían entrado por la fuerza al Albergue nuevamente buscando a otro grupo de migrantes. Sin embargo, este grupo también habría logrado esconderse.

166. El 11 de julio de 2009, aproximadamente a las 23:00 horas de la noche, un grupo de personas, supuestamente procedentes de Veracruz y pertenecientes a "Los Zetas", habrían allanado el Albergue con la intención de raptar a un grupo de migrantes de Honduras. Esa misma noche, los agresores habrían subido a un tren en el que viajaban varios migrantes y se habrían llevado a un grupo de migrantes.

167. Las acciones anteriormente mencionadas habrían puesto en riesgo a los miembros del Albergue del Migrante así como a los migrantes que se encontraban allí. Además, miembros del equipo que trabaja en el Albergue del Migrante habrían recibido amenazas de muerte y supuestamente se encuentran en una situación altamente riesgosa. El mayor factor de riesgo lo constituyen las organizaciones de la delincuencia organizada como "los Zetas"; el refugio y atención que ofrece el Albergue, así como su actividad de denuncia y promoción de los derechos humanos, implica para los delincuentes un freno en sus actividades de extorsión a las personas migrantes.

168. A pesar de que miembros del Albergue del Migrante habrían hecho denuncias formales ante las instancias de Procuración de Justicia, ni las autoridades locales, ni las federales habrían tomado las medidas necesarias para brindar la protección y seguridad necesarias para el personal del Albergue y los migrantes.

169. Se teme que el padre Solalinde Guerra, el Sr. Alvarez Vargas, la Sra. Palomo Contreras y otros miembros del Albergue del Migrante “Hermanos en el Camino” estén en riesgo como resultado directo de su trabajo en defensa de los derechos humanos, en particular de los derechos de migrantes. Además, se expresa una profunda preocupación por la integridad psicológica y física de todos los miembros del Albergue del Migrante “Hermanos en el Camino”. Estos actos de hostigamiento e intimidación, de ser confirmados, se enmarcan en un contexto de gran vulnerabilidad de los migrantes en México que amenaza también aquellos que trabajan para la defensa de sus derechos.

170. Los Relatores Especiales solicitaron la cooperación y observaciones del Gobierno sobre los asuntos siguientes, siempre y cuando sean aplicables al caso en cuestión:

1. Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. Fue presentada alguna queja?
3. Por favor proporcione información detallada sobre las investigaciones y diligencias judiciales iniciadas en relación con el caso. Si éstas no tuvieron lugar o no fueron concluidas, le rogamos que explique el porqué.
4. Por favor proporcione información detallada sobre las medidas cautelares adoptadas para garantizar la seguridad física y psicológica de los miembros del Albergue del Migrante “Hermanos en el Camino”.

#### **Reply from the Government to the communication sent on 9 September 2009**

171. El 10 de Mayo de 2010, el Gobierno de México respondió al llamado urgente enviado por los Relatores Especiales el 9 de septiembre de 2009. De conformidad con la respuesta del Gobierno, información proporcionada por el Instituto Nacional de Migración (INM), diversos medios de comunicación locales publicaron notas periodísticas que habitantes de Ciudad Ixtepec, Oaxaca, exigieron al sacerdote Alejandro Solalinde Guerra, director del albergue del migrante “Hermanos en el Camino de la Esperanza” y coordinador de la zona sur de la Dimensión Pastoral de la Movilidad Humana de la Conferencia Episcopal Mexicana, el cierre del albergue de manera definitiva y además amenazaron que de no hacerlo en un plazo de cinco días, incendiarían el albergue. La exigencia de los habitantes de dicho municipio obedeció a la denuncia presentada ante la Procuraduría General de Justicia del estado de Oaxaca (PGJ Oax), el 20 de junio de 2008 por parte de la Sra. Nora Luz Solano Rivera en contra del nacional nicaragüense Jaime Francisco Alvarado Flores<sup>2</sup>, por el delito de violación en perjuicio de su hija de seis años de edad, ocurrido en su domicilio particular ubicado a un kilómetro del albergue.

172. La información proporcionada señala que el sacerdote Alejandro Solalinde señaló a los habitantes que no era posible acceder a su requerimiento debido a que el albergue se encuentra a cargo de la Dimensión Pastoral de la Movilidad Humana, área Pastoral de Migrantes de la Diócesis de Tehuantepec, Oaxaca, cuya finalidad es ofrecer alimentación, albergue y atención médica a las personas migrantes procedentes de Guatemala, Honduras, El Salvador y Nicaragua, en tránsito temporal en México con rumbo hacia los Estados Unidos de América. Al tener conocimiento de las exigencias, el Arzobispo de Tijuana, responsable de la Dimensión Pastoral de la Movilidad Humana expresó su preocupación por la seguridad del sacerdote y solicitó a representantes del INM la implementación de las medidas de seguridad para la protección del sacerdote, de los migrantes que la habitan y del

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<sup>2</sup> Actualmente el señor Jaime Francisco Alvarado Flores se encuentra cumpliendo una sentencia de prisión por el delito de violación.

personal que lo auxilia. Por su parte, el sacerdote Solalinde solicitó ayuda al presidente municipal de Ciudad Ixtepec, Oaxaca para garantizar la seguridad del albergue.

173. En su respuesta, el Gobierno señala que en atención a la petición formulada por el Arzobispo, el 26 de junio de 2008, la delegada regional del INM en el estado de Oaxaca solicitó al Secretario de Seguridad Pública Federal (SSP) y al Secretario de Protección Ciudadana del estado de Oaxaca, brindaran medidas de seguridad para resguardar el orden de la comunidad y del albergue en caso de suscitarse hechos violentos que pusieran en riesgo la salud, integridad y vida del sacerdote Solalinde, de los migrantes albergados, así como los habitantes del municipio de Ciudad Ixtepec, Oaxaca.

174. Así mismo, el Gobierno destaca que el 27 de junio de 2008, en las oficinas del palacio municipal de Ixtepec, Oaxaca, se celebró una mesa de diálogo con la participación del sacerdote Alejandro Solalinde, del presidente municipal y sus colaboradores, el ministerio público de Juchitán, Oaxaca, representantes del gobierno del estado de Oaxaca, de la Comisión Nacional de los Derechos Humanos, de la Comisión Estatal de Derechos Humanos de Oaxaca, de Ferrocarriles de México, de la Asociación Nacional Católica y una comisión conformada por los vecinos del municipio.

175. El Gobierno también señala en su respuesta que la comisión de vecinos mostró su inconformidad ante los hechos en los que se vio involucrado el nicaragüense Alvarado Flores y solicitó a las autoridades involucradas la pronta solución a la problemática que enfrenta el municipio con la estadía de los migrantes, así como lo relacionado con el funcionamiento del albergue. Al finalizar la reunión se concertaron los siguientes acuerdos: Se solicitó apoyo de la policía estatal y municipal con el objeto de incrementar la seguridad en el área en que se encuentra el albergue y la zona aledaña; el sacerdote Alejandro Solalinde ofreció edificar una barda perimetral en el albergue, así como elaborar un reglamento interno y un registro con fotografía de los migrantes que hicieran uso de las instalaciones; el municipio realice las labores de limpieza y alumbrado de la zona ferroviaria; solicitar a la Secretaría de Gobernación su intervención para que analice las condiciones de operación del albergue para su permanencia o su posible reubicación.

176. Asimismo, el 30 de junio de 2008, la Dirección Seguridad Pública del estado de Oaxaca ordenó a su jefatura operativa en Juchitán de Zaragoza, Oaxaca, efectuar recorridos de seguridad y vigilancia las 24 horas en el albergue, con el fin de prevenir la comisión de delitos.

177. En su respuesta el Gobierno también informa sobre el trámite de dicho caso ante la Comisión Interamericana de Derechos Humanos y sobre algunas de las acciones de la autoridad estatal, de la autoridad federal y de la Comisión Nacional de los Derechos Humanos.

## **Republic of Korea**

### **Reply from the Government to the communication sent on 15 January 2010**

178. On 15 January 2010, the Special Rapporteur on the human rights of migrants, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders sent an allegation letter to the government concerning Mr. Minod Moktan as well as alleged human rights violations of migrant workers, including alleged violations of the right to freedom of expression and the right to liberty and security of the person.

179. According to the information received, Mr. Minod Moktan, a Nepalese citizen and human rights activist, arrived in South Korea in February 1992 on a short-term tourist visa. Mr. Moktan worked as a manual laborer in South Korea from 1992 until 2003. In 2004, he

reportedly founded a band in South Korea called “Stop Crackdown Band”. In 2005, he carried out educational programme on labour rights for migrants and also appeared on several television news programme to discuss the discrimination faced by migrant workers and the importance of cross-cultural awareness. He was reportedly one of the founders of the Migrant Workers TV (“MWTV”), a television station that broadcasts news related to migrants in South Korea in several languages. Between 2007 and 2008, he served as Co-chair of MWTV and in 2009 as Director of the MWTV Film Production Team. Mr. Moktan was reportedly arrested on 8 October 2009 at 10 a.m. in front of his office building by officers of the Seoul immigration authorities. He was allegedly deported to Nepal on 23 October, 2009. Concern is expressed that the arrest and deportation of Mr. Moktan are linked to his activity in favour of labour rights for migrant workers.

180. These allegations are of particular concern, when considered in light of the information received which indicates that there exists a pattern of excessive use of force against and arbitrary arrest of irregular migrants by immigration officials. Between January and May 2009, the Immigration Service has reportedly arrested and detained 11,818 irregular migrant workers, and has deported 11,318 irregular migrants. Reports indicate that immigration officials often failed to follow arrest procedures in cases of irregular migrant workers and even use violence to execute the arrest. According to the information received, in June and July 2009, immigration officials conducted raids in Ansan, an area reportedly heavily populated by migrant workers. They reportedly entered private houses without any warrants and without identifying themselves. Some migrant workers reportedly suffered from injuries due to the excessive use of force by the immigration officials in those instances.

181. The Special Rapporteurs requested the Government's cooperation and observations on the following matters:

1. Are the facts alleged in the above summary accurate?
2. Please provide information concerning the legal grounds for the arrest and deportation of Mr. Moktan and how these measures are compatible with international norms and standards
3. Please provide information on measures undertaken by your Excellency's Government to guarantee the rights and freedoms of Mr. Limbu and Mr. Sabur as referred to in the previous communication dated 16 May 2008. Please indicate whether or not they were deported to their countries of origin and if so, on what grounds.
4. Please provide information on the measures taken to ensure that migrants' rights to freedom of expression and freedom of association are respected in accordance with international standards.
5. Please provide information on the existing legal framework, policies and regulations to ensure that immigration and law enforcement officials duly respect international human rights standards concerning arrest procedures and the use of force. Please also provide information on measures or efforts undertaken by your Excellency's Government to implement such a legal framework, policies and regulations in practice.
6. Please indicate whether the victims or the families of the victims have access to effective remedies, including compensation for damages resulting from the alleged arbitrary arrest and violence committed against them.

**Reply from the Government to the communication sent on 15 January 2010**

182. On 13 April 2010, the Government replied to the communication sent on 15 January 2010.

183. On 13 April 2010, the Government replied to the communication sent on 15 January 2010 denying the veracity of the allegation that immigration officials entered a *private* residence in the Ansan area, on 10 July 2009, without any warrant and without identifying themselves. It highlighted that the immigration official who was in charge of the enforcement operation at the time attempted to verify the identity of suspicious foreigners in the street after presenting his identification. However, Mr. Moktan abruptly ran away to a nearby residence in order to avoid the enforcement operation, and the official entered the private house in the process of chasing him. It is true that a few of the immigrant workers were injured. These injuries occurred accidentally in the process of the attempt to arrest *the escaping* irregular migrants, and the Immigration Service took disciplinary measures against *the officials* concerned and carried out special training in that regard.

184. In its response, the Government highlighted that the allegation regarding an excessive use of force against and arbitrary arrest of irregular migrants by immigrant officials is inaccurate and describes what it considers the legal Grounds for the Custody and Deportation of Mr. Moktan. It also highlighted that Mr. Moktan had a past record of escaping in early 2000 from the temporary release which was granted to him by his request on the condition that he would leave the country as soon as he received his overdue wages. The judgment was finally settled on 15th January 2010.

185. In its response, the government stresses it guarantees freedom of speech and the press, and Freedom of assembly and association under Article 21 of the constitution. It also mentions that the Act on the Employment, of Foreign Workers stipulates that legally employed foreigners are to be accorded equal treatment, with domestic workers, and therefore foreign workers are allowed to freely organize a trade union or join one in accordance with the Trade Union and Labor Relations Adjustment Act. It adds that illegal foreign workers, however, are not allowed to join a trade union or to organize one under the Trade Union and Labor Relations Adjustment Act. They are prohibited from working pursuant to the immigration Control Act, and thus can not be seen as workers entitled to trade union rights.

186. The Government also informed that the due procedure for enforcement Operation directed at Immigration Offenders" and "General Standards for the Protection of human Rights" were introduced and have been implemented in order to enhance the protection of human rights and compliance with due process. The Directive sets out detailed provisions to ensure enforcement operations, investigations and evaluations of violation of the law, and the use of tools for arrest and restraining devices are conducted in such a manner as to fully protect human rights.

187. Finally, the Government explained that in a case alleged existence of arbitrary arrest and violence by law enforcement officials, the alleged victims and their families are able to file a civil suit against the officials concerned and pursue a state litigation in accordance with the State Compensation Act. A complaint or lawsuit can also be brought to investigation agencies, and the Government of the Republic of Korea, if necessary, postpones the deportation or permits a temporary release from custody. Furthermore, the Korea Legal Aid Corporation provides legal aid services to irregular migrants and their families in the same manner as it does to citizens of the Republic of Korea.

## South Africa

### Communication sent on 10 December 2009

188. On 10 December 2009, the Special Rapporteur on the human rights of migrants, together with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance brought to the attention of the Government information they have received concerning xenophobic violence targeting 3000 foreign migrant workers in de Doorns, Western Cape province.

189. According to the allegations received, on 17 November 2009, a mob attacked and demolished the shacks in an informal settlement of foreign workers, mainly Zimbabweans, in the town of De Doorns. The foreign workers were also prevented from going to work. Reportedly, violence erupted following allegations that foreign migrant workers were willing to work for less than the minimum wage (R60) and without any legal contracts. They were therefore accused of stealing jobs from local residents.

190. The situation would have been allegedly tense since 13 November 2009, following a violent quarrel involving Zimbabweans in a local tavern. After that incident, some 68 Zimbabweans would have fled the area, fearing a resurgence of xenophobic violence, similar to the one which occurred in May 2008.

191. The South African authorities reacted promptly by helping to set up an internally displaced persons camp site at the De Doorns Sports Grounds. On 20, 21 and 23 November 2009, they also arrested 24 individuals involved in the xenophobic attacks on 17 November. These 24 individuals appeared in court on 23 November on charges of public violence and a hearing was postponed until 30 November for further investigations to take place. One of the 24 individuals, a minor, was subsequently released. Additional charges, including theft and damage to property, are being investigated in respect of the 23 remaining detainees. Following the 30 November court hearing, 12 of the 23 suspects were released for lack of evidence. The 11 remaining individuals should have appeared in court on Friday 4 December for another hearing.

192. The Special Rapporteurs inquired the Government on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide information on any inquiries carried out into the xenophobic attacks carried out against foreign migrant workers on 17 November 2009. Please also provide information on the status or results of the trial of the 11 individuals who should have appeared for the court hearing on 4 December 2009.
3. What measures are being taken to prevent the resurgence of violence between local residents and foreign migrant workers?
4. What steps are being taken for the safe return to their homes of the people victimized by violence?
5. Please indicate whether the victims or the families of the victims have access to adequate procedures of compensation for damages resulting from the xenophobic violence described above.

### Reply from the Government to the communication sent on 10 December 2009

193. On 3 May 2010, the Government of South Africa replied to the communication dated 10 December 2009. In its response, the Government provided information made available following consultations with the Department of Home Affairs, Cooperative Governance and Traditional Affairs, and the Breede Valley Municipality.

194. The Government indicated that after consultation with relevant role-players, it appears that simmering social tension between citizens of Zimbabwe and the local community gave rise to the outbreak of violence. It further seems that the preference of local farmers to rather employ the migrant for cheaper wages caused the local community to attack Zimbabwean nationals living in the area.

195. In order to discuss the situation, a meeting was held between stakeholders, including local government and municipal departments, employer associations, local community representatives and representatives of the Zimbabwean community. From the consultations, it became clear that a great number of the affected Zimbabwean citizens have applied for asylum. According to the provisions of the South African Refugees Act and the Constitution, they are entitled to engage in income generating activities in order to sustain their livelihoods. They were employed by the farmers.

196. The Department of Home Affairs facilitated the documentation process whereby people who lost their documents during flight and those who were still undocumented at the time of the attacks were provided with new documents. There were 717 Zimbabweans in possession of asylum permits. There were also 250 people who were undocumented, and 150 people who had lost their permits. The people who were undocumented and who also lost their permits were assisted by the Maitland Refugee Reception Office in Cape Town. The local authorities, in conjunction with the UNHCR, also provided temporary shelter for the migrant community, as well as protection services by the South African Police Service. Local authorities and NGOs also provided clothing and food.

197. After the attacks 25 people were arrested on charges of public violence for the incident of 17 November. Of those arrested, 12 people were released due to lack of evidence and 13 people were released on bail and appeared in court on 20 January 2010. Posters denouncing xenophobia were circulated in the neighbouring areas of Worcester and De Doorns as part of information dissemination just after the November 2009 attacks.

198. Concerning its international obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Government of South Africa indicated that it complies with article 4 of the ICERD which requires that measures be instituted for the punishment of offences that instigate hatred or propagate ideas based on racial superiority. The ICERD requirements are entrenched in Chapter 2, Section 16 of the South African Constitution. Furthermore, the Government has introduced the Prohibition of Hate Speech Bill which criminalizes hate speech, in order to give effect to the ICERD and the Constitution of South Africa. The Prohibition of Hate Speech Bill imposes penalties to anyone who publicly advocates hatred against any person or group of persons. It is deemed an offense to instigate hatred on the basis of race, ethnicity, gender or religion, that is hurtful, harmful, intimidatory or incite imminent violence or seriously violate human rights.

199. The Government of South Africa also indicated that it complies with article 7 of the ICERD which requires that measures to combat prejudices and to promote understanding and tolerance be put in place. This provision is entrenched in the preamble of the Immigration Act which provides for anti-xenophobia programmes; a human rights culture of immigration enforcement; compliance with Government's international obligations; and human rights education for civil society. In this regard, the Department of Home Affairs conducts public education and training for schools, communities and immigration officers. The education programme covers human rights, refugee protection and immigration issues.

200. In line with article 6 of ICERD, the Department of Home Affairs, in collaboration with other government departments, participated in consultative meetings and mediation with civil society organizations, Zimbabweans, farmers associations and political leadership. The purpose of these consultations was to assess the situation and identify

possible solutions for the re-integration of the displaced Zimbabweans. Discussions are ongoing. In the specific case of De Doorns, 3 committees have been established to give feedback on a daily basis at the stakeholders meetings, which include a Camp Management Committee, a Reintegration Committee and Humanitarian Committee.

201. The Breede Valley Officials have also undertaken to investigate the issue of landownership by foreigners in De Doorns as from 7 January 2010. They have undertaken to ensure that residents living in flood prone areas will be relocated to safer sites and will receive basic services. The Breede Valley Municipality will conduct regular meetings with affected stakeholders as well as with the community to address developmental issues and the reintegration process.

202. Finally, the Government indicated that the Parliamentary Portfolio Committee on Labour and the Department of Labour also probed into the allegations of below minimum wages that farmers reported to have paid to the Zimbabwean nationals. The result of the investigations and recommendations from such investigations are dealt with by these relevant institutions.

## Spain

### Communication sent to the Government on 3 June 2009

203. El 3 de junio de 2009, el Relator Especial sobre los Derechos Humanos de los migrantes junto con el Vice-Presidente del Grupo de Trabajo sobre la Detención Arbitraria, y la Relatora Especial sobre la situación de los defensores de los derechos humanos enviaron un llamado de urgencia al Gobierno de España, con respecto a información recibida sobre la Sra. **Laura Bugalho**, pedagoga, defensora de los derechos humanos; activista por los derechos de las personas migrantes y particularmente de las inmigrantes trabajadoras sexuales y de los transexuales; dirigente del Foro Gallego de Inmigración y fundadora de "Transgaliza" y de la revista "Andaina", quien fue detenida el 26 de mayo de 2009 en Santiago de Compostella por agentes policiales. Luego de su detención se realizó un registro policial en su despacho en la sede gallega del sindicato CIG, donde trabaja. La Sra. Bugalho fue internada en los calabozos de la Comisaría Central de Santiago.

204. Según la información recibida, la Sra. Bugalho es conocida por sus actividades en pro de facilitar el empadronamiento y registro de inmigrantes en situación irregular. Su detención habría sido ordenada por la Subdelegación del Gobierno en razón de acusaciones de que habría colaborado en la comisión de supuestas irregularidades administrativas en la tramitación de documentación para la legalización de algunos inmigrantes en situación irregular. Según la fuente, dichos hechos, de ser ciertos, habrían sido cometidos con absoluto desinterés y no serían, en todo caso, constitutivos de delito. La detención de la Sra. Bugalho tendría por objeto, según la fuente, sancionar sus actividades en favor de la legalización de las trabajadoras sexuales y de los transexuales inmigrantes y amedrentar a quienes realizan en Galicia un trabajo similar. En vista de lo aquí resumido se teme por la integridad física y psicológica de la Sra. Bugalho.

205. Al respecto, los Relatores Especiales anteriormente mencionados solicitaron información sobre los asuntos siguientes, siempre y cuando fuesen aplicables al caso en cuestión:

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. ¿Fue presentada alguna queja?
3. Por favor, proporcione información detallada sobre las investigaciones iniciadas en relación con el caso, incluyendo los resultados de los exámenes médicos



llevados a cabo. Si éstas no hubieran tenido lugar o no hubieran sido concluidas, le rogamos que explique el por qué.

4. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?

#### **Reply from the Government to the communication sent on 3 June 2009**

206. El 1 de julio de 2009, el Gobierno respondió a la comunicación fechada el 3 de junio de 2009, señalando que efectivamente, la Sra Bugallo fue detenida como consecuencia de su participación en la tramitación de solicitudes de autorización de residencia de cinco ciudadanos extranjeros.

207. En su respuesta, el Gobierno precisó que en concreto, las supuestas falsificaciones para acreditar el requisito de permanencia en España, se refieren a un billete de tren, a un certificado bancario, a dos certificados de empadronamiento, a un certificado de la ONG Cáritas, a un historial clínico y a una analítica hospitalaria. El Gobierno también precisó que la Sra. Bugallo fue acusada de ser la autora material de las supuestas falsificaciones por dos de los inmigrantes participantes en el supuesto fraude, no pudiendo ser localizados los tres restantes por la policía.

208. El Gobierno también señaló en su respuesta que no consta la presentación de queja o denuncia alguna por detención ilegal, ni la presentación de "habeas corpus" por parte de la interesada o su representación legal. Igualmente señaló que no se realizaron exámenes médicos puesto que no fueron necesarios ni tampoco solicitados por la interesada. Finalmente, el Gobierno destacó que el caso está sometido a conocimiento de un juzgado de instrucción en Santiago de Compostela que acordó la libertad con cargos de la Sra. Bugallo, correspondiendo a la Autoridad Judicial la realización de las diligencias oportunas para determinar la veracidad de los delitos de falsedad documental y favorecimiento de la inmigración ilegal que se le imputan.

## **Thailand**

#### **Communication sent to the Government on 2 February 2010**

209. On 2 February 2010, the Special Rapporteur on the human rights of migrants, together with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance sent an allegation letter to the Government as a follow up to the previous communication of 10 November 2009 (Reference *AL G/SO 214 (106-10) G/SO 214 (78-15) THA 10/2009*) on the effects of the nationality verification process on the human rights of migrant workers from Myanmar.

210. According to the information received, on 19 January 2010, the cabinet of the Government approved a resolution for the extension of the nationality verification process and the temporary amnesty of permission to stay in the country by two years, for registered migrant workers who received work permits in 2009, in accordance with the cabinet resolutions of 18 December 2007 (382,541 persons), and in accordance with the Cabinet resolutions of 26 May 2009, 28 September 2009 and 3 November 2009 (a total of 928,149 person).

211. Following this announcement, the deputy director general of the Employment Office, Mr. Suphat Kukhu, has stated that for migrants to benefit from the extension, they must now submit their nationality verification forms by 28 February 2010 and also renew their work permits by that time to be able to stay in the country. The Government will give permission for this group of workers to work temporarily in Thailand but only on the

condition that every worker must enter into the Nationality Verification process and then return to the home country to complete the Nationality Verification process before 28 February 2012. If migrant workers do not submit national verification forms and renew work permits by 28 February 2010, they shall be considered illegal aliens for which the only option is arrest and deportation from the Kingdom of Thailand. The policy affects over one million migrant workers from Myanmar, together with 200,000 workers from Laos and Cambodia.

212. While officials from the Lao People's Democratic Republic and Cambodia will come to Thailand to assist their nationals, Myanmar's Government has reportedly refused to allow its officials to cross into Thailand. Instead, migrant workers from Myanmar must return to their country, and for many, such moves create anxiety amid fears of harassment and extortion by Myanmar officials.

213. The Special Rapporteurs requested information from the Government on the following issues:

1. Are the facts alleged in the above summaries accurate?
2. Please provide details of any measures your Excellency's Government has undertaken to inform migrant communities from Myanmar about the nationality verification scheme, including the procedural steps involved and the rights to which the migrants would be entitled to upon the completion of the process.
3. Please comment on our concerns that migrant workers must agree to enter into the National verification process by 28 February 2010 by submitting their personal information or, for migrants refusing to enter into the nationality verification process, they should be deported from Thailand after 28 February 2010.
4. Please provide details of any measures your Excellency's Government has undertaken to ensure the safety and human rights of migrant workers from Myanmar who participate in the nationality verification scheme, as well as the safety of their family members.
5. Please provide any details of contingency measures your Excellency's Government has planned, should the majority of migrants from Myanmar be unable to comply with the nationality verification process. In particular, kindly provide details of any long-term plans to accommodate Myanmar's migrant workers who are unable to complete the nationality verification process. In addition, please explain what plans are in place to manage the arrival of new migrants from Myanmar under the new bilateral agreements.

#### **Communication sent to the Government on 29 December 2009**

214. On 29 December 2009, the Special Rapporteur on the human rights of migrants, together with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent a joint urgent appeal concerning the forcible repatriation of approximately 4,000 Lao Hmong from Thailand to Laos and risks of torture they may face upon their return.

215. According to the information received, on 28 December 2009, the Thai Government proceeded to return about 4000 Lao Hmong to the Lao People's Democratic Republic under a bilateral agreement with the Lao People's Democratic Republic. The Government announced that the process is expected to be completed before the end of 2009. The persons to be deported include 158 refugees recognized by the United Nations Refugee Agency (UNHCR), held in detention in Nong Kai and a larger group of individuals, held in Huay

Nam Khao camp in Petchabun, to whom UNHCR has not been granted access. Reportedly, in parallel, additional troops of the official Thai army were deployed in Petchabun.

216. The Special Rapporteurs requested the Government's cooperation and observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate? Please specify the exact numbers of Lao Hmong returned and those remaining in Thailand.
2. Please describe the procedures in place to ensure that claims by individual Lao Hmong that they would be at risk of torture if returned to the Lao People's Democratic Republic are independently verified in compliance with the non-refoulement principle.
3. Please describe the procedure in place to ascertain that the persons returned to the Lao People's Democratic Republic are not subjected to ill-treatment upon their arrival there.

#### **Reply from the Government to the communication sent on 29 December 2009**

217. On 12 January 2010, the government replied to the communication sent on 29 December 2009. The government responded that on 28 December 2009, the Thai authorities oversaw the return of 4,350 Laotian Hmongs at Huay Nam Khao in Petchaboon Province and 158 Laotian Hmongs in the IDC in Nong Khai Province to Lao PRD under the framework of the bilateral agreement between Thailand and Laos with due regard to human rights and humanitarian principles. The returnees were provided with adequate food and medical services throughout the return process. Special considerations were given to the needs of women and children. The Thai government also took great care to uphold the principle of family unity and for all those concerned. The return followed assurances given by the Government of the Lao PDR to the Thai Government at all levels, from the leadership to the working level, that legal proceedings will not be undertaken against returning Laotian Hmongs and requests for onward travel by them will be facilitated. Moreover, third countries wishing to resettle some Laotian Hmong returnees would be able to directly discuss details with the Government of the Lao PDR. The Government of the Lao PDR has also given assurances that it will facilitate those Laotian Hmongs wishing to return to their home communities with transportation and initial financial assistance, while housing and other assistance will be provided to those wishing to move to a development village.

#### **Communication sent to the Government on 12 November 2009**

218. On 12 November 2009, the Special Rapporteur on the human rights of migrants and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, sent a letter of allegation concerning the alleged exploitation of and systematic discrimination against migrant workers from Myanmar in Thailand, particularly with respect to: (1) The effects of the nationality verification process on migrant workers from Myanmar; and (2) The rights of migrant workers from Myanmar who are injured as a result of workplace accidents.

219. According to the information received, on 21 June 2003, your Excellency's Government and the Government of Myanmar reportedly entered into a *Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on Cooperation in the Employment of Workers*, establishing a nationality verification scheme for irregular migrant workers from Myanmar in Thailand. While these efforts to regularize migrant workers are a welcome step, the scheme has reportedly caused significant confusion in migrant communities. After the initial verification process began, which reports suggest was in mid-2009, many migrant workers

have expressed confusion about the complexities of the registration process and the rights to which they would be entitled once their nationality had been verified.

220. The nationality verification scheme reportedly requires all registered migrant workers from Myanmar in Thailand to have their nationality verified by means of a complex 13-stage process involving Thai employment offices, the Embassy of Myanmar in Thailand, the Ministries of Foreign Affairs in Myanmar and Thailand, and National Verification and Processing Centres in three border crossings in both Myanmar (Kawthaung, Myawaddy and Tachileik) and Thailand (Ranong, Mae Sot and Mae Sai). In late 2008, your Excellency's Government reportedly announced that no irregular migrants would remain in Thailand after 28 February 2010, as all must complete nationality verification before this date or face deportation. Your Excellency's Government then offered a final 30-day registration period in July 2009 to allow all unregistered migrants to register and complete the nationality verification process. As of early October 2009, we were informed that around 2,000 of approximately 1 million registered migrants from Myanmar eligible for nationality verification have completed this process.

221. Despite the gravity of consequences of failing to complete the nationality verification process, it is alleged that your Excellency's Government has not provided migrant communities from Myanmar with sufficient information about the process, especially in their native languages. In addition, the perspective of the migrant communities appears to be that the deadline set by your Excellency's Government for the completion of the verification process is tight and unrealistic. Furthermore, it has been reported that certain ethnic groups, especially Shan and Mon, are increasingly fearful of providing personal information as part of the process, as they fear that their families will face harassment once this personal information reaches the Myanmar's authorities and that Myanmar's authorities might be using the process to arrest political activists.

222. Further, taking advantage of the lack of public information and clarity on the nationality verification processes, private brokers have allegedly charged migrant workers exorbitant fees for assistance in the paperwork. It has been reported that some migrants were charged more than 7,000 baht (US\$250), which many cannot afford. In addition, it is not clear to migrants as to what these fees cover and whether they need to apply for new work permits at additional costs when they return to Thailand with their temporary passports and visas. There are also reports that in some cases, brokers disappeared without providing services, and there have even been allegations that the nationality verification process may contribute to increasing trafficking in persons. For example, we have received information that migrants going through the nationality verification process at the Mae Sai/Tachilek border crossing are charged exorbitantly high fees with no legal basis.

*Exploitation and Systematic Discrimination Against Migrant Workers from Myanmar*

223. According to information received, migrant workers in Thailand are often exploited by their employers and deprived of access to mechanisms for the protection of labour rights, given their "illegal" status. In particular, we have received information which raises particular concerns about the rights of migrant workers who are injured or disabled as a result of workplace accidents. Migrant workers from Myanmar are reportedly denied access to the Social Security Office ("SSO") Workmen's Compensation Fund ("WCF") in the event of workplace accidents, although the WCF should be available to all workers in the case of work-related accidents and disease.

224. The refusal to allow migrant workers from Myanmar access to the WCF apparently results from their inability to satisfy conditions stipulated in circular RS0711/W751, issued by the SSO on 25 October 2001. These conditions provide that to obtain compensation directly from the WCF, migrants: (a) must possess a passport or alien registration documents; and (b) their employers must have registered for and paid a dividend into the

WCF. According to the information received, many migrants from Myanmar cannot satisfy these conditions, as they originally entered Thailand without documentation, or at best only possess one-year work permits, which are not accepted in lieu of passports or alien registration documents. The circular provides that if workers concerned cannot satisfy these conditions, their employers are responsible to compensate them directly. It has also been reported, however, that migrant workers from Myanmar rarely receive work accident compensation from their employers, as they are often not in the position to negotiate with them. Similarly, migrants often do not approach the SSO, due to the lack of knowledge about their rights. Even in few cases where the SSO orders employers to pay compensation to migrant workers, such orders are usually ignored and remain unenforced, as legal assistance necessary to enforce such orders is rarely accessible to migrant workers, because of language constraints and the lack of legal aid services. In that regard, the following individual cases were reported:

(a) Ms. Nang Noom Mae Seng, a 37 year old migrant worker from Shan State, Myanmar, was injured while working for Nai Wirat Mangkhon, a subcontractor of Link Innofa Properties Co. Ltd. and Wo Hup Company (Thailand) Ltd., at the Shangri-la Hotel construction site in Chiangmai, Thailand. On 4 December 2006, a 300 kg mould fell from the 12<sup>th</sup> floor of the building and a piece of the shattered mould struck Nang Noom who was working on the 2<sup>nd</sup> floor. As a result, Nang Noom suffered extensive injuries and was rendered permanently disabled by 70 percent. Her legs are paralysed and she will never be able to walk again. On 27 April 2007, the SSO in Chiangmai ordered her employer to pay 6,206.20 baht for the time she was unable to work and for the period when she received medical treatment (from 4 December 2006 to 20 February 2007). On 20 July 2007, the SSO ordered again to her employer to compensate Nang Noom in the amount of 2,418 baht a month over 15 years, in addition to the medical treatment costs not exceeding 35,000 baht. Nang Noom appealed these orders to the WCF Appeals Committee on the basis that she is entitled to lump sum compensation from the WCF pursuant to the Workmen's Compensation Act 1994. On 10 November 2007, while Nang Noom's employer agreed to pay lump sum compensation in the amount of 362,796 baht, they unfairly dismissed Nang Noom. In addition, the SSO has reportedly refused Nang Noom rehabilitation assistance. On 24 November 2007, the appeal to the WCF Committee was rejected on the grounds that RS0711/W751 provides that only migrant workers entering Thailand legally could directly access the WCF. This decision was further appealed to the Region 5 Labour Court and then to the Supreme Court on 29 August 2008. The case is pending and yet to be assigned a hearing date.

(b) Nang Noom has also been involved in several attempts, alongside other migrants, to challenge the SSO's policy in the administrative courts. It has been reported that on 27 November 2008, the Supreme Administrative Court of Thailand refused jurisdiction in her case on the basis that it was a labour case. Nang Noom and other migrants then proceeded to challenge the SSO circular in the Central Labour Court, which, on 25 May 2009, accepted jurisdiction over the case. The case, however, was then dismissed by the Region 5 Labour Court on 21 September 2009. The court refused to consider the legality of the SSO circular on the ground that the plaintiffs had no standing to petition the court. The case is now pending in the Supreme Court. It is noted that over a 2 year period, 4 different courts have reportedly refused to consider the validity of the SSO circular and/or to invalidate the circular on legal and jurisdictional grounds.

(c) Mr. Sai Htun, a 17 year old unregistered migrant worker from Shan State, Myanmar, worked for Nai Manas Promdaen on a local government flood defense project in Mae Rim district of Chiangmai Province, Thailand. On 20 June 2007, the riverbank collapsed on him and he died of brain injuries in a Chiangmai hospital on

24 June 2007. When Sai Htun's relatives claimed compensation immediately after his death, the employer told them that unregistered workers had no right to accident compensation under Thai law. Sai Htun's family was assisted for several years to pressure the SSO in Chiangmai to issue an order in his case. Finally, on 9 June 2009, SSO Chiangmai issued an order against Nai Manas and the contractor of the flood defense project, whereby: (a) The person(s) who organised the funeral for Mr. Sai Htun was entitled to 100 times his daily salary prior to his death in compensation; and (b) dependents of Sai Htun, in accordance with the definition in the law, were entitled to compensation for 8 years at 60% of his daily salary prior to his death. The order did not, however, state who the entitled persons were, despite the fact that the SSO apparently received an abundance of documents on the case, in Thai, Burmese and English. On 14 July 2009, dependents of Sai Htun appealed this SSO decision to the WCF Committee, arguing that the SSO should name those entitled to compensation based on the documents already provided, and that the WCF should pay compensation in one lump sum to Sai Htun's dependents, and not his employer. The appeal is pending to date. On 3 September 2009, following extensive negotiations in Region 5 Labour Court on a separate damages claim by Sai Htun's family, it is reported that an agreement was endorsed by this Court whereby Sai Htun's employer and the contractor of the flood defense project agreed to pay his mother and father 210,000 baht of compensation, with the first payment due to be transferred electronically on 4 October 2009. The agreement was reached on the basis that all SSO cases against the employer and the contractor as well as appeals were withdrawn. It is reported, however, that the employer or the contractor did not disburse the payments as scheduled on 4 October 2009. Sai Htun's relatives claim that they still have to receive compensation for his death.

(d) Mr. Nai Khek Booma (or Ou Kin Zo), a 44 year old migrant worker of Mon ethnicity from Myanmar, entered Thailand in 1998 with his wife. In April 2008, Nai Khek and his family began working at Roongsri Thanawat Co. Ltd, in Naknom Pathom, which produced show soles, shoes, crepe rubber and foam boxes. He was paid 150 baht per day, which was below the minimum wage of 203 baht in this province. The conditions in the workplace were very dangerous and there was no personal protection equipment. On 9 June 2008, his right hand was cut off when he tried to place a 30 kg crepe rubber into a machine. On 30 July 2008, Nai Khek complained to the SSO in Nakhon Pathom and requested compensation for his injury. On 1 December 2008, the SSO issued compensation order No 3/2551 to his employer to pay medical expenses, 60 percent of Nai Khek's salary during the period he was unable to work, and 3166.80 baht per month for the loss of an organ for 112 months in the total amount of 354,681.60 baht. On 25 December 2008, Nai Khek went to SSO to negotiate this order with his employer and his employer offered to make a single payment of 70,000 baht or pay compensation periodically for 112 months, as per the SSO's order. He refused this payment and instead appealed the order to the WCF Committee requesting a single one-off payment from the WCF. On 10 July 2009, the WCF Committee rejected Nai Khek's appeal on the basis of the SSO Circular RS0711/W751, but ruled that he had the right to rehabilitation and ordered his employer to pay for rehabilitation. From 1 December 2008 to the present, Nai Khek's employer has paid him, as per the SSO order, 3,166.80 baht per month. However, he and his family live now in poverty and want to return home. Despite requests to the SSO, officials have allegedly refused to assist Nai Khek to receive his monthly payments back in Myanmar, insisting instead he travels himself, at the cost of 500 baht per trip, to pick up his compensation every month at the SSO office in Nakhon Pathom. Given the loss of his right hand, Nai Khek cannot work and the SSO has reportedly refused to allow him access to rehabilitation under the SSO schemes. At least three workers in the same factory as

Nai Khek have had accidents and have been refused any compensation by their employer. Instead, they were dismissed by their employer and then deported back to Myanmar without compensation.

(d) Mr. Nai Yuu, a 39 year old migrant worker from Myanmar, entered Thailand in 2001. In August 2008, he started to work for a shoe factory making soles for 300 baht per day in Mahachai, Samut Sakorn Province. On the second day at work, his left hand was cut by a rubber machine, as he tried to push the crepe rubber inside it. All of his fingers were amputated from his left hand. On 10 September 2008, Nai Yuu complained to SSO Samut Sakorn and requested compensation for his injury. SSO did not reportedly take any action, as they did not know the company or the name of the employer and said Nai Yuu had not provided appropriate medical evidence. Nai Yuu has not yet received any compensation and SSO Samut Sakorn has not issued an order in his case, despite having all the required medical evidence. SSO has reportedly not provided any rehabilitation assistance to Nai Yuu.

(e) Mr. Nai Jam (or Aung Ngwe Ton), a 35 year old migrant worker from Myanmar, arrived in Thailand in 2001. On 23 February 2008, he started working for S.B.L. Industrial Co. Ltd and received 203 baht per day for placing iron in and out of a machine. On 3 August 2008, while he was taking the iron out, his fingers were cut off by the machine. His employer paid him 9,000 baht as compensation during the period in which he was unable to work. On 10 October 2008, Nai Jam complained to the SSO Samut Sakorn, but the SSO did not reportedly take action for a long time on the basis that officials did not know the company or the name of the employer and that Nai Jam's name was spelt incorrectly on the hospital certificates. Nai Jam requested that his employer compensate him approximately 200,000 baht in accordance with the law, but he has never received any compensation, except for the 9,000 baht. He is currently unemployed and has been arrested three times by the police since the accident due to his status as an undocumented migrant worker. On 29 September 2009, SSO Samut Sakorn issued an order in Nai Jam's case, ruling that: (1) Nai Jam should receive compensation for the time he was unable to work of 3166.80 baht (60% of his pre-accident salary), not exceeding one year; and (2) Nai Jam should receive compensation for the loss of his fingers at 3166.80 baht for a period of 64 months, or in total 202, 675.20 baht; and (c) Nai Jam's employer must pay all medical expenses. It is alleged that Nai Jam's employer continues to refuse to pay him any compensation and he is living in poverty. The SSO has reportedly never provided Nai Jam with any rehabilitation assistance.

(f) Ms. Nang Saw Wai (or Ka Zing), a 23 year old migrant worker from Myanmar, entered Thailand in 2003. In January 2008, she started to work at a factory in Samut Sakorn province for 175 baht per day, although the minimum wage in this province was 203 baht. Her job was to put plastic sacks into a grinding machine. On 8 January 2008, the forefinger and middle finger of her right hand were cut off by the grinding machine. Her employers, Don and Lee, agreed to pay her some money as compensation, but she claims she has not received it yet. Nang Saw Wai complained to the SSO Samut Sakorn, but SSO did not reportedly respond to the complaint. When the SSO officials visited the employers, the factory had then been moved and it was no longer possible to trace them. When one of the employers, Lee, was located, he refused to acknowledge that Nang Saw Wai was ever his employee. To date, Nang Saw Wai has not received any compensation and the SSO has reportedly never provided her with any rehabilitation assistance.

225. The Special Rapporteurs requested the Government's cooperation and observations on the following matters:

1. Are the facts alleged in the above summaries accurate?

2. Please provide details of any measures your Excellency's Government has undertaken to guarantee the safety of migrant workers from Myanmar who participate in the nationality verification scheme, as well as the safety of their family members.
3. Please provide details of any measures your Excellency's Government has undertaken to inform migrant communities from Myanmar about the nationality verification scheme, including the procedural steps involved and the rights to which the migrants would be entitled to upon the completion of the process.
4. Please provide details of any measures your Excellency's Government has undertaken to regulate private brokers who offer services to migrant workers from Myanmar who are subject to the nationality verification scheme.
5. Please provide any details of contingency measures your Excellency's Government has planned, should the majority of migrants from Myanmar be unable to comply with the nationality verification process. In particular, please provide details of any long-term plans to accommodate Myanmar's migrant workers who are unable to complete the nationality verification process. In addition, please explain what plans are in place to manage the arrival of new migrants from Myanmar under the new bilateral agreements.
6. Please provide full details of the current legal framework, regulations and policies which apply to migrant workers who become victims of workplace accidents. Please provide details of any measures or steps your Excellency's Government has 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.
7. Please provide details of any measures your Excellency's Government has undertaken to ensure that the migrant victims or the families of the migrant victims of workplace accidents have access to adequate procedures for receiving compensation and/or rehabilitation.

**Communication sent to the Government on 26 August 2009**

226. On 26 August 2009, the Vice-Chairperson Rapporteur of the Working Group on Arbitrary Detention, Special Rapporteur on the human rights of migrants, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Special Rapporteur on extrajudicial, summary or arbitrary executions, and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent a joint urgent appeal concerning a group of individuals from the Rohingya minority of Myanmar currently in immigration detention in Thailand.

227. According to the information received, on 1 July 2009, Abdul Salam deceased at the age of 18 at the Ranong IDC after suffering from heart failure. On 13 August 2009, Hammah Tullah, 15 years of age, also died while in detention at the Ranong IDC. In both cases, the rapid deterioration of their health might be due to the inadequacy and inefficiency of healthcare being provided to them during the entire period of their detention and particularly during the hours preceding their deaths. A third person is reportedly in a critical medical condition.

228. Following these deaths, all remaining individuals from the aforementioned Rohingya minority group have been transferred to the Suan Plu IDC in Bangkok. It has also been reported that irregular immigrants in Thailand face potentially indefinite administrative immigration detention.



229. The Special Rapporteur requested the Government's cooperation and observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of the investigations, and judicial or other inquiries carried out in relation to the deaths of Abdul Salam and Hammah Tulah.
3. Please provide information concerning the health conditions of the remaining individuals from the aforementioned Rohingya group and the steps being taken to ensure that their well being and physical integrity is protected and that their right to health is fully enjoyed.
4. Please indicate the legal basis for the arrest and detention of the above named individuals and how these measures are compatible with applicable international human rights norms and standards as stipulated, inter alia, in the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.

**Reply from the Government to the communication sent on 26 August 2009:**

230. On 17 November 2009, the Government replied to the communication sent on 26 August 2009. The Government stated that Thailand has taken care of the group of 78 Rohingyas based on humanitarian considerations. The Government allowed relevant embassy representatives and staff from the Office of the United Nations High Commissioner for Refugees (UNHCR) to visit and talk to this group of persons earlier in 2009. With respect to the death of Mr. Abdul Salam and Mr. Hammah Tulah, the post mortems have suggested that the causes of death were cardiac arrest. On a humanitarian basis, the Immigration Bureau moved all the Rohibgyas to the IDC in Bangkok to allow them more space for exercise and recreation, as well as better access to medical care. The Government stated that this move would also make it easier for UNHCR and other relevant NGOs to access this group of people. The Government had no intention of detaining them indefinitely and steps were being taken to verify their nationality and country of origin and provide a lasting solution for them.

**United Arab Emirates**

231. On 16 November 2009, the Special Rapporteur on the human rights of migrants together with the Special Rapporteur on trafficking in persons, especially women and children sent a joint allegation letter concerning Ms. Fatima Zahra Moussa, who was an alleged victim of trafficking in persons and had no access to an effective complaint mechanism.

232. According to the information received Ms. Fatima Zahra Moussa, a Moroccan national, submitted a case of alleged trafficking in persons to the NCCHT through the official website of the NCCHT in May 2009. In this case, Ms. Moussa claimed that she was trafficked to and within the United Arab Emirates by her former employers, the Emirates Centre for Strategic Studies and Research ("ECSSR") and the Dubai Chamber of Commerce and Industry ("DCCI").

233. Ms. Moussa was first offered a position of Editor by ECSSR on 25 July 2005. Upon arrival in Abu Dhabi, she surrendered her passport to ECSSR for the duration of her one year contract, which was stipulated to be part of the employment conditions. She was informed that it was possible for her to have her passport back as and when necessary. The employment conditions also stipulated that 10 percent of her salary would be withheld each

month. The sum withheld would be accumulated and subsequently paid back at the end of the year. She was informed by ECSSR that this was a standard practice in the UAE.

234. On 19 July 2006, after having worked one year for ECSSR, she was requested to renew her contract for another year. Although she refused to sign the contract, she was allegedly forced to do so, as personnel of the Human Resource Department of ECSSR allegedly intimidated her and told her that she would not be allowed to leave the room unless she signed. Allegedly, she had no option but to sign it, particularly because ECSSR was in possession of her passport at the time and she feared for ECSSR's retaliation. She contacted the Ministry of Labour in Abu Dhabi and informed them of ECSSR's practice, but the Ministry did not assist her on the basis that it only deals with cases of employees working for private companies.

235. On 16 January 2007, Ms. Moussa submitted a letter of resignation to ECSSR. She was informed that her resignation would be approved after she submitted a clearance letter from the bank confirming that she has no outstanding loans or debts. After she submitted the clearance letter to ECSSR, however, ECSSR allegedly cancelled Ms. Moussa's residence permit without complying with a requirement to pay her back the accumulated salaries owed to her. It then filed a criminal complaint against her at Al Shaabiyah police station in Abu Dhabi to evict her from the accommodation which belonged to ECSSR and to expel her from the UAE. She alleges that ECSSR did this to harass her and to retaliate against her.

236. In Abu Dhabi Court of first instance, she was fined 2,000 UAE dirhams in the case filed by ECSSR. She sought to appeal against this decision and went to the Abu Dhabi Public Prosecution office. While she was waiting to see the Chief Public Prosecutor in the office, it is claimed that two police officers suddenly handcuffed her and aggressively dragged her until another police officer intervened to stop them. While the police officer apologized for the mistreatment, he allegedly insisted that she pay the fine of 2,000 dirhams immediately. She paid the fine, so that she could leave the office. Subsequently, one of the two police officers filed a case against her on the basis that she insulted the police officer during the course of her duties. When she reported to the police station for questioning, she was arrested and put in jail. She was released only after a colleague came to the police station and left his passport as a guarantee. In Abu Dhabi Court of first instance, she was again fined 2,000 UAE dirhams, which she was allegedly forced by the police to pay on the same day. In both cases, there appeared to be no investigations and Ms. Moussa did not have a lawyer.

237. On 20 March 2007, Ms. Moussa was offered a position of business editor with DCCI. She was required to surrender her passport to DCCI as a guarantee to receive housing allowances, although this was not stipulated as part of the employment conditions. Ms. Moussa complained to the Ministry of Labour in Dubai about this practice, but the Ministry did not offer her any assistance. On 17 July 2007, she was dismissed by DCCI without any satisfactory explanations for the dismissal. Following the dismissal, DCCI issued an absconder notice against Ms. Moussa on 28 July 2007. On 26 August 2007, she departed the UAE and the absconder notice is still in effect to date.

238. Ms. Moussa submitted a complaint to the NCCHT, alleging that ECSSR and DCCI trafficked her. The NCCHT registered her case under the reference number NC000032. Ms. Moussa also called the NCCHT and provided further details of her case. She claims that she was informed during the telephone conversation that her case would be referred to the Public Prosecution without delay. However, on 7 June 2009, she was informed by the NCCHT by email that her case would not be reviewed as its official website cannot be used to notify the NCCHT about individual cases of human trafficking. This is contrary to the information publicly released by the National Media Council on 13 May 2009 that the official website of the NCCHT features an "important interactive feature "Contact Us" that

allows contact with officials via email, thus enabling users to send complaints and notify the committee about cases related to human trafficking”. While Ms. Moussa sought explanations from the NCCHT of its refusal to handle her case, it is alleged that the NCCHT has not responded to her request to date.

239. Moreover, under the “Contact us” page of the NCCHT webpage, it is stated that “[c]omplaints filed through this channel will not be processed”, in contradiction with the information released by the NCCHT in the mentioned official press release of 13 May 2009 related to the creation of its website.

240. The Special Rapporteurs requested the cooperation and observations of the Government on the following matters:

1. Are the facts alleged in the above summary of the cases accurate?
2. Please provide the details of how the NCCHT considered Ms. Moussa’s case and elaborate the ground(s) on which the NCCHT determined not to respond to Ms. Moussa’s case.
3. Please clarify and provide information on the current framework for reporting potential cases of human trafficking to the authorities in the United Arab Emirates. In particular, what specific measures have been adopted to provide victims with an easily accessible way to submit complaints and obtain assistance or redress? What is the role of the NCCHT and its website in this regard?
4. Please provide information on the measures taken by your Government to prevent trafficking and violations to the rights of migrant workers, in particular their being held in forced labour and services including practices similar to slavery and servitude such as surrender of passports to employers.
5. Please provide information on the implementation in the United Arab Emirates of the right to consular protection in cases involving migrants.

**Reply from the Government to the communication sent on 16 November 2009:**

241. On 23 April 2010, the government replied to the communication sent on 16 November 2009. The response will be available in the next communication report to be issued by the Special Rapporteur on the Human Rights of Migrants as it is being translated from Arabic into English.

**Uzbekistan**

**Communication sent to the Government on 20 November 2009**

242. On 20 October 2009, the Special Rapporteur on the human rights of migrants together with the Special Rapporteur on trafficking in persons, especially women and children, the Special Rapporteur on the sale of children, child prostitution and child pornography, and the Special Rapporteur on contemporary forms of slavery, sent a joint urgent appeal concerning an Uzbek boy who has been trafficked to Kazakhstan to work in a forced labor situation and whose whereabouts are currently unknown.

243. According to information received: Mr. **B.I.**, aged 17, is a resident of the Khiva town of the Khorezm region, Uzbekistan. In May 2008, B.I and four young Uzbek men were recruited by Mr. Bakhtiyor Bekchanov, a citizen of Uzbekistan aged 56, to travel to Kazakhstan as labor migrants. Mr. Bekchanov promised them and their parents that he would take care of their employment in Kazakhstan. He also assured them that being the oldest in the group, he would look after the young men during their stay in Kazakhstan.

244. Upon their arrival in Kazakhstan, the young men were taken to a house of Mr. Nurlibek Mamatov, located in Zhalagash aul, Kizil-Ordinski oblast. Mr. Mamatov is a citizen of Kazakhstan and a member of the local council in Zhalagash aul. Mr. Bekchanov received \$5,000 from Mr. Mamatov in exchange of the young men and handed over their passports to Mr. Mamatov before he disappeared. The young men were forced to carry out a variety of work in Mr. Mamatov's house, including construction work. They were forced to work under harsh conditions and without appropriate food and compensation. Approximately two months after the young men left for Kazakhstan, Mr. Bekchanov appeared in Khiva. B's mother went to see Mr. Bekchanov to ask how her son was. Mr. Bekchanov assured the mother that all the young men were well and that they would soon be sending money they earned in Kazakhstan. However, B's mother never heard from her son, as all the young men were not given any opportunity to contact their families in Uzbekistan. The young men except B. eventually managed to escape the house and return to Khiva.

245. In December 2008, B's mother lodged an appeal to the Department of Internal Affairs in the Khiva district and to the Embassy of the Republic of Kazakhstan in Uzbekistan to search for her son. However, she did not receive any responses from the authorities. Concerned for her son's safety and desperate to find him, on 12 June 2009, she travelled to Mr. Mamatov's house in Zhalagash aul, Kizil-Ordinski oblast by her own means. When she arrived at Mr. Mamatov's house, he shouted at her in the Kazakh language, throwing the passports of the young Uzbek men who were forced to work in his house. He told her that B. was taken by a Police Major named "Abdurakhmon" from Shimkent city in Yuzhno-Kazakhstanskaya oblast.

246. It has been reported that Mr. Bekchanov has deceived a number of individuals from the Khorezm region in a similar manner and the Department of Internal Affairs in the Khiva district commenced criminal proceedings against him under Article 135 of the Uzbek Criminal Code (Human Trafficking). However, Mr. Bekchanov has not been apprehended and the whereabouts of B. are unknown to date.

247. The Special Rapporteurs requested the Government's cooperation and observations on the following matters:

1. Are the facts alleged in the above summary of the cases accurate?
2. Please provide the full details of any actions or measures undertaken to identify the whereabouts of Bekzod Ikramov and to ensure his safety and protection.
3. Please provide the full details of the progress of the prosecution undertaken against Mr. Bakhtiyor Bekchanov. Further, please provide the details, and where available the results, of any other investigation, judicial or other inquiries which may have been carried out in relation to this case.
4. Please provide information on the measures taken to ensure rehabilitation and reintegration of the four young Uzbek men who managed to escape from the house of Mr. Nurlibek Mamatov.
5. Please indicate whether the victims or the families of the victims have access to adequate procedures of compensation for damages from those legally responsible.
6. Please provide information on the current policies and the preventive and awareness raising measures taken to tackle the issue of human trafficking in Uzbekistan.
7. What action is the Government taken to address the root causes of trafficking such as poverty and high youth unemployment?

**Reply from the Government to the communication sent on 20 October 2009:**

248. On 25 November 2009, the Government replied to the communication sent on 20 October 2009. In summary, the Government stated that: on 26 December 2008 the investigative section of the Department of Internal Affairs of Khiva district instituted criminal proceedings against B. Bekchanov under article 135, paragraph 3, of the Criminal Code of the Republic of Uzbekistan. The basis of the investigation was the alleged deception of Bekzod Ikramov, Ikrom Nosirov, Kuranba Babazhanov, Atabek Dzhabbergenov, Abdul Abdullayev, Ravshanbek Palvanov and Shabkat Baltayev, citizens of the Republic of Uzbekistan, by gaining their trust and promising monthly wages of US\$ 500 and inveigled them into leaving the territory of the Republic of Uzbekistan and going to the Kyzyl-Ordinsk province of the Republic of Kazakhstan, where he forced them to work in various places without pay. By a decision of the investigator of 20 January 2009, B. Bekchanov was charged (in his absence) under article 135, paragraph 3, of the Criminal Code of the Republic of Uzbekistan. On 8 November 2009 Bakhtiyar Bekchanov was arrested and placed in remand centre No. 6 in Urgench. As a result of the measures taken, the whereabouts of Bekzod Ikramov were ascertained and Bekzod Ikramov returned to Uzbekistan on 8 November 2009 and he is now living with his parents in the district of Khiva.

249. After returning to their homes in the Republic of Uzbekistan, the other victims K. Babazhanov, A. Dzhabbergenov, R. Palvanov and S. Baltayev underwent medical examinations and were not found to be suffering from any illnesses. They were therefore offered work by the job centre.

250. The Government has taken steps to improve national legislation to counter and combat trafficking in persons. The Act on countering the trafficking in persons was adopted on 17 April 2008, which is in conformity with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Pursuant to this law, the Government approved a national plan of action to boost the effectiveness of the fight against trafficking in persons for the period 2008–2010. As part of the implementation efforts, the Cabinet adopted a resolution on 5 November 2008 to set up a 30-bed national rehabilitation centre to assist and protect victims of trafficking in persons. On 26 February 2004, the Ministry of Internal Affairs established a special unit to counter human trafficking in the central department for criminal investigation and counter-terrorism. The unit has local sub-units comprising field agents from the crime prevention service. The Ministry of Internal Affairs has also formulated and issued guidelines on the investigation of offences linked to human trafficking.

251. In order to stop clandestine labour migration, the Ministry of Labour and Social Welfare provide advice on the labour and migration laws of the countries of most frequent destination from the Centre for Pre-departure Adaptation and Training and the Agency for Foreign Labour Migration of the Ministry of Labour and Social Welfare. The Ministry also issued booklets on these issues.

252. The Government also conducted awareness-raising campaigns to disseminate information about risks of human trafficking through mass media. Special advertisements are shown on national and local television channels. Clips and broadcasts are prepared and articles are published in periodicals. The causes of human trafficking and circumstances promoting it are discussed in direct contacts with the population. Banners have been hung up, posters have been placed on hoardings in all regions of the country and booklets on these issues have been distributed to the population. To date 1,438 banners and 325,128 posters have been put up and 3,980,000 booklets have been distributed in an endeavour to prevent crimes and offences related to human trafficking and to increase the population's

awareness of the means and methods used by malefactors engaged in this kind of criminal activity.

253. In addition, a series of seminars, round tables, conferences and training sessions on ways of combating human trafficking and improving support for the victims of these crimes have been held for the staff of government bodies, law enforcement agencies and courts, the education system, the health, labour and welfare services, migration and border services and also representatives of community organizations.

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