



## General Assembly

Distr.  
GENERAL

A/HRC/4/29/Add.1  
15 March 2007

ENGLISH / SPANISH

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HUMAN RIGHTS COUNCIL  
Fourth session  
Agenda item 2

### **IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”**

**Report of the Special Rapporteur on the right to education, Vernor Muñoz**

#### **Addendum**

**Summary of communications sent to and replies received from Governments  
and other actors, 1st January 2006 to 11 January 2007\***

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\* The reason for the late submission of this report is to reflect the latest information.

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## Introduction

1. This is the first time that the Special Rapporteur on the right to education issues a report regarding the communications he has sent to States Members on matters related to his mandate.
2. The Special Rapporteur receives information alleging violations of the right to education and related rights from national, regional and international non-governmental organizations (NGOs), as well as intergovernmental organizations. The Special Rapporteur responds to information received and considered to be reliable on alleged violations of the right to education, by writing to the Government and others actors concerned, either together with other special procedure mandates or independently, inviting comment on the allegation, seeking clarification, reminding them of their obligations under international law in relation to the right to education and requesting information where relevant, on steps being taken by the authorities to redress the situation in question. The Special Rapporteur urges all Governments and other actors to respond promptly to his communications and, in appropriate cases, to take all steps necessary to redress situations involving the violation of the right to education.
3. This addendum contains, on a country by country basis, summaries of communications sent by the Special Rapporteur, on the basis of information he has received, to Governments. These include letters of allegation, as well as replies received by the Special Rapporteur and his observations for the period 1 January 2006 to 11 January 2007. To the extent that his limited resources permit, the Special Rapporteur continues to follow up on communications sent and to monitor the situation where no reply has been received or where questions remain outstanding.
4. The Special Rapporteur draws attention to the fact that the issues reflected in this addendum are not representative of the wide range of issues encompassed by the right to education. During the period under review, the Special Rapporteur sent a total of seven communications to seven Member States. At the time of submitting the present report the Special Rapporteur had received responses from the Governments of Chile, China, Poland and Romania. The reply from the Government of China was not able to be translated in time, so it will be reflected in future reports to the Council.
5. The Special Rapporteur would like to thank the Governments that responded for their replies and would like to urge the Governments that have not yet responded to do so as soon as possible.
6. Finally, the Special Rapporteur would like to thank the Governments that have responded to the questionnaire he sent regarding the implementation of the right to education of persons with disabilities. At the time of submitting this report the following countries have sent their responses: Argentina, Austria, Bangladesh, Brazil, Colombia, Costa Rica, Croatia, Cuba, Denmark, Dominican Republic, Estonia, Germany, Grenada, Guatemala, Islamic Republic of Iran, Iraq, Japan, Jordan, Mauritius, Mexico, Monaco, Morocco, New Zealand, Philippines, Poland, Portugal, Russian Federation, Saudi Arabia, Serbia, Slovakia, Spain, Sri Lanka, Turkey and Ukraine. Likewise, the following agencies and international organizations have responded to the questionnaire: Office of the United Nations High Commissioner for Refugees (UNHCR),

United Nations Population Fund (UNFPA), United Nations Educational, Scientific and Cultural Organization (UNESCO) and MDAC.

## **Burundi**

### **Communications to the Government**

7. On 18 December 2006 the Special Rapporteur sent a joint communication with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, concerning a fifteen year old boy who is currently detained at Prince Regent Charles Hospital in Bujumbura.

8. According to the information received he was injured in July 2004, and was admitted to Prince Regent Charles Hospital in Bujumbura where he spent a year undergoing surgery and treatment. In July 2005 he was declared well enough to leave the hospital. However, it is alleged that he has been detained ever since because his mother has not been able to pay the hospital charges, which, according to an estimate made in October 2006, amount to BIF 3,050,065 (about US\$ 2891).

9. According to the report, the young boy has missed more than a year of school as a consequence of his detention in the hospital after he was declared medically able to leave. It is further alleged that detention in hospitals due to non-payment of hospital charges is a fairly widespread practice in Burundi.

### **Observations**

10. The Special Rapporteur regrets that at the time this report was finalized, the Government had not transmitted any reply to his communication.

## **Chile**

### **Comunicaciones enviadas al Gobierno**

11. El 1 Junio de 2006 el Relator Especial envió una comunicación con relación a la movilización estudiantil, en once de las trece regiones del país, para un acceso mejorado y más igualitario en la educación, además de mejores condiciones de educación.

12. Según la información recibida, en el marco de manifestaciones de personal docente, profesores, estudiantes y agrupaciones de padres pidiendo la modificación de la Ley Orgánica Constitucional de Enseñanza (LOCE) se produjeron varios incidentes entre manifestantes y fuerzas públicas que resultaron en la detención de más de 730 personas entre los cuales se encuentran estudiantes y alumnos de educación secundaria, menores de edad, y también en varias personas heridas y lesionadas. Según la misma información recibida, al parecer tres escolares reportaron abusos sexuales por funcionarios de carabineros.

13. El Relator Especial llamó la atención del Gobierno sobre la Convención sobre los Derechos del Niño y sobre el Pacto Internacional de Derechos Económicos, Sociales y

Culturales, en el cual se afirma “el derecho de toda persona a la educación que debe orientarse hacia el pleno desarrollo de la personalidad humana y del sentido de su dignidad, y debe fortalecer el respeto por los derechos humanos y las libertades fundamentales”, y el hecho de que la educación debe “capacitar a todas las personas para participar efectivamente en una sociedad libre”. Además, el Pacto y la Convención reconocen que la educación primaria debe ser obligatoria y asequible a todos gratuitamente; las enseñanzas secundaria y superior deben ser generalmente accesibles a todos, por cuantos medios sean apropiados, y en particular a través la implantación progresiva de la enseñanza gratuita.

14. El Relator Especial solicitó al Gobierno que aclarara los hechos mencionados, en particular sobre la veracidad de los mismos, sobre si se presentó alguna queja y sobre las acciones que habrían sido adoptadas en respuesta. Asimismo, el Relator Especial solicitó al Gobierno que indicara qué iniciativas sustantivas se estarían desarrollando para atender las peticiones de los y las estudiantes.

### **Comunicaciones recibidas**

15. Mediante comunicación de Carabineros de Chile del 21 de noviembre de 2006, el Gobierno de Chile proporcionó información relativa a los hechos arriba mencionados. En lo referente a la veracidad de los mismos, indicó que durante el mes de mayo de 2006 se llevó a cabo en diferentes ciudades del país una serie de manifestaciones organizadas por estudiantes de enseñanza secundaria, consistentes en marchas, tomas de colegios, protestas callejeras y otras acciones pacíficas tendientes a expresar el malestar e inquietudes del sector estudiantil ante diversos temas relacionados con su quehacer. Asimismo, en dicha respuesta se indica que con el pasar de los días las manifestaciones se hicieron más masivas, lo que impidió que sus organizadores tuvieran el control del estudiantado, lo que facilitó la participación de antisociales que utilizaron las marchas para la realizar acciones delictivas. En consecuencia la policía intervino arrestando a numerosos estudiantes y otros sujetos imputados de diversos delitos. Asimismo, se informa de que la Asociación de Padres y Apoderados de Santiago dirigió una nota de reclamo al Director General de Carabineros, formulando un reclamo en contra del personal de dicho organismo, alegando entre otros, supuestos abusos de poder y agresiones desmedidas.

16. De otra parte, en lo referente a las acciones adoptadas, el Gobierno informó de que en lo que corresponde a los Carabineros de Chile, se instruyen causas en diversas Fiscalías Militares del país respecto de los excesos policiales y las violencias innecesarias, pero que aún no se conocen los resultados de dichas investigaciones.

17. En cuanto a la situación de los tres escolares que habrían sido objeto de supuestos abusos sexuales por parte de funcionarios de Carabineros, el Gobierno indica que dichas acciones fueron investigadas y que se logró establecer que el procedimiento adoptado correspondió al contemplado en la reglamentación interna de la institución, ya que las personas involucradas fueron registradas y revisadas por el personal femenino de Carabineros y luego fueron trasladadas a la Posta de un consultorio médico, constatándose que no presentaban ninguna lesión. Además, el fiscal del Ministerio Público coordinó personalmente todo el procedimiento, entrevistando a cada una de las personas que se encontraban imputadas y en el caso de las menores señaladas, dispuso su entrega a los padres o guardadores. El Gobierno aclaró que dichas investigaciones son administrativas y que el resultado de las investigaciones judiciales se

encuentra aún pendiente. Adicionalmente, se indica que el Ministerio Público abrió una investigación referente a los abusos sexuales, la cual fue acumulada a otra referente a los mismos hechos. Ambas investigaciones fueron remitidas a la justicia militar el 15 de octubre de 2006, puesto que las denuncias de las estudiantes iban dirigidas en contra de los carabineros por actuaciones en servicio.

### Observaciones

18. El Relator Especial agradece al Gobierno las informaciones enviadas. Sin embargo quisiera manifestar su preocupación respecto del hecho de que las investigaciones relacionadas con las acusaciones a los Carabineros estén a cargo de la justicia militar, puesto que ello no es compatible con los estándares internacionales en la materia. Según dichos estándares la competencia de la jurisdicción militar debe restringirse a las actividades específicas que la ley asigna a las fuerzas militares; ello con el fin de garantizar la independencia e imparcialidad del proceso que involucre a miembros de las fuerzas armadas acusados de ciertos delitos<sup>1</sup>. Asimismo, el Relator Especial solicita al Gobierno que se le mantenga informado sobre el avance de las investigaciones administrativas y judiciales relacionadas con los hechos.

## China

### Communications to the Government

19. On 6 October 2006 the Special Rapporteur sent a communication concerning the closing, in Beijing, of various schools for migrant children, in the run-up to the 2008 Olympic Games to be hosted by China.

20. According to the information received, although the newly revised Compulsory Education Law, which came into effect on 1 September 2006, provides for the enrolment of children of migrant labourers in local state-run schools, it is reported that many administrative and financial barriers impede the full and effective implementation of the Law. Concern is expressed that the closure of the unregistered schools would deprive thousands of migrant children of their basic right to education.

21. On 12 July 2006, the Beijing Municipality issued the Notice of the General Office of the Beijing Municipality People's Government on the Work of Strengthening the Safety of Non-Approved Migrant Population Self-Schools, which, inter alia, set 30 September 2006 as the deadline for the "clean up and rectification" of all unregistered schools through "dispersion, standardization and closure". According to the document, 239 unregistered migrant schools in Beijing provide education to more than 90,000 children. It would seem that more than 50 schools

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<sup>1</sup>Ver a título de ejemplo el Informe del Relator especial sobre la independencia de los magistrados y abogados, Leandro Despouy (A/61/384), presentado ante la Asamblea General de las Naciones Unidas en el año 2006. En dicho informe se hace referencia específica al caso de Chile: "En la reciente sentencia *Palamara Iribarne v. Chile*, del 22 de noviembre de 2005, la Corte [Interamericana de Derechos Humanos] reiteró que 'En un Estado democrático de derecho la jurisdicción penal militar ha de tener un alcance restrictivo y excepcional y estar encaminada a la protección de intereses jurídicos especiales, vinculados con las funciones que la ley asigna a las fuerzas militares. Por ello, sólo se debe juzgar a militares por la comisión de delitos o faltas que por su propia naturaleza atenten contra bienes jurídicos propios del orden militar'".

are being closed in implementation of the “Notice”, including extremely popular schools, such as the Weimenkou school of Shijingshan district. It is reported that, in some instances, police forces intervened and those opposed to the closure denounced the brutality of their intervention.

22. The Special Rapporteur referred the Government to the provisions of article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which recognizes the right of everyone to education and states that, to that end, primary education shall be compulsory and available free to all. Therefore, and while States have the right to regulate schools, States have also the obligation to provide all children under their jurisdiction with an adequate education without any discrimination.

23. Furthermore, article 28 of the Convention on the Rights of the Child (CRC) provides for the access to education of children on the basis of equal opportunity, while article 29 (c) states that education should be directed to the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.

24. The Special Rapporteur appealed to the Government of China to seek clarification of the circumstances of the closure of the schools and to ensure that all necessary measures are taken to guarantee that no children are deprived of their fundamental right to education, either by ensuring the re-opening of the closed structures or by ensuring that all concerned migrant children are enrolled in State-run schools.

## **Observations**

25. At the time this report was finalized, the reply of the Government of 26 January 2007 had not been translated.

## **Poland**

### **Communications to the Government**

26. On 27 June 2006 the Special Rapporteur on the right to education and the Special Representative of the Secretary-General on the situation of human rights defenders sent a joint communication concerning Mr. Miroslav Sieltaycki, former director of the National In-Service Training Centre.

27. According to the information received, on 9 June 2006 Mr. Sieltaycki was dismissed from his position as Director of the National In-Service Training Centre by the Minister for Education, Mr. Roman Giertych. It is reported that the reason for his dismissal was due to Mr. Sieltaycki's involvement in the publication and dissemination of a handbook of the Council of Europe entitled, "COMPASS: a Manual on Human Rights Education with Young People". (COMPASS is a non-formal educational tool that is translated in as many as 17 languages and used to educate young people in Council of Europe member States and neighboring countries about human rights issues).

28. The experts expressed their concern that the dismissal of Mr. Sieltaycki may represent a punishment for his legitimate activities in the promotion and protection of human rights, in particular because of his role in the publication and dissemination of the human rights handbook. Further concern was expressed that his dismissal may be an attempt to prevent the dissemination in Poland of educational material that promotes universal human rights and respect for diversity.

29. The mandate holders referred the Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that “everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

30. Furthermore, they brought to the attention of the Government several provisions, and in particular article 12, paragraphs 2 and 3 of the Declaration, which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration, and article 15 of the Declaration that reminds States of their responsibility “to promote and teach human rights and fundamental freedoms at all levels of education”.

31. The experts also referred the Government to the provisions of article 13 of the International Covenant on Economic, Social and Cultural Rights which states that all States parties agree that education shall be directed to the full development of the human personality and the sense of its dignity and shall strengthen the respect for human rights and fundamental freedoms. They further drew attention to article 29 paragraphs (b) and (d) of the Convention on the Rights of Child that provide that the education of the child shall be directed to, inter alia, the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations, as well as the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes and friendship among all peoples.

32. Finally the experts appealed to the Government to seek clarification of the circumstances of dismissal of the former director of the National In-Service Training Centre and to ensure that all necessary measures are taken to guarantee that the rights and freedoms of the aforementioned person are respected.

### **Communications received**

33. In a letter dated 11 January 2007, the Government replied to the communication of 27 June 2006.



34. The Government stated that the National In-Service Teacher Training Centre –(NITTC) is responsible for the teacher training at all levels in Poland and accordingly all documents published by the NITTC should be consistent with the contents of the national curricula. The current curriculum was introduced by the Regulation of the Minister of National Education and Sport of 26 February 2002.

35. It was noted that Compass – ‘a manual on human rights education for young people’, contains chapters related to sexuality, homophobia and sexual orientation. The Government indicated that the contents of the manual were not suitable as a teaching aid and that it was contradictory to the general education curriculum of Poland which conforms with the Constitution of Poland, which protects marriage, defined as a ‘union of a man and a woman’. It was also noted that the English translation of the document differs from the Polish document and that a number of links to Polish gay websites are included in the document.

36. The Government concluded that Mr Sielatycki was responsible for teacher training within the national curriculum and that as Deputy Chairman of the National Committee for the European Year of Citizenship through Education, Mr Sielatycki was in a position to suggest to the Committee that the manual be published without the involvement of the NITTC. Mr Sielatycki was dismissed in accordance with Article 38.1 of the Act on the System of Education.

### **Observations**

37. The Special Rapporteur thanks the Government for its response. However, he remains concerned over the situation of Mr. Sielatycki. In spite of the fact that his dismissal has been decided according to internal legislation, it appears that it does not comply with Poland’s international obligations. Indeed, the inclusion of the Manual on Human Rights Education with Young People into the national curriculum was compatible with the goals pursued by the international human rights law, in particular the International Covenant on Economic, Social and Cultural Rights, that Poland ratified in 1977. The Special Rapporteur urges the Government to reconsider its decision on the matter.

## **Romania**

### **Communications to the Government**

38. On 5 October 2006 the Special Rapporteur on the right to education and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, sent a joint communication concerning reports alleging discrimination and denial of medical care to children living with HIV/AIDS.

39. According to the information received, 7,200 Romanian children and youth aged 15-19, are living with HIV/AIDS. According to the information received, many of them were infected by transfusions of unscreened blood and the use of contaminated needles between 1986 and 1991. They are now facing widespread discrimination that keeps many of them away from obtaining necessary medical attention, attending school or learning about their medical

condition. Fewer than 60 per cent of these children attend school and those who do attend schools being risk abused by teachers, as well as being expelled if their status is revealed.

40. Reportedly, doctors frequently decline to treat children living with HIV/AIDS, and harass them to discourage them from seeking care. Allegedly, the problem is especially acute for children and youth needing emergency care, as well as for those with mental disabilities who lack access to outpatient treatment and whose health would be endangered by the inadequate conditions in many psychiatric facilities.

41. Furthermore, breaches of confidentiality by medical personnel, school officials and government workers are common, and those responsible are not held to account. Breaches of confidentiality may have severe consequences for children and members of their families.

42. Even though the national laws of Romania prohibit discrimination against people living with HIV/AIDS, it is alleged that the authorities rarely enforce them. In addition, due to the serious shortage of competent staff in agencies in charge of protection from discrimination for children living with HIV/AIDS, adequate and meaningful assistance is rarely provided in this respect.

43. It was also reported that doctors cannot inform children of their HIV status without parental consent. This in practice prevents many children from making informed decisions on medical treatment or educational and employment plans.

44. The experts requested information on the steps taken by the competent authorities with a view to ensuring the right to health of the persons mentioned above. They recalled that this right is reflected, *inter alia*, in article 12 of the International Covenant on Economic, Social and Cultural Rights, which provides for the right of everyone to the enjoyment of the highest attainable standard of mental and physical health. This includes an obligation on the part of all States parties to ensure that health facilities, goods and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination.

45. Furthermore, the Special Rapporteur on the right to health noted that in his report following his visit to Romania in August 2004, he stated that “Romania has one of the highest prevalence rates of HIV and AIDS in Europe” and that he “.....urges the implementation of policies that explicitly address gender inequalities, stigma and discrimination; provide comprehensive sexual and reproductive health information, education and services to young people; and ensure access to voluntary testing, counselling and treatment for sexually transmitted infections, including HIV/AIDS. He further urges that legislation, regulations and other measures to eliminate all forms of discrimination against people living with HIV/AIDS and members of vulnerable groups be implemented” (E/CN.4/2005/51/Add.4, paragraphs 47 and 53).

46. The experts also requested information on the steps taken by the competent authorities with a view to ensuring the right to education of the above-mentioned persons. They recalled that this right is reflected, *inter alia*, in article 13 of the International Covenant on Economic, Social and Cultural Rights, which provides for the right of everyone to education, including the obligation for States parties to ensure access to education structures and services on an equal

basis for everyone, without discrimination. Moreover, article 29 of the Convention on the Rights of the Child provides, inter alia, that the education of the child shall be directed to the development of the child's personality, talents, and mental and physical abilities to their fullest potential.

47. The mandate holders urged the Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned persons are respected and the accountability of any person guilty of the alleged violations ensured. They also requested that the Government adopt effective measures to prevent the recurrence of these acts. In addition, they asked the Government to provide full details of any prosecutions which have been undertaken, in the event that the persons who are not applying the existing legislation are identified.

### **Communications received**

48. In a letter dated 4 January 2007, the Government replied to the communication of 5 October 2006.

49. The Government stated that it has adopted a national strategy for monitoring, preventing and controlling the cases of HIV/AIDS for 2004 to 2007. This national strategy provides measures for preventing the spread of the disease and for protecting infected persons. In addition, there is a national network of specialists from the Public Health Ministry who continuously monitor HIV/AIDS cases, and an inter-ministerial commission which ensures a coordinated and transparent approach of the various aspects involved while dealing with this disease.

50. The internal laws protect the vulnerable groups and the persons living with HIV/AIDS against discrimination, both in the public and the private sector, ensure the privacy and confidentiality of the personal data of infected persons, provide measures in order to prevent further HIV/AIDS infection, as well as fair and free treatment for the infected persons, create the framework for organizing awareness raising campaigns and educational programs on various aspects related to HIV/AIDS.

51. Concerning the protection of children living with HIV/AIDS, it was affirmed that 7,351 children have been registered as infected by the National Authority for the Protection of Children's Rights. Five hundred and seventy were included in the system of child protection.

52. The Government has implemented the necessary measures to ensure respect of the right to education of these children. For children living with HIV/AIDS with no other associated diseases, the integration in regular or special schools was successful. For children with easy and medium disabilities special classes were organized in the placement centres. Out of the 570 children included in the system of child protection, 461 are attending a regular or a special school. However, there are some obstacles to the realization of this goal, such as the advanced age of some children compared to their level of education, lack of motivation of children and low IQ. In addition, concerned parents put pressure on specialists in child protection not to register the infected children in certain schools. Nevertheless the combined efforts of different Government agencies, NGOs, parents and teachers have been successful in the dissemination of

the idea that children living with HIV/AIDS are entitled to the right to education and are not infecting other children.

53. The National Authority for the Protection of Children's Rights paid special attention to the development of all necessary skills of the children infected with HIV/AIDS, in order to help them live an independent life. Therefore, several projects have been implemented in cooperation with the Global Fund To Fight AIDS, Tuberculosis and Malaria and ChildNet. A major component of these projects is the education of infected children on issues of hygiene, health, sexual education, prevention and treatment.

54. Moreover, internal legislation has established HIV/AIDS as a discrimination criterion. On this basis the Council for combating discrimination has received 28 cases regarding discrimination based on HIV status. Among these cases seven were referred to discrimination related to free access to education. Three of these cases were solved by using the mediation procedure and at the end of the mediation the children were integrated within the public education system in regular classes. Likewise, one of the cases was solved by the imposition of a contravention against a school for breaking confidentiality regarding HIV status.

55. Finally, regarding prevention of discrimination, the National Authority for the Protection of Children and the Ministry of Education organize presentations and training on Romanian anti-discrimination legislation.

## **Observations**

56. The Special Rapporteur thanks the Government for its response. He remains concerned over the situation of the children who are not yet included in the system of child protection. It is a large number of children, since only 570 of the 7351 registered as infected with HIV/AIDS, are included in this system. The Special Rapporteur would like to express his concern regarding these children and requests that the Government inform him about their current situation, in particular regarding the implementation of their right to education.

## **Russian Federation**

### **Communications to the Government**

57. On 25 October 2006 the Special Rapporteur sent a joint communication with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Independent expert on minority issues, concerning the recent treatment of Georgians by the Russian authorities.

58. According to the information received, persons of Georgian origin, including persons recently arrived as well as persons belonging to the long-established ethnic Georgian community in Russia, have been the specific target of discriminatory practices and measures, allegedly in response to the arrest in Georgia of four Russian military officers on 27 September 2006.

59. Since the above-mentioned arrest, from 6 to 16 October, 682 Georgian nationals and stateless people originating from Georgia were deported. On 17 October, another 150 people

were expelled. Several hundreds are said to be held in detention centres in Moscow, in very harsh conditions, being deprived of sufficient nutrition and medical aid, while awaiting expulsion.

60. Many of these people would have had their legal visas or residence permits cancelled on arbitrary pretexts. It is reported that some of the deportees are refugees from Abkhazia, among them some stateless persons, or holders of old Soviet passports which have sometimes been destroyed by police officers. According to the information received, these practices are also taking place in other Russian cities.

61. It was also reported that some of the deportees, including women and children, have been transferred to Abkhazia and were allegedly requested to pay ca.US\$ 1,000 per person to travel to territory under the jurisdiction of the Government of Georgia.

62. Reportedly, courts were issuing verdicts on deportation automatically, without taking into consideration the circumstances of each case, violating procedural norms, and depriving persons of Georgian origin of any hearing before the court and of their right to legal assistance.

63. Information was received concerning instructions for the implementation of Order no.0215 of 30 September 2006 issued by the Department of Interior of Saint Petersburg and Leningrad region and requesting all police units to undertake a widespread effort to maximize the finding and deportation of persons of Georgian origin illegally located on the territory of Russia. It is further reported that police officers were instructed to initiate court proceedings for the examination of cases of violations by persons of Georgian origin of rules regarding foreign citizens, which were to be sanctioned only with the most serious measure of deportation.

64. Moreover, according to the information received, on 6 October 2006, various schools in Russia were requested to provide specific information on pupils from Georgia, including Russian pupils of Georgian origin, as well as their families and their possible whereabouts. It was reported that this request aimed to identify illegal migrants in order to be able to deport them to Georgia.

65. Similar instructions appear to have been given by the Russian authorities to three Russian schools in Georgia. In this context we have been informed that, on 3 October 2006, pupils and teachers with Georgian citizenship were not admitted to schools affiliated with the Russian Federation Defense Ministry in Tbilisi, Batumi and Akhalkalaki. Notices were reportedly posted on the doors of the schools stating that access was prohibited for Georgian citizens.

66. The information received also indicates that several raids have been carried out in different Russian cities against businesses owned by or employing persons of Georgian origin.

67. The experts appealed to the Government to guarantee the right to equality and non-discrimination of these persons in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination, such as the one established in articles 1 and 5, and other relevant international human rights instruments, including General Assembly resolution 47/135 of 18 December 1992 entitled 'Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities'. This Declaration provides in articles

1 and 2.5, inter alia, for States to guarantee the existence and the identity of minorities within their respective territories, and the right of persons belonging to minorities to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

68. The experts also referred the Government to the provisions of article 13 of the International Covenant on Economic, Social and Cultural Rights which recognizes the right of everyone to education and states that, to that end, primary education shall be compulsory and available free to all. Therefore, States have the obligation to provide all children under their jurisdiction without any discrimination with an adequate education. Furthermore, article 28 of the Convention on the Rights of the Child provides for the access of education of children on the basis of equal opportunity, while article 29 (c) states that education should be directed to the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.

69. The mandate holders appealed to the Government to seek clarification on the above-mentioned situation and to ensure that all necessary measures are taken to guarantee that individuals are not deprived of their fundamental rights, including the right to education.

### **Observations**

70. The Special Rapporteur regrets that at the time this report was finalized, the Government had not transmitted any reply to his communication.

## **Slovenia**

### **Communications to the Government**

71. On 20 April 2006 the Special Rapporteur sent a joint communication with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Independent expert on minority issues, concerning the unresolved status of individuals removed from the Slovenian registry of permanent residents in 1992, who are often referred to as “erased.”

72. According to the information received, before the dissolution of the Socialist Federal Republic of Yugoslavia (SFRY), its citizens were citizens of one of the constituent republics as well as being citizens of the SFRY. After Slovenia became independent, citizens of other republics having permanent residence in Slovenia could apply for Slovenian citizenship by 26 December 1991. On 26 February 1992, at least 18,305 individuals were removed from the Slovenian registry of permanent residents, pursuant to provisions of the Foreign Citizens Act, and their records were transferred to the registry of foreigners. The Government did not legislate to regulate the legal status of the citizens of other former SFRY republics who had been permanent residents in Slovenia, and this resulted in the “erasures”. The 18,305 “erased” were

mainly people from other former Yugoslav republics, who had been living in Slovenia and had not applied for or had been refused Slovenian citizenship in 1991 and 1992, after Slovenia became independent.

73. It is reported that some of the affected persons were born in Slovenia but, based on the republican citizenship and birthplace of their parents, had remained citizens of other Yugoslav republics. Others had moved to Slovenia from other Yugoslav republics before the SFRY dissolution. A majority of them were non-Slovene or of mixed ethnicity, including a significant number of members of Roma minority communities. A number of former officers of the Yugoslav People's Army had not applied for, or were refused, Slovenian citizenship, often on the grounds that they participated in the war against Slovenia or were otherwise perceived as not being loyal to Slovenia.

74. In 1999, the Slovenian Constitutional Court ruled that the "erasure" violated the principle of equality and was unconstitutional. Subsequently in the same year, the Act on the Regulation of the Status of Citizens of Other Successor States to the Former SFRY in the Republic of Slovenia was adopted, which allowed those affected to apply within three months for Slovenian citizenship. However, the legislation did not apply retroactively, resulting in the exclusion of those who were expelled from Slovenia or prevented from entry or re-entry as a result of the erasure.

75. In 2002, Amendments to the Act on Citizenship entered into force, offering a one-year opportunity for those who had a registered a permanent address in Slovenia on 23 December 1990, and who had lived there since, to apply for Slovenian citizenship. However, the Amendments also excluded those individuals who had been forced to leave the country as a result of the erasure.

76. In 2003, the Slovenian Constitutional Court ruled the Act on the Regulation of the Status of Citizens of Other Successor States to the Former SFRY in the Republic of Slovenia to be unconstitutional. Following the ruling, the "technicalities bill", a legislative measure aimed at reinstating the status of individuals removed from the population registry, was adopted by the Slovenian parliament in October 2003, but the bill was rejected at the subsequent referendum. However, the Constitutional Court made a further decision issued in December 2003 stating that the decision of April 2003 could be considered as sufficient legal basis for issuing decisions on permanent residence with retroactive effect, without there being any need for specific legislation.

77. On this basis, the Slovenian Ministry of the Interior began in February 2004 to issue individual written decisions, stating that those concerned were permanently resident in Slovenia with retroactive effect. This practice was discontinued in July 2004.

78. As a result, erased persons, reportedly at present still numbering about 6,000, continue to live in Slovenia without Slovenian citizenship or a permanent residence permit, being treated as illegal foreigners or stateless persons. This has a significant negative effect on their exercise of various human rights.

79. The affected individuals have had significantly limited or no access to a wide range of social services, including comprehensive health care. Reports indicate, for example, that some of

those who were in need of medical treatment have not had access to medical treatment since their erasure. Some erased persons had to pay the full amount for basic medical treatment, unlike Slovene citizens and those with permanent residence.

80. Some children who were removed from the registry of permanent residents in 1992, or whose parents were removed from the registry, lost access to secondary education. It is reported that the situation has improved in recent years, but for some of the erased, who lost many years of education, or had to delay the completion of their studies, the ongoing negative impact remains.

81. It is also reported that many of the erased lost their job or could no longer be legally employed. There are also reports of dismissals from their jobs of those affected.

82. Another negative impact of erasure is the loss of the entitlement to a pension, or a significant reduction of it. This has caused serious negative effects on the right to social security and an adequate standard of living.

83. Concern was expressed at the ongoing negative and reportedly disproportionate effects with regard to the access of persons belonging to Roma minority communities in a range of fields, particularly regarding housing, employment, health and education. By virtue of their situation as a minority without a “kin-state”, these persons were placed in an even more disadvantaged position than erased persons belonging to other ethnic groups, as they have faced greater difficulties in regulating their status elsewhere in the former SFRY.

84. The mandate holders brought the to the attention of the Government some of the most relevant rights of non-citizens. This includes the right to the highest attainable standard of health which is reflected, inter alia, in article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which provides for the right of everyone to the enjoyment of the highest attainable standard of mental and physical health. This right includes an obligation on the part of all States parties to ensure that health facilities, goods and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination. It also includes an obligation on States parties to ensure access to the underlying determinants of health, including adequate nutrition, safe drinking water and adequate sanitation. The right to the highest attainable standard of physical and mental health is also reflected in article 5(e)(iv) of the Convention on the Elimination of All Forms of Racial Discrimination, article 12 of the Convention on the Elimination of All Forms of Discrimination Against Women, and article 24 of the Convention on the Rights of the Child.

85. This also includes the right to education, reflected inter alia, in article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which provides for the right of everyone to education. This right includes an obligation to ensure non-discriminatory access to and availability of quality schools, services and infrastructures. Moreover, appropriate, adequate and quality education should be provided to students, as well as an education adapted to the social and cultural environment. Primary education should be compulsory and free. The right to education is also reflected in articles 28 and 29 of the Convention on the Rights of the Child which provide for the right to education on the basis of equal opportunity; article 10 of the



Convention on the Elimination of Discrimination against Women and article 5 (e)(v) of the Convention on Elimination of Racial Discrimination.

86. The mandate holders would also like to appeal to the Government of Slovenia to take all necessary measures to guarantee the right to equality and non-discrimination, as defined in international instruments such as the Universal Declaration of Human Rights (Article 1), the International Covenant on Civil and Political Rights (in particular Articles 2 and 26), the International Covenant on Economic, Social and Cultural Rights (in particular Article 2) and the International Convention on the Elimination of All Forms of Racial Discrimination, all of which Slovenia is a party to. In addition, they wish to draw the attention of the Government to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which stipulates in Article 4(1) that: “States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without discrimination and in full equality before the law”.

87. The mandate holders referred the Government to the Concluding Observations issued following the examination of Slovenia’s initial periodic report on its implementation of the ICESCR in November 2005 (E/C.12/SVN/CO/1, para 16). The Committee on Economic, Social and Cultural Rights noted its concern that former SFRY nationals have been erased, observing that “this situation entails violations of these persons’ economic and social rights, including the rights to work, social security, health care and education.”

88. In addition, General Recommendation No.30 of the Committee on the Elimination of Racial Discrimination recommends States regularize the status of former citizens of predecessor States who now reside within the jurisdiction of the State party and asks that States parties “respect the right of non-citizens to an adequate standard of physical and mental health by...refraining from denying or limiting their access to preventive, curative and palliative health services”. Furthermore, the UN Human Rights Committee, in its Concluding observations following Slovenia’s second periodic report, inter alia, expressed concern “about the situation of those persons who have not yet been able to regularize their situation in the State Party”(CCPR/CO/84/SVN, para 10).

89. Finally the mandate holders requested the Government to cooperate and to provide observations on the following matters:

- (a) Are the facts alleged in the above summary of the case accurate?
- (b) Have complaints been lodged following the relevant decisions of the Constitutional Court or the Ministry of Interior?
- (c) Has compensation has been provided to the victims or the families of the victims of erasure, in relation to their limited or impeded access to health care, education and other social services?
- (d) Is the Ministry of Interior preparing to finalize the issuance of supplementary decisions giving retroactive effect to the permanent residence permit of those persons who are entitled to it?

- (e) Does the Government consider it legally necessary to enact a law or constitutional act in order to regulate the status of the remaining erased persons, and is there an intention and process to this end?

**Observations**

90. The Special Rapporteur regrets that at the time this report was finalized, the Government had not transmitted any reply to his communication.

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