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IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL"

Report by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène

Addendum

Summary of cases transmitted to Governments and replies received**

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** The present document is being circulated in the languages of submission only as it greatly exceeds the page limitations imposed by the relevant General Assembly resolutions.

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Contents

I. INTRODUCTION

1. This addendum to the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance gives an account of the communications sent to Governments by the Special Rapporteur between 31 January 2006 and 30 April 2007.[1] It also contains in summary form the replies received from Governments to his communications during the same period, as well as observations of the Special Rapporteur where appropriate. Replies to communications which were received by the Special Rapporteur after 30 April 2007 will be reflected in his next communications report.

II. SUMMARY OF CASES TRANSMITTED AND REPLIES RECEIVED

Bangladesh

Communication sent

2. On 11 July 2006, the Special Rapporteur, jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, sent an allegation letter concerning a raid on a political meeting held by a local branch of the PCJSS (Chittagong Hill Tracts United Peoples' Party), a political organization linked to the indigenous peoples of the Chittagong Hill Tracts.

3. According to the information received, on 19 June 2006, activists and leaders of the Sama Adhikar Andolan (Chittagong Hill Tracks Equal Rights Movement), a political organization supported by the Government of Bangladesh and linked to Bengali settlers, violently intervened at the PCJSS meeting, shouting communal slogans and violently attacking PCJSS members and supporters. It is alleged that the attackers destroyed chairs, tables, doors and windows in the hall. They subsequently set fire to the national flag, the party flag and the curtains. **Mr. Poushe Thowai Marma, Mr. Kon Owai Mro, Ms. Sonari Tripura, Ms. Pongo Mro, Mr. Thowaimra Mro, and Mr. Mra Owai Marma** were injured during the attack. **Mr. Sadhuram Tripura** and **Mr. Chinghla Mong Chak**, PCJSS leaders, had to flee, as they were targeted by the attackers. Reports indicated that the local police and army did not intervene during the attack. It was alleged that the deputy for security of the PCJSS conference, a police sub-inspector, and a group of policemen were deployed in the conference hall but did not react to the violence.

4. The Special Rapporteurs expressed concern at what appeared to be related to a general situation of discrimination against the indigenous peoples of the Chittagong Hill Tracts. In this regard, reference was made to a book published in 2006 by Mohammad Humayun Kabirm, Deputy Commissioner of the Khagrachari Hill District (*Khagrachari*

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1 General statistical information on communications sent by special procedures is available on the OHCHR website: www.ohchr.org.

2001-2005), in which he stated, inter alia, that indigenous peoples were “infiltrators”, “settlers”, “anti-Bengali” and “wild and uncivilized tribes”.

Observations

5. The Special Rapporteur thanks the Government of Bangladesh for the letter sent on 14 July 2006 acknowledging receipt of the communication and assuring him that the contents had been forwarded to the concerned authorities for necessary inquiry and actions. However, he regrets that, at the time this report was finalized, no reply to the communication had been received from the Government.

6. The Special Rapporteur intends to follow up on this case. In the event that no response is received from the Government, he will no longer treat this case as a mere allegation but as a proven fact.

Chile

Comunicaciones enviadas

7. El 6 de marzo de 2006, el Relator Especial, juntamente con el Relator Especial sobre la promoción del derecho a la libertad de opinión y expresión, el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas y la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos, envió un llamamiento urgente en relación con la Sra. **Luisa Ana Calfunao Paillalef** y la Sra. **Juana Rosa Calfunao Paillalef**. La Sra. Calfunao Paillalef es lonko (autoridad tradicional) y portavoz de la comunidad indígena Mapuche de Juan Paillalef, ubicada en la comuna de Cunco, IX Región, en Temuco. Su situación fue objeto de varias comunicaciones por parte de distintos mecanismos especiales de la Comisión de Derechos Humanos de fechas 23 de agosto y 22 de octubre de 2004, 2 de septiembre y 29 de diciembre de 2005, y 12 de enero de 2006.

8. Según las nuevas informaciones recibidas, el 22 de febrero de 2006 se habría leído la sentencia que habría concluido el juicio iniciado la audiencia del 13 de febrero del mismo año, y que se habría desarrollado el 17 de febrero de 2006. La sentencia habría impuesto una pena de 61 días de “presidio menor en su grado mínimo” por el delito de “desórdenes públicos” a las dos imputadas y penas accesorias de suspensión de cargo y oficio público durante el tiempo de condena. Adicionalmente, según la información recibida, la Sra. Juana Rosa Calfunao habría recibido otra pena de 61 días de presidio por el delito de “amenaza a carabineros”. Debido al grado de las penas impuestas, el Tribunal de oficio les habría concedido el beneficio de la remisión condicional de la pena, bajo observación de la Gendarmería de Chile, por un lapso de un año. Además, ambas habrían sido condenadas a pagar los costos del juicio.

9. La Sra. Juana Rosa Calfunao tiene otro proceso pendiente desde el 4 de enero de 2006 por los mismos delitos de “desórdenes públicos” y “amenazas a carabineros”. En caso de confirmarse la presente condena, se podría solicitar el agravante de reiteración contenida

en el artículo 397 del nuevo Código Procesal Penal Chileno, lo que se traduciría en una eventual pena para el segundo proceso que podría llegar hasta los tres años y un día. La fecha de la audiencia de este segundo proceso no ha sido fijada por el momento.

10. Se expresan graves temores de que estas condenas formen parte de una campaña de hostigamiento contra las señoras Juana Rosa Calfunao Paillalef y Luisa Ana Calfunao Paillalef y estén relacionadas con la labor que ambas personas realizan en la defensa de los derechos de su comunidad indígena, en particular con sus recientes protestas reclamando una indemnización al Ministerio de Obras Públicas por la construcción (supuestamente ilegal) de un camino privado que pasa por el centro de la comunidad rural mapuche.

11. El 11 de mayo de 2006, el Relator Especial envió, juntamente con el Relator Especial sobre el derecho a la alimentación, el Relator Especial sobre la independencia de los magistrados y abogados, el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, el Relator Especial sobre la promoción y protección de los derechos humanos y las libertades fundamentales en la lucha contra el terrorismo y la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos, un llamamiento urgente en relación con la situación de **Patricia Troncoso**, **Patricio Marileo Saravia**, **Jaime Marileo Saravia** y **Juan Carlos Huenulao Lienmil**, líderes y simpatizantes mapuches condenados a más de 10 años de prisión bajo la acusación de "incendio terrorista".

12. Su situación ya había sido objeto de una comunicación personal enviada por el Relator Especial sobre la situación de los derechos humanos y libertades fundamentales de los indígenas a la Presidenta Sra. Michelle Bachelet, el día 21 de abril de 2006. Con anterioridad, el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas envió comunicaciones al Gobierno chileno expresando su preocupación por la aplicación de la ley antiterrorista a presos mapuches por hechos relacionados con la lucha social por la tierra y los legítimos reclamos indígenas.

13. Según la información recibida, en agosto de 2004 Patricia Troncoso, Patricio Marileo Saravia, Jaime Marileo Saravia y Juan Carlos Huenulao Lienmil habrían sido condenados a penas de diez anos y un día de prisión después de haber sido acusados del delito de "incendio terrorista", bajo la Ley Antiterrorista N.º 18314, por un incendio causado en el predio conocido como Poluco Podenco. De acuerdo con la información recibida, el juicio habría presentado irregularidades y las declaraciones de los testigos habrían presentado contradicciones.

14. Patricia Troncoso, Patricio Marileo Saravia, Jaime Marileo Saravia y Juan Carlos Huenulao Lienmil se encontrarían en la ciudad del Angol y desde el 13 de marzo de 2006 mantendrían la huelga de hambre en protesta por las fuertes condenas recibidas y por la aplicación de la ley antiterrorista (que se utiliza con frecuencia en relación con las reclamaciones agrarias y las reclamaciones para pedir un nivel de vida adecuado de los mapuches). Su estado de salud se habría deteriorado gravemente tras más de 55 días de huelga de hambre.

15. Se nota con mucha preocupación que los jueces hayan podido aplicar la ley de manera discriminatoria; mientras que por los delitos contra la propiedad se aplican generalmente multas o penas de prisión muy cortas, en el caso de los mapuches, los jueces calificarían estos mismos delitos como actos de terrorismo y aplicarían penas de prisión muy severas, de por lo menos 10 años.

16. Se expresan graves temores de que la aplicación de la Ley Antiterrorista en este caso pueda estar relacionada con las actividades de dichas personas en defensa de derechos humanos, en particular con sus actividades en defensa de la comunidad mapuche. Además, se expresan graves temores de que su situación de extrema fragilidad pueda acarrear daños irreversibles para su salud física y psíquica y pueda poner en peligro sus vidas.

Respuestas del Gobierno

17. Por carta con fecha 23 de noviembre de 2006, el Gobierno de Chile transmitió la siguiente información en respuesta a la comunicación urgente del 6 de marzo de 2006 relativa a **Luisa Ana Calfunao Paillalef y Juana Rosa Calfunao Paillalef**. El Gobierno informó de que el 15 de noviembre de 2006 se celebró en el Tribunal de Garantías de Temuco la sesión por los desórdenes acaecidos el 2 y 4 de enero de 2006 en contra de la Sra. Juana Calfunao. Dicha sesión debió suspenderse, ya que la imputada y otras 10 personas agredieron a los fiscales y a otros funcionarios, quienes sufrieron lesiones, aparentemente menores. Tras la golpiza, fueron detenidos seis mujeres y cuatro hombres. El hijo de la Sra. Calfunao, el Sr. Jorge Landeros Calfunao, que también participó en la golpiza, huyó y fue detenido el día 16 de noviembre de 2006. Tras el ataque a los funcionarios, el abogado de la Sra. Calfunao, el Sr. Freddy Barriga, habría renunciado a representarla. El Gobierno informó asimismo de que el día 20 de noviembre, el Tribunal de Garantía de Temuco condenó a la Sra. Juana Calfunao a 150 días de presidio por los desórdenes ocurridos en enero de 2006, y recordó que la Sra. Calfunao cumplía actualmente una pena remitida por desórdenes públicos y amenazas a carabineros por hechos ocurridos en diciembre de 2005.

18. Por carta con fecha 23 de mayo de 2006, en respuesta a la comunicación urgente del 11 de mayo de 2006 relativa a **Patricia Troncoso**, **Patricio Marileo Saravia**, **Jaime Marileo Saravia** y **Juan Carlos Huenulao Lienmil,** el gobierno de Chile informó que los hechos por los que fueron condenados el señor Huenulao, los señores Marileo y la señora Troncoso se encontraban previamente tipificados como delitos en la ley penal y en la ley antiterrorista, con su pena correspondiente (delito de incendio). Según las informaciones del gobierno, el incendio de los fundos Poluco y Podenco, zona cuya propiedad pertenece a la empresa forestal MININCO, ocasionó un daño cercano a los 600.000 dólares de los Estados Unidos.

19. En cuanto a los antecedentes judiciales, los inculpados, de acuerdo con el párrafo 3 del artículo 19 de la Constitución Política de Chile, contaron con defensa jurídica desde el inicio de la causa, defensa que fue proporcionada por la Defensoría Penal Pública. A su vez, también hicieron uso de recursos que proporciona la ley para impugnar las resoluciones judiciales: recurso de nulidad, amparo y revisión. En consecuencia, el Gobierno informa de que no existe duda alguna de que se cumplieran los principios del debido proceso.

20. En referencia a la invocación de la ley antiterrorista, el Gobierno informó de que la Presidenta de la República, Sra. Michelle Bachelet, se había comprometido a que el ejecutivo no invocara la aplicación de la Ley Antiterrorista, al hacer la denuncia o querella que corresponda, cuando en hechos futuros tipificados como delitos por la Ley Antiterrorista y que puedan ser juzgados por la ley común se vean involucrados indígenas en procesos de reivindicaciones de tierras. De todas maneras, el Gobierno resaltó que en el caso concreto del delito de incendio, la pena que establece el Código Penal es tan grave como la que establece la Ley Antiterrorista.

21. El Gobierno de Chile destacó que los Senadores Alejandro Navarrro y Jaime Naranjo presentaron un proyecto de ley con el objeto de modificar el Decreto Ley N.º 321 sobre la libertad condicional. Dicho proyecto establece la posibilidad de otorgar la libertad condicional a los condenados a penas privativas de libertad por delitos contemplados en la Ley 18314 (Ley Antiterrorista), y a los condenados por delitos sancionados en otros cuerpos legales, en causas relacionadas con reivindicaciones violentas de derechos consagrados en la Ley 19253 (Ley Indígena), siempre que los hechos punibles hayan ocurrido entre el 1.º de enero de 1997 y el 1.º de enero de 2006, y los mismos condenados suscriban en forma previa una declaración inequívoca y favorable a la no utilización de la violencia en la reivindicación de derechos establecidos en la Ley 19253 y en el derecho internacional de los pueblos indígenas.

22. El 15 de mayo de 2006, el Ministro del Interior comunicó que el Gobierno había asignado “suma urgencia” a la tramitación del Proyecto de Ley para modificar el Decreto Ley 321. Con motivo de la presentación del citado proyecto, el 14 de mayo de 2006, los cuatro afectados mencionados anteriormente depusieron temporalmente la huelga de hambre, a la espera de los resultados de la tramitación del proyecto de ley. El Gobierno especificó que esta situación no responde a una persecución política hacia el movimiento indígena o mapuche.

23. A su vez, el Gobierno señaló los siguientes antecedentes:

a) La ofensiva, a partir de 1999, por parte de sectores minoritarios ligados a la reivindicación de derechos territoriales indígenas destinada a ejecutar acciones contra empresas forestales y agricultores en algunas provincias de la VIII y la IX regiones, consistentes en ocupaciones ilegales, robos y hurtos, incendios de bosques y plantíos, edificaciones y casas patronales, maquinaria agrícola y forestal, vehículos y ataques a trabajadores y brigadistas forestales, carabineros y propietarios de los predios y sus familias e incluso a miembros de comunidades mapuches por no aceptar estos métodos de acción. Estas acciones se diferenciaron de la conducta de la gran mayoría de las organizaciones indígenas quienes no recurren a la violencia para reivindicar sur legítimas aspiraciones;

b) La aplicación de la Ley Antiterrorista, invocada frente a situaciones de extrema gravedad en nueve procesos de 2001 hasta la fecha; en la actualidad, existen 9 personas de ascendencia indígena condenadas por esta Ley;

c) Las acciones judiciales iniciadas estuvieron encaminadas a castigar a los autores de delitos y no al pueblo mapuche;

d) El reconocimiento como legítima, por parte del Estado de Chile, de la demanda de los pueblos indígenas, en especial la del mapuche. Desde 1993, la Ley Indígena N.º 19253 ha permitido traspasar unas 400.000 hectáreas de tierra a más de 500 comunidades a lo largo de todo el país;

e) El hecho de que el Ejecutivo no puede, bajo circunstancia alguna, revisar, modificar o anular un fallo judicial.

Observaciones

24. El Relator Especial agradece al Gobierno de Chile por sus respuestas a las comunicaciones de 6 de marzo y de 11 de mayo de 2006.

25. El Relator Especial expresa su preocupación por el caso de las señoras Juana Rosa Calfunao Paillalef y Luisa Ana Calfunao Paillalef, en la medida que los actos por las que se las acusa puedan estar relacionadas con sus actividades en defensa de los derechos de su comunidad indígena. El Relator Especial considera que la situación merece una atención urgente por parte del Gobierno y agradecería recibir información actualizada.

26. El Relator expresa su satisfacción por el hecho de que Patricia Troncoso, Patricio Marileo Saravia, Jaime Marileo Saravia y Juan Carlos Huenulao Lienmil abandonaran la huelga de hambre sin que se produjeran daños irreversibles para su salud. El Relator Especial se congratula del anuncio realizado por la Presidenta de Chile indicando que el ejecutivo no invocará la aplicación de la Ley Antiterrorista, al hacer la denuncia o querella que corresponda, cuando en hechos futuros tipificados como delitos por la Ley Antiterrorista y que puedan ser juzgados por la ley común, se vean involucrados indígenas en procesos de reivindicaciones de tierras. En este sentido, el Relator Especial agradecería recibir información sobre el estado actual de las discusiones referentes a la modificación de la legislación antiterrorista actualmente en vigor.

Seguimiento de las comunicaciones transmitidas previamente

27. Por la misma carta con fecha 23 de noviembre de 2006, el Gobierno de Chile transmitió información en respuesta a la comunicación urgente de 29 de diciembre 2005 referente a la situación relacionada con el estado de la Sra. Juana Calfunao Paillalef.

Colombia

Seguimiento de las comunicaciones transmitidas previamente

28. Por carta con fecha 20 de diciembre de 2006, el Gobierno de Colombia transmitió la siguiente información en respuesta a la comunicación urgente de 21 de noviembre 2006, enviada por el Relator Especial, juntamente con el Relator Especial sobre la independencia de los magistrados y abogados, relativa al homicidio del Sr. **Orlando Valencia,** líder afrodescendiente de la comunidad de Curbaradó.

29. El 15 de octubre de 2005, Orlando Valencia desapareció a manos de grupos paramilitares en el casco urbano de Belén de Bajira, 15 minutos después de que fuera detenido por la policía durante tres horas. El 26 octubre de 2005, las autoridades habrían informado de que se habría encontrado el cuerpo sin vida de Orlando Valencia. El Sr. Valencia sería la última de una serie de 111 víctimas de las comunidades afrodescendientes del Curbaradó Jiguamiandó desde 1996 por asesinatos o desapariciones forzadas.

30. A raíz de estos sucesos, el Gobierno informó de que el Juzgado Primero de lo Penal del Circuito Especializado de Antioquia condenó a 14 años y tres meses de prisión a Álvaro Padilla Medina, por su coautoría en el homicidio del dirigente comunal Orlando Valencia. El material probatorio recaudado por un fiscal de la Unidad Nacional de Derechos Humanos llevó al Sr. Padilla a aceptar en diligencia de sentencia anticipada los cargos por los que fue sentenciado. Los hechos materia de investigación ocurrieron el 15 de octubre de 2005 en Belén de Bajirá (Antioquia), donde el Sr. Valencia, representante de la comunidad de Caracolí, fue subido a la fuerza en una moto por dos hombres, integrantes de los grupos de autodefensa. El cuerpo baleado del Sr. Valencia fue encontrado nueve días después en un paraje de la vereda Boca de Sábalo, jurisdicción del municipio de Chigorodó (Antioquia). Para la época de su asesinato el líder comunitario estaba al frente del proceso de defensa de las tierras de las negritudes. A este proceso hay otros cinco vinculados.

Observaciones

31. El Relator Especial considera que este caso ilustra especialmente la agravación de la situación de derechos humanos en Colombia, tal y como se indica en el informe sobre su visita a Colombia (E/CN.4/2004/18/Add.3), así como la connivencia y la complicidad entre los grupos paramilitares y ciertos elementos de las fuerzas armadas y de la policía y miembros del Parlamento pertenecientes al partido dominante. La cantidad de fosas comunes descubiertas recientemente ilustra la magnitud de los asesinatos políticos y de las ejecuciones extrajudiciales contra líderes de comunidades autóctonas afrocolombianas y defensores de derechos humanos. La responsabilidad y la complicidad del Gobierno son directamente imputables. El Relator Especial invita al Consejo de Derechos Humanos a destinar una atención especial y urgente a estas graves violaciones de derechos humanos en Colombia y a condenarlas con la máxima fuerza.

Congo

Communication envoyée

32. Le 1er février 2006, le Rapporteur spécial, conjointement avec le Rapporteur spécial sur la situation des droits de l'homme et des libertés fondamentales des populations autochtones, le Rapporteur spécial sur la torture et l'Experte indépendante sur les questions relatives aux minorités, a envoyé une lettre d'allégation concernant la situation de M. **Maurice Sandima,** M. **Jean-Pierre Mossondo,** M. **Pota** et un **groupe de pygmées Mbendjele**. Des renseignements ont été reçus concernant les incidents survenus entre les mois d'août et octobre 2005, dont auraient été victimes des membres de la communauté pygmée, et en particulier les personnes mentionnés antérieurement.

33. Selon les informations reçues, M. Maurice Sandima, pygmée Mbendjele, aurait été battu par des Eco gardes, employés par le Gouvernement pour surveiller les forêts, déshabillé devant des femmes et des enfants, et se serait fait dire par ses agresseurs « Tu n'es qu'un Pygmée, je peux te tuer avec mon arme et rien n'arrivera ». Il aurait perdu une dent et se serait fait brisé deux côtes dans l'attaque. M. Jean-Pierre Mossondo, porte-parole d'un village Mbendjele, aurait été battu par des Eco gardes sur la base de suspicions selon lesquelles il aurait été chasseur, alors qu'au moment des faits il a été rapporté qu'il ne portait pas de fusil de chasse et qu'aucun gibier n'avait été trouvé sur lui. Outre les coups et blessures, M. Mossondo aurait été forcé de payer une amende à un Eco garde appelé Apena. M. Pota, également pygmée Mbendjele, aurait été battu, ligoté, puis abandonné en pleine forêt par des Eco gardes, alors qu'aucun élément n'aurait pu laisser supposer que M. Pota était un chasseur. Un groupe de pygmées Mbendjele, accompagnés d'observateurs de l'Observatoire congolais des droits de l'homme (OCDH), aurait été brutalement fouillés par des Eco gardes, sans raison ni aucun ménagement.

34. Selon les informations reçues, plusieurs autres incidents récents font état de nombreux cas de violence et de discrimination à l'encontre des pygmées Mbendjele, ainsi que d'une atmosphère générale de violence répétée voire systématique des Eco gardes contre les pygmées. Dans ce contexte, les Rapporteurs spéciaux expriment leur vive inquiétude quant au fait que les traitements subis par les Pygmées soient liés à une discrimination raciale à leur encontre.

Observations

35. Le Rapporteur spécial regrette de n'avoir pas reçu, à ce jour, de réponse à sa communication.

36. Dans l'éventualité ou aucune réponse ne serait fournie par le Gouvernement, le Rapporteur spécial ne considérera plus ce cas comme une simple allégation, mais comme un fait avéré.

Denmark

Follow-up to previously transmitted communications

37. On 24 November 2005, the Special Rapporteur, jointly with the Special Rapporteur on freedom of religion or belief, sent a letter of allegation to the Government concerning cartoons representing the prophet Mohammad published in a Danish newspaper. According to the information received, cartoons representing the prophet Muhammad in a defamatory and derogatory manner were published in the newspaper *Jyllands Posten* in the course of September 2005 (see E/CN.4/2006/16/Add.1, paras. 20-27).

38. Subsequent to its response dated 24 January 2006, which has already been reflected in the previous communications report (see E/CN.4/2006/16/Add.1), the Government of Denmark informed the Special Rapporteurs in further letters dated 31 January 2006, 3 February 2006 and 16 March 2006 about recent developments concerning this issue. On 31 January 2006, the Danish Prime Minister, Anders Fogh Rasmussen, made a statement in which he said that the Danish Daily, *Jyllands Posten*, had apologized for the indisputable offence to the Muslim world. He hoped that the apology would contribute to comforting those who had been hurt. The Prime Minister reported that the apology had been received positively by Muslim communities in Denmark and that they had pledged support for the efforts made. He also called on all parties to abstain from any statement or action that would create further tension. In an interview on the TV news channel Al-Arabyia on 2 February 2006, the Prime Minister stressed the value he attached to the close relationship based on mutual respect and friendship between Denmark and the Muslim world.

39. On 16 March 2006, the Government informed the Special Rapporteurs that the Danish Director of Public Prosecutions had decided not to institute criminal proceeding in the case of the article “The Face of Muhammed”, which was published on 30 September 2005, as in his opinion there had been a violation neither of section 140 of the Danish Criminal Code (mockery or scorn of religious doctrines or acts of worship of any lawfully existing religious community in Denmark) nor of section 266b of the Danish Criminal Code (public statement or imparting other information by which a group of people are threatened, scorned or degraded on account of their race, colour, national or ethnic origin, religion or sexual inclination). The decision of the Director of Public Prosecutions cannot be appealed to a higher administrative authority, as stipulated in section 99 (3) of the Administration of Justice Act. Furthermore, the Director stressed that although there was no basis for instituting criminal proceedings in this case, it should be noted that both provisions of the Danish Criminal Code contain a restriction of the freedom of expression. To the extent publicly made expressions fall within the scope of these rules there is, therefore, no free and unrestricted right to express opinions about religious subjects. It is thus not a correct description of existing law that, as stated in the article in *Jyllands Posten*, it is incompatible with the right to freedom of expression to demand special consideration for religious feelings and that one has to be prepared to put up with “scorn, mockery and ridicule”.

Observations

40. The Special Rapporteur is grateful for the Government's additional responses and encourages the Government to continue its efforts to increase mutual understanding and religious tolerance.

41. The Special Rapporteur reiterates his opinion that the political context in Denmark, in particular the xenophobic and Islamophobic platform of a party to the government coalition, should have been taken into account by the Director of Public Prosecutions in determining whether, on the basis of the International Covenant on Civil and Political Rights, the balance between freedom of expression and freedom of religion and restrictions and limitations on those rights had not been deliberately violated. Furthermore, the Government should have been more sensitive to the international ideological context of a threat of a clash of civilizations and religions and, in particular, the impact of the cartoons associating Islam with terrorism.

42. The Special Rapporteur refers to the joint press release issued with the Special Rapporteur on freedom of religion or belief and the Special Rapporteur for the promotion and protection of the right to freedom of opinion and expression on 8 February 2006. Furthermore, he reiterates the conclusions and recommendations contained in his latest report on the situation of Muslims and Arab peoples in various parts of the world (E/CN.4/2006/17) and the joint report with the Special Rapporteur on freedom of religion or belief (A/HRC/2/3) submitted pursuant to Human Rights Council decision 1/107 on incitement to racial and religious hatred and the promotion of tolerance.

Dominican Republic

Follow-up to previously transmitted communications

43. In the absence of an answer from the Government of the Dominican Republic concerning his communication of 7 September 2005 (see E/CN.4/2006 /16/Add.1, paras. 28-30), the Special Rapporteur is forced to consider the following case no longer an allegation, but a proven fact.

44. According to the information received, **more than 3,000 Haitians** were detained and **over 1,000 deported** without consideration of their legal status in the country. Those with the legal right to remain and Dominicans of Haitian origin had their papers confiscated and were deported along with undocumented migrants. Reports were also received of increasing violent attacks against Haitians, including three persons who were burnt alive by a gang and have since died. The reports received indicated a racial connotation in the targeting, detention and deportation of Haitians.

Observations

45. The Special Rapporteur welcomes the positive reply from the Government of the Dominican Republic, dated March 2007, to his request to carry out a visit to the country together with the independent expert on minority issues in October 2007. The Special Rapporteur and the independent expert intend to study in situ the allegations received.

France

Communication envoyée

46. Le 23 décembre 2006, le Rapporteur spécial a adressé une lettre d'allégation au Gouvernement concernant des propos tenus par l'animateur d'une chaîne publique du groupe France Télévisons et écrivain français, **Pascal Sevran**.

47. Selon les informations reçues, le 2 décembre 2006, dans le cadre d'une interview portant sur son dernier livre, *Privilège des jonquilles*, M. Sevran aurait déclaré au quotidien *Var Matin* : « L'Afrique crève de tous les enfants qui y naissent sans que leurs parents aient les moyens de les nourrir. Je ne suis pas le seul à le dire. Il faudrait stériliser la moitié de la planète ».

48. Selon ces informations, ce livre contiendrait l'affirmation suivante : « Le Niger. Safari-photo insoutenable. Des enfants, on en ramasse à la pelle dans ce pays (est-ce un pays ou un cimetière ?) où le taux de fécondité des femmes est le plus élevé au monde. Neuf enfants en moyenne par couple. Un carnage. Les coupables sont facilement identifiables, ils signent leurs crimes en copulant à tout-va. La mort est au bout de leur bite. Ils peuvent continuer puisque ça les amuse... »

49. Le Rapporteur spécial a noté que ces déclarations interviendraient après la polémique suscitée par les propos prononcés le 15 novembre 2006 par le président socialiste de la région Languedoc-Roussillon, **Georges Frêche**, concernant la composition de l'équipe de France de football. M. Frêche aurait déclaré : « Dans cette équipe, il y a neuf Blacks sur onze. La normalité serait qu'il y en ait trois ou quatre. Ce serait le reflet de la société. Mais là. S'il y en a autant, c'est parce que les Blancs sont nuls ». Enfin, ces déclarations s'inscriraient dans la lignée des propos du philosophe français, **Alain Finkielkraut**, qui dans une interview au quotidien israélien *Haaretz* du 18 novembre 2005 déclarait : « On nous dit que l'équipe de France est adorée par tous parce qu'elle est black-blanc-beur. [...] En réalité, aujourd'hui, elle est black-black-black, ce qui fait ricaner toute l'Europe ».

Réponse du Gouvernement

50. Le 5 mars 2007, le Gouvernement a répondu à la communication du Rapporteur spécial en date du 22 décembre 2006.

51. Le Gouvernement a noté que plusieurs réactions officielles et publiques ont fait suite aux propos de M. Sevran pour les condamner fermement. Dans ce sens, le Ministre de la culture, Renaud Donnedieu de Vabres, s'est dit « extrêmement choqué » sur RTL, une station de radio française, et a déclaré : « En tant que ministre et citoyen français, je trouve que les propos de Pascal Sevran sont scandaleux, inadmissibles et racistes. Je suis extrêmement choqué (...) Au-delà du choquant, c'est passible de la loi ». Interrogé mardi 19 décembre sur Europe 1 sur l'initiative du Niger, qui a décidé de porter plainte contre l'animateur, la Ministre déléguée à la coopération et au développement, Brigitte Girardin a déclaré: « Je comprends tout à fait car ces propos, ces écrits sont tout à fait scandaleux et jettent le discrédit sur tout un continent et aussi sur l'action de la France en matière de développement dans ce continent ». Elle a ajouté : « Ce genre de propos absolument inacceptables doivent être sanctionnés ».

52. Le Gouvernement français a également indiqué que la direction de France 2 a lancé un sévère avertissement à M. Sevran mais a refusé de prendre des sanctions, les propos en cause n'ayant pas été tenus à l'antenne. Cependant, le Directeur général de la chaîne a convoqué l'animateur pour lui demander de présenter ses excuses. Le PDG de France Télévisions, Patrick de Carolis, a évoqué la possibilité d'introduire une nouvelle clause dans les contrats des animateurs, leur imposant « le respect des valeurs et l'éthique de la télévision publique ».

53. Évoquant « une sortie par le haut de cette polémique », le président de SOS Racisme, Dominique Sopo, a annoncé avoir rencontré Pascal Sevran « afin d'étudier ce qu'il était possible de réaliser afin d'éclairer dans la sérénité et la pédagogie les réalités actuelles de l'Afrique ». À l'issue d'une discussion constructive, et au cours de laquelle les ambigüités ont pu être levées, Pascal Sevran a accepté le principe de se rendre en Afrique afin d'y réaliser un reportage traitant de ces problématiques, reprenant ainsi la proposition lancée par SOS Racisme quelques jours auparavant. Une rencontre doit avoir lieu avec l'Association de la presse panafricaine (APPA) afin de discuter des modalités et de l'axe de ce voyage.

54. Enfin, le Gouvernement a indiqué que, dans le respect des dispositions de l'article 11 du Code de procédure pénale relatives au secret de l'enquête et de l'instruction, que le 28 décembre 2006, la République du Niger, en la personne du Secrétaire général du Gouvernement de ce pays, et la Ligue contre le racisme et l'antisémitisme (LICRA) ont déposé une plainte avec constitution de partie civile du chef de provocation à la haine raciale, devant le Doyen des juges d'instruction du tribunal de grande instance de Paris, à raison du passage du livre de M. Sevran, cité plus haut. La plainte déposée est en attente du versement de la consignation fixée par le magistrat instructeur.

55. Concernant les propos prononcés par le président socialiste de la région Languedoc-Roussillon, Georges Frêche, sur la composition de l'équipe de France de football, le Gouvernement a indiqué que l'ensemble de la classe politique française a réprouvé vivement et publiquement ces assertions. Dans ce sens, le Président de la République, Jacques Chirac, a condamné ces propos «avec la plus grande fermeté» et rappelé que «la République garantit l'égalité des citoyens sans distinction d'origine ou de religion». Ces déclarations ont également déclenché une vague de protestations au sein du Parti de M. Frêche. Ainsi, le Premier secrétaire du Parti socialiste, François Hollande, a jugé ces déclarations « inacceptables » et demandé à Georges Frêche, déjà suspendu des instances dirigeantes du Parti socialiste pour des propos qualifiant les Harkis (Algériens ayant collaboré avec la France au moment la lutte pour l'indépendance de l'Algérie) de sous hommes, de s'expliquer « immédiatement ». Ségolène Royal, candidate du parti socialiste à la Présidence de la République a, elle aussi, jugé ces propos « insupportables ». Le 27 janvier dernier, les 33 membres de la commission des conflits du Parti socialiste ont voté à l'unanimité l'exclusion de M. Frêche du Parti socialiste pour ses déclarations. Auparavant, le 21 novembre 2006, Pascal Clément, Garde des Sceaux, a lui-même ordonné qu'une enquête pénale soit diligentée. Le jour où la communication a été envoyée, le Gouvernement a indiqué que les investigations, menées sous le contrôle du procureur de la République prés le tribunal de grande instance de Montpellier étaient toujours en cours.

56. Le Gouvernement français a indiqué que les propos de M. Finkielkraut portant également sur la composition de l'équipe de football de France, ont fait l'objet d'une plainte déposée par le Collectif des fils et filles d'Africains déportés (COFFAD) et le Mouvement pour une nouvelle humanité (MNH) devant le tribunal de grande instance de Paris qui avait renvoyé M. Finkielkraut devant la 17ème chambre du tribunal correctionnel de Paris.

Entendue le 12 décembre 2006, cette plainte a été rejetée pour irrecevabilité, en raison des statuts du COFFAD. Le COFFAD ayant interjeté appel contre cette décision, l'affaire sera réexaminée par la 11ème chambre correctionnelle de la Cour d'Appel de Paris le 26 avril 2007.

57. Enfin, le Gouvernement a voulu assurer au Rapporteur spécial que la France n'entend tolérer ni le racisme ni sa banalisation, qui sont de graves atteintes aux principes fondateurs de sa démocratie. Le Président de la République a réaffirmé cet engagement dans son allocution à l'occasion de la présentation de ses vœux pour l'année 2007 en déclarant que l'enjeu majeur était l'unité et le rassemblement autour des valeurs qui font la France : la liberté, l'humanisme, le respect, et notamment le respect de la diversité et des différences, ainsi que le combat contre le racisme. Le Garde des Sceaux l'a également rappelé, l'année passée, lors de la réunion des procureurs généraux et des magistrats référents en matière de lutte contre le racisme et l'antisémitisme, en soulignant que « la France a toujours eu comme volonté d'assurer la coexistence de tous ses enfants par notre pacte républicain, sans exclusive et sans exclusion ». Cette volonté politique de donner aux autorités publiques les moyens de lutter contre le racisme et la discrimination raciale s'appuie sur un arsenal législatif important qui tente d'appréhender les diverses formes d'expression et de manifestation du racisme et de la xénophobie.

58. Le Gouvernement a indiqué que, dans le Code pénal et dans d'autres textes, sont qualifiées crime les discriminations raciales, ethniques ou religieuses commises dans le cadre des actes de la vie courante ou visant à compromettre la reconnaissance d'un droit, de même qu'un certain nombre de comportements d'une exceptionnelle gravité. De surcroît, un certain nombre d'actes graves sont également qualifiés crime en ce qu'ils tendent soit à favoriser la commission d'un acte raciste ou à justifier de tels actes, soit en ce qu'ils constituent une atteinte à l'honneur ou à la dignité des personnes appartenant à des communautés raciales ou religieuses. Ainsi, la loi pénale incrimine et sanctionne les propos ou écrits de type discriminatoire qui portent atteinte à l'ordre public. Cependant, la loi n'interdit pas expressément la critique des croyances, des opinions, des philosophies, même faites sur un ton polémique. Elle laisse aux tribunaux le soin de savoir déceler, derrière la légitime discussion des points de vue adverses, les violences racistes même indirectement formulées et insidieuses.

59. Forts de ces moyens légaux, les services de police et de police judiciaire ont resserré leur coordination et travaillent en liaison étroite avec les parquets. Un « Mémento procédural de lutte contre le racisme et l'antisémitisme à l'usage des services de police et de gendarmerie » demande à « toutes les autorités publiques de faire preuve de vigilance dans la prévention et de la plus grande fermeté dans la poursuite et la répression des actes antisémites et racistes ». Enfin, le Garde des Sceaux dans une circulaire en date du 18 novembre 2003 invite les procureurs à faire preuve de la plus grande sévérité à l'encontre des crimes et délits à caractère raciste ou antisémite.

60. Finalement, le Gouvernement a souligné que la France, par les réactions publiques de sa classe politique, par sa législation sans cesse améliorée ainsi que par son action préventive et répressive, est résolument engagée à lutter contre le racisme et toutes ses manifestations.

Observations

61. Le Rapporteur spécial remercie le Gouvernement français pour sa réponse détaillée et se félicite que, dans le contexte de murmures de réprobation ou de connivence du monde intellectuel et médiatique qui ont suivi les déclarations de M. Sevran, la France ait clairement condamné ces propos. Il se réjouit également de l'intervention orale du Gouvernement français suite à la présentation de son rapport général (A/HRC/4/19) à la quatrième session du Conseil des droits de l'homme en mars 2007, dans laquelle la France a condamné les propos de M. Sevran et de M. Frêche avec la plus grande fermeté.

62. Le Rapporteur spécial souhaite se référer ici à son rapport général (A/HRC/4/19) au Conseil des droits de l'homme dans lequel il constate l'émergence, en France, d'un racisme des élites par une tendance à la lecture ethnique de faits et événements sociaux, économiques et politiques, et par le recyclage de stéréotypes et stigmates caractéristiques de la construction historique de la rhétorique raciste. Il considère que les propos de M. Sevran, qui s'inscrivent dans cette tendance, franchissent une ligne rouge très grave par la réitération des vieux stéréotypes du racisme anti-Noir, notamment son animalité et sa sexualité et, plus grave encore, par l'appel à la stérilisation de populations africaines qui, comme forme d'extermination biologique d'un groupe ou d'une communauté ethnique ou religieuse, a toujours constitué historiquement l'étape précédent le génocide, c'est-à-dire, l'élimination physique.

63. Le Rapporteur spécial considère que la gravité extrême de ces propos, qui conforte la banalisation du racisme, requiert une grande vigilance éthique, politique et légale et des mesures fortes pour mettre fin à l'impunité de leurs auteurs.

64. Le Rapporteur a exprimé sa vive inquiétude quant au fait que ces déclarations puissent être liées à une tendance de banalisation et de légitimation du racisme et à une montée du racisme des élites en France, dans un contexte politique où, d'après un sondage publié par le quotidien français Le Monde, 26 % des Français se disent « plutôt » ou « tout à fait » d'accord avec les idées défendues par le Front national. Il déplore également le silence ou la connivence de la plupart des medias et de personnalités politiques et intellectuelles ainsi qu'une certaine forme d'impunité des auteurs de propos ouvertement racistes et xénophobes. En effet, à ce jour, à part son exclusion tardive du Parti socialiste, George Frêche reste le président socialiste de la région Languedoc-Roussillon, Pascal Sevran est toujours animateur de la télévision publique et Alain Finkielkraut continue son programme à la radio publique France culture.

Germany

Communication sent

65. On 21 February 2006, the Special Rapporteur, jointly with the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the human rights of migrants, sent an urgent appeal concerning a questionnaire introduced in the Land of Baden-Württemberg which was to be answered by citizens of the 57 member States of the Organization of the Islamic Conference (OIC) who apply for German citizenship.

66. According to the information received, on 1 January 2006, the Ministry of the Interior of Baden-Württemberg introduced a questionnaire directed principally at Muslims who want to obtain German citizenship. They are required to fill out a 30-question questionnaire concerning a number of issues, including attitudes towards equality between men and women, homosexuality and freedom of religion. The questionnaire included questions such as: "Where do you stand on the statement that a wife should obey her husband and that he can hit her if she fails to do so?"; "Imagine that your adult son comes to you and says he is homosexual and plans to live with another man. How do you react?"; "What do you think if a man in Germany is married to two women at the same time?" and "Were the perpetrators of the attacks of September 11 freedom fighters or terrorists?"

67. The Special Rapporteurs expressed their concern that an obligation imposed only on the citizens of the 57 member States of OIC could be discriminatory, especially considering the large Turkish community living in Germany. It was further reported that, under the new legislation, those who pass the test can have their citizenship revoked if they are found guilty of acting in conflict with their responses to the questions.

Reply from the Government

68. On 28 March 2006, the Government of Germany replied to the communication sent by the Special Rapporteur on 21 February 2006. The Government explained that the naturalization of foreigners in Germany is carried out by each Land, as provided by the Nationality Act, which was effective from 1 January 2006. One requirement of that Act is that persons who wish to become naturalized citizens must declare their allegiance to the principles of freedom and democracy enshrined in the Basic Law and that they are not engaging and have never engaged in activities opposed to these principles or to the existence or security of the State.

69. The Interior Ministry of Baden-Württemberg had adopted a so-called "guide for conducting interviews" to examine applicants' compliance with this requirement. The naturalization authorities are supposed to use this guide only in case of doubt of an individual applicant's allegiance to the constitutional principles of freedom and democracy. There is no intent to make applicants answer all 30 questions provided in the guide. The authorities are free to choose the questions.

70. The Interior Ministry in a decree of 17 January 2006 clarified that the questions in the interview guide were not intended for use only with Muslim applicants, but were to be used with all applicants for naturalization in case of doubts regarding their allegiance to the constitutional principles of freedom and democracy. Muslim applicants are, therefore, not treated differently from other applicants. The Ministry also stated that the naturalization authorities as a rule were not aware of the religious affiliation of applicants, due to the fact that the application form did not ask for this information. As a result, it would be impossible to target Muslim applicants for questioning. Although 60 per cent of naturalized immigrants in Baden-Württemberg came from OIC member States, in the majority of the cases the authorities had no doubts about their allegiance to the freedom and democracy principles and did not ask them questions from the interview guide. Furthermore, the Minister of the Interior has announced that he will evaluate the use of the interview guide after six months and assess its practical effectiveness.

71. So far, there has only been one complaint from an applicant for naturalization regarding the interview guide. This applicant refused to answer the questions posed by the

naturalization authorities and the person's application for naturalization was rejected. The Ministry is not aware of any other complaints or rejected applications.

72. Once a person has become a naturalized citizen, his or her citizenship may be revoked only if he or she wilfully deceived the authorities with regard to matters relevant for naturalization. The possibility of this type of fraud is limited, as most of the questions taken from the interview guide are intended to elicit applicants' attitudes and opinions. In any case, under article 16 (1) of the Basic Law, no German may be deprived of his or her citizenship.

Observations

73. The Special Rapporteur thanks the Government of Germany for the detailed response provided, indicating that Muslim applicants are not treated differently from other applicants for naturalization. However, he is of the opinion that this guide cannot be separated from the post-11 September ideological climate that associates Islam with terrorism and promotes a clash of civilizations and values between Europe and the Islamic world. Indeed, this association has been denounced by some media and human rights organizations in Germany. The "ethical suspicion" underlying the rationale of the guide and the replies received are similar to that of the dominant argument against the entry of Turkey into the European Union. The Special Rapporteur intends to follow up on and monitor the implementation of this guide and its extension to other Länder in Germany. He invites the Committee on the Elimination of Racial Discrimination to pay particular attention to this development when examining the next report of Germany.

Greece

Communication sent

74. On 2 June 2006, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers, sent an allegation letter concerning **Theo Alexandridis**, legal counsel with the Greek Helsinki Monitor (GHM), and other staff members of GHM, an organization that monitors and reports on human rights violations in Greece, including violations against the Roma community.

75. According to the information received, on 19 April 2005, the Greek Minister of Health and the Secretary-General of Social Solidarity publicly accused certain non-governmental organizations of "existing only on paper" and of "publishing negative reports on the basis of unreliable, exaggerated and misleading information on the victims of the smuggling of human beings in Greece, in order to obtain an increase in funding from the Greek Ministry of Foreign Affairs". It was reported that GHM was specifically named in these accusations. Reports indicated that GHM has lodged a complaint against the Minister of Health and the Secretary-General of Social Solidarity.

76. Subsequently, on 13 October 2005, Mr. Alexandridis was arrested and detained in the Psair neighbourhood of Aspropyrgos, near Athens. It was reported that Mr. Alexandridis had gone to the police station to lodge a complaint against parents of non-Roma children who had allegedly committed violent acts against demonstrators who were protesting against the expulsion of Roma children from a school in the area. It was alleged that after he

had filed the complaint, Mr. Alexandridis was told he was under arrest and was detained for four hours before being released without charge. Moreover, the president of the Pupils' Parents Association allegedly lodged a complaint against Mr. Alexandridis for "libel" and "defamation".

77. It was also reported that, on 20 January 2006, the Head of the Appeals Prosecutor's Office stated during a radio interview that all Roma were criminals and announced that "perpetrators, instigators and accomplices" of Roma people who had helped them in a case concerning the alleged forced expulsion of Roma families in the Makrigianni area of Patras would be "called on to take the stand", specifically including among this group representatives of GHM. The Head of the Appeals Prosecutor's Office is also said to have stated in the same radio interview that he had opened an inquiry into the involvement of GHM in petitioning the First Instance Prosecutor to open a criminal investigation into alleged illegal evictions and attacks against Roma people in Makrigianni.

Observations

78. The Special Rapporteur regrets that no reply to this communication had been received from the Government of Greece at the time this report was finalized.

79. The Special Rapporteur intends to follow up on this case. In the event that no response is received from the Government, he will no longer treat the case as a mere allegation but as a proven fact.

India

Communications sent

80. On 6 March 2006, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture, sent an allegation letter concerning **Sekar Arjunan (Rajasekar)**, aged 32, a shopkeeper from Raja Thottam, Peravallur, Chennai. According to the information received, on 22 July 2005, eight police officers, all dressed in civilian clothing, approached Mr. Arjunan while he was standing near a fruit shop near the Central Prison in Chennai. The officers beat him and kicked him with their boots in the abdominal region. They then took him by car to Sangeetha lodge near Permbur Railway Station, where they locked him in a room on the second floor. Later that day, they took him to Sembiam Police Station and locked him in a dark room until 26 July. While he was there, he was beaten and deprived of food. On 26 July, he was taken to K-5 Peravallur Police Station, where he was put in a room on the third floor. He was stripped naked and beaten with an iron pipe, which resulted in a fracture to his right knee. The officers also subjected him to verbal caste-related abuse and placed a pistol to his forehead, threatening to kill him.

81. Moreover, it was alleged that the police officers brought false criminal charges against him and that he was remanded in custody by Judicial Magistrate's Court No. Five, Egmore. He was sent to the Central Prison in Chennai. Sekar Arjunan's mother had previously submitted a complaint to the State Human Rights Commission in Chennai requesting it to take action against the same police officials for killing her younger son, Ramesh. She had refused to withdraw the complaint, despite being pressured to do so by the alleged perpetrators. The names of the police officers are Sub-Inspector John Miller, Inspector Anbuselvam, Sub-Inspector Boopalan, Constable Koyilraj, Constable Vinod,

Constable Paramasivam, Constable Vijayan and Constable Gunasekaran of K-1 Sembiam Police Station and K-5 Peravallur Police Station in Chennai.

82. On 8 March 2006, the Special Rapporteur, jointly with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Special Rapporteur on violence against women, its causes and consequences, sent an allegation letter concerning **the alleged gang rape of a 22-year-old woman** belonging to the indigenous Nut community (a Scheduled Tribe) in Sirsi village, Chandauli District, Uttar Pradesh. According to the information received, on 14 January 2006, at 1 a.m., four men from nearby Hinauti village allegedly went to the house of the victim's family. All four men belong to the upper-caste Singh community. The men assaulted the victim's family members and chased them away, leaving the victim alone in the house. Allegedly, the four men then forcibly took her to a field 1 km away from her house where they gang-raped her for three hours. When she became unconscious, they threw her onto a nearby railway line, where she was found hours later by another villager.

83. The victim's family reported the incident to the Chandauli Police Station and lodged a First Information Report (FIR) against the four men under section 376 of the Indian Penal Code and under section 3 (2) and section 5 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989. Reportedly, however, the police tried to delay action against the alleged perpetrators. Under intense pressure from the Nut community, the police finally arrested the alleged perpetrators more than 40 hours after the rape allegedly took place.

84. The members of the Nut community in Sirsi village live in very poor conditions on Government-owned land and make their living from begging. Conversely, the members of the Singh community are large landowners and wield considerable influence in the region. Without wishing to prejudge the accuracy of these allegations, concern was expressed that the victim could be threatened and pressured to withdraw her complaint against the four Singh men.

85. On 11 May 2006, the Special Rapporteur, jointly with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, sent an allegation letter concerning a dispute that took place on 27 August 2005 between several members of the Jat and Dalit communities resulting in the **death of one member of the Jat community**. Upon complaint to the police, four Dalits were immediately arrested and charged, and a manhunt was organized to arrest the remaining allegedly responsible persons. Subsequently, on 28 August, the Jat community reportedly convened a *Maha Panchayat* (a Grand Caste court) and gave the police and the administration an ultimatum: if within 48 hours the guilty persons were not apprehended and justice done, the Jats would burn the entire Balmiki Basti (Dalit district), near Samata Chowk, Gohana, Sonepat, Haryana. Fearing reprisal from the Jats, some 1,500-2,000 Dalits had fled their homes in Balmiki Basti by 30August 2005.

86. It was further reported that, on 31 August, while a second *Maha Panchayat* was taking place, a large group of about 1,500–2,000 armed members of the Jat community entered Balmiki Basti and, in four hours, burned 55 to 60 Dalit houses, destroying or stealing valuables. The report indicated that about 150-200 policemen were present at the scene but took no action. It was further alleged by some witnesses that the police asked the Jat rioters not to burn any shop or house that belonged to a non-Dalit.

87. Reports indicated that several measures to redress the situation were taken, including reconstructing the burnt houses at government cost, helping children in the affected Dalit families to return to school and organizing nutrition programmes for children under the age of 5 years. However, local Dalits contest the claim that the Government has paid Rs 100,000 compensation to 55 affected Dalit families. A probe by the Central Bureau of Investigation (CBI) was ordered. Allegedly, the CBI report into the incident described it as a simple case of arson, allowing many who were involved to remain unindicted even though the FIR implicated the Jat community in Gohana in the burning of the Dalit houses.

88. On 8 December 2006, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture and the Special Rapporteur on violence against women, its causes and consequences, sent a letter of allegation to the Government concerning the **reported murder of S.B., wife of B.B., their daughter P. and their two sons S. and R.,** all belonging to the Dalit community in the village of Khairlanji, Bhandara District, Maharashtra.

89. On 3 September 2006, a local Dalit policeman was allegedly beaten up by upper-caste members of the community. B.B., S., P. and R. reportedly testified against alleged perpetrators, leading to their arrest. It was reported that on the same day, at about 6 p.m., a mob of 200-300 upper-caste villagers, many armed with axes and *ubhari* (a stick with a metal spike), stormed their home and dragged S. B. and her three children out of their house where they were stripped naked, beaten and driven to the main village square. B. B. was not at home at the time. Upper- caste men then gang-raped S.B. and her daughter for over an hour while bystanders, including upper-caste women, verbally incited the rapists. One of P.`s brothers was ordered to have sex with her and when he refused, he was beaten on his genitals. P. was hit on her breasts with an axe and beaten and stabbed with *ubhari* on her genitals. All four persons were hacked to death and the bodies thrown in a canal.

90. As of 30 November, although an FIR had been filed, the vast majority of the perpetrators, including those who were allegedly involved in the gang rape and murder, had not been arrested or charged. Many Dalit families in the village are afraid to testify and, reportedly, only one eyewitness has come forward to testify.

91. On 26 January 2007, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an allegation letter concerning an attack against **Mr. Ravikumar**, a member of the Legislative Assembly of the Kaaumannarkoil constituency, owing allegiance to the Vidudalai Chruthaiga, the Dalit Panthers of India (DPI), in Sedapalayam village, Cuddalore District, Tamil Nadu. Mr. Ravikumar also served as state president of the People's Union for Civil Liberties, Tamil Nadu-Pondicherry, and was elected to the Tamil Nadu Legislative Assembly in 2006.

92. According to the information received, on 2 January 2007, Mr. Ravikumar sustained injuries to his hands and legs during an alleged attack by a group of approximately 100 police officers, including Delta police personnel, in Sedapalayam village during a funeral procession for Mr. Siva, a Dalit youth who had been murdered on 1 January 2007. Twenty-eight other members of DPI were also injured in the attack. Mr. Ravikumar was admitted to the Sri Ramachandra Medical College in Chennai on 3 January 2007 and discharged three days later.

93. According to reports, the funeral procession was attacked by police officers in response to an attempt by some individuals attending the funeral to set fire to houses belonging to the alleged perpetrators of Mr. Silva's murder. Dalit youths who later went to the hospital for medical treatment were reportedly arrested by police on charges of attempted murder.

94. Prior to the events of 2 January 2007, Mr. Ravikumar had reportedly been in contact with Gagandeep Singh Bedi, District Collector, Cuddalore, and M. Karunanidhi, Chief Minister of Tamil Nadu, urging them to ensure that an immediate investigation was carried out into Mr. Silva's murder, and that the perpetrators were brought to justice. He also appealed to the police and the district administration to ensure that law and order was maintained during the funeral.

95. Concern is expressed that Mr. Silva's funeral procession was violently suppressed by the authorities and that excessive police force may have been used against peaceful participants in the funeral. Concern is also raised that Mr. Ravikumar may have been targeted due to his high-profile work in defence of the human rights of Dalits. The Special Rapporteurs do not condone the violence allegedly committed by members of the public, namely the attempt to burn the houses of those perceived to have been responsible for Mr. Silva's death, and hope that diligent, impartial and thorough police investigations are carried out in relation to both alleged incidents.

Reply from the Government

96. On 29 May 2006, the Government of India replied to the communication sent by the Special Rapporteur on 11 May 2006 indicating the steps taken by the Government following the dispute that took place on 27 August 2005 between several members of the Jat and Dalit communities resulting in the death of one member of the Jat community. It was reported that the Government of Haryana State had instituted an inquiry by the Central Bureau of Investigation to investigate the incidents. It was further stated that a case had been filed against the 23 accused and that four persons had been arrested by the police; that the Deputy Superintendent of Police and the Sub-Inspector of Police had been suspended and that departmental action was being taken against them; that the 54 houses which were identified as severely affected had been reconstructed and that grants of 5.4 million rupees had been given to the 54 families severely affected. It was further noted that a departmental grant of 275,000 rupees had been given to 55 other persons affected by the riots, an amount of 200,000 rupees had been distributed as daily allowances, and 33.26 rupees in compensation had been given to 144 families for loss of their belongings during the riots. It was also reported that those who had left their houses at the time of the incident had returned to them.

97. The Government further explained that the National Human Rights Commission of India had taken *suo motu* cognizance of the incident. After considering the case, the Commission expressed appreciation for the sensitivity and promptness shown by the State Government of Haryana in awarding compensation, repairing and reconstructing the houses of the victims and taking action against those responsible. A press release in this regard issued by the Commission was attached to the Government's communication.

Observations

98. The Special Rapporteur thanks the Government of India for the response provided to the communication sent on 11 May 2006. In his view, the response confirms not only the political will but also the legal strategy of the Government to combat caste-based discrimination. However, he is particularly alarmed at the cultural depth of this form of discrimination in many parts of the countryside and by the continuing violence faced by the Dalit community.

99. The Special Rapporteur regrets that no reply to the other communications had been received at the time this report was finalized. The Special Rapporteur intends to follow up on theses cases. In the event that no response is received from the Government, he will no longer treat the cases as mere allegations but as proven facts.

100. The Special Rappporteur wishes to refer to the invitation to visit India which he requested from the Government in 2004 and 2006 and which has remained unanswered. The Special Rapporteur reiterates his interest in visiting India with a view to investigating all forms of racial discrimination, including caste-based discrimination, which he considers to be an integral part of his mandate, in the framework of a regional visit that would also cover Pakistan and Nepal.

Follow-up to previously transmitted communications

101. In the absence of an answer from the Government of India concerning his communication of 16 August 2005 (see E/CN.4/2006 /16/Add.1, para. 33), the Special Rapporteur is forced to consider the following case no longer as allegations but as proven fact.

102. According to the information received, on 5 August 2005, **Dr. Lenin Raghuvanshi,** a human rights defender with the Peoples' Vigilance Committee for Human Rights (PVCHR), an organization working for the Dalits and "lower-caste" communities in Varanasi, received a telephone call from a man (whose identity is known to the experts) demanding that **S.N. Giri,** his associate, withdraw as a candidate from an election due to be held in Belwa village on 17 August 2005. Furthermore, on 7 August 2005, Dr. Raghuvanshi allegedly received another phone call from the same person threatening that if his associate did not withdraw, Dr. Raghuvanshi, his family and Mr. Giri would be shot dead. Dr. Raghuvanshi recorded the phone conversation and lodged a complaint with the Senior Superintendent of the Police and the District Magistrate. He reportedly also faxed a complaint to the Chief Minister of the state. It was reported that on 10 August 2005, **Anupam Nagvanshi**, field coordinator for PVCHR, was surrounded by a number of people connected to the village authorities (whose identities are known to the experts), who asked her why she was encouraging the Dalits and "lower caste" people to vote in the upcoming election. Ms. Nagvanshi was allegedly threatened with death if she returned to Belwa village. Ms. Nagvanshi telephoned the police at approximately 6 p.m. on 10 August 2005 but no officer was dispatched. She then sent a written complaint by registered post to Phoolpur Police Station. It was reported that no action was taken by the Phoolpur police.

Iran (Islamic Republic of)

Communications sent

103. On 1 March 2006, the Special Rapporteur, jointly with the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the independence of judges and lawyers, the independent expert on minority issues, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the question of torture, sent an urgent appeal concerning **173 members of the Nematollah Sufi Muslim community**.

104. According to the information received, on 13 February 2006, they were arrested for participating in a peaceful protest, which was reportedly violently suppressed by the security forces and members of the Hojatieh and Fatemiyon pro-Government groups. The protest was against an order by the security forces to evacuate the community's place of worship, known as the Hosseiniye. At the time the communication was sent, the 173 individuals were reportedly being interrogated at Fajr Prison in Qom and there were concerns that they were being tortured in order to force them to sign pre-prepared false confessions stating that the protest had political motivations and was linked to anti-Government groups. The relatives of the detainees were unable to obtain official information about their whereabouts and the detainees had not had access to lawyers. Lawyer Bahman Nazari was arrested when he approached officials in an attempt to represent the detainees.

105. Reports indicated that the protest had started on 9 February 2006. On 13 February 2006, there were hundreds of protesters present in and around the Hosseiniye. At about 3 p.m. the security forces set a deadline for the protesters to evacuate the Hosseiniye. Members of the Fatemiyon and Hojatieh groups also reportedly surrounded the place of worship, shouting slogans such as “Death to Sufis” and “Sufism is a British plot”, and distributed leaflets alleging that Sufis are enemies of Islam. The security forces moved in at about 4 p.m. and stormed the building, using tear gas and explosives. They beat many of the protesters. The next day, the Hosseiniye was demolished by bulldozers. Approximately 1,200 protesters were arrested and taken away on buses to unknown locations. The detainees were interrogated and many were allegedly tortured or ill-treated. Most of them were subsequently released; however, 173 were still being held at the time of the communication. According to the information received, those who were released were required as a condition of their release to sign papers agreeing not to attend any Sufi gatherings in Qom. Some were required to sign documents renouncing Sufism.

106. It was also reported that arrest warrants had been issued for the main Sufi preacher in Qom, Seyed Ahmadi Shariati, and the four lawyers who had previously been acting on behalf of the group. Their names are Amir Eslami, Omid Behrouzi, Gholamreza Harsimi and Farshid Yadollahi. This incident occurred amid concerns about increasing demonization of the Sufi Muslim group. In September 2005, a religious jurist in Qom, Ayatollah Hossein Nouri-Hamedani, called for a crackdown on Sufi groups in Qom.

107. On 22 May 2006, the Special Rapporteur, jointly with the Special Rapporteur on the independence of judges and lawyers, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the question of torture, sent an urgent appeal regarding **52 members of the Nematollahi Sufi Muslim community** and their two lawyers, **Farshad Yadollahi** and **Omid Behroozi**, who are among the 173 members of the Nematollah Sufi Muslim community arrested on 13 February 2006 and the subject of the communication sent on 1 March 2006, to which no response had been received at the time this communication was sent.

108. According to new information received, on 3 May 2006, 52 members of the Nematollahi Sufi Muslim community and their two lawyers, Farshad Yadollahi and Omid Behroozi, were convicted on charges of "disobeying the orders of government officials" and "disturbing public order". For the former charge, 25 individuals were fined 10 million Iranian rials (equivalent to more than US$ 1,000) and the rest were fined 5 million Iranian rials (equivalent to more than US$ 500). For the latter charge, they were sentenced to one year's imprisonment and 74 lashes. After their release, they would be obliged to report to the security officials every month for a period of two years. It was further reported that Farshad Yadollahi and Omid Behroozi were barred from practising their profession for five years. All of them were released on bail and were given 20 days to appeal the judgment.

109. On 24 May 2006, the Special Rapporteur, jointly with the independent expert on minority issues, sent an allegation letter concerning the **Azeri Turk minority community**. According to the information, Azeri Turks are mainly Shia Muslims and are the largest minority in Iran, consisting of about 25-30 per cent of the population. They are located mainly in the north and north-west of Iran. Reports indicate that, as Shia Muslims, they are generally not the main target of discrimination in Iran. However, there exists a growing demand for better recognition of their cultural and linguistic rights, including implementation of their right to education through the Turkish language. Those who actively seek Azeri Turkish cultural and linguistic identity can reportedly be viewed with suspicion by the authorities and accused of such charges as "promoting pan-Turkism".

110. Examples include the case of Mohammad Reza, Mostafa Evezpoor and Morteza, who were the subject of a joint communication sent by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the question of torture on 10 May 2006, and the case of Saleh Malla Abbasi, who was the subject of a communication sent by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders on 18 May 2006. According to the information received, the "Iran Newspaper" published an article with a cartoon depicting Azeri Turks as "cockroaches" living in toilets, and urging that their food supplies be cut off. This has reportedly triggered protests and hunger strikes in universities in Iran.

Observations

111. The Special Rapporteur regrets that no reply to these communications had been received from the Government of the Islamic Republic of Iran at the time this report was finalized.

112. The Special Rapporteur intends to follow up on these cases. In the event that no response is received from the Government, he will no longer treat the cases as mere allegations but as proven facts.

Follow-up to previously transmitted communications

113. On 7 February 2006, the Government of the Islamic Republic of Iran replied to the Special Rapporteur's letter of 12 December 2005 concerning a speech made by President Ahmadinejad on 26 October 2005 in which, according to the information received, he said that the State of Israel should be "wiped off the map", that Israel is a "disgraceful blot" and that "anybody who recognizes Israel will burn in the fire of the Islamic nation's fury" (see E/CN.4/2006 /16/Add.1, para. 41).

114. The Special Rapporteur refers to the reply of the Government, which was circulated as an official document of the sixty-second session of the Commission on Human Rights (E/CN.4/2006/G/10).

115. In its reply, the Government of the Islamic Republic of Iran, after reiterating his commitment to cooperation with the thematic mandates of the Commission on Human Rights, informed the Special Rapporteur that human life was sacred, irrespective of race, religion or belief, and that no one had the right to ethnic, racial or religious cleansing, which it wholly condemned.

116. The Government further indicated that the President's remarks were made in response to a "research question" and deserved an academic answer; the emotionally and politically charged environment was counter to the freedom of expression.

117. It also stated that the President of the Islamic Republic of Iran distinguishes between the Jewish religion and Zionism. He has underlined that Jews constitute a respectable minority in the Islamic countries, including Iran, and have lived in peace and security, enjoying freedom of religion and participation in social and political life in their respective societies. In contrast, the President considers that Zionism is an ideology based on hegemonic desires and political ambitions, articulated by colonial Powers and artificially injected into the Middle East for their purposes. The systematic oppression of the Palestinian people by Israel during last half century cannot be forgotten and is known to the fair and justice-oriented peoples of the world. Various documents of the United Nations and its human rights machinery, including the special procedures, unambiguously attest to the atrocities perpetuated in the Occupied Territories by the Zionist regime.

118. Furthermore, the Government reported that it has become a daily practice of American and Israeli officials to call for a "regime change" in Iran, stigmatizing Iran as part of the "axis of evil" and threatening Iran with a full-scale attack against its infrastructure. The Government indicated that it is a legitimate question to ask why these statements do not motivate the Special Rapporteur's sensitivity. Finally, the Government raised the question of whether these remarks advocate "hostility and violence", which are prohibited under article 20 of the International Covenant on Civil and Political Rights.

Observations

119. The Special Rapporteur refers to his general report to the Human Rights Council (A/HRC/4/19), in which he states that the amalgamation of the State of Israel with all Jewish communities, be in the Diaspora or living in Israel, the stereotyping of the Jewish people and the non-recognition of their cultural, religious and political diversity constitute the root causes of a new form of anti-Semitism. The Special Rapporteur has indicated in his report on defamation of religions and global efforts to combat racism, anti-Semitism, Christianophobia and Islamophobia (E/CN.4/2005 /18/Add.4) that he does not equate anti-Zionism with anti-Semitism, even if certain forms of anti-Zionism can hide manifestations of anti-Semitism. However, the President of the Islamic Republic of Iran has crossed a line by calling for the "wiping off the map" of a State Member of the United Nations and by organizing a conference in Tehran which questioned the historic truth of the extermination of Jews in Europe by Nazi Germany, in order, as indicated by the Government of Iran in the note verbale addressed to the Special Rapporteur on 5 March 2007, "to open a window of opportunity for all those who have given the issue a thought from all over the world to present their case ". The Special Rapporteur considers that, by organizing this conference, the President of Iran has demonstrated his intention to legitimize revisionism of other forms of racism, in particular by inviting, in addition to prominent figures in European anti-Semitic revisionism such as Robert Faurisson, symbols of anti-Black racism in the United States of America such as David Duke, one of the former leaders of the American Ku Klux Klan. The participation in the conference of the Ku Klux Klan, a group whose ideology of racial superiority has resulted in the most serious racist crimes committed against Afro-descendants in the United States, shows an alarming degree of insensitivity towards historical and current victims of racism.

Libyan Arab Jamahiriya

Communication sent

120. On 3 February 2006, the Special Rapporteur, jointly with the independent expert on minority issues, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, sent an allegation letter concerning **discrimination against Berbers** in the Libyan Arab Jamahiriya.

121. The information received alleged the existence of discriminatory legislation in respect of the Berber culture and identity, such as law No. 24 of the Libyan year 1369 (1991), which prevents people from using any language other than Arabic in the country. Allegedly, these laws forbid all literature and writing which is not in Arabic, and therefore the use of the Berber language. It was also alleged that it is forbidden to give children names of Berber origin.

122. It was also alleged that the Government deliberately holds back the development of regions with Berber communities. For example, the only hospital in the region of Zouara was closed in the 1980s and has not been reopened, and there was no hospital in the region at the time this communication was sent. Similarly, the water projects in the country have

deliberately excluded the regions of Nefoussa and Zouara. The information received also indicated that the Libyan education system and schoolbooks do not take into account the Berber component in Libya's geography, history and culture. Allegations also report that persons working for the defence of the Berber community, culture and identity have been harassed and ill-treated.

Observations

123. The Special Rapporteur regrets that no reply to this communication had been received from the Government of the Libyan Arab Jamahiriya at the time this report was finalized.

124. The Special Rapporteur intends to follow up on this case. In the event that no response is received from the Government, he will no longer treat the case as mere allegation but as proven fact.

Myanmar

Follow-up to previously transmitted communications

125. In the absence of an answer from the Government of Myanmar concerning his communication of 3 March 2005 (see E/CN.4/2006 /16/Add.1, para. 49), the Special Rapporteur is forced to consider the following case no longer as an allegation but as a proven fact.

126. According to information received the **Rohingyas**, a Muslim ethnic minority living in northern Rakhine State (historically known as Arakan), western Myanmar, are targeted because of their ethnicity and suffer widespread discrimination at the hands of the authorities under policies that do not affect other ethnic minorities to the same extent. Moreover, despite the fact that the ancestors of the Rohingyas have resided in Myanmar for many generations, the State Peace and Development Council denies their existence as a separate ethnic group and considers them to be merely permanent residents of the country, as a result of which a majority of Rohingyas would not be able to qualify for citizenship and are stateless. In addition, the freedom of movement of the Rohingyas is severely restricted. They are virtually confined to their respective villages, unable to access medical and educational services, due, inter alia, to the fact that, should they wish to travel outside their respective villages, they would require official authorization and must pay a fee which in many cases they cannot afford. This restriction, which is not applied to the Rakhine population in Rakhine State, seriously affects their standard of living, particularly with regard to food security. When Rohingyas nevertheless do attempt to travel without authorization, if apprehended, they are reportedly arrested and imprisoned. Moreover, security forces are said often to subject Rohingyas to forced labour. They are also said to be subjected to arbitrary taxation and confiscation of their land without compensation, and furthermore are required to seek and pay for official permission to marry, which in some cases is reported to cost the equivalent of several years' wages; payment does not necessarily guarantee that permission will be granted. Concern was expressed that the restrictions and violations of the human rights of the Rohingyas are especially serious owing to the fact that they appear to be targeted specifically because of their ethnicity.

Observations

127. The Special Rapporteur refers to the press release of 2 April 2007 issued jointly with the Special Rapporteur on the situation of human rights in Myanmar, the independent expert on minority issues, the Special Rapporteur on adequate housing, the Special Rapporteur on the right to food and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. In the press release the experts called on the Government of Myanmar to take urgent measures to eliminate discriminatory practices against members of the Muslim minority in northern Rakhine State, generally known as the Rohingyas, and to ensure that no further discrimination is practised against persons belonging to this community.

Nepal

Communication sent

128. On 10 October 2006, the Special Rapporteur, jointly with the Special Rapporteur on freedom of religion or belief, sent an allegation letter concerning attacks on **members of the Dalit community in Doti District, Nepal**. According to the information received, on 26 August 2006, Dalit women were harassed by the priest of Shivalaya temple and local men when they attempted to worship on the occasion of Teej, a Hindu festival. They were eventually barred from entering the temple. Reports indicated that, on 16 September 2006, the District Administrative Officer issued a formal notice stating that Dalits have the right to enter and worship at public temples, and that those who choose to discriminate on the basis of caste, in whatever form, will be prosecuted. However, when Dalit worshippers visited the Saileswori temple of Dipayal in Silgadhi, Doti District, on 17 September 2006, their worship was disrupted by upper-caste people who physically attacked them with knives and other weapons, alleging that the Dalits had been acting in an offensive manner.

Observations

129. The Special Rapporteur regrets that no reply to his communications had been received from the Government of Nepal at the time this report was finalized.

130. The Special Rapporteur intends to follow up on this case. In the event that no response is received from the Government, he will no longer treat the case as mere allegation but as proven fact.

131. The Special Rappporteur refers to the invitation to visit Nepal that he requested from the Government in 2004 and 2006, which has remained unanswered. The Special Rapporteur reiterates his interest in visiting Nepal, in particular to study the issue of caste-based discrimination, which he considers to be an integral part of his mandate, in the framework of a regional visit that would also cover India and Pakistan.

Follow-up to previously transmitted communications

132. In a letter dated 4 January 2006, the Government responded to a communication sent on 17 November 2004 regarding the alleged rape of S.S. from Inruwa, Sunsari (see E/CN.4/2005/18/Add.1. para. 32). On 17 May 2004, at around 11 p.m., 8 to 10 masked

persons attacked the family of S.S. and forcefully took her to a nearby pond belonging to D.B. S. was found dead in the pond; she had been gang-raped. According to the Government's information, the police immediately arrested some local youths on suspicion of involvement in the incident, but they were found not to have any connection with the incident and were released. As the case was investigated, the police on 29 November 2004 arrested M.P., M.C., T.N.S.K., K.R.C., D.Y. and R.K.C, permanent residents of Bhawanipur, India, and currently residing in Dumraha in Sunsari District. The Government indicated that they were produced before the competent authority for trial. On 28 December 2004, the accused were remanded to pre-trial detention in the District Jail, Morang by the order of the Sunsari District Court. M.C. and R.K.C. were released by the court on the condition that they report to the court on a specified date. According to the information provided, the court has also issued a warrant order.

Nicaragua

Seguimiento de las comunicaciones transmitidas previamente

133. Ante la falta de una respuesta del Gobierno de Nicaragua en relación con su comunicación del 18 de noviembre de 2005 (véase E/CN.4/2006 /16/Add.1, párr. 56) referente a la difícil situación en la que se encontraría la **comunidad indígena mayangna de Awas Tingni,** de la Costa Atlántica de Nicaragua, por las violaciones sufridas a sus derechos sobre las tierras, territorio y recursos naturales, el Relator Especial se ve en la obligación de dejar de tratar este caso como una alegación y de considerarlo como un hecho probado.

134. Según las informaciones recibidas, la falta de cumplimiento de la sentencia de 31 de agosto de 2001 habría permitido la continua violación de los derechos de propiedad reconocidos en esta sentencia y a la vez habría dado lugar a nuevas amenazas a la integridad cultural y supervivencia física de la **comunidad de Awas Tingni** como consecuencia de las actividades de terceros en su territorio ancestral, incluyendo madereros ilegales y colonos no indígenas. Se informa que el agravamiento de la situación en el territorio de Awas Tingni llevó a la Comunidad a solicitar una nueva intervención de la Corte Interamericana de Derechos Humanos, lo cual resultó en que la Corte dictara, el 6 de septiembre de 2002, una resolución de medidas provisionales las cuales, de acuerdo a las informaciones recibidas, tampoco se habrían cumplido hasta la fecha. Los informes afirman que cuatro años después de que la Corte emitiese su sentencia, y desde casi tres años de haberse expirado el plazo de 15 meses dado por este tribunal, las tierras de la comunidad Awas Tingni no habrían sido demarcadas o tituladas a pesar del compromiso adquirido.

Niger

Suite donnée aux communications précédemment envoyées par le Rapporteur spécial

135. En l'absence de réponse du Gouvernement du Niger à sa communication du 4 Août 2005 (voir E/CN.4/2006 /16/Add.1, par. 60) concernant l'inexistence de mesures suffisantes pour répondre aux **formes modernes et traditionnelles de la traite des personnes et du travail forcé**, y compris l'esclavage et les pratiques analogues de l'esclavage, le Rapporteur

spécial se voit dans l'obligation de considérer le cas suivant non plus comme une allégation mais comme un fait avéré.

136. Selon les informations reçues, le Niger ne posséderait pas encore de législation spéciale prohibant toutes formes de traite des personnes et l'érigeant en crime. En outre, des renseignements indiqueraient que le comité des experts du Ministère de justice responsable des politiques contre la traite des personnes n'existerait plus. Selon les informations reçues, le Niger serait devenu un pays de transit pour le trafic de femmes et jeunes filles, certaines âgées seulement de 15 ans, en provenance du Nigeria, Ghana, Togo, Bénin, Burkina Faso et Gabon et à destination du Maghreb et de l'Europe, où elles seraient forcées de se prostituer, ou encore du Proche-Orient, où elles seraient exploitées pour du travail domestique forcé. Dans certains cas, ces femmes et jeunes filles seraient également forcées à se prostituer sur le territoire du Niger, en particulier dans les régions de Zinder, Maradi et à Niamey. L'accès limité à l'éducation, illustré par un taux d'alphabétisation des femmes extrêmement bas (9,3 % en 2002), rendraient les femmes et les jeunes particulièrement vulnérable à ce type de promesses. Les informations indiqueraient également que, dans de nombreuses régions du Niger, les systèmes d'esclavage, historiquement répandus au Niger, se seraient transformés en des systèmes discriminatoires, de castes. Les femmes et des jeunes filles provenant des castes d'anciens esclaves se trouveraient plus exposées au trafic d'êtres humains, dans la mesure où elles seraient considérées comme issues d'une strate sociale inférieure. En outre, certains riches propriétaires fonciers utiliseraient leurs moyens financiers pour générer des situations de servitude. De véritables relations « maître-esclave », dans lesquelles des personnes et leurs descendants sont considérées et traitées comme la propriété personnelle d'une tierce personne, continueraient également d'exister. Dans ce type de cas, les victimes seraient forcées d'élever le bétail, d'accomplir les travaux agricoles ou domestiques du maître en échange d'un peu de nourriture et d'un endroit où dormir. Malgré l'entrée en vigueur des lois prohibant et criminalisant l'esclavage et les pratiques assimilées en avril 2004, les renseignements communiqués indiqueraient que certains agents publics cautionneraient délibérément certaines pratiques constituant des crimes au regard de la loi. Selon les informations communiquées, l'attitude de certaines autorités ferait obstruction au travail des organisations de la société civile et des défenseurs des droits de l'homme contre l'esclavage au Niger. En particulier, le 28 avril 2005, le Gouvernement aurait arrêté **Ilguilas Weila**, Président de l'ONG Timidria, et **Alassane Biga**, Secrétaire général du bureau de Timidria à Tillabéri. Ce cas a déjà fait l'objet d'un appel urgent de la Présidente-Rapporteur du Groupe de travail sur la détention arbitraire, le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et le Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, en date du 18 mai 2005. Les experts remercient le Gouvernement pour sa réponse prompte et détaillée du 20 mai 2005 (0003742/MAE/C/SG) dans laquelle il informe que Ilguilas Weila et Alassane Biga seraient accusés de faux et de tentative d'escroquerie. Selon les derniers renseignements des experts, les deux hommes auraient été remis en liberté sous caution mais la Cour n'aurait pas rendu d'ordonnance de non-lieu. Les experts demeurent par conséquent préoccupés par la situation de ces deux défenseurs des droits de l'homme. Enfin, certaines autres pratiques traditionnelles représentant des formes de traite des personnes existeraient toujours au Niger. En particulier, celles consistant en ce que les parents incapables d'assurer l'alimentation de leurs enfants ou pensant ainsi mieux pourvoir à leur éducation, confieraient leurs jeunes fils âgés sept à douze ans à des enseignants religieux (les « marabouts »). Certains marabouts forceraient leurs élèves à mendier, fixant un quota journalier pour chacun. D'autres marabouts obligeraient leurs élèves à effectuer de durs travaux manuels. Beaucoup des parents ne seraient pas conscients de ces pratiques

lorsqu'ils confieraient leurs enfants aux marabouts. D'autres n'ignoreraient pas la situation, mais ils considéraient le travail des enfants comme faisant partie de la culture nigérienne.

Poland

Communication sent

137. On 26 April 2006, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal regarding the third annual Krakow March for Tolerance, which was due to take place in Krakow, Poland, on 28 April 2006. The Krakow March for Tolerance is a peaceful march organized by the Campaign against Homophobia in Poland and aims to provide a platform for discussion about tolerance, antidiscrimination and respect for the rights of all persons regardless of their perceived sexual orientation.

138. According to the information received, a number of organizations had indicated their fear that past violence against this type of peaceful demonstration was likely to occur on this occasion. In 2004 peaceful participants in the Krakow March for Tolerance were victims of physical attacks by extreme nationalist groups. In November 2005 demonstrators in Poznan were reportedly harassed and intimidated by members of a right-wing group known as the All Polish Youth. At both events it was reported that the police stood by and failed to protect the demonstrators from being harassed and intimidated by members of the All Polish Youth who shouted discriminatory slogans at them including "Let's get the fags", and "We'll do to you what Hitler did to the Jews". Furthermore, when the police did intervene it was reportedly in a violent manner and against the peaceful demonstrators.

139. The Poznan event had already been brought to the attention of the Government of Poland in a communication sent by the Special Rapporteur and the Special Representative of the Secretary-General on the situation of human rights defenders on 5 December 2005 (see E/CN.4/2006 /16/Add.1, paras. 72-73).

140. Nevertheless, the Special Rapporteur and the Special Representative expressed their continued concern about the reported harassment of human rights defenders campaigning for equality and against discrimination based on perceived sexual orientation, and encouraged the Government of Poland to protect participants in the Krakow March for Tolerance against any possible discriminatory or hateful abuse.

Reply from the Government

141. On 14 June 2006, the Government of Poland sent a reply to the urgent appeal sent by the Special Rapporteur on 26 April 2006, informing him that the Krakow authorities had taken all the necessary measures to ensure that freedom of assembly was not restricted. Two gatherings were authorized to take place on 28 April 2006: the March of Krakow Tradition and Culture and the March of Tolerance. To avoid possible confrontation with the former, the organizers of the March of Tolerance proposed a procession route in consultation with the Krakow police. Since the organizers of both public gatherings in Krakow met all the legal requirements necessary to conduct a demonstration, there were no grounds for prohibiting either the March of Tolerance or the March of Krakow Tradition and Culture. Thus, the municipal authorities ensured freedom of peaceful assembly to participants in both demonstrations.

142. The Government further reported that meetings with the organizers had been held to ensure the security of the participants. At the same time, it was agreed that representatives of the Krakow municipal authorities would also participate in the security operation. Seeing that in the past participants in the March of Tolerance had been attacked by hooligans, the police decided that special security measures should be engaged to protect the gathering. A total of 435 police officers were assigned to protect both demonstrations, the great majority of whom provided security for the March of Tolerance.

143. When the counter-demonstrators became aggressive, the police formed a cordon around the marchers, protecting them from possible incidents. Two attempts were made to block the procession. The police responded by ordering the troublemakers to disperse, and then used force against them. Theses measures were commensurate with the situation, and excessive force was avoided in restoring public order and security. During the operation, the police detained 11 individuals for disturbing the peace.

144. The Government indicated that the Krakow municipal authorities, while recognizing that some demonstrations might irritate or upset individuals who opposed their ideas or objectives, acted on the correct assumption that people should be free to organize demonstrations without fear of violence on the part of their opponents. Such fear could prevent associations or groups from openly expressing their views on various important social issues. True freedom of peaceful assembly must not be limited solely to abstention from intervention by the State; sometimes it requires the competent authorities to become actively involved. In ensuring the security of the march, police allowed participants to safely manifest their views.

145. Finally, the Government noted that these measures were concordant with international human rights agreements binding on Poland, and also 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, adopted by the General Assembly on 9 December 1998.

Follow-up to previously transmitted communications

146. On 21 February 2006, the Government replied to the Special Rapporteur's letter dated 5 December 2005 concerning the banning of assemblies organized by the sexual minority community in Warsaw (June 2004 and May 2005) and Poznan (November 2005). The Government of Poland indicated that it did not share the concern expressed by the Special Rapporteur in connection with the abolition of the Office of the Government Plenipotentiary, at the same time determining that "tasks pertaining to the prevention of all forms of discrimination shall be implemented by the Minister of Labour and Social Policy and the remaining members of the Council of Ministers, as competent."

147. Pursuant to an ordinance issued by the Prime Minister on 9 December 2005 concerning the statute of the Ministry of Labour and Social Policy, a department for women's affairs, the family and prevention of discrimination was established within the structure of the Ministry. In accordance with the Ministry's rules of procedure, the department "is responsible for coordination of actions connected with the status of women and the family in society, and implements tasks concerning the prevention of discrimination in all spheres of social, economic and political life, with the exception of matters concerning the prevention of ethnic discrimination" (ordinance of the Minister of Labour and Social Policy of 30 December 2005 introducing the rules of procedure of the Ministry of Labour

and Social Policy). The above circumstances indicate that protection against discrimination will now be broader than in the past, since it will not be restricted to issues of gender inequality.

148. In the information received, the Government listed some articles of its national legislation to show that regulations of Polish law guarantee freedom of assembly and provide for the possibility of its restriction. On 18 January 2006 the Constitutional Tribunal of Poland ruled that article 65 of the law on road traffic of 20 of June 1997 in the part incorporating the word "assemblies" was incompatible with article 57 of the Polish Constitution, which ensures everyone's right to organize peaceful assemblies and participate in them and provides for its restriction only by statute. The ruling of the Constitutional Tribunal has enormous practical significance for the implementation of the right of assembly. In addition to ascertaining the unconstitutionality of the cited provision of the law on road traffic, invoked by the local authorities in prohibiting the assemblies, it also contains a catalog of guidelines for the local authorities concerning their future conduct, so as to ensure that their decisions comply with the law and Poland's international obligations.

149. Concerning the compatibility of the prohibition of the right to be free from all forms of discrimination, the Government of Poland pointed to rulings of the European Court of Human Rights and the European Commission on Human Rights which show that in all the situations where the local authorities prohibited the organization of assemblies and their organizers appealed against unfavourable decisions, the competent appellate organs or courts had issued judgements quashing the decisions prohibiting the assemblies. In other words, all the decisions of the administrative organs issued in contravention of domestic laws, and which could be seen as contradicting Poland's international obligations, were annulled and are no longer binding in the domestic legal order.

150. The Government of Poland reported also on the training for law enforcement officials concerning the rights of sexual minorities. Problems pertaining to discrimination are discussed during training provided by State institutions to many professional groups. One example of such training was the PHARE 2002 project "Strengthening Anti-Discrimination Policies" implemented by the Secretariat of the Government Plenipotentiary for Equal Status of Women and Men. A key component of the project consisted in preparing a model and programme of training on the prevention of and fight against discrimination on the grounds of race, ethnic origin, sexual orientation, gender and religion. The training was designed to provide representatives of different professional groups with the knowledge needed to identify and counter discriminatory phenomena and to sensitize them to the possibility of discrimination against different social groups. An additional, long-term assumption of the project was that it would lead to the implementation of similar training by professional associations, thus increasing the number of persons sensitized to discrimination and prepared to counteract it effectively.

151. The Polish authorities have also taken steps to train judicial officials. A programme of continuing anti-discrimination training for judges and prosecutors has been launched, with special emphasis on labour law and social security issues and due reference to the preventive measures and anti-discrimination legislation of the European Union. The project is a continuing undertaking. Police officers are another professional group provided with intensive training. The Government has launched a National Programme against Racial Discrimination, Xenophobia and Related Intolerance (2004-2009) designed to sensitize the public to problems of xenophobia, racism and anti-Semitism and to support the related

research. The project includes training for police, border and customs officers and prison staff.

152. Poland ratified the International Covenant on Civil and Political Rights on 3 March 1977, thus guaranteeing to all persons on its territory and subject to its jurisdiction full protection of the rights and freedoms envisaged under the Covenant. Discrimination, including against groups of different sexual orientation, is prohibited in a number of legal acts. Any person who has been denied equal treatment may pursue appropriate claims. Protection against discrimination on different grounds is explicitly provided in the Constitution, as well as civil, criminal and labour law. Since 1 May 2004 Poland has also been bound by directives obligating EU member States to ensure individual assistance to victims of discrimination in pursuing their claims connected with discrimination. In particular, the Constitution of the Republic of Poland of 1997 (art. 32) provides that all persons are equal before the law, have the right to equal treatment by public authorities and cannot be discriminated against for whatever reason in political, social or economic life. The Penal Code of 1997 (arts. 256 and 257) prohibits the instigation of hatred because of national, ethnic, racial and religious differences or non-denominationalism, and similarly insulting behaviour. The Civil Code of 1964 (arts. 23 and 24 in connection with art. 415) also provides victims of discrimination with the possibility of seeking damages. Under the Civil Code victims may invoke provisions protecting personal interests to claim damages or compensation. Also, the Labour Code of 1974 prohibits any direct or indirect discrimination in employment, employee recruitment and in work relations.

153. It should be emphasized that the legal regulations prohibiting discrimination grant persons of different sexual orientation the same legal protection as that enjoyed by other persons whose rights have been violated through discrimination. The prohibition of discrimination against all persons in political, social and economic life is a constitutional principle. It is obvious that this also encompasses the prohibition of discrimination on the ground of sexual orientation. The prohibition of this type of discrimination is contained in numerous international agreements to which Poland is a party. Since the Constitution stipulates that an international agreement ratified upon prior consent granted by statute has precedence over statutes if such an agreement cannot be reconciled with the provisions of such statutes, it should be understood that full institutional protection against all forms of discrimination is ensured within the Polish legal order.

Observations

154. The Special Rapporteur thanks the Government for its detailed responses to his communications.

Russian Federation

Communications sent

155. On 21 April 2006, the Special Rapporteur sent an allegation letter concerning the murder of **Samba Lampsar**, a Senegalese student and active member of African Unity, an NGO working for the promotion of tolerance and the elimination of racism in St. Petersburg.

156. According to the information received, on 7 April 2006, Mr. Lampsar and several other students of African origin were attacked by an unidentified person while walking in the city centre, after having participated in a weekly celebration of intercultural friendship between Russians and foreigners. The assailant was hiding beside the club where the gathering took place and blocked the students' way, shouting Nazi slogans. He shot at the students as they tried to escape, and killed Mr. Lampsar. The murderer then ran away. A shotgun bearing a swastika and the inscription "White Power" was later found in the area. Prior to the incident, Mr. Lampsar had actively participated in anti-racism events; in particular, he had been giving anti-racism lessons in several schools in St. Petersburg.

157. It was reported that the public prosecutor opened an investigation into this case under article 105-2 of the Russian Criminal Code (murder aggravated by racial or national hatred). The Special Rapporteur expressed his deepest concern regarding the assassination of Samba Lampsar, which seems to have occurred in a climate of increasing hostility towards foreigners, minorities and human rights defenders.

158. On 25 October 2006, the Special Rapporteur, jointly with the Special Rapporteur on the right to education and the independent expert on minority issues, sent an urgent appeal concerning **discriminatory treatment of Georgians by the Russian authorities.** According to the information received, persons of Georgian origin, whether newly arrived in Russia or members of the long-resident ethnic Georgian community, were the specific target of discriminatory practices and measures allegedly undertaken in response to the arrest in Georgia of four Russian military officers on 27 September 2006.

159. Between 6 and 16 October, 682 Georgian nationals and stateless people from Georgia were deported and on 17 October another 150 people were expelled. Several hundred were said to be held in detention centres in Moscow in very harsh conditions, deprived of sufficient nutrition and medical aid while awaiting expulsion. The experts had been informed about the death of. Tengiz Togonidze, a Georgian citizen aged 58, during his transfer from St. Petersburg to Moscow on a bus packed with people. Reports indicated that Mr. Togonidze, who suffered from cardiac asthma, spent five days in detention in St. Petersburg without receiving proper medical assistance.

160. Many of these people had their legal visas or residence permits cancelled on arbitrary pretexts. It was reported that some of the deportees were refugees from Abkhazia, among them stateless persons or holders of old Soviet passports whose papers were destroyed by police officers. It was alleged that these practices were also taking place in other Russian cities. It was also reported that some of the deportees, including women and children, were transferred to Abkhazia and were allegedly asked to pay approximately US$ 1,000 per person to travel to the territory under the jurisdiction of the Government of Georgia. Reportedly, courts were issuing deportation rulings automatically, without taking into consideration the circumstances of each case, violating procedural norms and depriving persons of Georgian origin of their right to a hearing before the court and to legal assistance.

161. The experts were also informed about instructions for the implementation of Order No. 0215 of the Department of the Interior of the St. Petersburg and Leningrad region of 30 September 2006, requesting all police units to make the maximum effort to find and deport persons of Georgian origin illegally located on Russian territory. Police officers were instructed to initiate court proceedings for cases of violations by persons of Georgian origin

of rules regarding foreign citizens that were punishable only with the most serious measure of deportation.

162. 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 families' possible whereabouts. It was reported that this request was aimed at identifying illegal migrants in order to be able to deport them to Georgia. Similar instructions were given by Russian authorities to three Russian schools in Georgia. On 3 October 2006, pupils and teachers with Georgian citizenship were not admitted to the schools affiliated with the Ministry of Defence of the Russian Federation in Tbilisi, Batumi and Akhalkalaki, Georgia. Notices were posted on the door stating that access to the schools was prohibited to Georgian citizens. The information received also indicated that several raids had been carried out in different Russian cities against different businesses owned by or employing persons of Georgian origin.

Reply from the Government

163. On 14 August 2006, the Government of the Russian Federation replied to the communication of 21 April 2006. The Government indicated that that the body of S. Lampsar was discovered on 7 April 2006 in the vicinity of No. 17, 5th Krasnoarmeiskaya Street, with gunshot wounds to the neck and upper back. Forensic analysis indicated that the victim died owing to massive blood loss. The Government stated that the St. Petersburg Admiralty district procurator's office opened criminal case No. 203048 on the evidence of an offence contrary to article 105, paragraph 2 (k), of the Criminal Code of the Russian Federation (homicide motivated by ethnic or religious hatred or enmity or blood feud). A crime response unit established to investigate the offence proceeded to conduct a number of investigations and inquiries. Seven active members of the "Mad Crowd" extremist youth group were arrested on suspicion of committing the offence, including the perpetrators, D.A. Borovikov and A.O. Milyugin, whose guilt was confirmed by eyewitness testimony. Mr. Borovikov was killed in a firefight with law enforcement officers. In the course of the investigation, it was established that the above-mentioned gang had been involved in seven homicides and two serious woundings in St. Petersburg and Leningrad province. The Government noted that the existence of this criminal gang has prompted the St. Petersburg procurator's office to open a criminal case under article 209 of the Criminal Code (thuggery); the Office of the Procurator-General of the Russian Federation is overseeing the investigation.

164. On 20 February 2007, the Government of the Russian Federation replied to the communication of 25 October 2006. It indicated that the Ministry of Internal Affairs of the Russian Federation and the Federal Migration Service, which operates under its authority, exercise, within their established fields of competence, the authority to prevent and put a stop to administrative offences, enforce public order and monitor compliance by foreigners and stateless persons with the rules governing residence and temporary sojourn in the Russian Federation. They do so in strict accordance with the law, which they apply without exception to all foreigners irrespective of their citizenship, and, consequently, there is no emphasis placed on detecting violations of federal law by Georgian citizens in particular. In this regard, it was pointed out that Georgians constitute nowhere near the majority of the illegal migrants deported from Russia; migrants from Central Asia, for example, are far more numerous.

165. According to Federal Migration Service figures, Georgian citizens were guilty of 27,438 administrative offences in 2006. Over the same period, the courts issued 5,622 orders for the deportation of Georgian citizens from the Russian Federation. Deportation was subject, in all instances, to the relevant court order becoming enforceable. There were thus no grounds to assert that Georgians are being subjected to mass deportation on account of their ethnic background. It was further noted that all the Georgian citizens detained for breaches of the rules governing sojourn in the Russian Federation, including Mr. Togonidze, were held until immediately before their deportation from Russia in holding centres under the authority of the Ministry of Internal Affairs where they were provided with beds, toiletries, food and medical attention and were able to receive messages from friends and relatives. Together with other Georgians awaiting deportation, Mr. Togonidze was taken to Moscow by bus on 16 October 2006. His state of health worsened at Domodedovo Airport; an emergency medical team was called and began resuscitation procedures. Despite all efforts, Mr. Togonidze passed away. According to the findings of the expert from the Forensic Bureau at the City of Moscow Health Department, Mr. Togonidze's death was caused by methadone poisoning (methadone is a narcotic).

166. In addition, the Government's reply indicated that between July and November 2006, the authorities in Moscow launched 245 sets of criminal proceedings against ethnic Georgians, detained 273 individuals under article 91 (grounds for detention of a suspect) of the Russian Code of Criminal Procedure, arrested 258 individuals and referred 224 cases involving ethnic Georgians to the courts; they also detained 28 individuals wanted for various crimes. It was noted that the city procurator's office had determined that the criminal proceedings were brought legally and for good reason, and that preventive measures were applied with due regard for current legislation. In addition, the Office of the Moscow City Procurator had received no complaints from Georgian citizens to the effect that their rights and liberties had been violated or that they had been subjected to discrimination on grounds of their nationality. It was further noted that there have been no established instances of extortion in connection with the enforcement of article 18.8 of the Russian Code of Administrative Offences.

167. The Government noted that, during checks by the Moscow City Procurator's Office, it was discovered that the individuals concerned were being legally held in holding centres and legally deported from the Russian Federation, and that staff at holding centres No. 1 and No. 2 requested the district courts to amend violation orders issued against citizens of the Republic of Georgia on the basis of erroneous personal data. This was in breach of article 30.11 of the Russian Code of Administrative Offences since the cases were not brought to the city procurator's office so that protests could be lodged against the orders. Contrary to the administrative legislation in force, the courts issued instructions to correct the personal data on the strength of which Georgian citizens were being deported from the Russian Federation. Given these breaches of the law, on 24 November 2006 the Office of the Moscow City Procurator lodged with the Moscow Municipal Court 22 protests, relating to 11 individuals, against the district courts' instructions to correct personal data and against the rulings in cases of administrative offences. So far, the Municipal Court has upheld 16 of the protests relating to the 11 individuals; the remainder are still under consideration. Where the protests have been upheld, the courts' instructions have been set aside and the cases have been referred back to the district courts for fresh examination.

168. The Government also noted that the Ministry of Education and Science, the Federal Education Agency and the Federal Education and Science Inspectorate reported that they had at their disposal no information about discrimination against students of Georgian

nationality or the establishment of lists of such students and their families with a view to their future prosecution and deportation from Russia. Upon checking, the Moscow City Education Department uncovered instances in which Internal Affairs employees, on the pretext of verifying compliance with the law on migration, had made unwarranted demands on schools and other institutions to furnish the personal details of ethnic Georgian pupils and their parents. The Moscow City Internal Affairs Authority conducted official investigations into these cases and the culprits were punished. The head of the Authority, Mr. V.V. Pronin, sent a telegram to all Authority offices notifying staff that violating citizens' rights during the performance of routine duties would not be tolerated and reminding them to maintain ethical standards of professional conduct.

169. Finally, the Government indicated that, in a bid to forestall events giving rise to nationalistic feelings in society, State procurators in the constituent entities of the Russian Federation were instructed on 5 December 2006 to monitor the observance by Internal Affairs organs of foreigners' and stateless persons' rights and freedoms with increased vigilance. The Russian Ministry of Education and Science is taking steps to prevent displays of xenophobia in educational institutions.

Observations

170. The Special Rapporteur thanks the Government of the Russian Federation for its replies to the communications sent on 21 April 2006 and 25 October 2006. The Special Rapporteur refers to the report on his mission to the Russian Federation (A/HRC/4/19/Add.3), to be submitted to the fifth session of the Human Rights Council.

Saudi Arabia

Follow-up to previously transmitted communication

171. In the absence of an answer from the Government of Saudi Arabia concerning his communication of 12 April 2005 (see E/CN.4/2006 /16/Add.1, para. 87), the Special Rapporteur is forced to consider the following case no longer as an allegation but as a proven fact.

172. According to information received, a cartoon was published in *Arab News*, an English- language daily newspaper published by the State corporation Saudi Research and Publishing Company, depicting rats wearing Star of David skullcaps. The rats were shown scurrying backwards and forwards through holes in the wall of an edifice bearing the sign "Palestine House". It is reported that this image replicates a scene taken from the Nazi film "Jew Suess", which depicts Jews as vermin to be eradicated by mass extermination. This scene had also been used in the media during the Hitler regime.

Slovenia

Communication sent

173. On 20 April 2006, the Special Rapporteur, together with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the independent expert on minority issues and the Special Rapporteur on the right to education, sent an allegation letter concerning the **unresolved status of individuals removed from the Slovenian registry of permanent residents in 1992**, who are often referred to as "erased".

174. 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 SFRY. After Slovenia's independence, 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, resulting 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 or had been refused Slovenian citizenship in 1991 and 1992, after Slovenia became independent.

175. It was 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 dissolution of SFRY. A majority of them are 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 had participated in the war against Slovenia or were otherwise perceived as not being loyal to Slovenia.

176. In 1999, the Slovenian Constitutional Court ruled that the "erasure" violated the principle of equality and was unconstitutional. 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, allowing 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". In 2002, Amendments to the Act on Citizenship entered into force, offering a one-year opportunity for those who had a registered 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".

177. 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 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. The Constitutional Court issued a further decision 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. 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.

178. As a result, "erased" persons, reportedly still numbering about 6,000, continued to live in Slovenia without Slovenian citizenship or permanent residence permit, being treated as "illegal" foreigners or stateless persons. This had a significant negative effect on their exercise of various human rights. 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 it since their "erasure". Some "erased" persons had to pay the full amount for basic medical treatment, unlike Slovene citizens and those with permanent residence. 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 had improved in the past years, but for some of the "erased", who lost many years of education or had to delay the completion of their studies, the negative impact remained. It was also reported that many of the "erased" lost their jobs or could no longer be legally employed. There were also reports of job dismissals. Another negative impact of the "erasure" is the loss or a significant reduction of their entitlement to a pension. This had serious negative effects on their right to social security and an adequate standard of living.

179. Furthermore, without wishing to prejudge the accuracy of these allegations, the Special Rapporteurs and the independent expert expressed their concern 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 conditions, employment, health and education. By virtue of their situation as a minority without a "kin State", these persons were placed in an even more disadvantageous position than "erased" persons belonging to other ethnic groups, as they have faced greater difficulties in regulating their status elsewhere in the former SFRY.

Reply from the Government

180. On 26 June 2006, the Government of Slovenia replied to the communication sent by the Special Rapporteur on 20 April 2006, explaining that the major political rearrangement of Central and Eastern Europe at the beginning of the 1990s and the formation of new States have resulted in a wide variety of members of non-Slovenian minority, ethnic or religious groups living in the territory of Slovenia. Among them are members of the nations of the former Yugoslavia: Albanians, Bosnians, Montenegrins, Croats, Macedonians, Muslims and Serbs as well as a certain number of Roma, living scattered across Slovenia in larger numbers as a result of the contemporary migration processes from other areas of the former SFRY. Migration from the former SFRY to larger towns in the territory of Slovenia such as Ljubljana, Maribor, Celje, Velenje and Jesenice took place for economic, political and military reasons, and numerous measures have been introduced by the State aimed at integrating them into the social environment in the shortest possible time.

181. The Government affirmed that Slovenia, as a democratic country, is aware of the needs of immigrants from the former SFRY and that its regulations must be in accordance with international legal norms. As regards statutory regulation of the status of members of other nations and nationalities living in the Republic of Slovenia, the first measure addressing this was the 1990 Statement of Good Intentions, which guarantees all rights established in the Constitution to the Italian and Hungarian ethnic minorities, the right to a multifaceted development of their culture and language as well as the right to obtain citizenship of Slovenia if they wished. Along the same lines, the Constitutional Act Implementing the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia stipulates that

> "citizens of other republics who on the day of the plebiscite on the independence and sovereignty of the Republic of Slovenia, 23 December 1990, were registered as permanent residents of and actually live in the Republic of Slovenia shall have, except in the cases specified in Article 16 of this Act, equal rights and duties as the citizens of the Republic of Slovenia until they acquire citizenship of the Republic of Slovenia under Article 40 of the Citizenship of the Republic of Slovenia Act or until the expiry of the time limits determined in Article 81 of the Aliens Act."

182. The Constitution of the Republic of Slovenia does not contain any provisions directly applicable to special protection of the members of nations of the former Yugoslavia in the Republic of Slovenia or other minority ethnic communities in the Republic of Slovenia, who may exercise their rights in accordance with articles 14, 61 and 62 of the Slovenian Constitution, which enable them to preserve their national, linguistic and cultural identity. Also, bilateral agreements concluded between the Government of Slovenia and the Government of the home country of the minority ethnic group or immigrants concerned serve as legal bases for the status of members of nations of the former Yugoslavia who live in the Republic of Slovenia.

183. With reference to the allegations, the Government of Slovenia noted that the statement that there are still 6.000 stateless persons and persons without a permanent residence permit residing in the Republic of Slovenia is not accurate. It was reported that, as early as 2001, of the total number of 18,305 persons who lost their permanent residence owing to their unregulated status, there still remained 4,205 persons in the register of permanent residents who failed to regulate their status in the period from Slovenia's independence until 2001. The Government’s information on persons who were registered as permanent residents on the day of independence and who failed to apply for citizenship of the Republic of Slovenia or for a residence permit afterwards shows that citizens of other successor States to the former SFRY were not erased from the register, but were required to regulate their status in compliance with legislation governing migration. In the initial period the majority of them did not apply for Slovenian citizenship, even though it could be obtained under extremely favourable conditions (registered permanent residence in the Republic of Slovenia and payment of an administrative fee of approximately €3). The Constitutional Court of the Republic of Slovenia, in its decision No. U-1-246/02-28 of 3 Apri12003, ruled that the time limit for filing an application according to the 1999 Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia was too short. Since the publication of this decision, it was again possible to file an application for a permanent residence permit in compliance with this Act; however, only 124 persons had regulated their status by the spring of 2006.

184. In the field of health care, the problem of the so-called "erased" did not actually appear until two years ago. These persons do not have health insurance because they have more or less been dismissed from employment, have no citizenship, and are often also unsettled (i.e. without a permanent residence) and consequently without health insurance. Nevertheless, these persons have had access to emergency health services, which are/were paid for by the Ministry of Health in accordance with article 7 of the Health Care and Health Insurance Act. Therefore, with regard to the right to health care, the so-called "erased" have always had access to emergency medical treatment.

185. With reference to the enrolment in secondary school of some children from the former Yugoslavia, the Government pointed out that, in accordance with the competent ministry's instructions, secondary schools had to enroll all children whose status was unresolved (refugees and asylum-seekers included). Their right to secondary education has never been violated. Slovenia complies with all international regulations on the right to education. Decision No. U-I-31/04-14 of 1 December 2005 of the Constitutional Court stipulated that the condition for the acquisition of the right to child benefit was fulfilled if a child legally resided in the Republic of Slovenia, which was proved with a certificate of registration of residence in the Republic of Slovenia. On the basis of this constitutional decision, the Parental Protection and Family Benefits Act (Official Gazette RS, No. 47/06 - amendments) was amended; article 67 stipulates that the acquisition of the right to child benefit is no longer subject to the permanent residence of a child.

186. As regards the conditions for the acquisition of work permits for the citizens of successor States to the former SFRY, the Government stated that the transitional provisions of the former Employment of Aliens Act (Official Gazette RS, No. 33/92) provided for special conditions for the acquisition of work permits for these persons. Article 23, paragraph 1, of the Act stipulates that the citizens of other republics of the former SFRY should be issued with a personal work permit valid for a period of one year if, upon the entry into force of the Act in the Republic of Slovenia (i.e. 18 July 1992), they were in an employment relationship and had worked in Slovenia for less than 10 years; they were in an employment relationship for a definite or indefinite period of time as working migrants; or they were registered with the Employment Service of Slovenia and were entitled to social welfare benefit in accordance with regulations on employment and insurance in case of unemployment. In 1992, 18,853 personal work permits were issued in accordance with that provision and upon the expiry of the permit the employer had to apply for an extension. If the employer did not apply for an extension, the alien's employment relationship terminated. Under article 23, paragraph 2, of the Act, the citizens of other republics of the former SFRY who upon the entry into force of the Act were in an employment relationship in Slovenia and had worked there for at least 10 years, working migrants excepted, could acquire a personal work permit for an indefinite period. In 1992, 13,350 such work permits for an indefinite period of time were issued in accordance with this provision.

187. The Government further explained that a work permit under article 23 of the Employment of Aliens Act had to be applied for within 90 days of the entry into force of the Act. If an alien applied for citizenship of the Republic of Slovenia in accordance with article 40, paragraph 1, of the Citizenship Act of the Republic of Slovenia and was refused, that person could acquire a personal work permit if he or she applied for it within 90 days of the entry into force of the Employment of Aliens Act, or of the decision to refuse citizenship becoming final if the decision became final after the entry into force of the Act (article 24, paragraph 1, of the Employment of Aliens Act). Aliens receiving a negative decision on

their application for citizenship under article 40, paragraph 2 or 3, of the Citizenship Act could not acquire a work permit.

188. If a personal work permit was not applied for within the set deadline, the employment relationship was terminated when the decision on the termination of employment became final. Therefore, the acquisition of a work permit in accordance with article 23 of the Employment of Aliens Act was not preconditioned by any alien status or residence registration, but mainly by an employment relationship in Slovenia and the periods of employment. In accordance with the general provisions of the former Employment of Aliens Act (art. 8), the acquisition of a personal work permit valid for an indefinite period of time was subject to the alien's residence in Slovenia for more than 10 years on the basis of a permanent residence permit; the issuing of other work permits (work permit applied for by an employer, personal work permit valid for a limited period) was not subject to a regulated alien status. The Government explained that “alien status” does not imply that a person cannot enter the Slovene labour market. Since the category of "erased" does not exist in official employment records, the Ministry of Labour, Family and Social Affairs does not have any information on whether and how many persons "erased" from the Register of Permanent Residents lost their jobs.

189. Regarding pensions, the Government highlighted that decision U-1-246/02-28 of 3 April 2003 of the Constitutional Court (Official Gazette RS, No. 36/2003) determines only the right to the prepayment of a pension for military personnel who were subject to the loss of permanent residence in Slovenia in 1992. Rights which can be asserted on the basis of pension and disability insurance are not subject to citizenship and permanent residence. Rights under pension and disability insurance are rights deriving from insurance and are connected with the payment of contributions to the Pension and Disability Insurance Institute of the Republic of Slovenia. At first, the right to the prepayment of a military pension was recognized by the Institute on the basis of the Decision on the Prepayment of Military Pensions, and in 1998 the Act on the Rights under the Pension and Disability Insurance of Former Military Insured Persons was adopted. Article 1 of the Decision stipulated that beginning on 1 November 1991 the Republic of Slovenia would be in charge of the payment of pensions and other benefits in accordance with the regulations on pension and disability insurance of military insured persons acquired by the entitled persons - Slovene citizens with permanent residence in Slovenia and other entitled persons with permanent residence in Slovenia since 26 June 1991. The dates of 18 July 1991, 18 October 1991 and 1 February 1992 were key dates for the acquisition of rights. The Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia stipulated that after 6 February 1992 their permanent residence would not be recognized; however, the majority of persons asserted their rights before this date. On the basis of the Act on the Rights under the Pension and Disability Insurance of Former Military Insured Persons, the Institute reviewed all cases and acted in accordance with the applicable laws. As early as 1999, on the basis of decision No. U-I-284/94 of 4 February 1999 of the Constitutional Court, the Institute reviewed the majority of cases and retroactively recognized the right to a military pension of the entitled persons.

190. As far as immigrant Roma are concerned, the Government noted that they have the same rights and obligations as Slovenian citizens provided they hold this status. Some important rights, especially for Roma, are also granted on the basis of permanent residence (e.g. social subvention, which is allocated to approximately 90 per cent of Roma living in Slovenia). Otherwise, they enjoy the rights applicable to them as aliens, in conformity with international rules and national legislation. They also may exercise some additional rights

under articles 14, 61 and 62 of the Constitution of the Republic of Slovenia. In accordance with Slovene legislation, an unemployed person being entered in the register of unemployed persons at the Employment Service of Slovenia is not obliged to state his or her ethnicity. Consequently, the Ministry of Labour, Family and Social Affairs does not have official data on the number of unemployed members of the Roma communities; only unofficial estimates are available. On the basis of the Active Employment Policy Measures Programme, special measures for the Roma are taken in areas where they are concentrated. With regard to employment, the members of the Roma communities are thus treated at least equally among the prioritized when compared to the members of other ethnic communities.

191. In accordance with the provisions of the Constitution, the Government has been actively engaged in the preparation of the Roma Community Act which will comprehensively and systematically resolve all issues regarding the Roma and define special employment measures, vocational education and training, and the employment of the Roma. This act is expected to be adopted this calendar year.

192. As regards the retroactive effect of the right of residence, between February and July 2004, 4,093 supplementary decisions were issued ex officio in compliance with the Constitutional Court decision granting to individuals the right to residence in the Republic of Slovenia with retroactive effect. In addition, 64 claims for re-entry in the register of permanent residents were filed with the Ministry of the Interior on the basis of the Constitutional Court decision. The examination of cases showed that 12 persons had been granted citizenship of the Republic of Slovenia where Constitutional Court decision did not provide for the regulation of their status with retroactive effect. In 34 cases, it was established that the claim for the issue of a supplementary decision on the basis of the Constitutional Court decision was not justified, as the applicant had no valid residence permit and the status could therefore not be granted with retroactive effect. In 11 cases, a supplementary decision was issued or the applicant's request was granted on the basis of the ascertained factual situation. Five cases are being processed by the Ministry.

193. The Government reported that 31 claims for damages had been filed so far; one of the reasons for the adoption of a constitutional act that would supplement the Constitutional Court decision is also the regulation of the payment of damages. In this respect, the Ministry of the Interior drew up a draft Constitutional Act amending the Constitutional Act Implementing the Basic Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia in order to resolve the problem of citizens of other successor States to the former SFRY whose registration of permanent residence in the Republic of Slovenia had terminated after the provisions of the Aliens Act began to apply to them. The draft Act amends article 13 of the Constitutional Act Implementing the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia, which stipulates that citizens of other republics of the former SFRY registered as permanent residents of the Republic of Slovenia and who actually lived in Slovenia on the day of the plebiscite on 23 December 1990 have equal rights and obligations as citizens of the Republic of Slovenia (except for purchasing real estate), until the time when the provisions of the Aliens Act begin to apply to them. The draft Act regulates the issue of permanent residence permits and the conditions for obtaining a permanent residence permit with retroactive effect for those citizens of the successor States to the former SFRY who still have no permanent residence permit of the Republic of Slovenia.

194. The Act lays down the conditions for acquiring a permanent residence permit with retroactive effect for citizens of other successor States to the former SFRY who had

permanent residence in the Republic of Slovenia on 23 December 1990 and who had already acquired a permanent residence permit under the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia. The draft Act further sets out those cases in which the condition of actual residence in the Republic of Slovenia has been met and what absences from Slovenia do not affect this condition. The draft Act also regulates the right to compensation in cases when the beneficiary suffered damage due to the unlawful action of an official person or authority.

195. The Government stated that the adoption of the Constitutional Act is essential for the final resolution of the problem and for regulating the status of citizens of successor States to the former SFRY. The Government has examined the draft Constitutional Act; however, additional harmonization is required, as the speediest possible adoption of the Act is in the interest of both the Government and all individuals concerned.

Observations

196. The Special Rapporteur thanks the Government of Slovenia for the detailed reply provided.

Sudan

Communications sent

197. On 3 March 2006, the Special Rapporteur sent an allegation letter regarding an attack on and looting of the market of the town of Shearia, Southern Darfur**.** According to the information received, the attack and looting took place in the first week of November 2005 and was carried out by Janjaweed militias working in collaboration with government forces. It was reported that during this attack, persons from the Zaghawa tribe and shops belonging to them were specifically targeted. After the attack, persons belonging to the Zaghawa tribe fled the town to El Fahal, Otash and Dereig IDP camps.

198. On 15 August 2006, the Special Rapporteur, together with the Special Rapporteur on the question of torture and the Special Rapporteur on violence against women, its causes and consequences, sent an allegation letter concerning **the rape of a group of women** at Kalma IDP camp in Nyala, Southern Darfur. According to the information received, on 24 July 2006, approximately 25 armed militias, some wearing army uniforms, attacked a group of 20 women aged 19-42 outside the camp while the women were collecting firewood. All the women belong to the Fur ethnic group. The militiamen beat the women with the butts of their guns and flogged them before raping 17 of the women. There had been a steady gathering of armed Janjaweed militias in the areas surrounding Kalma camp. They had previously attacked humanitarian workers and undertaken nightly armed incursions into the camp in order to loot.

199. The Special Rapporteurs expressed their strong concern about these allegations of sexual assault committed by militia against internally displaced women. They strongly urged the Government to protect internally displaced persons, especially women and girls, from all forms of sexual and other violence and to arrest, disarm and prosecute the perpetrators.

Observations

200. The Special Rapporteur regrets that no reply to these communications had been received from the Government of the Sudan at the time this report was finalized.

201. The Special Rapporteur intends to follow up on these cases. In the event that no response is received from the Government, he will no longer treat the cases as mere allegations but as proven facts.

United States of America

Follow-up to previously transmitted communications

202. In the absence of an answer from the Government of the United States of America concerning his communication of 13 July 2005 (see E/CN.4/2006 /16/Add.1, para. 96), the Special Rapporteur is forced to consider the following case no longer as an allegation but as a proven fact.

203. According to the allegations received, **Mohammed C.** was arrested in Karachi, Pakistan, on or around 21 October 2001. He was transferred to a prison, where he was stripped to his shorts and hung by his wrists . He was kept in this position for 10 to 16 hours a day for three weeks; if he moved, he was beaten. He was blindfolded for the whole period except for three to five minutes each day, when the blindfold was removed so he could eat. Mohammed was subsequently taken to Peshawar for 10 days, and then transferred to United States custody in late November 2001. In United States custody, he was given blue overalls, hooded, shackled, beaten and threatened with death. It was said that the soldiers repeatedly called him “nigger” and that that was the first time he had heard the word. He was flown to the United States airbase in Kandahar, Afghanistan, where he was physically assaulted on arrival and kept naked for the first week, beaten and doused with freezing water. On one occasion, a guard grabbed Mohammed’s penis and threatened to cut it off with a pair of scissors he was brandishing. In early January 2002, Mohammed was transferred to Guantánamo Bay. He was sedated, shackled, hooded and gagged for the flight and beaten upon arrival. During the ensuing interrogation process, he was hung by the wrists for up to eight hours at a time, beaten, deprived of sleep, and exposed to strobe lighting, extreme cold from air conditioners and racial abuse. It is reported that dogs were used to intimidate detainees, and that he was brutally removed from his cell, sprayed with pepper and physically assaulted. In 2003, during an interrogation, the interrogator allegedly burned Mohammed’s arm with a cigarette. In May 2004, Mohammed was transferred to the newly opened Camp V, where he is said currently to be held for up to 24 hours a day in solitary confinement in a concrete cell measuring approximately 4 x 2 m. He is allegedly supposed to be able to leave his cell three times a week for an hour, for a shower and exercise; however, it is reported that he is usually allowed out just once a week. Large fans make a constant noise and 24-hour lighting hurts his eyes. On his first day in Camp V, the interrogator allegedly said to Mohammed: “We made this camp for people who would be here forever. You should never think about going home. You’ll be here all your life. Maybe one day my son will come to see you as you get old. Don’t worry, we’ll keep you alive so you can suffer more. If you don’t believe me, look at these walls”. And he allegedly banged on the concrete wall to show how solid it was.

Observations

204. In the light of this case, the Special Rapporteur strongly supports the report of the group of special procedures mandate holders on the situation of detainees in Guantánamo Bay (E/CN.4/2006/120) which notes the complete disregard of respect for the human rights of the detainees. The use of racist language confirms the reality of manifestations and expressions of racism and racial discrimination in Camp V.
