



General Assembly

Distr.
GENERAL

A/HRC/11/36/Add.1
19 May 2009

ENGLISH/FRENCH/
SPANISH ONLY

HUMAN RIGHTS COUNCIL
Eleventh session
Agenda item 9

**RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED
FORMS OF INTOLERANCE, FOLLOW-UP TO AND IMPLEMENTATION
OF THE DURBAN DECLARATION AND PROGRAMME OF ACTION**

**Report of the Special Rapporteur on contemporary forms of racism, racial
discrimination, xenophobia and related intolerance, Githu Muigai**

Addendum

**SUMMARY OF CASES TRANSMITTED TO GOVERNMENTS
AND REPLIES RECEIVED***

* The report is being circulated in the languages of submission only.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
I. INTRODUCTION	1	3
II. SUMMARY OF CASES TRANSMITTED AND REPLIES RECEIVED	2 - 74	3
Burundi	2 - 5	3
Chile	6 - 15	4
Greece	16 - 34	6
India	35 - 41	13
Iran (Islamic Republic of)	42 - 45	14
Italy	46 - 63	15
Russian Federation	64 - 65	19
South Africa	66 - 67	19
Spain	68 - 74	20

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 1 January 2008 and 31 December 2008,¹ including the communications sent by the previous mandate holder between 1 January 2008 and 31 July 2008. It also contains in summary form the replies received from Governments to his communications until 15 May 2009, as well as observations of the Special Rapporteur where considered appropriate. Replies to communications which were received by the Special Rapporteur after 15 May 2009 will be reflected in his next communications report.

II. SUMMARY OF CASES TRANSMITTED AND REPLIES RECEIVED

Burundi

Communication envoyée le 12 décembre 2008 conjointement avec l'Expert indépendant sur la situation des droits de l'homme au Burundi et la Rapporteuse spéciale sur la vente d'enfants, la prostitution des enfants et la pornographie mettant en scène des enfants

2. Le titulaires de mandat de procédures spéciales ont adressé une lettre d'allégation au Gouvernement du Burundi concernant la situation des personnes atteintes d'albinisme au Burundi et des cas récents de violence contre ce groupe d'individus.

3. Selon les informations reçues, cinq personnes atteintes d'albinisme auraient été tuées au Burundi depuis septembre 2008. Ces personnes seraient ciblées pour leurs pouvoirs mystiques. Leurs membres ainsi que leur sang seraient revendus en Tanzanie, à des fins de sorcellerie pour transmettre ces facultés. Dans les derniers événements, une fille âgée de six ans, dont l'identité est inconnue, a été tuée à Bweru, dans la province de Ruyigi, le 15 novembre 2008. Ses membres ont été enlevés et emmenés par les assaillants. En outre, une famille avec trois enfants albinos aurait été attaquée le 17 novembre à Cendajuru, dans la province de Cankuzo, mais a réussi à échapper à l'attaque. En octobre, 24 albinos de la province de Ruyigi qui craignaient pour leur sécurité se sont réfugiés dans la résidence personnel du procureur de la République à Ruyigi. Au début novembre, ils auraient été transférés temporairement à une maison d'accueil sécurisée par la police nationale. Outre les problèmes à Ruyigi, des craintes auraient été exprimées par des albinos vivant dans d'autres régions, en particulier aux provinces frontalières avec la Tanzanie.

Observations

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

¹ General statistical information on communications sent by Special Procedures is available on OHCHR website: www.ohchr.org.

5. Le Rapporteur spécial souhaite exprimer sa préoccupation en relation avec la situation des personnes atteintes d'albinisme au Burundi. Il fait rappel que des mesures spécifiques tels que le combat à l'impunité, la protection des personnes vulnérables et des programmes éducatifs sont nécessaires pour promouvoir le respect aux droits des personnes atteintes d'albinisme.

Chile

Comunicación enviada al Gobierno el 4 de enero de 2008

6. El Relator Especial, junto con la Representante Especial sobre la situación de los defensores de derechos humanos, el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas y el Relator Especial sobre la promoción y protección de los derechos humanos y las libertades fundamentales en la lucha contra el terrorismo, envió un llamamiento urgente, señalando a la atención urgente del Gobierno la información recibida en relación con la Sra. Patricia Roxana Troncoso Robles y otros presos mapuches que cumplen condenas de prisión en la cárcel de Angol.

7. Según las informaciones recibidas; los Sres. José Huenchunao Mariñan, Héctor Llaitul Carrillanca, Jaime Marileo Saravia, Juan Millalén Milla y Patricia Roxana Troncoso Robles dieron inicio a una huelga de hambre seca el pasado 10 de octubre de 2007. Según las alegaciones, la huelga de hambre tendría como objetivo, entre otros, denunciar la situación de los numerosos dirigentes y activistas mapuches condenados en los últimos años a penas de prisión por actos de protesta asociados a reivindicaciones de derechos indígenas. El 8 de diciembre de 2007, un equipo médico independiente habría emitido un informe sobre el estado de salud de los presos. Este informe habría señalado que los presos se encontraban en un estado de salud crítico, indicando pérdidas de peso de entre 13.4 y 22.6 Kg. El 15 de diciembre de 2007, al cabo de 66 días de huelga, los Sres. José Huenchunao, Jaime Marileo y Juan Millalén habrían abandonado la huelga de hambre, aceptando la mediación del Obispo de Temuco, Mons. Camilo Vial. El Sr. Héctor Llaitul y la Sra. Patricia Troncoso habrían decidido sin embargo continuar con la huelga de hambre. El 30 de diciembre de 2007, el Sr. Héctor Llaitul habría desistido de la huelga de hambre ante la extrema gravedad de su estado de salud.

8. Según las informaciones recibidas, la Sra. Patricia Troncoso continuaría todavía en huelga de hambre. Según la revisión del parte médico independiente llevado a cabo el pasado 30 de diciembre de 2007, la Sra. Troncoso habría perdido más de 23 Kg., presentando un cuadro clínico que indicaría un serio riesgo vital. Según las alegaciones, existe grave riesgo por la vida de la Sra. Patricia Troncoso tras 85 días del inicio de su huelga de hambre, en particular teniendo en cuenta su delicado estado de salud como resultado de las huelgas de hambre emprendidas con anterioridad.

9. Según las informaciones recibidas, la Sra. Patricia Troncoso y el Sr. Jaime Marileo fueron condenados el 21 de agosto de 2004 a penas de 10 años y un día de prisión por el supuesto delito de "incendio terrorista" en relación con el incendio del Fundo Poluco Pídeno, en aplicación de la Ley No. 18.314 ("Ley Antiterrorista") que determina conductas terroristas y fija su penalidad. Los Sres. Héctor Llaitul y José Huenchunao fueron detenidos el 21 de febrero y el 20 de marzo del 2007 respectivamente, y se encuentran en prisión para cumplir las condenas pronunciadas previamente en su ausencia en relación con los mismos hechos. El Sr. Jaime Marileo y la Sra. Patricia Troncoso participaron en una primera huelga de hambre iniciada junto con otros

presos mapuches cumpliendo condenas en virtud de la legislación antiterrorista el 7 de marzo de 2005. Dicha situación fue objeto de la comunicación enviada por el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas el 24 de marzo de 2005 (Ref. UA CHL 2/2005).

10. El Sr. Jaime Marileo y la Sra. Patricia Troncoso participaron asimismo junto con otros presos mapuches en una segunda huelga de hambre iniciada el 13 de marzo de 2006. Dicha situación fue objeto de la comunicación conjunta enviada el 11 de mayo de 2006 por el Relator Especial sobre el derecho a la alimentación, el Relator Especial sobre formas contemporáneas de racismo, discriminación racial, xenofobia y formas conexas de intolerancia, el Relator Especial sobre independencia de 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 para los defensores de derechos humanos [Ref.: UA G/SO 214 (42-1) G/SO 214 (107-5) G/SO 214 (3-3-12) G/SO 214 (78-11) CHL 3/2006], a la que respondió por medio de su nota de 26 de mayo de 2006 (s/ref.).

11. Según las informaciones recibidas, el 13 de mayo de 2006, los presos habrían puesto fin a la huelga de hambre a raíz de la mediación del Senador Alejandro Navarro, con el compromiso de promover las reformas legislativas necesarias para atender la situación de los presos mapuches cumpliendo condenas por supuestos delitos de terrorismo. El 15 de mayo de 2006, el Senador Navarro, junto con los Senadores Guido Girardi y Juan Pablo Letelier, habría introducido en el Senado un proyecto de Ley “que permite conceder la libertad condicional a condenados por conductas terroristas y otros delitos, en causas relacionadas con reivindicaciones violentas de derechos consagrados en la Ley No. 19.253” (Boletín 4188-07), que fue aprobado el 17 de mayo de 2006 por la Comisión de Derechos Humanos del Senado y que desde entonces se encuentra en espera de tramitación parlamentaria. Dicho proyecto de ley, así como los proyectos de ley para la reforma de la Ley Antiterrorista presentados en mayo y julio de 2006 y también pendientes de tramitación parlamentaria (Boletín N° 4199-07 y 4298-07, respectivamente) fueron objeto de la comunicación conjunta enviada por el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas y por el Relator Especial sobre la promoción y la protección de los derechos humanos y las libertades fundamentales en la lucha contra el terrorismo el pasado 5 de abril de 2007.

Respuesta del Gobierno enviada el 12 de marzo de 2008

12. Mediante carta con fecha del 12 de marzo de 2008, la Misión Permanente de Chile en Ginebra remitió la respuesta gubernamental a la carta más arriba. La carta afirmaba que la Sra. Troncoso había puesto fin a una prolongada huelga de hambre el 26 de enero de 2008. Durante la duración de la huelga, el gobierno dijo haber adoptado las medidas necesarias para su protección y para prevenir eventuales daños irreparables. El término de la huelga se logró tras llegar a un acuerdo en orden a que podría acceder a beneficios intrapenitenciarios, junto a los Sr.es Marileo Saravia y Millalén Milla. El gobierno informó de que el acuerdo ya había comenzado a operar y la Sra. Troncoso había sido trasladada al Centro de Estudios y Trabajo (CET) de Angol el 5 de marzo de 2008.

13. El gobierno quiso destacar la creación de un Comisionado presidencial para asuntos indígenas, a cargo del Sr. Rodrigo Egaña Baraona, para reforzar el trabajo de la Corporación Nacional de Desarrollo Indígena (CONADI).

14. Por último, el gobierno comunicó que el Senado chileno aprobó el proyecto de acuerdo aprobatorio del Convenio N° 169 sobre pueblos indígenas y tribales en países independiente, lo cual permite proceder a la promulgación del Convenio, cumpliéndose así una recurrente recomendación hecha por relatores y mecanismos multilaterales de protección de los derechos humanos de los pueblos indígenas.

Observaciones

15. El Relator Especial agradece al Gobierno de Chile por su respuesta a la comunicación de 4 de enero de 2008. El Relator expresa su satisfacción por la creación de un Comisionado presidencial para asuntos indígenas y por la aprobación del proyecto de acuerdo aprobatoria del Convenio sobre pueblos indígenas.

Greece

Communication sent on 20 July 2007 jointly with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and the Independent expert on minority issues

16. On 20 July 2007, the Special Procedures mandate holders sent an allegation letter regarding information received on forced evictions of persons belonging to minority Roma communities in various locations around the country, including the city of Patras. The summary of this joint communication is contained in the communications report A/HRC/7/19/Add.1, paras. 34-39.

Response from the Government sent on 26 August 2008

17. In its reply, the Government stated that the integration of Roma into the society is a very complex, multi-faceted social problem which all European countries with a Roma population face. It can only be solved through the application of consistent efforts, financial support and a constructive attitude from all sides involved, including local societies and the Roma. Greek Roma, or Greek Gypsies, which is the term used in Greece by themselves in most cases are not registered separately from other Greek citizens, either during the national census, or in the municipal rolls. As a result, there is no precise official number of Roma populations as such. Some studies drawn up with a view to designing and implementing social actions and programs for the Roma indicate a population of approximately 250,000 to 300,000 persons all over Greece. The Government affirmed that Roma living in Greece are largely an integral part of the Greek population and they are protected against all forms of discrimination, by the Greek laws and the Constitution. They enjoy the same civil and political rights, they participate in Greek society, they organize themselves in associations, political parties, etc. Regarding the questions raised by the mandate holders, the Government provided the following information.

A. Facts regarding the alleged forced evictions in Patras

18. According to recent data (field visit held on 14/04/2008 by the Public Health Directorate of the Region of Western Greece), the Municipality of Patras has one Roma settlement at the Riganokampos area, where 20 shacks and one prefabricated house exist. The members of the field visit team met with the people of the settlement who stated that those who have been granted a housing loan are already looking for a proper house to buy in order to move from the settlement. Based on the statistical data of the housing loans program (operated by the Ministry of the Interior) and the terms of the identification documents submitted (i.e. identity card, certificate of marital status, etc.) from 2002-2006, a total of 50 loans have been granted to an equal number of families residing permanently at or being registered with the Municipality of Patras. In 2007-2008, (second operation phase of the program), another 34 loans were also processed. Therefore, the number of families to have been granted a housing loan through the Municipality of Patras runs, to date, to a total of 84 families. It is necessary to note that the Ministry has issued and maintains a database with all necessary individual administrative documents for the qualification of the above-mentioned beneficiary families. We should take into consideration the fact that each application doesn't always stand for one independent family. It should be pointed out that, for various reasons, many Roma/Gypsy families submitted more than one applications for housing loans per family (e.g. one application by the husband and another by the wife), not always to the same authorities, sometimes in spite of the fact that they have already been granted a housing loan (from the same project) in the past. Furthermore, in view of presenting quantity data on the number of the loans granted to Greek Gypsies, since the beginning of the program (2002-2008) and bearing in mind that the reference to the Roma "living in the greater area of Patras" lacks a precise geographical definition necessary for the retrieval of any such data, we herewith present the following statistical analysis based on research criteria related to "Patras greater area" and in particular.

19. Greek Gypsies with an affiliation to Patras (residing in or registered in) who applied for a loan at the Municipality of Patras or other municipalities, whether at the time of the submission of their application they were registered with the municipal rolls of Patras or other municipalities.

20. Greek Gypsies who submitted their application to a Municipality belonging to the greater area of Western Greece, bearing in mind that neither the loan nomination, nor any other provision restricts the settlement or even the use of the loan to the settling down to a particular region of the Greek territory. This has also been apparent from table 1, where it is shown that citizens of non-neighboring or adjacent municipalities to the Municipality of Patras submitted, however, their applications to the latter. According to the relevant figures it is noted that:

- 881 families registered in the municipal rolls of a municipality in the Region of Western Greece applied successfully for a loan to a number of municipalities within or out of that region (45 municipalities, including Patras).
- 866 families applied and got nominated for a loan through 33 different municipalities of Western Greece Region (including the Municipality of Patras).
- In Achaia Prefecture alone to which the Municipality of Patras belongs, 285 beneficiary families submitted an application to a Municipality falling within that territory.

- Finally, it is stated that the above-mentioned Housing Loans Program addresses housing needs of all Greek Gypsies residing in the Greek territory, regardless of their religion or beliefs, and, to date, has granted a total of 6.984 loans to an equal number of gypsy families (beneficiaries). Among them, a total of 5.689 beneficiaries have disbursed their loans from the banks cooperating with the Program. The disparity between the loans granted and the disbursements is explained by the fact that the disbursement is processed upon the beneficiaries' responsibility and initiative. Practically, this means that the disbursement of the loan depends on the submission of the proper documentation for the house to be purchased/built/completed, by the interested persons to the bank.

B. Facts regarding alleged pattern of forced evictions of Roma in Greece

21. In the case of the Roma/Gypsies that used to live in shacks at the banks of Gallikos river, the solution has been given, as already pointed out in the Special Procedures' mandate holders' letter, by relocating them to a former military barracks (Gonos military camp). The municipal authorities have been improving the living conditions both in the camp and in the wider area outside the camp by performing infrastructure works (roads, electricity, medical - social services, playgrounds, etc.) In the case of the 200 Roma/Gypsies that used to live in shacks at the Olympic complex in Maroussi, Athens, they were relocated to rented homes where the rent was paid by the Municipality of Maroussi for an initial period of time and not indefinitely since lifetime payment of financial rental benefits to the Roma (in addition to those provided as social benefits for the whole population and, therefore, to the Roma too) only leads to a dangerous distortion of the State's obligation toward the fighting against social exclusion and the equal treatment for all. Let alone that, in parallel, a housing loan program, guaranteed by the State budget, was offered to those interested; as a result, 21 out of the 34 applications submitted, were approved by the banks, that is, to all interested individuals that submitted the relevant documentation. As regards the case of the area of Votanikos, central Athens, where Albanian speaking Roma have settled arbitrarily on private property, a special Committee has been set up, by decision of the Secretary General for the District of Attica, due to the seriousness of the said case (the Roma/Gypsies being recognized as a socially vulnerable group). The Committee was set up under article 2 of the Amendment CP/23641 of the Sanitary Provision A5/696/25.4.83 on the organized settlement of itinerant populations (Official Gazette of the Hellenic Republic 973/B/15.7.03). The Committee, in its meeting of 5.3.08 expressed the view that the importance of the matter calls for the preparation of a study which, upon consideration of the specifications of the relevant ministerial decree as well as other sanitary parameters, shall recommend appropriate areas for the relocation of the Roma in question. Furthermore, the Municipality of Athens undertook to cooperate with the Union of Municipalities of the Wider District of Attica to prepare a draft recommendation for finding areas for the rehabilitation of the Roma. On a more general note, the case of Patras served as a priority and at the same time as a case study. In this context, with regard to the funds allocated for the establishment of a settlement for itinerant populations (regardless of nationality and thus for Albanian Roma too), bearing in mind that, to date, the effort made by the local and regional administration in western Greece didn't achieve the desirable results, the Secretary General of the Ministry of Interior called for a [second] meeting in January 2008 (the first one took place in Nov. 2007) among the local relevant authorities (Region of Western Greece, Municipality of Patras) in order to speed up the process for the rehabilitation of the Romas in the wider area of Western Greece. The meeting's scope was to renew the commitment undertaken by the local authorities in the past towards permanently

addressing the situation. To this end, it was made clear that cooperation among all parties involved is necessary for maintaining as well as enhancing the efforts and measures of a temporary nature undertaken already (e.g. subsidy of rent, provision of school and social aid, etc.) It was also stressed that central administration remains supportive to the proposals the parties are going to come up with, on the condition that there will be full consensus by all parties concerned (i.e. the local authorities and the gypsies residing in the area.) In this context, the Ministry of Interior reiterated its commitment to grant the amount of 320.000€ for the construction of the necessary infrastructures for the establishment of the above-mentioned settlement for temporary residing of itinerant populations. It is also worth noting that the Committee established to this end at regional level did not yield the results expected, since the proposals put forth by local authorities were not met with consensus by the parties concerned. Another meeting with similar objectives took place, late 2007, upon the initiative of the National Committee of Human Rights, where all parties concerned participated, such as Roma representatives, NGOs and representatives from central and local government. The local government bears the responsibility for addressing its local issues, based on the principles of subsidiarity and citizen's proximity. To this end, we note the recent legislative reform on local government responsibilities (article 75, Law 3463/2006) with regard to the living conditions of their citizens. In this context, the central government undertakes all necessary financial and legislative measures for the proper support of the proposals made by local authorities. It should be made clear that the Ministry of the Interior stands ready to support with the necessary funds the commitments undertaken already by the local authorities, as well as their proposals aiming at the improvement of the existing living conditions in the area and at permanently addressing the rehabilitation issue in question.

22. In any case, as regards the implied alleged systematic infringement of the right to adequate housing and the existence of discriminatory acts or even failure to act due to discrimination, we would like to emphasize the following:

(a) Article 21§4 of the Greek Constitution stipulates that "obtaining a house for those who lack of or who are inadequately housed is under the special care from the State." However, this doesn't imply "neither that everyone may demand from the State to provide him a house, nor that if someone doesn't possess a house may by right occupy a private or public land" (see *Chapman v. United Kingdom* (2001) of the European Court of Human Rights). In other words, the obligation of the State should not be confused with the alleged right to encroach on other parties' rights whether these parties are individuals or the public sector. The Court goes on to say that "... even if [it involves people] of a particular racial origin or of other special characteristics, any such rights couldn't be legally recognized. Claiming the right to housing, state subsidy or to encroach on foreign property on the pure basis that the claimant is for example of Rom origin constitutes a mere infringement of the principle of equal treatment for all at the expense of all the others";

(b) Detailed data on the projects implemented by the state to the benefit of the socially vulnerable group of Greek Gypsies have been supplied by previous communication (our Note Verbale ref. 6171.13/45/A5 1586 dated 28 July 2006). Nevertheless, selective reference to specific problematic situations by some seems to be part of an effort to try to establish an overall, deliberate, discriminatory attitude toward the group in question. For instance, the decrease of the

number of homeless people in particular settlements, such as the one in Patras, is often leading one to the hasty conclusion that this is the result of a racist policy and not the possible effect of the improvement of their living conditions (e.g. through the use of the housing loans offered and the transition to a different living status);

(c) Further on, while talking about insufficient state measures, it is worth mentioning the implied request for multiple parallel settlements for those deciding to be travelling within the territory (itinerant populations) due to temporary work as well as the selective reference to people who although already qualifying for a loan, they are presented as abandoned (by the state) to reside in settlements. Yet, the picture is slightly different if one takes into account, as an indication, the fact that names of representatives [and residents] of Riganokampos settlement (in Patras, Prefecture of Achaia), Ms. Maria Vasilari and Ms. Eleftheria Georgopoulou seem to be identical with particular name data of beneficiaries qualified for housing loans in neighboring municipalities also, both in the Prefectures of Achaia and Ilia;

(d) With regard to “forced evictions” in Greece, it is worth mentioning that eviction is closely related to the title-right to property. In that sense according to article 17§2 of the Greek Constitution, and article 1§2 of the International Covenant on Civil and Political Rights and article 1 of the first Optional Protocol of the European Convention on the Protection of Human Rights and Fundamental Freedoms “... nobody may be deprived from his property unless for reasons of public interest which has been adequately proved as provided by law and on the precondition of former adequate compensation”;

(e) In this context, it is inaccurate to use the term “unlawful eviction” when the relevant administrative act of expulsion comes in response to the unlawful occupancy of land and to the arbitrary and illegal settlement in tracts of land that are not owned by the occupants. Eviction, in the sense of the law, may be lawful in cases of: a. lack of property titles, b. illegal settlement in an area or c. of works of public interest concerning the property in question. In any case, the same legal framework applies to all citizens residing in the Greek territory, including Greek gypsies. It is evident that all citizens, including Greek Gypsies, have the right to appeal against administrative decisions before the courts. The cases in question refer to situations of lawful eviction or administrative removal from private or public lands. In such cases, anyhow, the Ministry of Interior tries to properly relocate the persons concerned, if possible in prior agreement with local authorities and those concerned, with a view to their permanent relocation;

(f) With regard to police behavior, it is to be noted that standard orders from the Hellenic Police Headquarters to all regional police departments are for absolute respect of one’s personality and their human rights and of equal treatment of all regardless of racial or ethnic origin, religious beliefs, disabilities, age or sexual orientation. Those orders are based on article 4 of the Greek Constitution, they are within the framework of Law 3303/2005 on “equal treatment regardless of racial or ethnic origin, religious beliefs, disabilities, age or sexual orientation” and article 5§3,4 of the Presidential Degree 254/2004 on “Policemen Professional Ethics Code”.

23. In conclusion, the success of the measures undertaken by the State should not be reduced to mere budget allocations or to participation in decision-making bodies; it necessitates the political will of all parties concerned, as well as the unanimous action from a wide range of Roma collective bodies. In light of those mentioned above, the state does not wish to deny its own obligations and responsibilities and does not consider that all measures taken so far have

yielded the anticipated results. It fully recognizes the need for combating any form of social exclusion and it deploys considerable efforts to this end. However, a number of positive measures and actions have been implemented. The attached Integrated Action Plan has entered, since 2005, its second phase of the implementation process. The overall aim is to encourage and promote Romas/Gypsies; inclusion in the Greek society, in terms of equity and active participation in all aspects and spheres of daily life.”

Observations

24. The Special Rapporteur is grateful for the Government’s detailed response and for the information provided concerning specific actions to promote the inclusion of the Roma community in Greek society. The Special Rapporteur notes that public policies directed to the Roma community should bear in mind General Recommendation XXVII of the Committee on the Elimination of Racial Discrimination, particularly paragraph 31 in relation to adequate housing, in which the Committee recommended States “[t]o act firmly against any discriminatory practices affecting Roma, mainly by local authorities and private owners, with regard to taking up residence and access to housing; to act firmly against local measures denying residence to and unlawful expulsion of Roma, and to refrain from placing Roma in camps outside populated areas that are isolated and without access to health care and other facilities.”

Communication sent on 25 January 2008 jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders

25. The Special Procedures mandate holders sent an allegation letter concerning Mr. **Panayote Dimitras**, spokesperson for the Greek Helsinki Monitor and a member of the OMCT Assembly of Delegates, Ms. **Andrea Gilbert**, GHM’s specialist on anti-Semitism, and Messrs. **Moses Konstantinis**, **Benjamin Albala**, **Abraham Reitan** and **Leon Gavrilidis**, four members of the Central Board of Jewish Communities in Greece (*Kentriko Israilitiko Symvoulío* - KIS).

26. According to the information received, the aforementioned persons testified against Mr. Kostas Plevris on 4 December 2007 during a trial against him and the extreme-right newspaper Eleftheros Kosmos which had published articles from Mr. Plevris’ anti-Semitic book entitled *The Jews - The whole truth*. In the book, Mr. Plevris reportedly alleges that “Jews are sub-human, mortal enemies and worthy of the firing squad”, that “Hitler is only criticized for not clearing Europe of the Jews” and that “[Auschwitz] is rightly preserved in good condition, because nobody knows what might happen in the future”. Mr. Plevris was convicted of ‘incitement to racial violence and hatred and for racial insult’ and was reportedly given a 14-month suspended sentence.

27. Following the trial on 4 December, Mr. Dimitras was verbally abused by a journalist who reportedly tried to assault him. Later that evening, a video showing the attempted assault was uploaded on the internet with messages inciting viewers to take action against Mr. Dimitras. Threatening messages have also been found on fora linked to extremist right movements in Greece. Mr. Plevris has also reportedly taken legal action against the aforementioned, accusing

them of defamation. Further complaints have been filed by Mr. Plevris against GHM and NGOs in general reportedly claiming they are redundant, illegal and implying they are foreign agents. It is alleged that these complaints again contain racist and defamatory comments; however trial dates have reportedly been set for later in 2008.

Response from the Government dated 18 April 2008

28. In its response, the Government informed that Mr. Plevris was sentenced by the Court of Appeals of Athens to fourteen months of imprisonment, with suspension, on the grounds that he “publicly and intentionally incited, through the press, the commission of acts and activities conducive to discrimination, hatred and violence against persons and groups of persons, on the sole basis of their racial and national origin, while at the same time expressed ideas which are insulting against a group of persons due to their racial and national origin, namely the Jews.” The Government expressed that this sentence was in conformity with the Greek constitution and Law No. 927 of 1979 which criminalizes acts or activities aiming at racial discrimination.

29. The Government also noted that in the case against Mr. Plevris, the prosecution for anti-Semitic propaganda took place *proprio motu* in application of the provisions of the above-mentioned law.

30. The Government further informed that there is no information with regard to Mr. Dimitras' claims about verbal attacks and threats against him as described in the letter sent by the Special Procedures mandate holders, and that no relevant complaint has been filed to the Greek competent authorities.

31. The Government also provided information concerning two lawsuits and complaints filed by Mr. Plevris in order to restore the moral damage which he claims to have suffered due to the alleged malicious defamation to his person by Mr. P. Dimitras and others mentioned in the communication sent by the Special Procedures mandate holders. The basis of these lawsuits would be that the above-mentioned persons testified against him in his trial and, as he claims, systematically and publicly support views in a manner which constitutes an insult against his personality. The Government informed that these cases are still pending.

32. The first lawsuit was filed by Mr. Plevris on 12 January 2007 against Mr. Moses Konstantinis, Mr. Benjamin Albala, Mr. Abraham Reitan, Mr. Leon Gavriilidis, Ms. Andrea Gilbert and Mr. Panayote Dimitras. The case was scheduled to be discussed on 24 January 2008 but the court decided not to go ahead with the case. The second lawsuit was filed by Mr. Plevris on 25 January 2007 against Mr. Dimitras and the Greek Helsinki Monitor. The case was scheduled to be discussed on 7 February 2008, but the defendants did not appear and a request for postponement was filed. The case is now to be tried on 10 October 2009.

33. The Government further reiterated that it is the right of any Greek citizen to launch judicial proceedings and this cannot in any way be considered as a judicial harassment.

Observations

34. The Special Rapporteur thanks the Government of Greece for its response.

India

Communication sent on 19 December 2007 jointly with the Independent expert on minority issues, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on violence against women, its causes and consequences

35. In 2007, the Special Procedures mandate holders sent an allegation letter to the Government concerning allegations of violence against Dalit women in India (see A/HRC/7/19/Add.1, paras. 64-70).

Response from the Government sent on 29 April 2008

36. In its response, the Government noted that the communication sent by the Special Procedures mandate holders did not include any information on the places of occurrence of these cases. The Government requested that details pertaining to place of occurrence of each case be provided to facilitate investigations by authorities.

Observations

37. The Special Rapporteur would like to thank the Government of India for its letter dated 29 April 2008 but regrets that the Government failed to address the general situation of Dalits and in particular Dalit women in India. The communication makes reference to the general descent-based discrimination that Dalit women and men suffer, the lack of proper implementation of existing legislation as well as the lack of police and judicial action to protect the rights of Dalits. In addition, the mandate holders referred to a large number of cases in the communication in order to illustrate the extent and variety of allegations of violence against Dalit women in India. In most cases the name of the victim(s), the alleged perpetrator(s) as well as in some cases, the location of the incident, were reported. However, it was not possible to provide the full details of each individual case, either because the victims did not wish to reveal their full identity for privacy or safety concerns or because the source providing the information did not have the full details for each of the cases. While it is not excluded that each of these cases be subsequently addressed on a case by case basis, the Special Rapporteur urges the Government of India to provide information regarding the measures taken to guarantee the rights and freedoms of the Dalits.

38. The Special Rapporteur would also like to make reference to the report presented by his predecessor at the 7th session of the Human Rights Council where he analyzed the issue of discrimination on the grounds of caste (see A/HRC/7/19, paras. 69-71) and stated that “the main human rights bodies working in the area of racism and discrimination have stated clearly that prohibition of this type of discrimination falls within the scope of existing instruments, in particular the International Convention on the Elimination of All Forms of Racial Discrimination”. In particular, reference was made to General Recommendation XXIX (2002) of the Committee on the Elimination of Racial Discrimination, which strongly reaffirms that

“discrimination based on ‘descent’ includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights”.

Communications sent on 5 November 2008 jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on freedom of religion or belief

39. The Special Rapporteurs sent an allegation letter concerning the eruption of violence between the Bodo tribal and the Muslim communities in the Indian state of Assam. According to the information received, the violence between these two communities started on Friday 3 October 2008. The incidents that sparked this wave of violence remain unclear, yet there have been long running tensions between the two communities.

40. Despite the important number of paramilitary officers deployed by the Government and the imposition of a curfew, mobs from both communities armed with machetes and knives continue to fuel violence between the two communities in the districts of Udalguri, Darrang and Baksa. As a result of the communal violence, reportedly more than 50 people were killed, more than 500 houses were burnt and more than 80’000 people, both from the Bodo and the Muslim communities have been forced to flee out of their village and to seek shelter in camps set up by the Government. To counteract the communal violence, the government of the Indian state of Assam has issued shoot on sight orders to the security forces. Indeed, 25 of the more than 50 victims mentioned above, were reportedly killed by police fire.

Observations

41. The Special Rapporteur regrets that no reply to this communication had been received at the time this report was finalized.

Iran (Islamic Republic of)

Urgent appeal sent on 19 May 2008 jointly with the Chairperson-Rapporteur of the Working Group on arbitrary detention, the Independent Expert on minority issues and the Special Rapporteur on freedom of religion or belief

42. The Special Procedures mandate holders sent an urgent appeal regarding the arrest and continued detention of Ms. Fariba Kamalabadi, Mr. Jamaloddin Khanjani, Mr. Afif Naeimi, Mr. Saeid Rezale, Mr. Behrouz Tavakkoli, Mr. Vahid Tizfahm and Ms. Mahvash Sabet, who are residents in Tehran. According to the information received, the above-mentioned persons are members of a group that coordinates the Bahá’í community’s religious and administrative affairs in Iran and have been arrested and were detained in Evin prison in Teheran at the time the urgent appeal was sent.

43. On 14 May 2008, officers of the Intelligence Ministry in Teheran entered the homes of Ms. Fariba Kamalabadi, Mr. Jamaloddin Khanjani, Mr. Afif Naeimi, Mr. Saeid Rezaie, Mr. Behrouz Tavakkoli and Mr. Vahid Tizfahm. These six Bahá’í members were subsequently arrested and brought to Evin prison where they joined the acting Secretary for their informal

national-level coordinating group, Ms. Mahvash Sabet. Ms. Sabet has been held in custody since 5 March 2008 when she was summoned to Mashhad by the Intelligence Ministry to answer questions related to the burial of an individual in the Bahá'í cemetery in that city.

44. Concern was expressed that these seven Bahá'í members were arrested because of their religious beliefs or their peaceful activities on behalf of the Bahá'í community.

Observations

45. The Special Rapporteur regrets that no reply to this communication had been received at the time this report was finalized.

Italy

Urgent appeal sent on 23 May 2008 jointly with the Independent Expert on minority issues and the Special Rapporteur on the human rights of migrants

46. The Special Procedures mandate holders sent an urgent appeal regarding the attacks against a Roma settlement in the outskirts of Naples and Milan and the arrest of hundreds of undocumented migrants in security raids by law enforcement agencies. According to the information received, on 13 May 2008, approximately 60 people attacked Roma settlements in the outskirts of Naples, using homemade incendiary devices to set fire to tents and houses. On the same day, four Molotov cocktails were thrown at a Roma camp in Novarra, near Milan. Two other Roma encampments were set alight on 14 May 2008 in Ponticelli, near Naples. In the streets of Ponticelli, for several weeks prior to the riots, signs inciting racial hatred against Roma had been posted, which the police failed to act upon. In Trieste, the local administration cut provision of water and electricity to a Sinti camp, apparently in an attempt to force them to leave.

47. During that same period, several officials belonging to the Northern League made strong anti-immigrant statements. The Minister of Interior, Mr. Roberto Maroni, is reported to have stated publicly on 11 May 2008 that "all Roma camps will have to be dismantled right away, and the inhabitants will be either expelled or incarcerated". Milan Deputy Mayor Riccardo de Corato stated that he wanted to institute a *numerus clausus* on the number of Roma in Milan.

48. In parallel, from 12 to 14 May 2008, throughout Italy hundreds of undocumented migrants - including 50 Roma living in a camp in Rome - have been arrested, registered and fingerprinted. It has been reported that these measures were taken by law enforcement agencies for the purposes of the migrants' expulsion from Italy.

49. On 21 May 2008, the Council of Ministers adopted a package of new measures in the area of public security. The proposed measures would, among others, criminalize illegal immigration and allow for immigrants to be held in so-called centres for identification and expulsion for a period of up to 18 months. In addition, the measures would make expulsions easier, restrict family reunification and allow for the confiscation of apartments rented to irregular migrants. The package also appears to include a declaration of a state of emergency, which would serve to deal with what is described as "the critical situation which has arisen in Campania, Lombardia and Lazio in relation to the presence of numerous irregular non-EU citizens and nomads living in these areas".

Reply from the Government dated 4 August 2008

50. In its response the Government highlighted that the stigmatization of certain ethnic or social groups is of serious concern for the Government, state and local authorities. It noted that all political forces have firmly condemned all recent attacks against particular groups and will continue to exercise the responsibility to protect all persons present on the Italian territory, as clearly emphasized by the Head of State, Hon. Giorgio Napolitano, on 2 June 2008, on the occasion of Italy's National Day. The Government stated that it is the responsibility of central and local authorities to guarantee the security and the public order throughout the country. The Government further reiterated that Police controls in Roma camps are carried out only in full compliance with the Law in force. The criminal investigation police carries out these controls when individuals are caught red-handed or by motivated decree of the judicial authorities; or upon decision by the local Head of the Police Headquarters (*Questore*) who issues *ad hoc* orders, to be considered within the framework of the activities planned jointly with the Prefettura (*Prefettura*) and often with the municipalities concerned. The Government also provided the following information regarding specific events described in the letter by the mandate holders.

51. "Ponticelli (Naples): On Saturday, May 10, 2008, in Naples, a young Roma girl was arrested on a charge of illegally entering a private flat in Principe di Napoli street close to the Roma camp located in Malibrán street, in the suburban district of Ponticelli, where she tried abducting a baby, six months old. This attempted abduction provoked a reaction by people residing in Ponticelli who, on the following night, threw incendiary bottles against another Roma settlement in Petri street resulting in the destruction of some shanties. The situation of public order got worse on Tuesday, May 13, when, during the shooting of a national broadcast (RAI) programme "La vita in diretta", hundreds of people grew in the main streets of the district making road blocks, while a group of residents tried penetrating the Roma settlement located in Malibrán street. The quick intervention of the police forces prevented the opposing factions from getting in touch with each other, but unfortunately it was impossible avoiding stones hurling against the Roma.

52. In the evening, thanks to the darkness and despite the watch services placed by the police, suspicious characters succeeded in setting fire both to some shanties within the Malibrán street settlement, close to Argine street, and to a dismissed building - the former premises of the mental hospital "Tropeano" - located in De Meis street, that had been occupied without permission by five/six Roma families, then moved away before the fire has started. On the afternoon of Wednesday, May 14, about fifty people, mostly women, made a road block close to one of the various Roma settlements in Ponticelli, where some Roma families were still waiting for being moved to another place by the Naples Municipality. Furthermore, within the Calibra street Roma settlement, already totally evacuated, some shelters were partially set on fire by unknown persons that the police forces patrolling the area put to flight. The same police forces, having been reported by a cameraman who witnessed the fact, found two incendiary bottles that had been hidden not far from the Malibrán street Roma settlement. Within one of the settlements, two young men have been caught by the police and then seized while trying to steal a double current generator". Finally, on Thursday, May 15, around 9.00 a.m., unknown persons set fire to some shanties and household goods with the abandoned camp of Virginia Woolf Street. Thanks to the intervention of the Fire Brigade the fire was put off at 11:30 a.m."

53. The Government also provided detailed information concerning the general conditions of life for Roma in the Ponticelli district of Naples. The Government stated that within seven unauthorized Roma settlements, “Roma communities live in a degraded social environment with various indicators of social deviance and in lack of considerable signs of integration. While the householders are mainly engaged with retail trade, collection of various material and building works, the other components are usually engaged with begging and typical forms of crime such as thefts in houses, shops that leave a mark on the citizens’ perception of security”.

54. The Government also informed that particular protection measures were taken by law enforcement authorities in order to guarantee the safety of the Roma community in the Ponticelli district.

55. The Government also provided information concerning events in Milan and Trieste.

56. “Milan: the unauthorized Bovisasca Roma camp lays on an area between Milan Northern Train Station (Bovisa Politecnico) and Boviasca street/Candian street railroad, property of the Milan Municipality. The soil was found contaminated by arsenic, hydrocarbons and other heavy metals by health authorities (ARPA and ASL). The population of the camp has been increasingly growing and it was estimated as close to 300 individuals at the end of 2007 (mostly of Romanian nationality). Following a Police intervention in neighbouring area, the number of presences doubled (nearly 750 people) and the living conditions became unbearable, enough for the authorities to decide to move the inhabitants and proceed with a reclamation. In March 2008, following the decision by the Board of Governors of the Municipality, the Municipal Police, in cooperation with State Police, entered the camp and demolished the shacks, checking over 114 people (5 of them, being expelled according to the provisions of Legislative Decree 2007/10). At the beginning of April, a second Police operation was held, so that the remaining shack were demolished and further 205 Roma were identified. These operations, therefore, responded to the need to manage a social emergency and to protect the health of the Roma community. On May 15, 2008 a further intervention took place, when unidentified persons threw a Molotov Cocktail against a disused shop in Morosini Street, illegally occupied as a dormitory by two Romanian nationals. On the following day the Police took into custody an Italian citizen, unemployed and previous offender, who, together with others, was alleged of the crime based on racist motivations.

57. Trieste: the unauthorized Pietraferrata Street camp is located in the southern outskirts of Trieste, property of the Trieste Municipality and it was settled in 1999. Recent controls verified that it lodges only 27 people (7 families) who are Italian citizens belonging to the Roma ethnic Group. Since it was never authorized by the Municipality, many inhabiting were condemned for illegal occupation in 2003, while many of them had been also condemned for crimes against property in other occasions. On March 1, 2008, the electricity company ACEGAS, which provided the camp with water and electricity, turned off the utility (temporarily activated on a forfeit basis for settlements such as circuses and itinerant performers). Due to the intervention of the Prefect - requesting ACEGAS through the Municipality to reinstate the service for humanitarian reasons - the company reactivated the supply of water and electricity, even if on May 5 it was again interrupted. The municipal administration is trying to figure out a permanent solution to the problem”.

58. Finally, the Government also provided information regarding the “security package” that contains new measures on immigration. It stated that, among other ends, the package aims at addressing more effectively the phenomenon of illegal immigration as well as its connection with ordinary and organized crime. The Government stated that the measures included in the “security package” are intended to curb criminal behaviours of individuals and no provision at all is envisaged against any community, group or class nor is linked to any form of discrimination and xenophobia. The Government explained that only one of five bills within the “security package” had come into force as of 25 July 2008, called “Urgent measures concerning public order”. This law has some immigration-related provisions, including the return of aliens by court decision if sentenced to a term of more than 2 years or convicted of crimes against the personality of the State. The expulsion has to be validated by the peace justice (*giudice di pace*) within 48 hours, during which time the foreigner may be held in a Centre for Identification and expulsion. Other provisions of the law include: the rental to irregular migrants is subject to a sentence ranging from 6 months to three years’ imprisonment and to the seizure of the rented property; the punishment for those who employ irregular migrants is raised and ranges from 6 months to 3 years in addition to a fee of 5,000 euros. The Government stated that these provisions do not appear to contrast with international human rights law, particularly article 13 of the ICCPR.

Observations

59. The Special Rapporteur thanks the Government of Italy for its detailed reply to his communication of 18 October 2007. The Special Rapporteur continues to follow the situation closely, in particular with regards to the implementation of the legislation that composes the “security package”.

60. The Special Rapporteur warns against sweeping statements that associate members of certain minorities to criminal behavior or social deviance, which contribute to further stigmatize such groups rather than promoting effective alternatives for social inclusion.

61. The Special Rapporteur wishes to make reference to the press release issued by his predecessor along with the Independent Expert on minority issues and the Special Rapporteur on the human rights of migrants on 15 July 2008 expressing serious concern about recent actions, declarations and proposed measures targeting the Roma community and migrants in Italy. The mandate holders expressed extreme concern about the proposal made by the Ministry of Interior to fingerprint all Roma individuals, including children, in order to identify those undocumented persons living in Italy, stating that this proposal can be unambiguously classified as discriminatory by targeting exclusively the Roma minority. The mandate holders also expressed dismay at the aggressive and discriminatory rhetoric used by political leaders, including Cabinet members, which in their view created an overall environment of hostility, antagonism and stigmatization of the Roma community among the general public.

62. The Special Rapporteur also wishes to make reference to the mission report of his predecessor following his visit to Italy in October 2006, which was presented to the 4th session of the Human Rights Council (A/HRC/4/19/Add.4). He wishes to recall in particular the following recommendations: the recognition of the Roma and Sinti as national minorities, the adoption of a comprehensive national policy towards these communities, in particular to address

their poor housing conditions, lack of documents, high dropouts of their children and their difficulties in accessing employment. The Special Rapporteur also refers to his recommendation that Roma and Sinti should be among the priority beneficiary groups of social inclusion policies.

63. The Special Rapporteur also notes that public policies directed to the Roma community should bear in mind General Recommendation XXVII of the Committee on the Elimination of Racial Discrimination, particularly paragraph 31 in relation to adequate housing, in which the Committee recommended States “[t]o act firmly against any discriminatory practices affecting Roma, mainly by local authorities and private owners, with regard to taking up residence and access to housing; to act firmly against local measures denying residence to and unlawful expulsion of Roma, and to refrain from placing Roma in camps outside populated areas that are isolated and without access to health care and other facilities.”

Russian Federation

Urgent appeal sent on 29 January 2008 jointly with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons

64. The Special Procedures mandate holders sent an urgent appeal concerning allegations that 147 Chechen families who have been displaced to Ingushetia and Dagestan returned to the Chechen capital of Grozny. They reportedly had not yet found a durable solution and were at risk of being forcefully evicted from their accommodation. According to the information received, on 10 January 2008, these 147 families who are living in a temporary accommodation centre at 4 Vyborgskaia Street in Grozny, were reportedly told by officials that they had to leave their accommodation at short notice. Some inhabitants were reportedly told that they should leave before the end of January and officials allegedly threatened to cut off the electricity and gas if they did not leave. It was reported that inhabitants of many other temporary accommodation centres in Grozny were also being told to leave. Those affected have reportedly not been consulted and no adequate alternative accommodation had been foreseen for their relocation.

Reply from the Government dated 31 December 2008

65. At the time this report was finalized, the Special Rapporteur was not in a position to reflect the content of the reply from the Government of the Russian Federation dated 31 December 2007 as he had not received the translation of its content from the relevant services.

South Africa

Communication sent on 5 November 2008 jointly with the Special Rapporteur on the human rights of migrants

66. The Special Rapporteurs sent an allegation letter concerning the murder of a Somali national, Ms. Sahra Omar Farah, and her three children in a village in the Eastern Cape. According to the information received, on 3 October 2008, Ms. Farah, her 19 and 14 year-old sons and her 12 year-old daughter were stabbed to death in a shop run by other Somalis in a village in the Eastern Cape. Ms. Farah was reportedly stabbed over 100 times in what has been

characterized as a xenophobic attack. According to reports, both female victims may have been subjected to sexual assaults. Three other Somali merchants were allegedly killed in Johannesburg and Port Elizabeth since 3 October. These acts follow a wave of violent attacks faced by foreigners in South Africa last May 2008, targeting particularly migrants and refugees who had moved to South Africa fleeing the dire conditions in their countries of origin. In this regard, concern was expressed that the murder of Ms. Farah and her family reflect a pattern of xenophobic violence in South Africa over the recent months.

Observations

67. The Special Rapporteur regrets that no reply to this communication had been received at the time this report was finalized. The Special Rapporteur would also like to make reference to the press release issued by his predecessor on 30 May 2008, in which he expressed distress at the xenophobic violence targeting refugees, migrants and South African ethnic minorities in Johannesburg and surrounding townships, claiming the lives of over forty people. The former Special Rapporteur took note of the efforts of the Government of South Africa to address the crisis and called upon authorities not only to carry out a thorough investigation of the acts of violence in order to bring the perpetrators to justice and prevent the spread of atrocities, but also to stimulate a collective reflection on the root causes of these phenomena.

Spain

Carta de alegaciones enviada el 24 de enero de 2008 juntamente con el Relator Especial sobre los derechos humanos de los migrantes

68. Los relatores especiales enviaron una carta de alegación en relación con una menor de nacionalidad ecuatoriana que habría sido víctima de agresiones físicas y verbales de contenido xenófobo y racista en Barcelona. Según la información recibida, el ataque se habría producido el martes día 7 de octubre en un tren de la línea ferroviaria de la Generalitat de Cataluña en el trayecto de Plaza España a Martorell, poco antes de llegar a la estación de 'Colonia Güell', donde el agresor descendió del tren. S.X M. M., un joven de 21 años, de nacionalidad española, se habría fijado en la menor de nacionalidad ecuatoriana que viajaba sola. Se acercó a ella y, sin dejar de hablar en ningún momento por el teléfono móvil, le insultó y le amenazó de muerte. Posteriormente se lanzó contra la chica ecuatoriana a la que golpearía varias veces al tiempo que continuaba profiriendo insultos racistas y xenófobos hacia la menor.

69. Tras insultarla y gritarle al oído varias veces que se marchara a su país, el presunto agresor comenzó a golpearla cada vez con más agresividad, llegando incluso a propinarle patadas en la cara, hasta que el tren paró y el presunto agresor se bajó de él, mientras continuaba profiriendo insultos de contenido racista. La Audiencia de Barcelona habría decidido mantener la situación de libertad provisional sin fianza para el joven que agredió a la chica ecuatoriana, tras haber desestimado los recursos en contra del Ministerio Fiscal y de la víctima.

Respuesta del Gobierno enviada el 31 de marzo de 2008

70. En su respuesta, el Gobierno confirmó que el 7 de octubre de 2007 un hombre joven agredió e insultó a otra pasajera de 16 años de edad y nacionalidad ecuatoriana, que viajaba sola. Después de la agresión, la joven solicitó auxilio al teléfono de emergencias, siendo atendida por

la Guardia Civil. Desde ese momento la Guardia Civil inició gestiones para localizar al autor de los hechos, que culminaron con su detención a la entrada de su domicilio el día 19 siguiente. El detenido pasó a disposición del Juzgado de Instrucción y justificó sus actos diciendo que estaba embriagado y que nunca había tenido comportamientos racistas, lo que desmentirían posteriormente la víctima y un testigo.

71. La titular del Juzgado de Primera Instancia e Instrucción n. 2 de Sant Boi de Llobregat dejó en libertad con cargos al joven porque la parte acusadora no pidió ninguna otra medida, como la prisión provisional. Según fuentes del Tribunal Superior de Justicia de Cataluña, el fiscal no asistió a la declaración del imputado y la familia de la menor renunció a ser representada por un abogado, motivo por lo que al juez no tuvo otra opción que dejarle en libertad.

72. No obstante y con posterioridad, la Fiscalía recurrió y pidió el arresto del imputado por considerar que existía riesgo de fuga y para proteger a la menor. Sin embargo, la juez no aceptó estos argumentos en base a que el imputado tiene arraigo social y está en paro, por lo que no tiene medios para huir. Igualmente, la juez cree suficientes las medidas cautelares adoptadas hasta la celebración del juicio: prohibición de acercarse a la joven, prohibición de abandonar las localidades de Santa Coloma de Cervelló, en la que él reside, y de Sant Boi de Llobregat. También se le prohíbe viajar en la línea S8, en la que se produjo la agresión, y se le ordena que se persone dos veces al día ante la Policía Municipal de Santa Coloma de Cervelló y cada quince días en el juzgado.

73. La víctima declaró en el juzgado el día 25 por la mañana, ratificando los extremos recogidos en el atestado policial. El forense considera la posibilidad de que sufra un shock postraumático como consecuencia de la agresión, por lo que se le ha ofrecido el oportuno tratamiento.

Observaciones

74. El Relator Especial agradece al Gobierno de Chile por su respuesta a la comunicación de 4 de enero de 2008.
