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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, Doudou Diène**

Addendum

Summary of cases transmitted to Governments and replies received * **

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

** The present report was submitted later than the indicated deadline, in order to incorporate the latest available information on the subject matter.

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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 May 2007 and 31 December 2007¹. 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 considered appropriate. Replies to communications which were received by the Special Rapporteur after 31 December 2007 will be reflected in his next communications report.

SUMMARY OF CASES TRANSMITTED AND REPLIES RECEIVED

Australia

Communication sent to the Government

2. On 10 October 2007, 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 to the Government regarding the recent adoption of **the Northern Territory National Emergency legislation in response to the situation of child abuse in Aboriginal communities**.

3. According to information received, on 14 June 2007 the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse released its final report *Little Children are Sacred* (Ampe Akelyernemane Meke Mekarle). The outcome of a research of eight months, the report provided a description of the situation of “common, widespread and grossly under-reported” sexual abuse of children, in particular of girls, in Northern Territory Aboriginal communities, which is depicted as a “reflection of historical, present and continuing social dysfunction”. The report contains a broad set of recommendations ranging from prevention (including education, health services, housing, and employment measures) to law and order, protection of children, and rehabilitation.

4. On 17 August 2007, following the proposals tabled by the Minister for Families, Community Services and Indigenous Affairs, the Senate passed a package of legislation integrated by the Northern Territory National Emergency Response Bill 2007; the Social Security and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007; and the Families, Community Services and Indigenous Affairs and Other Legislation Amendment 2007 (hereinafter “NTNER legislation”). The recently adopted NTNER legislation includes a number of extraordinary measures applicable only to Aboriginal communities of Northern Territory, including a system of alcohol restrictions, as well as offences for breaching these restrictions; the acquisition of townships through five year leases; the licensing of community stores; the audits of publicly funded computer, with offences for illicit use; a ban on pornographic materials, an income management system; and changes to the communities’ permit system. These measures were coupled with a substantial increase in the funding required to put them in place in the first twelve

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

months after their entry into force. Concern was expressed at numerous reports alleging potential or actual contradiction between the new legislation and the international human rights standards which are binding upon Australia's ratification.

5. In particular, reports received alleged that, in promoting the adoption of the Emergency Bill, the Government had failed to consult with indigenous peoples, either via community authorities or representative organizations, through effective and culturally appropriate mechanisms. According to reports, the proposed legislation was introduced by the Government in the House of Representatives on 6 August 2007, 47 days after the announcement of the Government's emergency plan and less than 24 hours after drafts of the proposed legislation were shared with opposition parties and relevant stakeholders. The draft legislation was then referred to the Senate's Standing Committee on Legal and Constitutional Affairs for inquiry. Even though more than 150 written submissions against the proposed legislation were received, the Committee held only a one-day public inquiry on Friday 10 August 2007. On Monday 13 August 2007, the Committee recommended that the Senate pass the proposed legislation without further amendments. It is alleged that this very short period of time did not permit for an in-depth scrutiny of the serious concerns expressed by the organizations that took part in the hearing, including some of the most representative Aboriginal organizations as well as major human rights organizations. It is alleged that, despite the existence of a real urgent need to address the situation, the adoption of the new policy has violated the rights of the Aboriginal communities of Northern Territory to be consulted and to give their consent prior the adoption of any measures susceptible to affect them directly. These rights have been affirmed, *inter alia*, by the Committee for the elimination of Racial Discrimination (CERD).

6. Furthermore, according to the allegations received, the NTNER legislation would include a number of extraordinary measures that would apply specifically to Aboriginal communities in Northern Territory, affecting a range of existing legislative scheme, including the Aboriginal Land Rights (Northern Territory) Act 1976 (ALRA), the Racial Discrimination Act 1975 (RDA); the Native Title Act 1995 and others. These measures would include restrictions in the exercise of individual rights of the members of Aboriginal communities, including in areas such as alcohol consumption or use of pornographic materials, as well as a number of limitations to vested communal rights. It is alleged that these measures would arbitrarily limit the exercise of their individual rights on an equal basis with other sectors of the national population, thus amounting to discrimination prohibited under international and domestic law/legislation. A number of provisions of the NTNER package would explicitly seek exemption from the application of the RDA, in connection to the permissibility of "special measures" provided for in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). According to article 1 of ICERD, special measures are permissible under the Convention in case they are "necessary in order to ensure equal enjoyment or exercise of human rights and fundamental freedom" by groups of specific groups and "for the sole purpose of securing adequate advancements" of these groups. In this particular case, it is alleged that serious problems of child protection would not confined to indigenous communities living on indigenous-controlled land, the extraordinary measures adopted as a short-term strategy to combat child abuse would not reasonable and proportionate means of achieving the "adequate advancement" of the targeted communities.

7. Moreover, information received indicated that the NTNE legislation arbitrarily affects vested Aboriginal property rights on a number of fronts, in a way that would seem to contradict international and domestic standards concerning indigenous peoples' rights over their lands, territories, and natural resources. In addition, it was alleged that, in addition to the fact that the legal exceptions introduced by the NTNE legislation on land rights do not have a demonstrated

role in promoting children's welfare, they would fail to meet the test required by ICERD for special measures. Part 4 of the Northern Territory Emergency Bill establishes a system of involuntary leases with regard to Aboriginal township land under Aboriginal Land Rights Act (ALRA) lands, Community Living Areas, and other lands, for a period of five years. Such leases, that would grant the Government exclusive possession and quiet enjoyment over approximately 70 Aboriginal townships and settlements in the Northern Territory, can be approved without consultation with the concerned communities and without their consent. These leases further seem to be dispensed from the owner's consent in cases of sublease and other dealings as required by the Land Rights Act. In addition, the compensation procedures established in the NTNER legislation would seem to compare unfavorably with the legal resources that non-Aboriginal people enjoy in cases of compulsory acquisition of property rights.

8. Reportedly, the Government has justified the new system of compulsory acquisition by pushing forward the need to secure the unconditional access to Aboriginal land and assets during the emergency period, aiming at securing policing and social assistance, and at facilitating the early repair of buildings and infrastructure. However, allegations received claim that these objectives do not provide an adequate and proportionate justification to the new system of compulsory acquisition. In this regard, according to information received, under the ALRA regulations any Government service, officer or agency would be able to enter Aboriginal townships without requiring a permit. It was further alleged that the system automatically works on the assumption that Aboriginal communities will not cooperate with the Government in the implementation of welfare policies, failing to limit compulsory acquisition as a measure of last resort and on an ad-hoc basis. In this connection, reports indicate that the NTNE legislation weakens the Aboriginal lands permit system by depriving Aboriginal peoples of their power to remove unwanted elements for common areas and access roads in their communities, as provided for in ALRA.

9. In addition, according to the information received, the NTNE package legislation would contain provisions banning the consideration of the cultural background or customary laws of an offender in mitigation (or aggravation) of sentencing. These provisions mirror the provisions of the Crime Amendment (Bail and Sentencing) Act 2006 – an act that has been the subject of concern in the past for its potential discriminatory implications, as it requires courts to treat Aboriginal Torres Strait Islanders, and other people with multicultural backgrounds, as if they did not belong to any specific cultural group. Information received indicated that the impact of this measure in the Northern territory would be significantly worse, given the disproportionate numbers of Aboriginal peoples charged under State and Territory criminal law. In addition, it was alleged that this measure would undermine the power and achievements of Aboriginal traditional courts, which have reportedly relied on flexible sentencing and bail options, as well as community involvement in order to strengthen compliance with the law while reducing rates of imprisonment and recidivism.

10. Reports received also expressed concern about the new income management regime included in the NTNER legislation. This system would include the linkage of welfare payments to children's school attendance and to participating in clean up and repair activities. Concern was expressed that this new system, including the possible quarantining of up to 60% of welfare payments for food and other essentials, may increase the risk of violence against mothers and other caretaker women of Aboriginal communities, who could be "blamed" by the fathers of children for the quarantining of welfare payments.

11. Finally, concern had also been expressed about the termination of Community Development Employment Projects (CEDP) by the new legislation. The measure would include

a period of transition payment in order to ensure the delivery of key services in force until 30 June 2008. According to the reports, while 7,500 people currently depend of CEDP in the Northern Territory, only an estimated of 2,000 participants will be able to find an employment in the formal labour market after the end of the transition payment period. Concern has been expressed that the termination of CDEP, connected to the lack of alternative employment options in indigenous communities, could lead to increased social unrest in these communities and increased family violence and abuse.

Reply from the Government

12. On 22 November 2007, the Government replied to the letter sent on 10 October 2007 stating that the measures which comprise the Northern Territory Emergency Response (NTER) were both exceptional and necessary measures to enable all, particularly women and children, to live their lives free of violence and to enjoy the same rights to development, education, health, property, social security and culture that are enjoyed by other Australians. In this regard, the Government stressed that many of the provisions are time limited and designed to stabilize communities so that longer term action can be taken.

13. The Australian Government acknowledged that child abuse and neglect are not unique to Indigenous Australians and that while measures in the Northern Territory will impact more on Indigenous than on non-Indigenous people, they apply equally to all those living in the prescribed areas. The Government stated that the NTER implements Australia's obligations under human rights treaties such as the Convention on the Rights of the Child. While acknowledging that the Convention on the Elimination of All Forms of Racial Discrimination requires that such measures must not result in persons of a particular race being treated differently so as to diminish their equal enjoyment of human rights and fundamental freedoms, it further noted that this will not be the case where different treatment is based on objective and reasonable criteria that implement a legitimate purpose under relevant treaties, including the Convention on the Rights of the Child.

14. The Government maintained that the legislation implementing NTER clarifies that certain measures are "special measures" for the purpose of the Racial Discrimination Act 1975, which implements Australia's obligation under CERD. It was noted that such measures do not seek to take away rights and freedoms; rather, they provide the foundation for rebuilding social and economical structures and give meaningful content to Indigenous rights and freedom.

15. In addition, it was noted that the Australian Government has introduced broader changes to respond to child neglect in all Australian States and Territories. In this regard, it was indicated that State and Territory child welfare and authorities will be able to request the Government to income manage parents' welfare payments in circumstances where they consider it is necessary to ensure that parents meet their obligations to provide for their children's basic needs. Parents and guardians receiving welfare payments will also be required to ensure children are enrolled at school and attend regularly. These measures will be progressively introduced over the next three years, with the school enrolment and attendance measures commencing in the Northern Territory as soon as possible.

16. On the question of consultation with members of affected communities, the Government asserted that all prescribed communities had been visited by teams from the Operation Centre and that a series of regional community engagement workshops was underway with the objective of informing community members about the emergency response, providing an opportunity for discussion, building relationships and seeking their involvement in the implementation of the

response. It was also noted that the Government's welfare payment delivery agency was meeting individually with those affected by the welfare reform measures. Furthermore, reference was made by the key role played by the appointed Government Business Managers in each community in working cooperatively, liaising with the local community and providing a direct point of contact for community members to discuss any issues and concerns they may have with the Australian Government.

17. In light of the consequences of widespread alcohol abuse for Indigenous Territorians, the Government noted that it had imposed alcohol restrictions - including a general ban on all people in prescribed areas possessing, selling, transporting and drinking alcohol- supported by extra policing during the emergency period that will help to track, investigate and prosecute any person bringing alcohol into vulnerable communities. Coupled with the new legislation, it was further indicated that the Australian Government Department of Health and Ageing is implementing a package of measures which will provide alcohol withdrawal interventions, family support, referrals for withdrawal, rehabilitation and treatment and linkages with primary health care services. Further, the Australian Government Department of Families, Community Services and Indigenous Affairs has been allocated an additional AUD\$9.2 million in 2007-08 for a new Alcohol Diversionary Activities initiative including rehabilitation services focused on providing activities to divert young people, living in remote Northern Territory Indigenous communities, away from alcohol and drugs. These services will provide intensive support in communities and will assist with the engagement of young people back into schools and employment (where appropriate).

18. Concerning the findings in the report that young children were being exposed to sexually explicit material in Indigenous communities and that this was having an adverse effect on the wellbeing and safety of these children, the Government indicated that it had banned both the possession of pornography within prescribed areas and the supply of pornography into those areas. The Government also introduced audits of publicly funded computers to identify illegal material. In addition the Australian Government is working with the Northern Territory Government on training needs for pornography education in Indigenous communities.

19. Additionally, it was stated that the Government will compulsorily acquire leases over towns and communities specified by legislation for a period of five years, the area of the land being less than 0.1 per cent of all Indigenous land in the Northern Territory. The Government considers this as crucial to removing barriers to implementing the NTER in a timely fashion, allowing the Government to stabilize communities and ensure that children live in a cleaner environment with more sustainable housing. The Government, while noting that it cannot repair buildings and infrastructure in a crisis situation without access to the land and assets in question, indicated that the leases will only do what is necessary to address the current crisis and that underlying rights, title and interest of the Indigenous owners will be preserved and compensation will be provided whether payable.

20. Furthermore, the Government noted that it has been considering changing the permit system – which in its view created closed communities which have hidden problems from public view and allowed some people to create a climate of fear and intimidation- since it announced a review in September 2006 and a discussion paper was released in October 2006. The Government noted that it decided to retain the permit system for 99.8% of Indigenous land in the Northern Territory. It added that public access will be allowed for common areas in major communities, that homes will remain private, sacred sites will continue to be respected, and that the Northern Territory Government will be able to legislate for the temporary closure of

common areas and access roads for cultural events including ceremonies and public health and safety.

21. The Government indicated that it has introduced welfare reforms in the NTER to stem the flow of cash being used to buy substances such as alcohol, drugs and pornography, and to ensure that money meant for children's welfare is used for that purpose. It was noted that in most cases up to 50% of welfare payments will be subject to income management. The level of individual entitlements will not be reduced, but rather redirected to ensure that the priority needs of the person, their partner, children and other dependants are met. These new arrangements apply to all people who receive welfare payments and live in prescribed communities in the Northern Territory.

22. Finally, the Government recalled that in 2006, the Council of Australian Governments (COAG) agreed that no customary law or cultural practice excuses, justifies, authorizes, requires or lessens the seriousness of violence or sexual abuse and that their laws would reflect this. In this regard, it noted that the Australian Government's legislative amendments reflect this decision by providing that in the assessment of bail and sentencing decisions under Northern Territory law, the seriousness of criminal behaviour cannot be excused, lessened or aggravated because of customary law or cultural practice. The Government assured that, even if a court or bail authority will still be able to consider customary law in limited circumstances, legislation makes it clear that the decision to grant bail or impose a particular sentence should not be based on whether the criminal behaviour would be assessed as less, or more serious, due to customary law or cultural practice.

Observations

23. The Special Rapporteur thanks the Government of Australia for the detailed response provided to the allegation letter. The Special Rapporteur urges the Australian Government to revise the Northern Territory National Emergency legislation in order to ensure its compatibility with the relevant international human rights instruments. The Special Rapporteur recalls in particular General Recommendation No. XXIII on Indigenous Peoples adopted by the Committee on the Elimination of Racial Discrimination in 1997 (A/52/18, Annex V), according to which States parties of the International Convention on the Elimination of all Forms of Racial Discrimination should provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics (para. 4, c); ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent (para. 4, d); and recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources.

Bangladesh

Follow-up to previously transmitted communications

24. In the absence of an answer from the Government of Bangladesh concerning his communication of 11 July 2006, jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (see A/HRC/4/19/Add.1, par. 2-4), the Special Rapporteur is forced to consider the following case no longer as an allegation but as a proven fact:

25. According to the information received, on 19 June 2006, activists and leaders of the Sama Adhikar Andolan (Chittagong Hill Tracts Equal Rights Movement), a political organization supported by the Government of Bangladesh and linked to Bengali settlers, violently intervened at a meeting of PCJSS (Chittagong Hill Tracts United Peoples' Party), a political organization linked to the indigenous peoples of the Chittagong Hill Tracts, shouting communal slogans and attacking violently PCJSS members and supporters. It is alleged that the attackers were violent and destroyed chairs, tables, doors and windows of the hall. They subsequently set fire to the national flag, the party flag and the curtains of the building. 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**, leaders of the PCJSS, had to flee, as they were targeted by the offenders. Reports indicated that the local police and local 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 didn't react to the violence. The Special Rapporteurs expressed concern at what appeared to be related to a general situation of discrimination towards the indigenous peoples of the Chittagong Hill Tracts.

Czech Republic

Communication sent to the Government

26. On 10 May 2007, the Special Rapporteur, together with the Independent expert on minority issues, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and the Special Rapporteur on the right to education, sent an allegation letter to the Government of the Czech Republic concerning information received on the living conditions in socially excluded localities in the country affecting mainly persons belonging to the Roma minority.

27. According to information received, a study conducted for the Ministry of Labour and Social Affairs of the Czech Republic identified 310 socially excluded Roma localities in the country, 35% of which would have emerged in the last 10 years. Reportedly, these localities possess a considerably sub-standard quality of housing, which in turn affects negatively the quality of life and related human rights of these individuals, such as access to work, health care and education services. According to reports, over 50% of Roma inhabit bare-walled apartments, otherwise known as "apartments of the lowest quality", into which people with outstanding rent are relocated. In some cities this number reaches as much as 90%.

28. Even though it is acknowledged that the creation of Roma socially excluded localities arises from a mix of problems relating to high rates of unemployment and substandard education, it was alleged that they are often the result of racial discrimination and deliberate segregation policies within some municipalities. Reportedly, 90% of the municipalities where socially excluded communities are found do not have any concept or strategy of integration of Roma, while only 1% has an explicit one.

29. Furthermore, according to the information received, the system in place for providing public housing owned by municipalities would not be transparent, and the criteria would often indirectly discriminatory. This situation has reportedly aggravated by the attitude of some regional representatives towards issues of social exclusion, which can lead to the perpetuation of existing problems of those Roma localities, thus reinforcing their social exclusion and even their segregation.

30. As an illustration of this social exclusion, in the eastern town of Vsetín, reportedly in an attempt to solve the problem of 42 (mostly Roma) families living in a big house in the centre of town which was in critical condition, the local government decided to demolish the house and resettle the inhabitants. It is alleged that most of the resettlements were carried out late at night, and without the families having prior knowledge of the housing conditions they were moving into. Some of the families were resettled in new flats on the outskirts of the town; however, these flats are allegedly situated next to the former waste dump in an area which is full of toxic substances and they are cut from the centre by an industrial zone. Furthermore, it is reported that the flats were built out of metal containers used for shipping, and shortly after the families moved in mould appeared inside given that the flats have inadequate air ventilation and are overpopulated. According to the information received, the rest of the families were moved some hundreds miles away into houses that have been described by experts and local public officials as uninhabitable, given that there is no potable water, roofs are full of holes, rafters are rotting, and the electricity distribution is unsuitable and even life-threatening. The former mayor of Vsetín allegedly stated that: *“We chose this solution in necessity only because we do not want hundreds of homeless Roma wandering around the town and being a nuisance to their fellow citizens”*.

31. Furthermore, it is alleged that Roma children do not receive the same standard of education as other pupils. According to the information received, Roma children are segregated from regular schools in different ways: firstly, they have separated classes in regular schools; secondly, the schools they attend enjoy a bad reputation regarding the quality of education; finally, more than half of Roma children attend schools for children with disabilities (zvláštní pomocná škola), now renamed as ordinary basic schools (základní škola). It is alleged that one of the reasons why a number of Roma children attend special schools is that teachers and psychologists who are in charge of mental tests do not take into account that these children have some learning difficulties. In addition, it is reported that schools prefer to label Roma children as children with mental disabilities in order to obtain extra resources from the State. It is reported that, for example, in Ivanovice na Hané, a town with a population of approximately 30.000 habitants, all Roma children were officially acknowledged as mentally handicapped. This is exacerbated by the fact that aliens are obliged to prove the lawfulness of their stay in the Czech Republic at the beginning of their school attendance at the latest under the new Education Act N. 561/2004. This act establishes that the headmasters of elementary and secondary schools cannot enroll any foreign children without documentation that proves their legal status in the country. In addition, Roma children are allegedly excluded from certain advantages granted only to Czech and European Union citizens, for example, free educational services such as counseling and accommodation facilities.

Observations

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

33. 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 proven fact.

Greece

Communication sent to the Government

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

35. According to reports received, since late July 2006, about 60 families, representing more than 400 persons, of the Riganokampos and Makrigianni Roma communities would have been evicted in Patras without being given prior notice, offered alternative housing or adequate compensation. Reportedly, the Roma in Makrigianni settled there in 1996, while the Roma in Riganokampos had living in that area for several decades going back to at least 1977. The order for these recent evictions was allegedly given by the deputy mayor of Patras and head of municipal social services unit. As a result, several Roma families allegedly have had no other option than to sleep and to live precariously in their cars, and in inadequate health and sanitation conditions, particularly for women and children.

36. It was reported that between 27 July and 25 August 2006, the Municipality of Patras demolished the homes of Roma families in the Makrigianni district while they were absent for seasonal work, served the remaining families with notices of emergency police measures of eviction, and without waiting for their confirmation by a prosecutor proceeded to implement the evictions. It was further reported that in June 2006, all Roma families of the Riganokampos district were referred to a criminal trial for illegal squatting on state land, and they were told to leave in August 2006 by a court order. These Roma families had allegedly never been provided with official documents attesting the legitimacy of their residences, and these evictions had reportedly been described by the authorities as “administrative acts of evacuation and expulsion in response to the unlawful occupancy of land and to arbitrary and illegal settlement of tracts of public land.” However, according to information received, these actions were taken without proper administrative or legal procedure in the first case and despite the fact that in October 2005 magistrates had reportedly annulled as abusive such administrative protocols of eviction which were being requested at the time and the related criminal charges were dropped. Furthermore it was indicated that following his visit to the eviction sites in Patras in September 2006, the Council of Europe Commissioner for Human Rights stated that in his view the “procedures” for eviction were in total contradiction to human rights standards.

37. Information received indicated that the Ministry of the Interior had secured a credit line of 320,000 euros to be used for the purchase of adequate land and settlement of the Roma families of these two communities, and that in the context of the Integrated Action Plan for the social inclusion of Greek Roma (IAP), 47 housing loans had been allocated until now to Greek Roma registered in the municipality of Patras, under favourable terms and under the guarantee of the Greek state. Additionally, it was indicated that a Special Committee had been set up within the administration of Western Greece with the task of identifying a suitable site to set up a permanent settlement for the Roma families. However, this body would reportedly have not come up with any concrete solution for the permanent settlement of these families. While it was reported that the municipality is renting apartments for 18 to 22 of the evicted families until the Government approves loan applications for them to buy their own homes, concerns were expressed on the part of these families as to what will happen once the initial, financially subsidized period of rent is over, as they have no money to pay for the rent on their own.

38. In addition, further reports indicated that most local Roma from these communities had left Patras or were looking for a home. Reportedly, these evicted families also face discrimination to access adequate housing, as landlords are reluctant to rent them houses, thus forcing them to constantly change their place of residence. Allegedly, the relocation plans foreseen for the Patras Roma communities has failed because of strong local community reactions against the settlement of Roma families in their neighbourhoods. Concerns have been expressed that the situation is not being dealt with adequately and in a sustainable manner by the authorities. In this context, information received indicated that in an interview in a weekly newspaper published on 2 February 2007, the then Chief Appeals Prosecutor of Patras and now Deputy Supreme Court Prosecutor reportedly made discriminatory statements against Roma in connection with last year's evictions and recommended similar eviction of immigrants who live in similar informal settlements in that city.

39. Concern is expressed at the possibility that evictions mentioned above seem to follow a pattern of forced evictions of Roma in Greece. In 1997, about 2,000 Roma were allegedly expelled from a rundown district of Thessaloniki. Reportedly, they camped on the banks of the Gallikos River for three years before being relocated to a former military barracks. Furthermore, in 2003, about 200 Roma were removed from the affluent Athens suburb of Maroussi to make way for the Olympic complex before the 2004 Games. Currently, about 200 Roma allegedly face eviction from a large site in Votanikos, central Athens, which is earmarked for the construction of a soccer stadium and the capital's first mosque by 2009. While there are no official statistics available, it is estimated that there are 200,000 to 300,000 Roma in hundreds of settlements across the country, at least half of them living in extreme poverty and inadequate housing conditions.

Observations

40. 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.

41. 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.

Follow-up to previously transmitted communications

42. On 29 August 2007, the Government of Greece replied to the allegation letter sent on 2 June 2006 by 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, concerning the case of Mr. **Theo Alexandridis**, legal counsel with the *Greek Helsinki Monitor (GHM)*, and other staff members of the GHM. The GHM is an organization that monitors and reports on human rights violations in Greece, including violations against the Roma community (see A/HRC/4/19/Add.1, par. 74-77).

43. In its reply, the Government indicated his sensitiveness on human rights issues and in particular regarding the Roma people. It stressed that Roma living in Greece are an integral part of the Greek population, they are Greek citizens and they are protected against all forms of discrimination by the Greek laws and the Constitution. It was further noted that they enjoy the same civic and political rights, they participate in the Greek society, they organize themselves in associations, political parties etc.

44. The Government noted that, due to their community particular lifestyle and needs, Roma are recognized as a socially vulnerable group of the Greek population and special measures and policies have been adopted to facilitate their integration in the modern Greek society.
45. Regarding the detention of Mr. Alexandridis, the Government indicated that at the beginning of the 2005 school year among the 360 Greek children attending the 10th and 11th primary Schools of Aspropyrgos, there were 24 Roma children. A large number of parents had objected to the attendance of the Roma Children.
46. On October 13 2005 about 60 persons assembled to prevent the entry of 8 Roma pupils in the school, who were accompanied by the representative of the Greek Helsinki Monitor Mr. Theodoros Alexandridis. Half an hour later, following consultations between those assembled and the school Direction and the intervention of Greek police, the Roma pupils entered the schools and attended classes.
47. Later that day, Mr. Alexandridis went to the Police station of Aspropyrgos and filed charges against the President of the Parents and Guardians Association of the aforementioned Primary Schools, Mrs. Eleni Panda, who was consequently arrested. Charges were also filed against unnamed men, for violation of articles 330, 361 and 33 of the Greek Penal Code. Three persons were also arrested for violation of article 330 of the Penal Code (illegal violence), because along with others, they tried to prevent the access of pupils in the school.
48. At the Police Station of Aspropyrgos, Mrs. Eleni Panda filed charges, as well, against Mr. Theodoros Alexandridis, for insult and false complaints and, as a result of that action, Mr. Alexandridis was also arrested. Later that day, the Public Prosecutor of Criminal Proceedings was informed by phone and ordered the Police not to initiate the "flagrante delicto" procedure. Therefore, the arrested persons were released after registering their pleas. The brief was submitted to the Public Prosecutor of the Magistrate Court of Athens for follow up action.
49. The Government stressed that following that incident, the Officers of Aspropyrgos Police Station, whenever so requested by representatives of the Greek Helsinki Monitor, have always provided assistance so that registered Roma pupils could enter their schools and attend classes, despite reactions of some parents. Moreover, police officers have been at the school on a daily basis and took appropriate measures to protect Roma pupils when they enter and leave the schools.
50. Regarding the statement made by the Public Prosecutor at the Patras Court of Appeals (16/09/2004-4/09/2006), the Government's reply indicated that Mr. Anastassios Kanellopoulos received numerous complaints and communications by inhabitants of the city of Patras and particularly those living in the areas of «Makrygianni» and «Rodopoulou» describing in details the "deplorable" living conditions they encountered due to the arbitrary settlement of the Roma population.
51. The Government noted that the Roma settled in those areas had been constructing shanty houses on the left bank of Glafkos River near the suburbs of the Municipality of Patras without fulfilling the appropriate and necessary sanitary conditions. As a result, the whole area has been transformed to a permanent infectious site with an elevated degree of pollution. Moreover, it was underlined that the inhabitants of Patras had also denounced the persistent climate of fear and insecurity, prevailing in their neighborhood as a result of unlawful acts allegedly committed by Roma. Specifically, it was noted that it was impossible for the children to play around as well as for the rest of the people to circulate at night. It was also indicated that the

local Authorities of Patras have been blamed of being unacceptably tolerant to the constant infringements of law committed by the Roma. Moreover, the Patras Public Prosecutor Office had also been receiving numerous complaints on the same matter, both orally and in writing, filed by the inhabitants of the abovementioned areas.

52. The Government also noted that in April 2006, 637 inhabitants living in the areas of Makrygianni and Rodopoulou filed a complaint and consequently the Patras Public Prosecutor's Office initiated criminal proceedings for nine misdemeanors, the majority of which was related to violation of sanitary provisions. At the same time, the Public Prosecutor ordered the initiation of preliminary investigation. According to the complaints, members of the Greek Helsinki Monitor had been inducing the Roma to commit punishable acts. Mr. Kanellopoulos as the Head of Patras Public Prosecutor's Office ought to examine those allegations, by ordering preliminary investigation.

53. Furthermore, the Government underlined that Mr. Anastassios Kanellopoulos denied that he ever stated that «all Roma are criminals» and considers those allegations groundless and unsubstantiated. Regarding the alleged involvement of the Greek Helsinki Monitor to the commitment of punishable acts, it was indicated that Mr. Kanellopoulos stated that nobody is above the law and since there was a complaint by 637 Greek citizens it was absolutely reasonable to initiate an investigation which should also include alleged activities of members of the Greek Helsinki Monitor.

54. The Government finally noted that it believed that the above mentioned facts clearly show that in the first case the Greek authorities did their utmost to facilitate the inclusion of Roma children in the Greek society and to protect them from any discrimination, whereas in the second case the Public Prosecutor's Office acted according to the Greek laws in order to investigate allegations made by other Greek citizens. A 2007 updated report on the Integrated Action Plan for the social inclusion of Greek Roma was attached to the reply.

Observations

55. The Special Rapporteur thanks the Government of Greece for its response. However, he wishes to express great concern at several reports alleging manifestations of discrimination not only against the Roma population in Greece but also against non European migrants. The Special Rapporteur intends to closely monitor the situation.

India

Communications sent to the Government

56. On 23 August 2007, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, the Special Rapporteur on violence against women and the Special Representative of the Secretary-General on the situation of human rights defenders regarding attacks on the **Dalit communities, particularly women**, in Somebhadra District, Uttar Pradesh, India.

57. It is reported that in Sonebhadra District, the poorest District in Uttar Pradesh with a large Dalit population, Dalit families have been cultivating and living in a Government's waste lands, the Gram Sabha's, for years. Reportedly, the land ownership has always been a conflicting issue between the Upper Caste controlling land resources and Dalits and tribes.

58. Reports indicate that Dalits' reclaim of land has led to conflicts with forest officials and the Police, especially after the adoption of the "Schedule Tribe and other Forest Dwelling Communities (Recognition of Forest Rights) Act of 2006". It is further alleged that since the Act is not yet operational, the forest department officials have been harassing the activists working for the rights of the forest dwellers and the tribes, with the aim to ensure that evictions take place before the clauses of the Act are enforced. Reportedly similar actions are taking place in other parts of the country including Maharashtra, Madhya Pradesh and Orissa.

59. In this context, on 3 August 2007, **Ms. Roma** and **Ms. Shanta Bhattacharya**, two members of the National Forum of Forest People and Forest Workers (NFFPFW) who had been working in the Sonebhadra District for the past seven to eight years, were allegedly arrested in Robertsganj under charges of provoking Dalits and Tibals to encroach forest lands. According to information received, they were arrested under section 120 (B) and 447 of Penal Code; they were in Mirzapur jail and their bail applications had been rejected at the Circle Judicial Magistrate. In addition, it was reported that on 5 August 2007, **Lalita Devi** and **Shyamlal Paswan** were arrested from a local market in Rangarh and were also held in Mirzapur jail. As a consequence of these imprisonments, people would have been staging a protest since 4 August in front of the District Magistrate (DM) office in Sonebhadra demanding immediate release of the activists. New charges would have been brought against Ms. Roma under article 4 of the National Security Act on 10 August.

60. Reports also indicate that on 10 August 2007, at around 9 p.m., the police attacked Dalit women in Chanduli Village, in Sonebhadra District, leaving fifteen women seriously injured. Two trucks loads of Police along with upper caste representatives of the locality descended on Chanduli village in Sonebhadra district. They were allegedly heavily armed, and demanded to see **Bachchalal**, an active member of the local organisation Kaimoor Kshetra Mahila Mazdoor Kisan Sangharsh Samiti (KKMMKSS). According to information received, when they did not find Bachchalal in the village, they started attacking women present in the village. Police and upper caste representatives barged into the house of Bachchalal and attacked his pregnant sister and sister-in-law; pulling them out and attacking them. In three hours, the police and upper caste representatives beat up around 15 women and destroyed their houses.

61. At the time of the incident, there were very few male members in the village as most of them were staging a protest in front of the DM's office in Sonebhadra against the arrest of Ms. Roma, Ms. Shanta Bhattacharya, Lalita Devi and Shyamlal Paswan.

62. This was allegedly the third attack of this kind against Dalits in less than two weeks and reportedly a consequence of the Dalits families' requests for land that started in the last two years, as a response to the forest department's Government Resolution of 2002-3 to clear forest lands from any encroachments.

63. During the events, the police reportedly left the village giving an ultimatum to remove the bricks of the houses by 11 August 2007 and threatening them to come back with an administrative order to destroy the houses.

64. On 19 December 2007, the Special Rapporteur, 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 sent an allegation letter to the Government concerning allegations of **violence against Dalit women** in India.

65. According to information received, Dalit women and men suffer descent based discrimination in various aspects of their lives; they are also victims of violence and untouchability practices (based on notions of Dalits' supposed impurity) arising out of the caste system. While both men and women are discriminated and suffer from social exclusion, Dalit women are confronted with discrimination, exclusion and violence to a larger extent than men. They are not only discriminated by people of higher castes but also by men of their own communities. Violence against women in India is generally structured by relationships of power set in systematic caste, class and gender discrimination.

66. The case of Dalit women is specific because of their socio-economic positioning at the bottom of the caste, class and gender hierarchies. Dalit women face violence in the community and in their family, from State and private actors alike, belonging to various castes and socio-economic groupings, and of both sexes. The major forms of violence that Dalit women are subjected to are physical and verbal abuse, sexual harassment, abduction, and sexual violence, including rape.

67. It is alleged that on many occasions, cases of violence against Dalit women are not registered by the police, and opportunities for intervention in the legal system are inexistent due to a general lack of law enforcement. Women are unaware of the laws protecting their rights and their ignorance is easily exploited by perpetrators, and some members of the police and the judiciary. Allegedly, even when the cases are reported to the police and the perpetrators arrested, they are usually released on bail and women do not receive justice as a result.

68. The Indian government adopted the "Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act" in 1989, to prevent atrocities against Scheduled Castes and Tribes. According to this act, in cases of violence against Dalits, including physical or sexual violence against Dalit women, the police are obliged to register the complaints. However, according to information received, the police often refuse to register complaints under this act or register them under a different act, because the act imposes high prison sentences and fines and the police may not agree with the purpose of the act and may try to protect the perpetrators (who may be their fellow caste members).

69. If a case is not registered under the Prevention of Atrocities Act, it is possible for the perpetrator to receive anticipatory bail which, especially in rape cases, in practice means that the case is generally not examined and prosecuted further. This goes against a Supreme Court judgment that ruled that anticipatory bail should not be available in cases within the Prevention of Atrocities Act (Case 1995-1198, State of M.P. & anr. vs. Respondent, Ram Krishna Balothia & anr, judgment of 6 February 1995). The Supreme Court also ruled that anticipatory bail can be denied for the purpose of investigation (Case 2005-326), which would apply to most rape cases, but this is allegedly not implemented in practice (Appeal (crl.) 326 of 2005, Adri Dharan Das v. State of West Bengal, judgment of 21 February 2005).

70. The Special Rapporteur presented to the Government allegations on specific cases of physical and sexual violence affecting 21 Dalit women or girls that occurred between August 2004 and April 2007, and which outlined the impunity that allegedly prevails with respect to ensuring protection and redress.

Observations

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

72. The Special Rapporteur expresses his utmost interest in receiving responses in regard to the allegations submitted and would be particularly interested to know whether these cases have resulted in any prosecutions of alleged perpetrators. 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.

73. The Special Rapporteur wishes to refer to the invitation he requested to the Government of India in 2004 and 2006, which has remained unanswered, and reiterates his interest in visiting the country. The Special Rapporteur considers the issue of caste-based discrimination to be an integral part of his mandate, in line with the CERD's general recommendation XXIX 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". In this regard, he wishes to refer to the chapter on caste-based discrimination in his 2008 general report to the 7th session to the Human Rights Council (A/HRC/7/19).

Follow-up to previously transmitted communications

74. In the absence of an answer from the Government concerning his allegation letters of 6 March 2006, 8 March 2006, 8 December 2006 and 26 January 2007 (see A/HRC/4/19/Add.1, par. 80-84, 88-95), the Special Rapporteur is forced to consider the following cases no longer as allegations but as proven facts.

75. According to the information received, on 22 July 2005, eight police officers, all of them dressed in civilian clothing, approached **Sekar Arjunan (Rajasekar)**, aged 32 years, a shopkeeper from Raja Thottam, Peravallur, Chennai as he was standing near a fruit shop close to the Central Prison in Chennai. The officers beat him and kicked him with their boots in his 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 2005. While he was there, he was beaten and deprived of food. On 26 July 2005, 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 oral caste-related abuse and threatened to kill him by placing a pistol on his forehead.

76. Moreover, it was alleged that the police officers brought false criminal charges against him and 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 them 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 K1 Sembiam Police Station and K-5 Peravallur police station in Chennai.

77. According to information received, on 14 January 2006 at 1:00 a.m., four men from nearby Hinauti village allegedly came to the house of a **22 year-old woman** belonging to the indigenous Nut Community (a scheduled tribe) in Sirsi village, Chandauli District, Uttar Pradesh. All four men belong to the upper caste Singh community. Allegedly, the four men then forcibly took the victim to the pulse plants field, where they gang raped her for three hours. When she fell unconscious, they threw her onto a nearby railway line, where she was found hours later by another villager.

78. 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.

79. According to information received, **Ms. S.B., wife of Mr. B.B., their daughter Ms. P. and their two sons, Mr. S. and Mr. R.**, all belonging to the Dalit Community in the village of Khairlanji, Bhandara District, in Maharashtra, were reportedly murdered by upper caste men.

80. On 3 September 2006, a local Dalit policeman was allegedly beaten up by upper caste community members. Mr. B.B., S., P. and R. reportedly testified against alleged perpetrators leading to their arrest. It was reported that on the same day, a mob of two to three hundred upper caste villagers, many equipped with axes and ubhari (a stick with a metal spike), stormed their home, and dragged Ms. S. B. and her three children out of their house where they were stripped naked, beaten and driven to the main village square. Mr. B. B. was not at home at the time of the incident. Upper caste men then gang raped Ms. S.B. and her daughter Ms. P. for over an hour, while bystanders, including upper caste women, verbally incited the rapists and spurred them on. One of Ms. P.'s brothers was asked to have sex with Ms. P. and after he refused, his genitals were thrashed. Ms. P. was hit on her breasts with an axe and thrashed and stabbed with ubhari in her genitals. All four persons were hacked to death and the bodies were thrown in a canal. As of 30 November, although a First Information Report (FIR) had been filed, the vast majority of the perpetrators, including those who were allegedly complicit in the gang rape and murder, have 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.

81. According to information received, on 2 January 2007, Mr. **Ravikumar**, member of the Legislative Assembly of the Kaaumannarkoil constituency, owing allegiance to the Vidudalai Chruthaiga, Dalit Panthers of India (DPI), in Sedapalayam village of Cuddalore District, in the State of Tamil Nadu, sustained injuries to his hands and legs during an alleged attack by a contingent of approximately 100 police officers, including Delta police personnel, in Sedapalayam village during a funeral procession for Mr. Siva, a Dalit youth murdered on 1 January 2007. Twenty-eight other Dalit Panthers of India (DPI) members 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.

82. 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 attended the hospital for medical treatment were reportedly arrested by police on charges of attempted murder.

83. Prior to the events of 2 January 2007, Mr. Ravikumar had reportedly been in contact with Mr. Gagandeep Singh Bedi, District Collector, Cuddalore, and Mr. M Karunanidhi, Chief Minister of Tamil Nadu urging them to ensure that an immediate investigation be carried out in relation to Mr. Silva's murder on 1 January 2007, and that the perpetrators be brought to justice. He also made an appeal to the police and district administration to ensure that law and order be maintained during the funeral.

84. Concern is expressed that the funeral procession of Mr. Silva was violently suppressed by authorities and that excessive police force may have been used against peaceful attendees of 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 impartial and thorough police investigations are carried out in relation to both alleged incidents.

Iran (Islamic Republic of)

Follow-up to previously transmitted communications

85. In the absence of an answer from the Government concerning his urgent appeal of 1 March 2006, and his allegation letters of 22 May 2006 and 24 May 2006 (see A/HRC/4/19/Add.1, par. 103-110), the Special Rapporteur is forced to consider the following cases no longer as allegations but as proven facts.

86. According to the information received, on 13 February 2006, **173 members of the Nematollah Sufi Muslim community** were arrested due to their participation 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 being held against an order by the security forces to evacuate the community's place of worship, known as Hosseiniye. At the time the urgent appeal 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 had been 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.

87. Reports indicated that, on 13 February 2006, members of the Fatemiyon and Hojatieh groups also reportedly surrounded the place of worship, shouting slogans such as "Death to Sufis" and "Sufi-ism is a British plot", and distributed leaflets alleging that Sufis are enemies of Islam. The next day, the Hosseiniye was demolished using bulldozers. Approximately 1,200 protesters were arrested and taken away on buses to unknown locations. The detainees were interrogated and many were allegedly subjected to torture or ill-treatment. Most of them were subsequently released. According to the information received, those who were released were required to sign papers as a condition of their release agreeing not to attend any Sufi gatherings in Qom. Some were required to sign documents renouncing Sufism.

88. 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 an 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.

89. According to information received, on 3 May 2006, **52 members of the Nematollahi Sufi Muslim community** and their two lawyers **Farshad Yadollahi** and **Omid Behrooz** were convicted on charges of "disobeying the orders of government officials" and "disturbing public order". They are amongst 173 members of the Nematollah Sufi Muslim community, who were arrested on 13 February 2006, due to their participation in a peaceful protest against an order by

the security forces to evacuate the community's place of worship, known as Hosseiniye. They were the subject of the communication sent on 1 March 2006. 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 imprisonment and 74 lashes. After their release, they were obliged to report to the security officials every month for the period of 2 years. It was further reported that Farshad Yadollahi and Omid Behrooz were disqualified from their profession for five years. All of them were released on bail, and were given 20 days to appeal the judgment.

90. According to the information, **Azeri Turks** are mainly Shi'a Muslims, and are the largest minority in Iran, consisting around 25 to 30 percent of the population. They are mainly located in the north and north-west of Iran. Reports indicate that, as Shi'a 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 be accused of charges such as "promoting pan-Turkism".

91. Examples include the case of Mohammad Reza, Mostafa Evezpoor and Morteza, who were the subject of the 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, the "Iran Newspaper" published an article with a cartoon of cockroaches, describing Azeri Turks as "roaches", speaking their own language, usually living in toilet holes, and whose food sources should be cut. This has reportedly triggered protests and hunger strikes in universities in Iran.

Italy

92. On 18 October 2007, the Special Rapporteur sent an allegation letter jointly with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, the Special Rapporteur on the human rights of migrants and the Independent expert on minority issues **concerning incidents of evictions of Roma communities in Rome and Pisa** which allegedly would form part of a pattern of discrimination against Roma communities.

93. According to the information received, on 19 July 2007, the Italian police in cooperation with the Romanian police forcibly evicted approximately 1,000 Roma from a settlement in Via dell'Imbarco, Magliana suburb, Rome. Earlier in July 2007, the police and the municipal wardens forcibly evicted approximately 100 Romanian Roma from a settlement in Bagno di Tivoli, near Rome. During both operations personal belongings and dwellings were allegedly destroyed.

94. Following an official visit to Romania of the Rome's mayor, Mr. Walter Veltroni, an agreement was signed between the Italian and Romanian governments whereby the police of these countries would collaborate concerning the eviction, identification and repatriation of Roma of Romanian origin living in settlements in the city of Rome. Despite the declaration that

this would be a plan for “voluntary return”, there are allegations that the intention is to repatriate Roma settlers forcibly.

95. It was also reported that the Vice-President of the European Commission, Mr. Franco Frattini, stated that “it is not true that European citizens cannot be repatriated... There is a very clear directive, valid for all citizens of the European Union that provides for the expulsion for all those who cannot prove to have adequate means of subsistence to live in a dignified way”. This statement has been allegedly used by politicians in anti-Roma speeches. For instance, the mayor of Verona, Mr. Flavio Tosi, who had previously been sentenced to two months imprisonment for racist propaganda against Roma, used the above statement to affirm that many of the Romanian Roma living in a “nomad camps” could be repatriated.

96. The Special Rapporteur also received information concerning the case of four Romanian Roma children, Lenuca, Danchiu, Dengi and Eva, who, on 11 August 2007, died in a fire that burned down, for reasons yet unknown, in the hut where they were temporarily living with their parents in Livorno, following their forced eviction from Pisa in May 2007. According to information received, their parents would be currently in detention, charged with abandonment of minors and parental negligence.

Reply from the Government

97. By letter dated 21 December 2007, the Government of Italy replied to the joint allegation letter sent on 18 October 2007 noting, in the first place, that the question of the living conditions of the Roma populations, as laid down in the Consolidated Text 286/1998 as amended and integrated by Act 189/2002, was a competence of Local Bodies and that local institutions were still proceeding with the adoption of all pertinent interventions. Within this framework, the Government indicated that several initiatives aiming at setting up small camps are in the process of being implemented in different part of the country as in Naples, Milan and Rovereto.

98. More specifically, in the case of the Municipality of Rome, it was noted that actions aimed at the reception and integration of Roma communities have been increased and strengthened. The Government informed that thousands of Roma people were received in the “Pronta Accoglienza” (Welcome reception centers) while *ad hoc* structures had been realized specifically for mother and child groups.

99. Concerning the removal of a Roma settlement located in “Magliana” – Via dell’Imbarco – Rome (July 19, 2007), the Government informed that the Rome police headquarters, in agreement with the Municipality of Rome, the “Nucleo Assistenza Emarginati” (Outcasts Assistance Nucleus) and the Municipal Police carried out the removal of a Roma illegal settlement located under an overpass of the Tiber river, in an area subjected to overflow and that was found in appalling hygienic and sanitary conditions. A decision to intervene had been previously agreed within the Provincial Committee for Public Order and Security and had been repeatedly requested by the Municipal Agency for Electricity and Water in order to allow urgent maintenance works close to the settlement. Evacuation of the area was carried out with medical units, charity institutions and sanitation experts. The Government informed that the removal affected about 500 (not 1,300) people belonging to a Romanian ethnic group 8many of whom were children) who, being informed about the impossibility to remain in an unsafe area, voluntarily moved away. Just a few of them, who did not intend to leave the premises, immediately received assistance from the Roman Social Service. Following the event, the police and social workers intervened in order to assist the more disadvantaged categories, like mothers and children.

100. Concerning the removal of a Roma settlement in “Bagni di Tivoli”, former “Stacchini” powder warehouse (July 26, 2007), the Government reported that, according to a decision taken by the “Illegal Roma Settlement Issues Working Group” of the local “Prefettura”, police officers, the Carabinieri, the Civil Protection and other competent offices of the Tivoli Municipality carried out the removal of an illegal settlement within the private area of the former powder warehouse. This action had been made necessary as a consequence of requests by the owner of the site and other private citizens. During the intervention, 80 Romanian citizens had been requested to pick up their belongings and leave the place. At the end of the eviction procedure, the entire area was returned to the owners with the order of clearing it up by destroying the remaining buildings and fencing it off, in order to keep out future illegal settlements.

101. Concerning the removal of a Roma settlement in Pisa (May 2007), the Government reported that the removal of a small community from the so-called “CEP” area had been planned and carried out by the Municipal Police of Pisa. Goods of subsistence and meal tickets were supplied and the only family with minors was offered an alternative accommodation at a nearby landlord in the area. The Government underlined that this family was not one of the families involved in the terrible episode occurred in Livorno.

102. The Government indicated that in 2002 the city of Pisa started a specific programme called “Le Città Sottili”, mainly aimed at the final closure of the Roma settlement. Four out of five Roma camps have been definitely closed. At the time the Government sent this communication, there were still two areas where some family groups had been temporarily accommodated and various housing possibilities had been already foreseen for them. In the area of Coltano, where the only authorized settlement was set up, the Government indicated that a building of a village has started in order to accommodate by the spring of 2008 about 15 family groups. The Government specified that out of 572 Roma citizens coming from various regions of the Balkans half benefited from the programme “Le Città Sottili” and were offered an adequate housing, while another relevant number of Roma citizens were well-placed in temporary solutions. The Government also reported that each single family group was backed by a specific project in order to cope with the integration process autonomously and that all persons still staying within the settlement and in the transition areas were supported with targeted interventions. The Government also indicated that all the children in the age of compulsory education had entered a school and had a sufficient level of attendance. It was also noted that all of these projects have been approved by the social cooperative societies and local associations.

103. As to the Roma from Rumania, during the summer 2004, after the removal of illegal settlement in Pisa, the authorities detected hazardous situations for the health of some minors and consequently five Romanian Roma family groups were resettled along the line drawn with “La Città Sottile”. Two of these family groups then decided to move autonomously. In April 2005, after the fire of a warehouse hosting several family groups, 11 families were accommodated in temporary facilities within the Municipality of San Giuliano Tm. In spring/summer 2006, the Municipality joined the programme and paid for those families who benefited from the above mentioned projects.

104. In its reply the Government noted that after the arrivals of a number of Roma from Rumania, especially at the beginning of 2007, several situations of marginalization and poverty arose in the territory of Pisa. By the end of 2006, the “IRRMA” (“Regional Intervention against Marginality”) project started. This project was developed by the Tuscany Regional Administration in cooperation with the “CNCA” (Reception Communities National Coordination Board), managed within the Pisa territory by the social cooperative “Il Cerchio”

and aiming to taking care of the Romanian Roma. It was added that two family groups had been supported for housing projects along with a number of people looking for employment, and this with good results.

105. Furthermore, the Government indicated that the Municipality of Pisa was committed to activating further interventions addressed to family groups with a sufficient income to guarantee an integration path, and/or family groups with a particular health situation. It was also reported that actions would be developed with the commitment to closing the illegal settlement and preventing the creation of new ones.

106. Concerning the events of Livorno (August 11, 2007), the Government reported that around midnight, the Fire Brigade was requested to extinguish a fire in the outskirts of the town, where three huts made of wood and plastic were on fire. The charred corpses of four children were found and identified, according to their parents' statements, as Romanians of 4, 7, 8 and 11 years of age. Late in the night, the police arrested the parents of the victims who were questioned by the judge and finally they were considered guilty of child abandonment and consequently of their death. Following investigation, and despite the parents' allegations, any responsibility of a third person and the possibility of a racist or a xenophobic attack was been excluded. The authorities also specified that the victims were not living temporarily in Livorno because of their forced eviction from Pisa and that just the householder of one of the family groups could have been present in Pisa and been removed.

107. Concerning non-discrimination, the Government recalls that besides article 3, c.2 of the Italian Constitution, Law decree No. 286/98 and subsequent modifications settle the procedures for civil action against discriminatory acts due to racial, ethnic, national or religious reasons committed by a private individual or by the public administration. It was noted that this decree establishes measures of social integration as the organization of training courses tailored for public officers and private corporations in charge of foreign citizens or working in the immigration field.

108. The government also explained that the National Office against Racial Discrimination (UNAR) was offering free legal counsel to victims of discrimination who reported to competent jurisdictional authorities. In addition, periodical meetings with the Rom associations have permitted UNAR to have an exhaustive picture of the main critical profiles that characterize these people and play an intermediation role and to determine the main sectors of potential intervention by the State or by the local authorities, including housing, health and legal status.

109. Finally, the Government mentioned the very recent agreement signed in Bucharest, on 20 December 2007, by the Italian Minister for Social Solidarity and the Romanian Minister of Labour. It was explained that this agreement aimed at establishing a partnership in order to reduce, in both countries, the level of poverty of Romanian citizens, in particular Roma people. It was noted that this agreement provides for the use of national and European funds for the implementation of joint projects in the fields of labour, education and housing.

Observations

110. 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 the implementation of the agreements that have been signed.

111. The Special Rapporteur wishes to refer to the mission report on 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.

112. The Special Rapporteur also wishes to refer to his general report to the 7th session of the Human Rights Council (A/HRC/7/19), in particular the information concerning the follow-up of his to Italy. He notes with particular concern the adoption on 28 December 2007 of a decree allowing for the expulsion of European Union nationals accused of posing a threat to “public order” and “public security”. The Special Rapporteur expresses concern that the decree, adopted in the wake of the murder of an Italian woman allegedly by a Romanian Roma man, may particularly target the Romanian citizens in the country.

Libyan Arab Jamahiriya

Follow-up to previously transmitted communications

113. On 11 October 2007, the Government replied to an allegation letter sent on 3 February 2006 by the Rapporteur concerning alleged **discriminatory legislations toward the Berber culture and identity**, such as the law number 24 of the year 1369 w.r. (1991), which would prevents people from using any other language than Arabic in the country (see A/HRC/4/19/Add.1, par. 120-122) Allegedly, these laws forbid all literature and writings which is not in Arabic, and therefore, the use of the Berber language. It was also alleged that it is forbidden to use names of Berber origin to name children and that the Libyan government deliberately withholds the development of regions with Berber communities. The information received also indicated that the Libyan education system and school books do not take into account the Berber component in Libya’s geography, history and culture. Allegations also reported the harassment and ill-treatment of persons working for the defense of the Berber community, culture and identity.

114. In his reply, the Government notes that the information provided is an unreliable account devoid of objectivity and impartiality provided by some individuals. The Government further states that it is not true to claim that there is discrimination based on tribal, ethnic or religious status. It further stresses that Libyan society has a cohesive structure and all citizens enjoy their rights on the basis of equality, as provided in the Great Green Document on Human Rights in the Age of the Masses and the Promotion of Freedom Act. All citizens are equal before the law in respect of their rights and obligations.

115. The Government further notes that it is untrue that people are prevented from using their tribal names. According to Decision No. 3 of 2007 issued by the Secretariat of the General People’s Committee and judgments handed down in implementation of Act No. (24) 1369 MWR [from the death of the Prophet], it is permitted to register the names of ascendants, names conveying meanings that are authentically Libyan or names that are passed down from ascendants to descendants in keeping with recognized Libyan traditions and customs.

116. Finally, the Government underlines that the allegation that persons who work for the defense of the Berber community, culture and identity are harassed and ill-treated is groundless. If it were true, the names of those subjected to such treatment would have been provided and Libyan legislation would punish them.

Observations

117. The Special Rapporteur thanks the Government for its response to his communication. However, with regard to the use of language, he wishes to recall in particular article 2.1 of the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, which refer to the right by persons belonging to national or ethnic, religious and linguistic minorities to use their own language, in private and in public, freely and without interference or any form of discrimination.

Nepal

Communication sent to the Government

118. On 25 September 2007, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, as Special Rapporteur on violence against women, its causes and consequences, and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent an allegation letter to the Government concerning **Ms. Uma Devi Badi**, the coordinator of the “Badi Adhikari Sangharsa Samiti” (Badi community Struggle Committee), **and women and male human rights defenders of the Badi community in Nepal**.

119. According to information received, on 22 August 2007, **three dozen women human rights defenders from the Badi community** were reportedly beaten and detained in custody. They were protesting in Singha Durbar, in Kathmandu. Allegedly, the aim of their protestation was the rehabilitation of women who have been forced to work as commercial sex workers, the right to own land, the equal representation of male and female candidates in the constituent assembly, and the establishment of legal bodies at all levels of the government addressing issues as racial discrimination, untouchability and legal identity for their children who are deprived of citizenship certificates. All the protestors were released later on that day without being charged.

120. On 27 August 2007, **450 Badi women and men (225 of them were women from the Badi Community Struggle Committee and members of the Dalit Civil Society Movement)** protested to enter in Singha Durbar. They were beaten with truncheons by the police. Reportedly, the police tried to take off the clothes of Ms. Uma Devi Badi, the coordinator of the Badi community Struggle Committee. **120 protestors** were arrested by the police. Ms Uma Devi Badi and other women human rights defenders of the Women’s rehabilitation centre (WOREC) were taken to the Armed Police Battalion number-2 in Maharajgunj. They were released in the evening without charge against them.

121. On 7 September, members of the Badi Community protested again in front of Singha Durbar. They were severely beaten by the police. On 9 September, during another protest in Harihar Bhawan, members of the Badi community were beaten by the police with sticks and boots. The police also poked sticks into people’s organs. One of the victims is **Padma Badi**, 18 years old, whose intestine was badly damaged. Altogether **140 persons** were arrested and taken

to Mahendra Police Club in Maharagunj, Kathmandu, and were kept there for around 8 hours without being provided any food or water.

Observations

122. The Special Rapporteur thanks the the Permanent Mission of Nepal to the United Nations and other International Organizations in Geneva for the letter sent on 31 October 2007 acknowledging receipt of the communication and noting that the letter had been forwarded to Kathmandu with the request for information on this case. However, he regrets that, at the time this report was finalized, no reply to the communication had been received from the Government.

123. 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.

124. The Special Rapporteur wishes to refer to the invitation he requested to the Government of Nepal in 2004 and 2006, which has remained unanswered. The Special Rapporteur wishes to reiterate his interest in visiting the country, in particular to study the issue of caste-based discrimination, which he considers to be an integral part of his mandate, in line with CERD's general recommendation XXIX. In this regard, he wishes to refer to the chapter on caste-based discrimination in his 2008 general report to the 7th session to the Human Rights Council (A/HRC/7/19).

Follow-up to previously transmitted communications

125. In the absence of an answer from the Government concerning his allegation letter of 10 October 2006 (see A/HRC/4/19/Add.1, par. 128), 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, on 26 August 2006, **Dalit women** were harassed by the Priest of Shivalaya Temple and some 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 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 Dalit worshippers had been acting in an offensive manner.

Russian Federation

Communications sent to the Government

127. On 5 July 2007, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning the attack on Ms. **Valentina Uzunova**, Director of the *Minority Rights Commission* in St. Petersburg.

128. According to the information received, on 19 June 2007, at approximately 18:00, Ms. Uzunova was brutally attacked by an unidentified female outside the family home of a former colleague, Mr Nikolai Girenko, in St. Petersburg. Mr Girenko, ex-Director of the *Minority*

Rights Commission, professor of ethnology and prominent expert on ethnic and racial issues in the country, was shot dead on his doorstep in June 2004. The masked assailant allegedly demanded that Ms Uzunova turn over the documents she was carrying. However, when Ms Uzunova refused, the woman physically attacked her before absconding with the dossier containing the documents along with Ms Uzunova's earrings. The assailant did not take Ms Uzunova's purse. Ms Uzunova suffered concussion as a result of the attack and was treated at Alexandrovskaya Hospital.

129. According to reports, the attack took place the day before Ms Uzunova was due to testify against Mr Vladislav Nikolsky, a publisher of xenophobic literature who has been accused of inciting ethnic hatred. Prior to the attack Ms Uzunova had allegedly received an anonymous phone call threatening her and her family with death if she did not assist in clearing Mr Nikolsky's name. Ms Uzunova was apparently refused police protection on the basis that there was not enough evidence to support the threat.

Reply from the Government

130. On 22 August 2007, the Government of the Russian Federation replied to the urgent appeal sent by the Special Rapporteur on 5 July 2007, indicating that the Vyborg district court in St. Petersburg was hearing criminal proceedings against V.I. Nikolsky, who was charged with the commission of offences covered by article 280, paragraph 3 (attempted commission of an offence), article 280, paragraph 1 (public incitement to extremist activities), and article 282, paragraph 1 (inflaming hatred or hostility and degrading treatment) of the Criminal Code of the Russian Federation.

131. The Government reply noted that the case file stated that Nikolsky was the author of a pamphlet inciting its readers to perpetrate extremist acts and inflaming ethnic hatred, entitled "Russian national initiative: What we should do now (minimum programme for the Russian people), St. Petersburg, 2006", which he was attempting to have run off in the printing company Profprint. An expert appraisal of the contents of the pamphlet was performed by V.I. Ms. Uzunova. On 4 June 2007, the court acceded to the request by Nikolsky's defence counsel for the conduct of a second expert appraisal of the text of the pamphlet, which, once again, was entrusted to Ms. Uzunova. For the purpose of this expert appraisal, Ms. Uzunova was also given a copy of a book edited by Nikolsky, "Introduction to the Theory of National Security".

132. The Government further informed that, on 19 June 2007, at around 6 p.m., in the vicinity of No. 18 Podkovarov Street, in the Petrograd district of St. Petersburg, an unidentified woman attacked Ms. Uzunova, striking her several times on the head and then fleeing, having snatched from her victim money, earrings and the above-mentioned book "Introduction to the Theory of National Security". As a consequence of this attack, Ms. Uzunova suffered head injuries, concussion and contusions and was admitted to hospital No. 3 in St. Petersburg. According to testimony by Ms. Uzunova, the woman who attacked her did not utter any threats relating to her victim's professional activity.

133. On the basis of the attack on Ms. Uzunova, the Petrograd Side internal affairs office in St. Petersburg instituted criminal proceedings under article 161, paragraph 2 (d) (Robbery) of the Criminal Code. The theory that "supporters" of V.I. Nikolsky were involved in the attack is being studied. The criminal proceedings in question are being specially monitored by the Office of the Procurator General of the Russian Federation.

Observations

134. The Special Rapporteur thanks the Government of the Russian Federation for its reply to his urgent appeal. However, he wishes to express concern that the attack on Ms. Uzunova may be directly related to her legitimate work in defence of human rights in Russia, in particular, her activities in relation to the protection of minority rights, activism against extremism and incitement to racial hatred in Russia. The Special Rapporteur wishes to refer to one of his recommendations on his report on the Russian Federation establishing that “acts of racism and intolerance against foreigners, and in particular students, human rights defenders, witnesses in criminal investigations, intellectuals and activists engaged in the combat against racism should be firmly condemned and given utmost priority by law enforcement officials, amongst others, by offering effective protective measures from racially motivated attacks, especially by ultranationalist groups” (A/HRC/4/19/Add.3, par. 86). While noting an increase in the judicial and legal measures taken against the perpetrators of racist crimes, the Special Rapporteur continues to be seriously concerned about the high number of racially motivated attacks, in particular perpetrated by neo-Nazi groups. He intends to closely monitor the situation on the basis of his mission report.

Sudan

Follow-up to previously transmitted communications

135. In the absence of an answer from the Government concerning his allegation letters of 3 March 2006 and 15 August 2006 (see A/HRC/4/19/Add.1, para. 197-199), the Special Rapporteur is forced to consider the following cases no longer as allegations but as proven facts.

136. According to information received, in the first week of November 2005, **an attack and looting on the market of the town of Shearia, Southern Darfur**, 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 persons from the Zaghawa tribe were specifically targeted. Subsequent to this attack, persons belonging to the Zaghawa tribe fled the town of Shearia to El Fahal, Otash and Dereig Internally displaced Camps.

137. According to information received, on 24 July 2006, approximately 25 armed militias, some wearing army uniforms, **attacked a group of twenty women** aged 19-42 outside Kalma Internally Displaced Camp, while they were collecting firewood. All women belong to the African Fur ethnic group. The militiamen beat the women with the butts of their guns and flogged them before raping seventeen of the women. There had been a steady gathering of armed militias, reportedly the Arab Janjaweed, in the surrounding areas of Kalma camp. These militias had previously attacked humanitarian workers and undertaken nightly armed incursions into the camp in order to loot property.

Suisse

Communication envoyée au Gouvernement

138. Le 27 juillet 2007, le Rapporteur spécial, conjointement avec le Rapporteur spécial sur les droits de l'homme des migrants, a adressé une lettre d'allégation au Gouvernement suisse concernant **une nouvelle campagne du parti politique Union Démocratique du Centre (UDC)**.

139. Selon les informations reçues, le parti politique Union Démocratique du Centre aurait lancé une nouvelle campagne pour promouvoir une proposition d'initiative populaire concernant le renvoi des citoyens étrangers qui auraient commis un crime grave en Suisse. Dans le cadre de

cette campagne, une publicité visuelle ayant pour titre «Pour plus de sécurité » aurait été publiée dans plusieurs journaux suisses, montrant trois moutons blancs sur un drapeau suisse basculant un mouton noir hors du drapeau. Ces images s'accompagneraient du texte suivant: «Grâce à l'initiative sur le renvoi, nous pouvons enfin systématiquement renvoyer les étrangers qui commettent un crime grave en Suisse. Nous augmentons ainsi la sécurité pour les enfants, les femmes et les hommes».

140. Le Rapporteur spécial a exprimé sa vive inquiétude quant au fait que ce type d'images puisse utiliser intentionnellement des ambiguïtés liées à la question de la couleur des moutons pour transmettre un message de nature raciste. Dans ce sens, il a rappelé le Gouvernement suisse des informations dont il a fait état dans son rapport de mission au Conseil des droits de l'homme (A/HRC/4/2007/19/Add.2) concernant des campagnes politiques précédentes de l'UDC, montrant entre autres des mains de couleur essayant d'attraper des passeports suisses dans un panier. En outre, comme constaté dans son rapport de mission, il a exprimé sa profonde préoccupation quant à la possibilité que cette campagne puisse contribuer à la tendance de banalisation et de légitimation du racisme et de la xénophobie dans les milieux politiques et intellectuels en Suisse. Finalement, il a exprimé son inquiétude quant à la possibilité que ce type de publicité produise une augmentation de la discrimination et de la xénophobie dont souffrent majoritairement les membres des communautés étrangères et des minorités nationales, notamment les Noirs.

Réponse du Gouvernement

141. Le 13 septembre 2006, le Gouvernement a répondu à la communication du Rapporteur spécial du 27 juillet 2006.

142. Le Gouvernement a tout d'abord noté que toutes les sociétés modernes doivent aujourd'hui faire face à une accélération de la diversité dans tous les domaines et que, en Suisse, comme partout ailleurs en Europe, les dynamiques liées à la globalisation peuvent conduire à un climat de tension identitaire, susceptible d'être exploité politiquement. Le Gouvernement a cependant indiqué que ces confrontations sont le signe d'une démocratie vivante à laquelle participent tous les groupes de la population. En Suisse, la démocratie directe permet, par le biais de referendums lancés contre des lois votées par le Parlement et d'initiatives émanant du peuple qui proposent des modifications constitutionnelles, que même les thèmes controversés puissent être discutés sur la scène publique.

143. Le Gouvernement a également souligné qu'une grande transparence est assurée dans le débat politique visant à trouver des solutions pratiques et constructives, et que les campagnes liées à ce débat, dans les phases initiales tout au moins, peuvent être accompagnées d'expressions exagérées et regrettables. Le Gouvernement a toutefois observé que les auteurs de l'initiative doivent savoir, compte tenu de l'expérience historique, qu'en caricaturant la réalité, ils compromettent leurs chances de succès.

144. La démocratie directe, finalement, oblige les citoyens actifs à se déterminer concrètement. Il est démontré qu'elle n'a pas entraîné d'abus de caractère raciste, même aux moments les plus difficiles de l'histoire européenne.

145. Dans sa réponse, le Gouvernement a également noté que pour adhérer à la Convention pour l'Élimination de la Discrimination Raciale, en 1994, la Suisse a modifié son Code pénal en y inscrivant l'art 261 bis qui rend punissable toute incitation au racisme dans l'espace public. Cet article a été accepté par le peuple le 25 septembre 1994.

146. En ce qui concerne la campagne de l'UDC, le Gouvernement a confirmé qu'une initiative populaire visant le renvoi des citoyens étrangers qui auraient commis un crime grave a été lancée le 10 juillet 2007 et que des affiches conformes à la description contenue dans la lettre d'allégation ont été placardées dans toutes les régions de la Suisse. Le Gouvernement a précisé que les actes à caractère potentiellement raciste commis dans l'espace public étant poursuivis d'office, il appartient, le cas échéant, aux tribunaux de juger si ces affiches sont condamnables.

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

148. Le Gouvernement a également indiqué que la récolte de signatures et, si cette initiative aboutit, les débats qui auront lieu avant la votation, permettront de se confronter à son contenu. Si l'initiative est acceptée par le peuple et les cantons, les autorités fédérales et cantonales devront veiller à ce qu'elle soit mise en œuvre de manière conforme aux engagements internationaux de la Suisse.

149. Finalement, la réponse indique que le Conseil fédéral a réitéré à plusieurs reprises son engagement contre le racisme et qu'il continuera à prendre clairement position contre toute forme de discrimination et de xénophobie. Le Conseil fédéral porte une attention particulière aux questions migratoires et à la politique d'intégration; c'est pour cela qu'il a décidé, le 22 août 2007, d'adopter un train de mesures visant à favoriser l'intégration et à combattre la discrimination. Ce projet a été élaboré en étroite collaboration par tous les organes fédéraux concernés. La contribution fédérale s'élève à plus de 50 millions de francs par an. Le Conseil fédéral est convaincu qu'un travail constructif de ce genre est la meilleure réponse aux manifestations xénophobes.

Observations

150. Le Rapporteur spécial remercie le Gouvernement suisse pour sa réponse détaillée. Toutefois, après lecture attentive de la réponse du Conseil fédéral à la lettre d'allégation et compte tenu des précédents mentionnés dans son rapport de visite sur la Suisse concernant notamment des campagnes politiques précédentes de l'UDC, le Rapporteur considère cette affiche de nature à susciter la haine raciale et religieuse. Il estime, en conséquence, que la liberté d'expression ne doit pas servir de paravent à l'incitation à la haine raciale et religieuse et que le retrait de cette affiche serait plus conforme à l'image avérée de la Suisse comme pays respectueux des droits de l'homme.

151. Le Rapporteur spécial se réjouit du profond débat démocratique suscité par ces campagnes au sein de la société suisse. La résonance que les questions de racisme et discrimination ont eu dans des milieux intellectuels, sociaux et, en particulier, politiques – notamment lors des élections au Conseil fédéral le 12 décembre 2007 – illustre l'ancrage du débat démocratique au sein de la société suisse. Le Rapporteur spécial tient à souligner, dans ce contexte, l'engagement personnel et le degré élevé de motivation et de sensibilité sur la question du racisme des responsables de certains services et commissions. Il souhaite tout particulièrement exprimer sa gratitude à la Commission fédérale contre le racisme pour son initiative d'organiser, le 6 décembre 2007, une réunion avec les délégués cantonaux et communaux à l'intégration à

laquelle ont également participé des responsables du Service de lutte contre le racisme. Cette réunion a porté non seulement sur un dialogue fructueux avec le Rapporteur spécial mais surtout sur les enjeux, les avancées et les obstacles à la promotion d'un vivre ensemble réciproquement enrichissant entre les communautés, l'acceptation de la diversité et du multiculturalisme et le combat contre toutes les formes et manifestations de racisme et de xénophobie.
