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SPECIFIC GROUPS AND INDIVIDUALS

MIGRANT WORKERS

Report of the Special Rapporteur on the human rights of migrant workers, Gabriela Rodríguez Pizarro

Addendum

Communications sent to Governments and replies received*

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

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COMMUNICATIONS SENT TO THE GOVERNMENTS AND REPLIES RECEIVED

Australia

Communications received from the Government

1. By letter dated 10 December 2003, the Government provided information regarding the allegations transmitted by the Special Rapporteur (see E/CN.4/2003/85/Add.1, paras. 1-5).

2. The competent governmental authorities reported that the Indonesian vessel *Palapa I* was detected by the Australian authorities in difficulty in the Indian Ocean in the maritime and rescue region over which the Republic of Indonesia exercises responsibility. The Australian maritime search and rescue organization issued an alert to shipping and the Norwegian container ship *MV Tampa* went to the aid of the Indonesian vessel. The *Palapa I* was dangerously overloaded with persons who had engaged the services of smugglers based in Indonesia to arrange their illegal entry into Australia. Those on board the *Palapa I* were transferred onto the *MV Tampa*. The Master of the *MV Tampa* obtained the approval of the Indonesian authorities to divert to the port of Merak. A number of persons on board approached the Master of the Norwegian vessel threatening to create an incident unless he altered course and headed south towards the Australian external territory of Christmas Island. The Master was advised by the Australian authorities that the *MV Tampa* was not permitted to enter Australian territorial waters and should proceed on his original course. Nevertheless, the *MV Tampa* was brought into Australian territorial waters surrounding Christmas Island. Medical officers from the Australian Defence Force were sent to the *MV Tampa* to assist those in need of medical aid. The Government noted that the persons concerned were in the position they were in because they had taken the decision to enter Australia unlawfully. Smuggled departure from Indonesia was unnecessary, as the Governments of Australian and Indonesia, with the cooperation of the International Organization for Migration (IOM) and the Office of the United Nations High Commissioner for Refugees (UNHCR), had put in place an effective mechanism to identify persons requiring international protection and to seek solutions for those found to be refugees.

3. The Government concluded arrangements with the Governments of Nauru and Papua New Guinea according to which the persons on board the *MV Tampa* and persons who attempted to enter Australia unlawfully by boat would be accommodated in processing centres established in the territories of those two countries. These processing centres were operated by IOM, and they are not detention centres. The persons accommodated there were free at any time to return to their country of origin or any State to which they permission to enter. They had access to a refugee assessment process that in Nauru was undertaken by UNHCR and the Government of Australia and in Papua New Guinea by Australia. The Australian process was modelled closely on that used by UNHCR. When an individual was recognized as a refugee, arrangements were made for his/her resettlement in Australia, New Zealand or other countries willing to accept the person.

4. At 21 November 2003 there were 305 offshore asylum-seekers in the processing centres in Nauru and none in Papua New Guinea; 1,328 persons had been resettled or had returned home; 379 had been resettled in Australia, 361 in New Zealand, 17 in Sweden, 9 in Canada, 6 in Denmark and 4 in Norway. There had been a further 462 voluntary returns. A total of 1,505

individuals in the processing centres had sought asylum from Australia or UNHCR. All processing had been completed and 743 persons had been found to be refugees. The overall approval rate of refugee claims was 49 per cent. The legislation and arrangements put in place in Australia to implement the Pacific Strategy were consistent with the wording and the spirit of the 1951 Convention relating to the Status of Refugees and its Protocol. Australia's key obligation under the Convention was not to return an asylum-seeker, either directly or indirectly, to a country where he/she had a well-founded fear of persecution. The national legislation and arrangements had two mechanisms which ensured that the changes to the legislation supporting the Pacific Strategy were consistent with the international obligations assumed by Australia: the first consisted in the power to remove unauthorized arrivals of persons who entered the country at excised offshore places to another country for processing their status only where the Minister for Immigration had declared under section 198A of the Migration Act 1958 that the country of destination provided adequate guarantees of access to effective procedures, provided protection for asylum-seekers and for refugees pending their resettlement or voluntary repatriation, and met relevant human rights standards. The second mechanism was applicable to unauthorized arrivals entering at excised offshore places and remaining in Australia; in those circumstances any asylum-seeker would undergo the refugee assessment process.

5. The Government had also released a protocol to clarify the responsibilities of Australian and international ships' masters rescuing people at sea. The protocol was part of the Government's response to the *MV Tampa* incident. It did not distinguish between people who were seeking asylum and other individuals in distress at sea.

6. In relation to Operation Relex, the objectives were to detect, intercept and, where possible, turn back boats presumably carrying individuals attempting to enter Australia unlawfully. The Australian Customs Act 1901 enabled Commonwealth ships to use any means consistent with international law to stop a foreign vessel suspected of being used in the commission of certain offences against Australian law and attempting to escape apprehension.

7. Nurjan Husseini and Fatima Husseini drowned after the Indonesian boat on which they were passengers was set on fire by unknown persons on board and foundered. Their bodies were retrieved by the Australian Defence Force and taken to Christmas Island. An inquest into the deaths of the two women was opened and undertaken by the Coroner under the Western Australian Coroners Act 1966. The Coroner determined that the cause of the death of Nurjan Husseini and Fatima Husseini was immersion in the water which was the result of either an accident or an unlawful homicide. A copy of the Coroner's determination was attached to the letter sent to the Special Rapporteur. These deaths could not be considered to have occurred as a result of the actions of the Australian Government.

8. In relation to Sondos Ismael, her application for refugee status was given urgent attention and she arrived in Australia on 21 March 2002. It was not necessary for her husband, Ahmed Al Zalimi, to travel to Indonesia to be reunited with her.

9. The Government also justified the issuance of temporary protection visas, affirming that the main reason for their establishment was to reduce the incentive for people seeking to enter Australia illegally using the services of smugglers. This regime was consistent with the obligations under the 1951 Convention. Asylum-seekers who were found to be refugees and who had entered legally on genuine documents and met health and character requirements were

granted a Protection Visa (PV) granting them permanent residence. Those who were found to be refugees but had entered the country illegally were granted a Temporary Protection Visa (TPV), provided that they met health and character requirements. The residence permit was valid for three years. A TPV did not provide the right to family reunion in Australia and it did not allow the right to automatic return if its holder departed Australia. TPV holders could apply for a further protection visa and, depending on their individual circumstances, could be eligible for either a TPV or a PV. They could also be eligible for a grant of a PV after 30 months, or a shorter time as the Minister may set, in case they were still in need of protection.

Observations

10. The Special Rapporteur thanks the Government of Australia for the responses provided.

Belgium

Communications adressées au gouvernement

11. Par lettre datée du 4 juin 2003, envoyée conjointement avec le Rapporteur spécial sur la question de la torture, la Rapporteuse spéciale a informé le gouvernement qu'elle avait reçu des renseignements concernant Ibrahim Bah, un demandeur d'asile sierra-léonais qui aurait subi des violences physiques au cours de plusieurs tentatives manquées d'expulsion depuis l'aéroport de Zaventem, entre janvier et mai 2001.

12. D'après les renseignements reçus, des policiers lui auraient donné des coups de poing et de pied alors qu'il avait les pieds et les mains liés; ils auraient exercé une forte pression sur son artère carotide, auraient lourdement pesé sur sa cage thoracique avec les jambes et un coussin et lui auraient enfoncé un mouchoir dans la bouche. Les personnes qui lui ont rendu visite après ces tentatives d'expulsion auraient déclaré qu'il présentait des blessures visibles. Dans ses rapports, un médecin l'ayant examiné à titre privé aurait conclu que l'ensemble des symptômes et des blessures que présentait celui-ci concordait avec ses allégations. Par ailleurs, à l'issue d'un examen médical réalisé le lendemain de la dernière tentative manquée d'expulsion en mai 2001, il aurait prescrit au demandeur d'asile des médicaments. Un parlementaire qui aurait rendu visite à Ibrahim Bah à la prison de Saint-Gilles, 10 jours plus tard, aurait déclaré que celui-ci n'avait toujours pas reçu le traitement prescrit. Le Ministre de l'intérieur aurait répondu que des médecins mandatés par le Ministère avaient examiné Ibrahim Bah cinq jours après la dernière tentative d'expulsion, n'avaient constaté aucune blessure particulière ni aucun signe de négligence médicale délibérée. Il aurait ajouté que, selon les conclusions d'un rapport établi par l'Inspection générale de la police, les allégations du demandeur d'asile ne pouvaient pas être prouvées car les policiers avaient scrupuleusement respecté les procédures. Après sa libération de prison, Ibrahim Bah aurait déposé plainte pour mauvais traitements.

Communications reçues du gouvernement

13. Par lettre datée du 16 octobre 2003, la Représentation permanente de la Belgique auprès de l'Office des Nations Unies à Genève a communiqué aux Rapporteurs spéciaux que le cas de M. Ibrahim Bah faisait actuellement l'objet d'une instruction judiciaire auprès du parquet de Bruxelles et que les Rapporteurs seront tenus au courant de la suite de ce dossier.

Observations

14. La Rapporteuse spéciale remercie le Gouvernement belge pour sa prompte réponse. Elle souhaiterait être informée sur les résultats des enquêtes en cours.

Canada

Communications sent to the Government

15. On 7 November 2003, the Special Rapporteur sent a letter to the Government of Canada as a follow up to the report on her visit to the country (E/CN.4/2001/83/Add.1), requesting updated information on the following issues: (a) measures undertaken to provide psychological care to persons held in detention centres, in order to assist those affected by depression and to ensure that they are not left too long without qualified medical attention (ibid., para. 85); (b) solutions found and implemented for keeping minors out of detention centres and for avoiding the risk that unaccompanied minors might fall into the hands of traffickers, smugglers or other unscrupulous individuals (ibid., para. 86); (c) measures adopted and implemented in order to ensure that migrants who are detained and have no previous criminal record are attended to in welcome centres in order to avoid, in particular, the situation that occurred at the detention centre in Prince George (ibid., para. 87). The Special Rapporteur also requested information on the new legislation—the Immigration and Refugee Protection Act—and on how it differed from the old Immigration Act in terms of guarantees and protection measures.

Observations

16. The Special Rapporteur looks forward to receiving information from the Government and to continuing the fruitful dialogue established during her visit.

China (Hong Kong Special Administrative Region)

Communications sent to the Government

17. By letter dated 4 June 2003, the Special Rapporteur notified the Government that she had received information on the situation of migrants in the Hong Kong Special Administrative Region. According to the information received, foreigners represented 7.1 per cent of the total population of Hong Kong and that 41 per cent of those foreigners were domestic helpers, mostly women from the Philippines, Indonesia and Thailand. Reportedly, the law required that migrant workers be provided with standard employment contracts, which were the same for all foreign workers, regardless of nationality or gender. The New Conditions of Stay (NCS) policy, adopted by the Government in 1987, had reportedly the effect of discriminating against migrant domestic workers vis-à-vis other categories of foreign workers. This policy allegedly denied foreign domestic workers the right to change to other job categories, obtain residency after seven years and be joined by their families, and severely restricted the conditions under which they could change employers.

18. Reportedly, NCS established a “two-week rule”, which stipulated that a foreign domestic worker whose contract was terminated could legally remain in the territory of Hong Kong for a maximum period of two weeks. On 26 February 2003, the Legislative Council of the Hong Kong Special Administrative Region announced the reduction of the foreign domestic workers’

minimum wage from US$ 471 to US$ 419, effective from 1 April 2003. The Council also announced the imposition of a levy on employers of US$ 1,231 for a two-year contract, effective from 1 October 2003. According to the information received, the legislation provided that taxes could not be imposed on those workers whose monthly wage was under US$ 1,154, and foreign domestic workers' salaries fell far short of that level. The Special Rapporteur expressed concern that in practice foreign domestic workers might be subject to taxes on their salaries, thus leading to a deterioration of their situation.

Communications received from the Government

19. By letter dated 13 November 2003, the Government reported that foreign domestic helpers (FDHs), like other foreigners, enjoyed the same rights and benefits granted by labour legislation to local workers. They had equal access to conciliation and adjudication services in case of disputes with their employers. In the Hong Kong Special Administrative Region, wages were freely negotiated between employers and local employees, however FDHs were entitled to receive a wage not lower than the minimum allowable wage (MAW) stipulated by the Government.

20. MAW was subject to annual review, taking into account the general economic and employment situation of Hong Kong, as reflected by such factors as income growth, price indices and the labour market situation. The decision to impose the levy on employers of FDHs was taken in view of the need to provide training and retraining for local workers affected by the economic restructuring of the region so that they could change jobs. The Employment Retraining Ordinance (ERO) was enacted in 1992 in order to establish the Employees Retraining Board which was mandated to retrain employees in Hong Kong. Employers of foreign workers were required to pay an Employment Retraining Levy of HK$ 400 per month to fund the activities of the Board. In February 2003, the Government decided to impose such a levy also on employers of FDHs with effect from 1 October 2003.

21. While the levy would result in employers of FDHs being treated in the same way as other employers of foreign workers under ERO, a reduction of the minimum taxable wage was due regardless of whether an overall review of FDH policy was being conducted. The cut in MAW was made following the established practice and had no bearing on the levy. It was a coincidence that both amounted to HK$ 400. An employer retraining levy was imposed on employers and not on FDHs, and it was a levy intended to generate funds for retraining activities and not comparable to a salary tax.

22. The Government reported that the problem of underpayment of FDHs was taken very seriously. It had created mechanisms to assist FDHs to file complaints against their employers. The Labour Department had also set up an Employees Claim Investigation Unit in late 2002 to step up the investigation and prosecution of underpayment claims. In addition, the Government had organized a series of activities to sensitize employers and employees to their duties and rights. As regards the regulation of employment agencies, under the Employment Ordinance, it was established that they could charge a commission, limited to 10 per cent, of the first month's salary of an FDH. There was strict supervision over the work of employment agencies to prevent malpractice and agencies convicted of overcharging commissions or of misconduct had their licence revoked.

23. If a migrant worker's professional occupation was terminated prematurely, the worker was allowed to remain in Hong Kong for the remainder of the permitted limit of stay or for two weeks from the date of termination of the contract. This two-week rule policy, which the Government considered essential to maintain effective immigration control, did not preclude migrant workers whose contract had been prematurely terminated from working in Hong Kong again after returning to their place of origin. The cost of the return flight was to be born by the employer. In special cases, the Government could also permit FDHs whose contracts had been terminated prematurely to change employment without returning to their place of origin. In 2002, 71.5 per cent of applications had been approved. In cases of labour disputes, an FDH could approach the Labour Department for assistance or could initiate legal proceedings herself. While seeking redress the FDH could apply for an extension of stay.

Observations

24. The Special Rapporteur would like to thank the Government for the response provided. While she is pleased to learn that measures to ensure the respect of the human rights of migrant domestic workers are in place, she would like to encourage the Government to continue monitoring their effective implementation, as well as their impact on the human rights of migrants. In this connection, she would also like to recall the recommendations contained in her annual report to the Commission on Human Rights (E/CN.4/2004/76).

Costa Rica

Comunicaciones recibidas del Gobierno

25. En relación con una comunicación transmitida por la Relatora Especial el 7 de noviembre de 2002 sobre las condiciones de vida en el centro de detención ubicado en la V Comisaría de San José (véase E/CN.4/2003/85/Add.1, párr. 10), el Gobierno transmitió la siguiente información por carta con fecha de 19 de marzo de 2003.

26. La Dirección General de Migración y Extranjería, el órgano encargado de velar por los asuntos alegados, habría adoptado como política el mejoramiento de las condiciones de vida que deben garantizarse a los ciudadanos extranjeros que se encuentren en el Centro de Aseguramiento para Extranjeros en Transito, ubicado en la V Comisaría de San José. Para esos efectos dicha Dirección habría instituido una Comisión de Mejoras con la apreciación de funcionarios competentes de alto nivel, encargada de realizar inspecciones, detectar y corregir las deficiencias. El trabajo durante varios meses de la Comisión de Mejoras habría repercutido notablemente en las condiciones de vida de los extranjeros detenido el la V Comisaría. Hasta la fecha del 25 de enero de 2003 se habrían realizado tres inspecciones (el 20 de septiembre de 2002, el 5 de diciembre de 2002, el 8 de enero de 2003) y una reunión ejecutiva (el 5 de julio de 2002) que habrían arrojado resultados satisfactorios alcanzando mejoras notables en las instalaciones y en las condiciones de los migrantes detenidos. El Gobierno añadió documentos relativos a las actas de dichas inspecciones.

27. Sobre los puntos específicos señalados por la Relatora Especial, la Defensoría de los Habitantes de la Republica, por medio de su inspección con fecha del 8 de enero de 2003, habría constatado particularmente que se brindaban los utensilios sanitarios necesarios de aseo personal y de limpieza en el momento en que eran solicitados por parte de la Policía Especial de

Migración; que los servicios sanitarios contaban con las respectivas puertas; que un teléfono publico podía ser utilizado cada vez que los migrantes detenidos lo requirieran (hasta las 6 horas de la tarde); que las visitas de asesores legales a los detenidos continuaban dándose con regularidad durante todo el día hasta las 6 horas de la tarde; que existía una instalación de base de datos con acceso directo al sistema de información de la Dirección General de Migración y Extranjería sobre el status migratorio de los detenidos.

28. Según informó el Contralor de Servicios de la Dirección General de Migración y Extranjería, dentro del Centro de Aprehensión de Migrantes habría existido una capacidad máxima que nunca se sobrepasaba. Se indicó también que los migrantes no tenían que dormir en el suelo, puesto que ya se habían tomado las medidas necesarias para que eso no sucediera. Con respecto a la detención de menores de edad, se señaló que la Dirección General de Migración y Extranjería sería consciente de la protección jurídica de que gozan, por lo que en el momento que se conociera algún indicio de que un menor de edad se encuentra en el centro, se pondría en conocimiento del Patronato Nacional de la Infancia y se les dejaría en libertad.

Observaciones

29. La Relatora Especial quisiera agradecer al Gobierno de Costa Rica por haberle remitido una respuesta detallada.

Cuba

Comunicaciones enviadas al Gobierno

30. El 13 de enero de 2003, la Relatora Especial transmitió un llamamiento urgente en relación al caso de William Alvarado Almeida, su esposa Iyolexis Rodríguez Mora y su hija S.A., personas que no habrían tenido la autorización a salir de Cuba. El padre, la madre y el hermano de William Alvarado residían en los Estados Unidos de América. William Alvarado, su esposa y su hija habrían tenido visa para Estados Unidos, pero, como William Alvarado era médico, el permiso de salida habría requerido el acuerdo del Ministerio de Salud Pública. Dicho permiso habría sido solicitado por el Sr. Alvarado en 1999, después de haber recibido la visa. En enero de 2000 el Sr. Alvarado habría recibido informaciones contradictorias sobre el tiempo que le quedaba para trabajar en Cuba antes de obtener el permiso para salir y habría decidido de dejar el trabajo. Tras solicitar información sobre su caso, el Sr. Alvarado habría sido informado por un oficial del Ministerio que según su ficha el permiso habría sido solicitado para permitirle de trabajar en la Iglesia Bautista La Trinidad. El oficial del Ministerio habría también informado el Sr. Alvarado que para obtener el permiso tenía que trabajar cinco años más. El Sr. Alvarado habría también sido informado que si no volvía a trabajar el permiso no habría sido firmado. El Sr. Alvarado habría también brindado su caso a la atención del Ministerio de Justicia, el Ministerio de Salud y el Ministerio de Asuntos Exteriores. Según la información recibida, todavía no había obtenido respuesta.

31. El 6 de mayo de 2003, la Relatora Especial transmitió un llamamiento urgente en relación al caso de João Alberto Alves Amorim, brasileño residente en los Estados Unidos y detenido en Cuba. Según la información recibida, el Sr. Amorim habría estado detenido bajo la acusación de facilitar la entrada ilegal de extranjeros en el país y de ser el mismo un migrante irregular. Según se informó, el Sr. Amorim había estado detenido por más de 120 días durante los cuales había

tenido escaso acceso a su familia. También se informó que, a pesar de que el juicio se iba a tener en las semanas siguientes y que las acusaciones podían conllevar la pena capital, el Sr. Amorim solamente habría tenido acceso a un abogado cubano que nunca lo había visitado, mientras que su abogado brasileño no habría tenido acceso a los archivos del caso.

Comunicaciones recibidas del Gobierno

32. En relación con el llamamiento urgente transmitido por la Relatora Especial el 1 de agosto de 2002 sobre el caso del niño U.R.A., de cinco años, hijo de Israel Rivera Rabelo y de Zenith Alonso Rodríguez, ciudadanos cubanos residentes en los Países Bajos (véase E/CN.4/2003/85/Add.1, párr. 13), el Gobierno comunicó la siguiente información por carta con fecha de 7 de abril de 2003.

33. Israel Rivera Rabelo habría viajado al exterior en el cumplimiento de una misión oficial en representación de una institución del Estado cubano. Su esposa habría viajado a acompañar su esposo en su misión. Habría sido ella quien primero habría comunicado su decisión de no regresar a Cuba, a pesar de que su hijo permaneciera allí. Israel Rivera Rabelo habría comunicado posteriormente, el 15 de septiembre de 2002, su decisión de deshonorar las obligaciones contractuales asumidas con una institución del Estado cubano. Esta decisión habría ocasionado graves daños tanto al Ministerio de la Industria Básica como a particulares quienes vieron frustrados temporalmente sus planos de superación y desarrollo individual, al tener que asumir las obligaciones abandonadas por Israel Rivera Rabelo. El niño, U.R.A., habría seguido gozando de todos los privilegios y derechos a los cuales son acreedores los niños cubanos y se habría mantenido bajo la custodia de sus familiares. El caso se encontraba siendo analizado por las autoridades pertinentes.

34. En relación con el llamamiento urgente transmitido por la Relatora Especial el 11 de noviembre de 2002 sobre el caso de Juan López Linares, un físico cubano que estaba cursando un post doctorado en Brasil y que habría tenido prohibido el regreso a Cuba (véase E/CN.4/2003/85/Add.1, párr. 14-16), el Gobierno comunicó la siguiente información por carta con fecha de 7 de abril de 2003.

35. Juan López Linares se habría negado a regresar a Cuba cuando fue convocado, violando las obligaciones asumidas cuando decidió viajar al exterior en el cumplimiento de una misión oficial en representación de una institución del Estado cubano. El Sr. López Linares habría decidido por voluntad propia deshonorar las obligaciones contractuales asumidas con dicha institución estatal no teniendo en cuenta a su familia en Cuba al momento de tomar su decisión de abandonar el país. Esta decisión habría ocasionado daños tanto a la institución del Estado que lo envió en misión oficial como a particulares quienes vieron frustrados temporalmente sus planes de superación y desarrollo individual al tener que asumir las obligaciones abandonadas por el Linares. Juan López Linares. Su caso estaría siendo evaluado por las autoridades pertinentes a partir de la necesidad de determinar la entidad y cuantía de los daños ocasionados al Estado como consecuencia de sus acciones.

36. En relación con el llamamiento urgente transmitido por la Relatora Especial el 25 de noviembre de 2002 sobre el caso de Francisca Alonso Lotti y su hijo de 11 años, J.E.G.A., que no habrían tenido la autorización de salir de Cuba (véase E/CN.4/2003/85/Add.1, párr. 17), el Gobierno comunicó la siguiente información por carta con fecha de 7 de abril de 2003.

37. Francisca Alonso Lotti cumplía funciones como medico especialista en una especialidad de elevado impacto en la garantía de una vida digna y saludable para los niños y sus familias. En Cuba el ejercicio de la medicina entrañaría una responsabilidad social y comunitaria muy importante. Desde el momento en que un ciudadano cubano decide iniciar sus estudios de medicina, realizaría un juramento y asumiría una responsabilidad en relación con el disfrute del derecho a la salud y a la vida de los pacientes y la ciudadanía. Como Francisca Alonso Lotti habría decidido de manera voluntaria el estudio y el ejercicio de la medicina social en Cuba, ella y su hijo no habrían tenido prohibida la salida del país aunque la emigración definitiva solicitada por la Sra. Lotti habría sido posible sólo cuando se lograra preparar un nuevo especialista que pudiera asumir las funciones que ella venia desempeñando.

38. En relación con el llamamiento urgente transmitido por la Relatora Especial el 13 de enero de 2003 sobre el caso de William Alvarado Almeida, su esposa Iyolexis Rodríguez Mora y su hija S.A., el Gobierno comunicó la siguiente información por carta con fecha de 30 de mayo de 2003.

39. El Sr. William Alvarado Almeida había cumplido funciones vitales como médico. Desde el propio momento en que decidió iniciar sus estudios de medicina realizó un juramento y asumió una responsabilidad en relación con el disfrute del derecho a la salud y a la vida por parte de sus conciudadanos. Puesto que William Alvarado Almeida decidió de manera voluntaria el estudio y el ejercicio de la medicina social en Cuba, tanto él como su esposa y su hija no habrían tenido prohibida la salida del país, pero la emigración definitiva solicitada por el Sr. William Alvarado Almeida habría sido posible sólo cuando se lograra preparar un nuevo especialista capaz de asumir las funciones que él venía desempeñando.

40. En relación con el llamamiento urgente transmitido por la Relatora Especial el 6 de mayo de 2003 sobre el caso de João Alberto Alves Amorim, el Gobierno comunicó la siguiente información por carta con fecha de 30 de mayo de 2003.

41. João Alberto Alves Amorim habría sido detenido por su responsabilidad directa en una operación de tráfico de personas hacia los Estados Unidos. El expediente de la causa preparada contra João Alberto Alves Amorim habría incluido numerosas pruebas y testimonios que sustentaban los cargos que se le imputaron. A los abogados de la defensa se les habrían extendido todas las facilidades para una adecuada preparación de su defensa, habiéndolo entrevistado en numerosas ocasiones. El mismo, como todos los ciudadanos extranjeros sometidos a procesos judiciales en Cuba, habría disfrutado plenamente de sus derechos a la protección consular. Al Sr. Alves Amorim se le habría permitido visitas periódicas de sus familiares.

Observaciones

42. La Relatora Especial quisiera agradecer el Gobierno de Cuba por la información proporcionada. La Relatora Especial quisiera referirse a la resolución 2002/59 de la Comisión de Derechos Humanos, intitulada “Protección de los migrantes y de sus familiares”, que exhorta a los Estados “a que faciliten la reunificación de las familias de modo expedito y eficiente”, y a los artículos 9 y 10 de la Convención sobre los Derechos del Niño, e alentar el Gobierno a que en la consideración de los casos individuales, se tomen todas las medidas necesarias en el interés superior del niño.

Denmark

Communications sent to the Government

43. By letter dated 6 May 2003, the Special Rapporteur notified the Government that she had received information concerning the case of Charles Ani.

44. According to the information received, Charles Ani first travelled to Denmark on 2 September 1997 with the purpose of studying. In September 1999, Mr. Ani reportedly married a Danish citizen. Together with his wife he reportedly submitted a new application for residence in Denmark on 3 September 1999 at the Silkeborg police station. In October 1999, he was asked to report to the police, where he was informed that his application was not accepted and that he should travel to Nigeria to submit a new application through the Danish Embassy in Lagos. At that time, Mr. Ani was reportedly working in Denmark. Mr. Ani made travel reservations for 1 November 1999. One day before the departure, T.W., a human rights lawyer, reportedly cancelled Mr. Ani's trip and asked his wife to collect the money and pay him, which she reportedly did. Mr. Ani reported this matter to the Silkeborg police on 1 November 1999, who told him that they had already been informed by T.W. who had also expressed the wish to take up the matter. Mr. Ani had reportedly never met T.W. personally but had only spoken to him on the phone.

45. According to the information received, at the end of November 1999, Mr. Ani was again requested to report to the police where he was detained for an hour and then released, reportedly owing to the intervention of T.W. Mr. Ani was again requested to report to the police on 4 January 2000. At the police station he was reportedly detained without being told why. After 24 hours had passed, he was reportedly taken to a court at the Silkeborg police station. The court reportedly ruled that Mr. Ani was not in violation of the legislation on residence. Mr. Ani was again requested to report to the police on 8 February 2000, when he was informed that he had to leave Denmark within 24 hours and that he should report to the Copenhagen Police Department the following day. As directed and arranged by the police, Mr. Ani reportedly travelled to Copenhagen and was kept at the police station with a group of people awaiting deportation. He was then transferred to the airport where he boarded an Aeroflot Russian Airlines plane to Moscow. In Moscow he reportedly stood up all night waiting for the morning flight to Nigeria.

46. Mr. Ani reportedly arrived in Lagos on 9 February and discovered that his luggage, containing the manuscripts of two books on which he had been working since 1987, as well as US$ 9,970 which he had borrowed and all his belongings and personal items, had gone missing. The following day Mr. Ani submitted his visa application to the Danish embassy in Lagos. Six months later he was informed that he could not return to Denmark before a year had passed owing to some infractions he had committed and of which he was not aware. In April 2001 he was granted a family reunion visa and travelled to Denmark. In October 2001, Mr. Ani's wife obtained a court order for separation. Mr. Ani reportedly continued to participate in the integration programme under the Danish New Act on Integration of Aliens in Silkeborg. In December 2001, Mr. Ani was formally divorced. He reportedly filed a complaint in

January 2002, followed by numerous reminders, with the Ministry for Refugees, Immigration and Integration requesting the return of the luggage, the restoration of his rights as a legal resident and compensation for the losses and expenses incurred due to his arrest, detention and deportation.

47. In January 2003, Mr. Ani reportedly took his Danish language test, marking the conclusion of the integration programme and qualifying him for permanent residence. Mr. Ani requested the restoration of his work permit, attaching a written agreement with prospective partners and employers, as he intended to open a business. The authorities reportedly requested him to leave Denmark or submit an application for asylum. Among the reasons given for this decision were reportedly that he had stayed outside Denmark for 14 months, that he was not working, and that he was no longer married to a Danish citizen. He alleged that the forced separation from his wife contributed to the erosion of their relationship.

Communications received from the Government

48. By letter dated 22 July 2003, the Permanent Mission of Denmark to the United Nations Office at Geneva transmitted the reply of the Danish Ministry for Refugees, Migrants and Integration concerning the case of Charles Ani.

49. On 27 August 1997, the Danish Immigration Service issued Charles Ani with a residence and work permit valid until 31 January 1998 as a trainee with the People's Center for Renewable Energy. Charles Ani entered Denmark on 6 September 1997. On 16 February his work and residence permit were extended until 30 October 1998. On 15 October, Charles Ani applied for a residence and work permit as an employee of the company Thorsen Chipskartofler; the permit was refused by the Immigration Service on 3 March 1999. This decision was upheld by the Ministry for Refugees, Migrants and Integration, which ordered Mr. Ani to leave Denmark by 6 September 1999. On 2 September 1999, Charles Ani married a Danish national and the following day he applied for a Danish residence permit on the basis of his marriage. On 12 October, the Danish Immigration Service refused to consider Mr. Ani's application and ordered him to leave the country by 26 October 1999. On 17 December, the Immigration Service expelled Mr. Ani with a prohibition of re-entry for one year. The decision was upheld by the Ministry on 4 January 2000. On 9 February Mr. Ani left for Nigeria. On 31 March the Danish Immigration Service refused Mr. Ani's request for reconsideration of the decisions of the Danish Immigration Service of 17 December 1999 concerning expulsion with an entry prohibition and refusal of application for a residence permit on the basis of marriage because he had not been out of the country for two years, as required in order for a reversal of entry prohibition to be considered. At the end of the period of expulsion, on 27 March 2001, Charles Ani was granted a residence permit on, the basis of his marriage to a Danish national, for a period of 12 months. Mr. Ani entered Denmark on 29 April 2001. On 25 September 2001, Mr. Ani and his wife dissolved their marriage. As a consequence, on 28 January 2002, the Danish Immigration Service revoked Charles Ani's residence and work permit as he was no longer cohabitating with his spouse. The decision was upheld by the Ministry on 8 November and Mr. Ani was asked to leave the country by 9 December 2002. A request to the Ministry to review the decision was refused on 6 and 24 January 2003 and Mr. Ani was notified to leave Denmark immediately.

50. On 16 April 2003, the Danish Immigration Service refused Mr. Ani's application for a residence and work permit on the basis of his self-employed activities on the grounds that he was not staying in the country legally on the application date. By letter dated 25 April 2003, Mr. Ani's attorney appealed the decision. The Ministry for Refugees, Migrants and Integration noted that Mr. Ani had asked for an opinion on the case from the Danish Immigration Service but such a request did not suspend the time limit for his departure. On 14 May 2003, the Ministry refused once again to reconsider its decision of 8 November 2002. On 2 June 2003, the Ministry received all the files pertaining to the case of Mr. Ani together with the opinion requested on the occasion of the appeal of the decision of 16 April. In its opinion, the Immigration Service confirmed its decision. Mr. Ani was duly informed of the status of his case. The Ministry also requested the Danish Immigration Service to consider whether there was any basis for expelling Mr. Ani in pursuance of section 25 b of the Aliens Act, as he was still staying in the country in spite of the fact that he had been ordered to leave Denmark by 9 December 2002.

51. As for Mr. Ani's claim that he had never seen his agent T.W., the Ministry noted that Mr. Ani had signed an agent contract with him on 29 October 1999 and that the latter had acted on his behalf in connection with an appeal pending at the Ministry. As for the claim for the lost luggage, that issue was not subject to the authority of the Ministry for Refugees, Migrants and Integration.

Observations

52. The Special Rapporteur thanks the Government of Denmark for its prompt and detailed response. The Special Rapporteur would appreciate being kept informed by competent authorities on the status of the case, as well as on the status of the claim for the luggage loss.

Ecuador

Comunicaciones recibidas del Gobierno

53. En relación con el llamamiento urgente transmitido por la Relatora Especial el 4 de junio de 2002 sobre la situación de 250 ecuatorianos que habrían estado esperando su deportación de Puerto Madero (México) [véase E/CN.4/2003/85/Add.1, párr. 34], el Gobierno comunicó la siguiente información por carta con fecha de 26 de mayo de 2003.

54. La detención de las dos embarcaciones se habría llevado a cabo en aguas internacionales frente a la Republica del Salvador, los días 15 y 16 de mayo de 2002. Las naves detenidas por el patrullero estadounidense *Sherman* habrían transportado en condiciones infrahumanas a 530 ciudadanos ecuatorianos quienes intentaban trasladarse sin documentación en regla a los Estados Unidos. Dichas embarcaciones habrían sido escoltadas hasta Puerto Madero (México) donde el Gobierno mexicano habría procedido a la repatriación forzosa y urgente de la gran mayoría de los indocumentados (algunas 515 personas) quien recibieron salvoconductos por parte del Consulado General del Ecuador en México. Las 15 personas restantes (5 presuntos tripulantes del barco *San Jacinto*) y otras 10 personas (localizadas posteriormente y quienes habían escapado del centro de detención provisional en Chiapas, mientras aguardaban su deportación) habrían salido de México.

55. A partir del 10 de junio de 2002, la Dirección General de Apoyo a los Ecuatorianos en el Exterior del Ministerio de Relaciones Exteriores habría recibido varias llamadas por parte de familiares de los cinco presuntos tripulantes del *San Jacinto* quienes habrían manifestado que aquellos ciudadanos ecuatorianos habían sido secuestrados por autoridades del Servicio de Inmigración y Naturalización (INS) del Gobierno de los Estados Unidos, en Houston, Texas, el día 7 de junio de 2002, durante la escala del vuelo de Continental Airlines en el cual habrían viajado (para el procedimiento de deportación al país de origen) y que los ecuatorianos detenidos habrían ido a ser procesados judicialmente en los Estados Unidos.

56. De la información solicitada a las Embajadas del Ecuador en México y los Estados Unidos y a los Consulados del Ecuador en México, Houston y Washington, habría podido confirmarse que los cinco ciudadanos ecuatorianos, presuntos tripulantes, fueron desembarcados por la fuerza en Houston por autoridades del INS, detenidos y traslados al Federal Detention Centre en Oklahoma —donde habrían permanecido hasta el 26 de junio de 2002— para ser enviados posteriormente a Washington con el propósito de ser juzgados por su presunta participación en el delito de tráfico ilícito internacional de personas, por vía marítima.

57. La Titular de Oficina Consolar ecuatoriana en Washington se habría trasladado a la cárcel y visitado a los detenidos, como medida para proteger los derechos de los ciudadanos ecuatorianos, y habría podido constatar que los derechos y garantías de los detenidos se habrían observado y a cada uno de ellos se les habría provisto de abogados defensores de oficio. En el mes de marzo de 2003 se habría concluido el proceso judicial.

58. Con relación a las medidas adoptadas para evitar la salida irregular y en condiciones peligrosas de migrantes desde el litoral ecuatoriano, la policía y la marina del país habrían desplegado una serie de operativos al fin de detener e interceptar la salida de barcos al exterior dedicados al tráfico de personas. Como consecuencia de ello, en los últimos meses se habría registrado una reducción drástica de este delito. La Dirección General de Apoyo a Ecuatorianos en el Exterior en conjunto con la Oficina Internacional para las Migraciones habrían preparado una campaña informativa dirigida a los potenciales migrantes sobre el riesgo que significa el viajar de manera ilegal.

Observaciones

59. La Relatora Especial quisiera agradecer el Gobierno del Ecuador por la información proporcionada.

Egypt

Communications sent to the Government

60. By letter dated 24 February 2003, the Special Rapporteur notified the Government that she had received information on the situation of hundreds of foreigners allegedly beaten and jailed during two nights of racially motivated arrests in Cairo. During the raids, which reportedly took place on 28 and 29 January, plain-clothes policemen and security forces allegedly entered homes, without showing either identification or warrants, and arrested foreigners, predominantly people of sub-Saharan African origin. Other foreigners were arrested while walking down the street, and were prevented from returning home to collect identity

papers. Still others were beaten during the arrests and sustained injuries as a result. It was reported that police wagons and minibuses patrolled the streets of the al-Maadi district of Cairo throughout the day on 28 January, looking for "Blacks". Reportedly, 28 January was referred to as "Black Day" and the intake sheet on which police took names at al-Maadi station was reportedly headed, in Arabic, "Operation Track Down Blacks". Detainees were reportedly held at al-Maadi and Bassatin police stations in inhumane and crowded conditions. Allegedly, as many as 80 people were crammed into cells measuring three by four metres and were forced to stand overnight. It was reported that early on 29 January, UNHCR staff secured the release of a few dozen detainees with refugee status. A number of other detainees have since been freed, but it was reported that an undetermined number of migrants and asylum-seekers were still being held.

Communications received from the Government

61. By letter dated 14 March 2003 the Government provided the following information.

62. Numerous complaints had been received from Egyptians and foreign nationals residing in Egypt about accidents in which nationals of African countries approached and threatened them with knifes with the intention of stealing their personal belongings or coercing them into "engaging in depravity or debauchery". Between 28 and 29 January 2003, 183 African nationals suspected of having committed the above offences were placed under arrest. The results of the security checks undertaken showed that 29 individuals amongst those arrested had personal identification papers and valid residence permits, and they were then released. The UNHCR office was consulted in order to review the status of the remaining 154 individuals and ascertain whether they were registered with that agency, since they had no identification papers. As a result, 150 nationals of African countries were found to be registered with UNHCR and released immediately. Deportation measure were being taken against four Sudanese nationals identified as illegal aliens, not registered with UNCHR and whose status did not fall within the mandate of that Office.

Observations

63. The Special Rapporteur thanks the Government for the response provided. She would appreciate receiving information on the legislation concerning the entry and stay of aliens in Egypt and on procedures for arrest, detention and deportation of aliens unlawfully in the territory of the State.

France

Communications adressées au gouvernement

64. Par lettre datée du 29 janvier 2003, la Rapporteuse spéciale a informé le gouvernement qu'elle avait reçu des renseignements concernant les cas de Ricardo Barrientos, ressortissant argentin, et Mariame Getu Hagos, ressortissant somalien en provenance d'Afrique du Sud.

65. D'après les renseignements reçus, ces deux personnes, arrivées en France sans papiers légitimant leur séjour, seraient décédées durant leur attente de rapatriement vers leur pays d'origine. Leurs demandes d'asile territorial ayant été rejetées, une mesure d'expulsion a été décidée. Ayant montré de la résistance à leur rapatriement, les forces de police ont dû les maintenir à l'aéroport de Roissy, mains liées dans le dos, à l'arrière de l'avion en attendant leur départ. Selon les informations reçues, il apparaîtrait que ce sont lesdites conditions de détention qui auraient entraîné leur décès. M. Ricardo Barrientos est décédé le 30 décembre 2002, M. Mariame Getu Hagos le 16 janvier 2003 à l'hôpital de Villepinte, où il avait été conduit deux jours plus tôt après avoir perdu connaissance.

66. Par lettre datée du 4 juin 2003, la Rapporteuse spéciale a informé le gouvernement qu'elle avait reçu des renseignements concernant les conditions de rétention de migrants et demandeurs d'asile dans la zone d'attente de l'aéroport de Roissy. Celle-ci comprendrait deux zones d'hébergement connues sous le nom de «zones d'attente pour les personnes en instance»: ZAPI 2 et ZAPI 3. Les migrants et demandeurs d'asile seraient également hébergés dans des aérogares.

67. D'après les renseignements reçus, les conditions de rétention à la ZAPI 3, généralement réservée à l'hébergement des familles, femmes et mineurs non accompagnés, seraient meilleures que dans la ZAPI 2 et les aérogares. Cependant, de nombreux migrants et demandeurs d'asile se seraient plaints d'un usage excessif des haut-parleurs, y compris la nuit, ainsi que de réveils abusifs en pleine nuit lorsque certaines personnes doivent être emmenées au tribunal de grande instance.

68. La ZAPI 2 ne serait pas chauffée adéquatement et manquerait de couvertures. La rétention dans les aérogares se réaliserait dans des postes de police ou des salles de transit utilisées à cet effet. Certaines personnes y auraient été retenues pendant plusieurs jours. Il y serait difficile d'avoir accès aux toilettes ainsi qu'à la nourriture et à l'eau. D'après les renseignements reçus, les personnes retenues dans les aérogares seraient fréquemment soumises à des mauvais traitements, en particulier des gifles, des coups de pied dans les jambes et dans le bas ventre, des coups de poing sur le visage et l'utilisation de menottes intentionnellement trop serrées.

69. En ce qui concerne les moyens médicaux à disposition, une permanence médicale serait assurée cinq fois par semaine et une infirmière serait présente à temps plein. Cependant, en dehors de ses horaires, l'accès aux soins et l'appréciation du caractère urgent ou non d'un problème médical seraient laissés aux mains des agents de la police de l'air et des frontières (PAF), qui n'auraient pas reçu de formation particulière dans ce domaine. Plusieurs cas de retard dans l'accès effectif aux soins médicaux aux personnes maintenues en ZAPI 2 ou dans les aérogares auraient été rapportés. De plus, les médicaments que possèdent les personnes retenues dans ces conditions leur seraient souvent retirés à leur arrivée pour des raisons de sécurité. Par ailleurs, d'après les renseignements reçus, des femmes en état de grossesse avancée, des personnes malades et/ou âgées ainsi que des enfants et des nourrissons seraient retenus dans ces espaces collectifs dans les situations ci-dessus décrites.

70. Par lettre datée du 5 juin 2003, envoyée conjointement avec le Rapporteur spécial sur la question de la torture, la Rapporteuse spéciale a informé le gouvernement qu'elle avait reçu des renseignements concernant le cas de Blandine Tundidi Maloza, une femme originaire de la République démocratique du Congo en rétention à la ZAPI 3 de Roissy.

71. Blandine Tundidi Maloza aurait été blessée par un policier après que ce dernier aurait tenté de la forcer à embarquer dans un vol à destination de Douala (Cameroun) le 10 mars 2001. Il lui aurait donné plusieurs coups de pied, après l'avoir déséquilibrée en la tirant brusquement vers l'arrière et traînée sur le sol par les cheveux. Un agent du Ministère des affaires étrangères en service à la ZAPI 3 aurait remarqué la présence sur ses jambes de multiples plaies ouvertes manifestement récentes. Blandine Tundidi Maloza aurait eu la possibilité, par la suite, de faire enregistrer sa demande d'asile. Une enquête préliminaire aurait été ouverte à la suite d'un rapport adressé au procureur de la République près le tribunal de Bobigny par ce même agent du Ministère des affaires étrangères.

Communications reçues du gouvernement

72. Par lettre datée du 27 mars 2003, le gouvernement a envoyé les informations suivantes concernant les cas de Ricardo Barrientos et Mariame Getu Hagos.

73. Le 30 décembre 2002, Ricardo Barrientos, de nationalité argentine, condamné à une peine judiciaire d'interdiction du territoire français pour une durée de trois ans, aurait fait l'objet d'une mesure de reconduite à la frontière, programmée sur un vol de 23 h 30 à destination de Buenos Aires. Peu de temps après son installation à bord de l'appareil, il aurait manifesté un début de malaise constaté par les fonctionnaires qui assuraient son escorte. Ces fonctionnaires l'auraient immédiatement conduit sur la passerelle avant de l'avion dans l'attente de l'arrivée des secours. Un passager qui s'était présenté comme médecin s'est occupé de la personne qui était inanimée. Le personnel médical de l'aéroport et les sapeurs-pompiers, arrivés rapidement sur les lieux, ont tenté de réanimer Ricardo Barrientos puis ont constaté son décès à 23 h 50.

74. Le magistrat du parquet de permanence, avisé des faits, a ordonné une autopsie. Le médecin légiste a conclu à une mort naturelle et constaté une absence totale de traces de coups. Sur instructions du procureur de la République de Bobigny, une enquête judiciaire a été diligentée. Le rapport d'autopsie a conclu à un décès par infarctus du myocarde; aucune trace de violence et de lésion de défense n'ont été relevées. L'enquête a permis d'établir que Ricardo Barrientos avait bénéficié d'une visite médicale lors de son incarcération et elle n'avait révélé aucune difficulté particulière. L'enquête se poursuivrait dans l'attente des résultats de l'examen anatomopathologique.

75. Mariame Getu Hagos, somalien, serait arrivé à Roissy le 11 janvier 2003 en provenance de Johannesburg (Afrique du Sud). Démuni de tout document d'entrée, il aurait été placé en zone d'attente le même jour, sa demande d'asile aurait été examinée, puis rejetée le 16 janvier 2003. Ce même jour, Mariame Getu Hagos devait faire l'objet d'une mesure d'éloignement à destination de Johannesburg, mais, ayant eu des malaises à deux reprises, il aurait été examiné par un médecin qui aurait diagnostiqué une simulation et indiquait que l'état de Mariame Getu Hagos était compatible avec un maintien en zone d'attente. À 21 h 30, l'intéressé, qui opposait une forte résistance à son embarquement, aurait été accompagné par cinq fonctionnaires de

police pour être conduit à bord de l'avion. Peu de temps après son installation dans l'avion, vers 23 h 30, il aurait eu un malaise. L'intervention sur place du SAMU et des sapeurs-pompiers fut immédiatement demandée et l'intéressé conduit à l'hôpital dans un état de coma grave. Il devait décéder le 18 janvier dans l'après-midi.

76. Deux enquêtes seraient en cours. Une enquête de nature judiciaire aurait été diligentée par le procureur de la République de Bobigny qui a requis, le 21 janvier, l'ouverture d'une information judiciaire du chef d'homicide involontaire. Le rapport d'autopsie conclut à un décès par arrêt cardiorespiratoire consécutif à une anoxie cérébrale résultant d'un appui marqué cervical avec compression des carotides tandis que les expertises anatomopathologiques et toxicologiques seraient en cours. Les premiers éléments recueillis feraient apparaître que Mariame Getu Hagos a opposé une résistance importante au cours de son embarquement et il se serait également opposé au menottage. Il aurait alors été entravé par des sangles aux genoux et aux chevilles, puis aurait été monté dans l'avion. Par la suite, un malaise serait intervenu. L'information judiciaire se poursuivrait afin de déterminer les raisons du malaise. Une commission rogatoire délivrée par le juge d'instruction aurait été confiée à l'inspection générale des services.

77. L'autre enquête serait de nature administrative, conduite par l'Inspection générale de la préfecture de police. Trois policiers chargés de l'escorte à Mariame Getu Hagos auraient été suspendus de leurs fonctions dans l'attente de la conclusion de l'enquête en question.

78. Par la même lettre, le gouvernement a apporté des précisions sur l'exécution des mesures d'éloignement d'étrangers et les efforts entrepris par les autorités françaises pour que ces procédures se déroulent dans les meilleures conditions possibles.

79. Par lettre datée du 23 septembre 2003, le gouvernement a envoyé les informations suivantes concernant le cas de Blandine Tundidi Maloza.

80. Le parquet de Bobigny aurait été saisi, le 16 mars 2001, d'une note d'un fonctionnaire du Ministère des affaires étrangères rapportant des allégations de violences subies par Mme Blandine Tundidi Maloza de la part de fonctionnaires de police lors d'une tentative d'embarquement à bord d'un avion à destination de Douala. Le parquet de Bobigny aurait saisi l'Inspection générale de la police nationale de l'enquête le 28 mars 2001. Blandine Tundidi Maloza aurait été entendue par les services de police le 25 mai 2001. L'enquête aurait établi que Blandine Tundidi Maloza, sous couvert d'un passeport falsifié, est arrivée le 8 mars 2001 à Roissy en provenance de Douala. Le 9 mars, il lui aurait été notifié une décision de refus d'admission sur le territoire français ainsi qu'une décision de maintien en zone d'attente. Le 10 mars, elle aurait été présentée à l'embarquement d'un vol à destination de Douala en compagnie de huit autres personnes, toutes escortées par sept fonctionnaires de la compagnie d'intervention polyvalente. Au pied de l'avion, ces neuf personnes auraient refusé d'embarquer et se seraient échappées sur la piste en courant et en se déshabillant. Elles auraient été rattrapées par les fonctionnaires de police qui ont dû les maîtriser en usant des gestes et techniques professionnels d'intervention. À cette occasion, Blandine Tundidi Maloza aurait été blessée à la jambe. Ces personnes ont ensuite été ramenées en zone d'attente. De retour dans la zone d'attente, Blandine Tundidi Maloza aurait fait une demande d'asile politique. Le 11 mars, elle a été examinée par un médecin, qui délivrait un certificat médical indiquant que son état de santé était compatible avec son maintien en zone d'attente. Le jour suivant, le juge a autorisé son

maintien en zone d'attente. Le 15 mars, il était notifié à Blandine Tundidi Maloza une autorisation d'entrée en France au titre d'asile, et un sauf-conduit valable huit jours lui était octroyé. Au vu des résultats de l'enquête, la procédure a été classée sans suite en juillet 2001. Blandine Tundidi Maloza a été reconnue réfugiée au sens de la Convention relative au statut des réfugiés le 30 avril 2003 et est placée depuis lors sous la protection juridique et administrative de l'Office français de protection des réfugiés et apatrides (OFPRA).

81. Par lettre datée du 18 novembre 2003, le gouvernement a envoyé les informations suivantes concernant les conditions de rétention de migrants et demandeurs d'asile dans la zone d'attente de l'aéroport de Roissy.

82. La législation applicable en matière d'entrée et de séjour des étrangers résulterait d'une ordonnance de 1945 modifiée en 1993, 1997 et 1998, qui devrait être prochainement réformée par un projet de loi relatif à la maîtrise de l'immigration et au séjour des étrangers en France présenté par le gouvernement et actuellement soumis au Parlement. Le maintien des étrangers en zone d'attente serait réglé par l'article 35 *quater* de l'ordonnance du 2 novembre 1945 modifiée. Seraient placés en zone d'attente les étrangers qui font l'objet d'un refus d'entrée sur le territoire ou qui ont présenté une demande d'asile, le temps nécessaire à examiner si celle-ci n'est pas manifestement infondée. Les lieux de maintien peuvent être les frontières aériennes, maritimes ou ferroviaires. Le maintien en zone d'attente serait encadré dans un délai strict qui ne peut en tout état de cause dépasser 20 jours: la première décision de maintien est prononcée pour une durée maximale de 48 heures renouvelable une fois par le chef de service de contrôle aux frontières qui en informe immédiatement le procureur de la République par décision écrite et motivée. L'intéressé serait immédiatement informé de ses droits et devoirs, s'il y a lieu par l'intermédiaire d'un interprète. Au-delà de quatre jours, le maintien en zone d'attente ne pourrait se poursuivre qu'avec l'autorisation du juge des libertés et de la détention pour une durée qui ne peut être supérieure à huit jours. L'ordonnance de maintien serait prononcée après l'audition de l'intéressé en présence de son conseil ou d'un conseil d'office à la demande de l'intéressé. L'étranger peut aussi demander le concours d'un interprète et la communication de son dossier. L'ordonnance de maintien serait susceptible d'appel devant le premier président de la Cour d'appel. À titre exceptionnel, le maintien peut être renouvelé au-delà de 12 jours par le juge des libertés et de la détention pour une durée de huit jours suivant la même procédure. S'agissant de mineurs isolés placés en zone d'attente, la loi du 4 mars 2002 relative à l'autorité parentale prévoirait la présence d'un administrateur ad hoc au côté du mineur isolé lui donnant la capacité à agir en justice.

83. Dès le début du maintien en rétention, l'étranger peut demander l'assistance d'un interprète, d'un médecin, d'un conseil et peut s'il le désire communiquer avec son consulat et avec une personne de son choix. Mention devrait être faite sur un registre que l'intéressé s'est vu notifier ses droits, que l'étranger doit émarger. Le procureur de la République ainsi que le juge des libertés et de la détention peuvent se rendre en zone d'attente pour vérifier les conditions du maintien et se faire communiquer le registre spécial relatif au maintien en zone d'attente. Le procureur de la République territorialement compétent devrait visiter ces locaux une fois par semestre. Les parlementaires nationaux peuvent également visiter à tout moment les locaux de la garde à vue, les centres de rétention, les zones d'attente et les établissements pénitentiaires. Les représentants du Haut-Commissariat des Nations Unies pour les réfugiés ainsi que des associations humanitaires auraient accès à la zone d'attente. Ils pourraient s'entretenir avec le chef de service de contrôle à la frontière, les représentants du Ministère des

affaires étrangers, les agents de l'Organisation internationale pour les migrations. Ils pourraient également s'entretenir confidentiellement avec les personnes maintenues en zone d'attente. Chaque association peut accéder, par l'intermédiaire d'un ou deux représentants agréés, à chaque zone d'attente huit fois par an, entre 8 heures et 20 heures. En outre, l'État français aurait passé une convention avec la Croix-Rouge française à titre expérimental et pour une durée initiale de six mois à partir du 1er octobre 2003, permettant à ladite association d'assurer une mission d'assistance humanitaire dans la zone d'attente de Roissy Charles-de-Gaulle.

84. Les locaux d'hébergement de la zone d'attente de Roissy comprendraient deux installations: la ZAPI 2, composée de plusieurs bungalows installés à l'intérieur du centre de rétention administrative du Mesnil-Amelot et la ZAPI 3, nouveau lieu d'hébergement spécialement conçu pour accueillir les personnes maintenues en attente, en fonction depuis 2001. Cette dernière installation offrirait des chambres à deux lits, nursery, salle de jeux pour enfants, local pour les avocats et les visiteurs, salle de restauration, infirmerie, salle de détente avec télévision, livres et journaux, cabines téléphoniques et espace de détente à l'extérieur. Les chambres seraient équipées, éclairées, aérées et convenablement entretenues. Les hommes, les femmes, les familles et les mineurs isolés bénéficieraient d'une zone d'hébergement réservée. Les deux sites auraient une capacité totale d'accueil de 300 places. Lorsque la pression migratoire conduit à la saturation des possibilités d'hébergement dans ces installations, les locaux des aérogares seraient temporairement utilisés pour le maintien des personnes placées en zone d'attente. Les autorités seraient conscientes que ces locaux ne seraient pas adaptés à des rétentions prolongées, et des locaux adaptés devraient être prochainement mis à disposition par la direction des Aéroports de Paris en cas de saturation des zones d'attente.

85. S'agissant de l'accès à la nourriture et à l'eau, la direction de la police aux frontières de Roissy aurait conclu un contrat avec une société prestataire de services chargée de veiller à la fourniture des repas et au nettoyage des locaux. Les personnes maintenues auraient droit à un repas répondant à leurs habitudes alimentaires et leurs coutumes religieuses. Des repas tampons seraient aussi distribués en dehors des heures régulières de repas. Sur la question de l'appel par haut-parleur, les autorités françaises seraient conscientes de ce désagrément mais auraient affirmé que ce dispositif serait le seul moyen d'appel adapté à la configuration des lieux et au nombre des personnes maintenues en attente. Pour ce qui concerne la prévention et la sanction des mauvais traitements, les autorités françaises exigeraient des services de police un scrupuleux respect des règles de la déontologie. Lorsque des faits de violence sont portés à la connaissance des autorités hiérarchiques, une enquête administrative serait systématiquement diligentée; si les faits sont avérés, des sanctions disciplinaires seraient prises à l'égard du fonctionnaire qui s'en est rendu coupable, sans préjudice des sanctions pénales. Lorsqu'il y a des motifs raisonnables de croire à des mauvais traitements, l'engagement non seulement d'une enquête mais d'une instruction judiciaire serait de droit, si la victime engage une action en ce sens.

86. La qualité du suivi médical des personnes maintenues en zone d'attente serait une question importante pour les autorités françaises. Une convention aurait été signée entre l'État et le centre hospitalier intercommunal Robert Ballanger d'Aulnay-sous-Bois avec l'objectif d'assurer la présence sept jours sur sept d'un médecin (8 heures par jour du lundi au vendredi) et d'une infirmière (10 heures par jour du lundi au vendredi, 4 heures par jour les samedis). En cas d'urgence, il serait fait appel au service médical d'urgence (SMU) de l'aéroport de Roissy et les

transferts en hôpital seraient assurés par le SAMU de Seine-Saint-Denis. Actuellement, l'objectif d'une présence médicale permanente ne serait pas parfaitement rempli par manque de personnel qualifié. La situation préoccuperait les autorités françaises, qui font des efforts pour résoudre ces difficultés. Un service de télémédecine serait aussi opérationnel.

Observations

87. La Rapporteuse spéciale remercie le Gouvernement français pour sa réponse prompte et détaillée. Elle souhaiterait être informée sur les résultats des enquêtes en cours concernant les cas de Ricardo Barrientos et Mariame Getu Hagos.

Greece

Communications sent to the Government

88. By letter dated 27 January 2003, the Special Rapporteur notified the Government that she had received information according to which in the months of December 2002 and January 2003 there had been incidents of irregular migrants being detained beyond the three-month legal limit in Rhodes. It was also reported that around 1,000 aliens who had entered Greece illegally were being held in Thrace in inadequate conditions beyond the three-month period. On 23 December 2002, the mainstream newspaper Eleftherotypia reported similar information concerning some 100 asylum-seekers on the island of Chios.

89. By letter dated 28 February 2003, the Special Rapporteur notified the Government that she had received information relating to the case of H. W. (full name transmitted to the Government), an Iraqi citizen who had reportedly fled Iraq together with his family in fear for their lives. They crossed Turkey and, on 5 July 2002, they entered Greece illegally, crossing the border at Evros and then travelling to Athens.

90. On 4 November 2002, H. W. went to the Alien's Department of West Attikí in order to submit his application for political asylum, but was not allowed to submit the relevant form. It was reported that a civil servant of the Department stamped his application and added, in handwriting, the date of 20 December 2002 for a new appointment to proceed with the application. Allegedly, on that date, H. W. went again to the Alien's Department but was not allowed to submit his application and was not given a new appointment in writing. Reportedly, in the following weeks he repeatedly tried to submit his application but was never allowed to do so.

91. It was reported that, on 10 February 2003, while waiting at a bus stop, H. W. was arrested by a police officer for not having proper documents. He was tried before the Misdemeanour Court of Athens the same day, allegedly without legal representation, and sentenced to four months' imprisonment for illegal entry, suspended upon execution of his deportation. He has been held ever since at the detention facilities of the Pesteri police station awaiting deportation, although this was reportedly impossible due to the international embargo.

92. By letter dated 4 July 2003, sent jointly with the Special Rapporteur on violence against women, the Special Rapporteur notified the Government that she had received information concerning the case of Olga (full name provided to the Government), a 19-year-old Ukrainian victim of trafficking.

93. According to the information received, on 23 May 2003, a court acquitted a police officer who was accused of raping Olga in 1998. Reportedly, the victim was never summoned to testify or to be present at the proceedings. There were allegedly two summonses issued to an address in Amaliada, where the victim never lived. The actual residents of that address reportedly swore that the victim never resided there and that they never saw any bailiffs appear to give or post the summons. According to the court record, the bailiffs claimed that they had gone to the address in Amaliada on 29 January 2003 and had posted the summons as the victim was not present. One bailiff also claimed that he was told on 14 April 2003 that the victim had moved to an "unknown address." The victim asserted that she never lived at the address in Amaliada nor did she give that address to the police. She also reportedly claimed that, in 2001, she gave her exact address to the court, and that she was known to the police as she had done some interpreting work for them.

94. In the absence of the victim at the trial, the court reportedly concluded that she had consented to sexual intercourse with the police officer. The other witnesses who had testified on behalf of the victim at the preliminary hearings also were not summoned and were not present at the trial. At the trial, the police officer was given a two-year suspended sentence for breach of duty as a police officer since he knew that trafficking victims were being held in a bar, did not report the crime, and engaged in intercourse with one of the victims. The bar owner was sentenced to three years in prison for trafficking and three other defendants were also sentenced to two years in prison each for procuring women or assisting in the trafficking of women. However, the sentences of these four co-defendants were reportedly converted into fines (1,600 euros per year).

95. The Minister of Justice reportedly asked the Prosecutor of the Supreme Court to take all necessary actions for the acquittal of the police officer on cassation. While the Prosecutor of the Supreme Court did file a motion for cassation on 20 June 2003, the motion only concerned the acquittal of the police officer on the grounds that the verdict "lacked specific and detailed explanation". According to the information received, the Prosecutor had up to 15 days before the hearing to file additional arguments.

96. According to the information received, Olga had not received any form of effective protection during these proceedings despite the risks she faced and the threats she had received. A key witness in Olga's case also did not receive any form of witness protection. Furthermore, it was reported that Olga faced lengthy, expensive court costs, with no assistance from the Government. She also had no identity papers and was facing deportation. The Consulate of the Ukraine had reportedly refused to issue her a new passport, her passport having been seized by the bar owner in 1998.

97. On 29 August 2003, The Special Rapporteur sent an urgent appeal regarding the cases of two Somali minors allegedly detained in Greece.

98. F.(N.)S.H. (born in 1991) and A.K.S.H. (born in 1997), citizens of Somalia, entered Greece irregularly, through the island of Leros, on 23 May 2003 and were transferred to Rhodes on 28 May 2003. There, they were allegedly kept in detention in the former "Voice of America" facility, along with other adults.

99. The children reported that when civil war broke out in Somalia, their parents fled the country leaving them and their other brother, J., aged 11, in the care of their grandmother. Reportedly, their grandfather asked a family friend to look for the children's mother and arrange for them to joint her. The children were reportedly taken to the Syrian Arab Republic, where they were put on a boat together with another half brother, Abdel Hakim, and from where they reached Greece. On 26 June 2003, the Swedish Red Cross, via the Greek Red Cross, contacted two organizations in Greece and asked for their mediation in order to help the two children reunite with their mother, who was looking for them through the Swedish Red Cross's missing persons service. Reportedly, the children's mother was granted permanent resident status Sweden on humanitarian grounds in 1 November 2002. It was reported that under Swedish law, the children could be reunited with their mother.

100. Local Greek police authorities reportedly failed to inform the Prosecutor's Office in Rhodes of the presence of unaccompanied alien minors, in order for the Prosecutor's Office to take the necessary actions with respect to their custody status. On 26 May, the Greek Police (EL.AS.) reportedly issued a deportation order (No. 6634/2/03/295b) for the children along with orders for the 19 other adult aliens who were on the same boat. EL.AS. reportedly decided that the children were in the custody of their half brother who was with them on the boat, and thus ordered the deportation of all three, as would have been the case of children accompanied by their parents.

101. It was reported that on 15 August 2003, the UNHCR office in Athens wrote to the Secretary-General of the Ministry of Public Order that the Greek Council of Refugees (GCR) would accommodate the children, once transferred to Athens, in an appropriate reception centre run by GCR in Pikermi, near Athens. An asylum application was in the meantime reportedly filed on 14 July 2003. On the same day, asylum applications for the 19 adults were also reportedly filed. Nevertheless, it was reported that the deportation orders were not cancelled. Reportedly, on 25 July, EL.AS. in Rhodes issued the aliens the temporary residence ("pink") cards for asylum-seekers. However, these cards were given to the 21 asylum seekers only on 24 August, resulting in their detention being prolonged for a month even though they had residence papers.

102. On 8 July 2003, the Greek Helsinki Monitor contacted the Swedish Embassy to initiate the procedures for transferring the children to Sweden. Following the intervention of UNHCR and the Swedish Red Cross, the Swedish Embassy reportedly started the procedures through the Swedish Migration Board.

103. It was reported that, on 30 July, the Deputy Greek Ombudsman for children's rights and the Deputy Greek Ombudsman for human rights sent a letter to EL.AS. requesting the competent services "to take action in order to reunite the children with their mother as soon as possible and to transfer their asylum applications to Sweden without delay, prioritizing the examination of their asylum applications over the applications of the remaining adults in the group with whom they had entered the country". Reportedly, no action was taken by the police on this request

which, as of 26 August, had not yet been addressed. The children were reportedly not yet in the legal custody of the Prosecutor or anyone else who would look after their best interest. Furthermore it was reported that the reunification procedures were very slow, both in Greece and in Sweden.

104. By letter dated 2 September 2003 the Special Rapporteur notified the Government that she had received information on the following cases.

105. Reportedly, on 19 July 2003, a boat carrying 24 aliens, mainly Somalis, Sudanese and Afghans, reached the coast of Nees Kidonies, Mytilini. It was reported that these individuals were first handed over to the police and port authorities to be transferred to the former prison establishment of Lagadas, which was reportedly being used as a detention centre for aliens.

106. It was reported that the Lagadas facility was designed to hold approximately 70 individuals, but at the time allegedly housed 223 persons in very poor conditions. Reportedly, there were 10-15 persons in each room—while some 20 persons lived outdoors, in the courtyard. For all of them there were reportedly only three toilets, two showers and three washbasins.

107. Reportedly, upon the arrival of the 24 new aliens, local residents protested, and EL.AS decided to relocate them. They were allegedly moved to an area in the Mytilini port that was open to the air and surrounded by steel barriers. The 24 individuals, including a 7-month-old baby, were allegedly exposed to intense heat during the day, cold at night, and in the first days were not provided with adequate water or access to a doctor.

108. Reportedly, on 24 July 2003, the 24 individuals were moved to an open-air facility belonging to the State where they, along with another 15 persons who arrived on another boat on 27 July, lived in five tents, without toilets or showers.

109. It was reported that, under article 44.3 of law 2910/01, as amended by article 21.7 of law 3013/02, undocumented aliens may be held for up to three days after the prosecutor has decided to refrain from prosecuting, but an administrative deportation order must be issued to continue the detention past three days. Reportedly, according to Greek law, they should also be informed of their rights in a language that they understand. The 24 individuals were allegedly held for more than five days without an administrative deportation order, and their rights were not explained to them in a language that they could understand. In addition, a local NGO was allegedly prevented from informing the 24 individuals of their rights.

110. It was reported that, on 24 July 2003, a group of eight asylum-seekers held in the Lagadas facility were told by the police to prepare their belongings in order to leave, but they were not told where they would be going. They reportedly did leave, escorted by the police at 5 p.m. They had all applied for asylum, but they had not been given a copy of their application with a date of deposition and a protocol number, guaranteeing that their applications had been registered. Upon their departure, they were reportedly not given the special identity card of an asylum applicant and were not given anything in writing informing them of their deportation. The persons' names were as follows: from Palestine—Hassan Abdulah Ramamazan,

Hawad Mohmmad Hawad, Abdul Aziz Mohmmad Shohib, Hamada Harba Wey Adice, Sayid Mohmmad Ibrahim, Mohmmad Morsy Adice; from Sri Lanka—Lakshmi Heart Dingerbanda and Opali Jaysing Sayna Ratn. All of them reportedly arrived in Greece on 19 June 2003, apart from Lakshmi Heart Dingerbanda, who arrived on 11 May 2003.

111. By letter dated 17 October 2003, sent jointly with the Special Rapporteur on violence against women as a follow-up to their previous communication, the Special Rapporteurs notified the Government that they had received additional information in relation to the case of Olga.

112. Reportedly, on 7 October 2003, the Supreme Court held a hearing on the case of Olga, which allegedly took place in her absence. It was reported that she was again not summoned to court for the hearing and that she only learnt that the Supreme Court had held a hearing on her case through an article in the local newspaper. The accused was reportedly present at the hearing.

113. Furthermore, Olga's complaint against two bailiffs, who allegedly falsely claimed that they had served summons to her at an address where she never lived, filed in Patras on 11 September 2003, had reportedly not yet been forwarded by the Patras Prosecutor to the competent Amaliada Prosecutor. Thus, according to information received, no investigation into the criminal responsibility of the bailiffs had yet started.

114. Furthermore, it was reported that Olga was facing lengthy, expensive court costs, with no assistance from the Government. She also had no identity papers and was reportedly facing deportation.

115. By letter dated 21 October 2003, the Special Rapporteur notified the Government that she had received information regarding the following cases.

116. According to the information received, on 15 September 2003, at about 5 a.m., Ligor Halimi (age 41), Mili Halimi (43) and Rahman Pashollari (62), all Albanian citizens, were severely mistreated by several Greek policemen. The three Albanians had been working since 5 September 2003 in Greece and were returning to Albania when they were stopped near the border by six Greek police border patrol officers dressed in camouflage uniforms and wearing black hoods. The officers searched them, took their money, and reportedly began to punch, kick and hit them with wooden batons all over their bodies. The three men were then transferred to a detention facility in Pili (Florina), where their identity data were recorded. No violence was reportedly used against them at the detention facility, where they were kept for approximately one hour. The policemen then took them to the Kapshtica (Kristalopigi) border crossing point. In Kapshtica, the three men allegedly received no assistance from the Albanian police, even though the gravity of their injuries was clear. They then reportedly travelled to their homes in Elbasan, where they sought medical attention at the local hospital. Of the three travellers, Ligor Halimi reportedly experienced the most severe injuries, while Mili Halimi and Rahman Pashollari suffered only slight bruises on their knees and arms. Ligor Halimi was hospitalized in Elbasan and was diagnosed with injuries to the abdomen and a ruptured spleen, accompanied by internal haemorrhaging; he later underwent surgery to have his spleen removed.

117. Reportedly, on 23 September 2003, an 18-year-old Albanian, Vullnet Bytyçi, was shot in the back of the head and killed by members of the Greek police near the Kristalopigi checkpoint while he was attempting to escape arrest. Four other Albanians with whom he was travelling to

Greece, Alfred Ramadan Metaliaj, Emri Saetr Metaliaj, Beqir Osman Metaliaj and Bilbil Selman Metaliaj, were reportedly arrested and later released and returned to Albania on 27 September 2003. A sixth person, Luan Metaliaj, reportedly escaped arrest and hid for 24 hours before returning to Albania. A bullet reportedly went through his jacket without injuring him during his escape. According to the information received, the Greek police reported that one police border guard shot in the air to prevent their escape, as well as their threatening attitude towards one of his fellow guards. Allegedly, there were reports that at the time of the shooting, Mr. Bytyçi had stopped running away and did not represent a danger. The authorities had reported that the police border guard responsible for the shooting would be tried according to Greek law. Reportedly, he had been prosecuted for reckless homicide and the decision of the Misdemeanour Court was pending as to whether he would be referred for trial.

118. In another incident, three Albanians—Leonard Shëmbilko, Dashamir Brakolli and Sokol Hallko—were reportedly subjected to ill-treatment by Greek policemen on 22 September. Mr. Shëmbilko and Mr. Brakolli reportedly regularly visited Greece for employment purposes and had valid documents, but were nevertheless arrested by the Greek police near Kastoria and were beaten with hard objects, before being taken to the Mesopotamia police station, where the beatings allegedly continued for several hours. Of the three, Mr. Brakolli received the worst injuries; however, he did not officially report the incident to the Greek authorities out of fear of reprisals.

119. On 25 September, Gani Ibrahim Rama, 35 years old, from Kruja, was reportedly shot at by Greek soldiers and wounded in the arm while he was running to elude the police, having crossed the border illegally. He was reportedly arrested and detained for several days before being released and returned to Albania.

120. The whereabouts of Sokol Allkja, 25 years old, Ardian Allkja, 31 years old, and Edmond Sula allegedly remained unknown—according to their relatives—since they left for Greece from Cerrik, Albania, on 19 September, although reports indicated that Sokol Allkja was wounded by the Greek police and was possibly in Korca hospital, while his brother Ardian was in prison. Nothing further was known about Edmond Sula's situation.

121. Arjan Torka, from the town of Gramsh, was reportedly beaten and insulted by an official on the premises of the Greek customs office at Kristalopigi between 4 and 5 October 2003. While checking his passport, the police officer reportedly claimed that it was forged and started punching and kicking him. After having refused to sign a form in Greek that he could not understand, he was reportedly told to leave Greek territory and to obtain a new passport and visa. The Korca police, who promised to investigate the case, reportedly stated that the passport was not forged whilst there reportedly was an undertaking on the part of the Greek authorities (the Director of Police of Kozani) that measures would be taken so that similar incidents would not occur in the future.

Communications received from the Government

122. By letter dated 10 June 2003, the Government transmitted the following information concerning the case of H. W.

123. On 4 November 2002, Hormez Salem, an Iraqi citizen, went to the Western Attikí Alien's Department accompanied by his wife and four minor children and applied for asylum. Owing to the great number of aliens at the Department, the employees there were unable to process their asylum application on that day. The application was time-stamped and a new appointment was scheduled for 20 December 2002 at 8 a.m. The persons concerned did not present themselves at the Department on the scheduled day or on any other occasion for their application to be examined.

124. On 10 February 2003, H. W., one of the four sons of Mr. Salem, was arrested by the Peristeri police and charged, according to Law 2910/01, for not being in possession of travel documents. The next day H. W. was brought before the Prosecutor of the of Athens Misdemeanours Court. On 13 February the court issued a decision sentencing him to a four months' imprisonment. By the same decision the court suspended the execution of the sentence and ordered his deportation. The Western Attikí Alien's Department transferred H. W. to Avlona prison pending his deportation. On 21 February 2003, the Department sent a document to the prison stating that the deportation could not be carried out.

125. At the time of his arrest, H. W. did not have any travel document and did not mention that his father had applied for asylum. Had that been the case, his true status would have been discovered and he would not have been brought before the prosecutor. On 9 April 2003, his parents went to the Western Attikí Alien's Department and filed a new application for asylum, with a new address. They were fingerprinted the same day and given an official document and an appointment for an interview on 7 May 2003.

126. By letter dated 6 August 2003, the Government transmitted the following information concerning the case of Olga.

127. Olga B. entered the country illegally on 20 or 21 February 1998 via Bulgaria and worked in a nightclub owned by V. B., at Marathópolis, for about one month. On 26 February 1998, at 1.30 a.m., she was picked up from the nightclub by the police officer N. B. The policeman and the Ukrainian woman proceeded to a hotel where the officer asked for a room for which he did not pay, because he was not asked to. There, he engaged in sexual intercourse with Olga. At 4 a.m., they returned to the club where the officer left Olga and went away. The owner of the club used to lock Olga, together with other women, in a house next to the club and force them to provide sexual favours to customers.

128. The next morning, Olga went to the Amaliada hospital because of bleeding caused by the sexual intercourse. She was accompanied by the waiter of the club. The doctors suggested that she stay in the hospital, but the waiter told her she had to pay 30,000 drachma a day if she wanted to stay in the hospital, since he had paid 25,000 drachma to "rent" her from the owner of another nightclub in Corinth. Because her health problem persisted, she was taken, with her consent, to a private doctor in Patras who diagnosed a serious wound of the genital organs.

129. On 9 November 1998, Olga went to the Amaliada police station and reported that police officer N.B. had raped her on 26 February 1998. She said that she had not denounced him before because feared that she would have been arrested. She said that the nightclub owner keeping her personal documents, which he later refused to return he was paid US$ 8,000 in "compensation".

130. The police officer and the club owner were both persecuted. The Public Prosecutor of Amaliada charged the policeman with rape and subsequently violation of duty and the club owner with pimping, procuring and exploitation, and misappropriation of documents. The police officer was brought to trial in Patras where, on 23 May 2003, after a number of successive adjournments, he was acquitted for the rape and convicted of violation of duty and sentenced to two years' imprisonment. The officer appealed against the sentence but a date for the trial had not yet been set.

131. A formal administrative investigation was also ordered with regard to the case by the Ministry of Public Order and on 22 December 1998 the police officer was suspended for one year.

132. The investigation yielded the following results. According to the medical report issued by the General Prefectural Hospital of Amaliada on 9 September 1998, Olga had suffered a haemorrhage the day before, caused by sexual. That diagnosis was confirmed by the doctor, who added that as the victim had not reported that she had been raped, he did not proceed to further medical examination. Therefore, the alleged rape could neither be confirmed nor excluded. No scratches or bruises in the genital area were found by the doctors that examined Olga. It was not proved whether Olga had engaged in sexual intercourse with a man other than the police officer after the latter left her. It was not proved whether the police officer had paid the owner of the club in order to pick up Olga. The charges against the policeman were published in the newspapers, giving rise to unfavourable comments about him and the police forces in general. This was reported to the appropriate police official and it was decided that N.B. should be brought before the First Degree Disciplinary Board, facing dismissal.

133. The Board imposed a penalty of suspension for six months, follows by transfer; the Second Degree Disciplinary Board upheld the decision on appeal. The sentence was considered to have been served by the officer's suspension from 29 December 1998 to 28 June 1999. By order dated 30 May 2000, the police officer was transferred, for disciplinary reasons, to the General Police Directorate of Attikí.

134. By letter dated 20 November 2003, the Government transmitted the following information concerning the case of the two Somali minors F.(N.)S.H. and A.K.S.H.

135. The two minors entered Greece on 23 May 2003, together with their adult step-brother Hassan Abdulhakim. On the same day, they were arrested by police for violation of the laws on immigration. The Public Prosecutor of the island of Kos issued an administrative decision of deportation on 26 May 2003. On 14 July 2003, Hassan Abdulhakim submitted to the Security Suboffice of the island of Rhodes a request for political asylum for himself and his two brothers. With the agreement of the Public Prosecutor of the Court of First Instance of Rhodes, no special temporary guardian was appointed for the minors as required by the asylum procedure for juveniles, as they were considered to be in the custody of their adult step-brother. After having being informed that their mother was a refugee in Sweden, the Greek Ministry of Public Order and the competent Swedish authorities started consultations, within the framework of the Dublin Convention. The Swedish authorities assumed responsibility for considering the asylum request of the children and, on 7 September 2003, the boys were collected by their mother. Following an understanding between the Swedish Migration Service and the Swedish Embassy in Athens, temporary passports were issued to the two minors on 9 September 2003, in order to enable them

to travel to Sweden accompanied by their mother. During their stay in Rhodes, the minors lived next to their adult step-brother in a special place separated from the rest of the population of the centre. On 24 August 2003, at the end of the three-month period from the date of arrest, the minors were duly released and were accommodated at the refugee Hospitality Centre at Pikermi, Attikí, under the supervision and care of the Ministry of Health and Welfare and in cooperation with the Greek Council for Refugees, pending their departure.

136. By letter dated 9 January 2004, the Government of Greece provided the following information.

137. Concerning the case of Tarko Arian, the Government reported that, on 4 October 2003, at 5.30 p.m., he arrived at the Kristallopigi Passport Control Station, on the Greek-Albanian border, with the intention of entering Greece. While checking his Albanian passport and his Temporary Resident Card issued by the Prefecture of Pieria (Greece), it was discovered that the passport was counterfeit. Mr. Arian was therefore prohibited by the duty officer from entering Greece and issued an Entry Prohibition Notice, which he was requested to sign despite the fact that he was advised of its content in Greek, a language in which he was fluent. The duty officer retained his Temporary Residence Card, which he returned to the Greek issuing authority. Mr. Arian was sent back to Albania. According to the investigation that was carried out, no abuse or derogatory language was used. According to the same investigation, the correct name of the person is Tarko Arian and not Arjan Torka, as stated in the Special Rapporteur's letter.

138. Concerning the cases of Leonard Shembliko, Dashamir Brakoli, Sokol Halko, Sokol Allkja, Arrdian Allkja and Edmond Sula, the Government reported that the police authorities of Kastoria had no records of them for the time-period indicated by the Special Rapporteur and that nobody by the name of Allkja Sokol had visited the Kastoria Hospital during that period for treatment or hospitalization.

139. Concerning the case of Bytyci Vullnet, the Government reported that he was fatally injured on 23 September 2003, at 9 p.m., in the forest area "Leropigi" in Kastoria Prefecture, when the border guard who was on patrol with two colleagues shot twice with service pistol in order to intimidate and arrest a group of six aliens, including the victim. The Subdivision of Kastoria Police Force filed charges against the border guard concerned and brought him before the Public Prosecutor (Court of First Instance of Kastoria). Subsequently, he was referred to the Investigating Judge of Kastoria, on charges of intentional homicide. On 29 September 2003, the guard was released under the restriction that he could not leave Greece. The criminal case is currently pending before the courts. According to the forensic report issued by the Forensic Service of West Macedonia, Mr. Vullnet's death occurred during the night of 23 September 2003 and was due to severe craniocerebral injury caused by a bullet shot from a long distance. The Police Directorate of Kastoria had ordered a statutory administrative investigation which had not yet been completed, and the border guard concerned had been suspended from his duties.

140. Concerning the case of Ligor Halili, Mili Halili and Rhaman Pashollari, the Government reported that, when in Albania, the aforementioned individuals had denounced in the local mass media, to the Citizen's Advocate (Ombudsman) and to the Centre for Rehabilitation of Injuries and Torture that on 15 September 2003, in Kristallopigi Passport Control Station, six police officers robbed and ill-treated them and as a result Ligor Halili suffered internal bleeding and

was operated in Elbasan hospital in Albania for removal of his spleen. The Hellenic Police Headquarters ordered a statutory administrative investigation of these accusations, which had not yet been completed.

Observations

141. The Special Rapporteur thanks the Government of Greece for the information submitted and for its willingness to cooperate with the mandate. The Special Rapporteur would appreciate being kept informed of the case of Olga B. and, in particular, she would appreciate receiving information concerning the request for the suspension of the deportation order and the granting of a residence permit which would allow Olga to be present when her case is examined by the Supreme Court, as foreseen in the Greek legislation on trafficking (Law 3064/2002). The Special Rapporteur would also appreciate being kept informed of the developments in the investigations in the cases of Bytyci Vullnet and Ligor Halili, and receiving information concerning the cases for which she has not received a response.

Indonesia

Communications sent to the Government

142. By letter dated 2 July 2003, the Special Rapporteur notified the Government that she had received information concerning the situation of Indonesian women migrant workers. According to the information received, by mid-2001, over 70 per cent of Indonesian migrants were women, and 43 per cent worked in the informal employment sector as domestic workers, factory workers or construction workers. Reportedly, Indonesians wishing to work abroad as low-status workers were officially required to go through Government-sanctioned recruitment agencies. The agencies required prospective migrant workers to live in training camps for 1 to 14 months. Though the Indonesian Labour Department had set minimum standards to regulate certain practices within these camps, such standards were reportedly rarely enforced. Restrictions were placed on prospective migrants' freedom of movement, and conditions in the camps were poor, often leading to health problems for which there was insufficient medical care. Physical and sexual abuses were also reported in camps. Reportedly, while staying in camps, prospective migrants were at times not allowed to leave and their families were only allowed a few hours to visit them. Furthermore, some camps had no public telephones.

143. Many workers signed contracts in foreign languages, without translation or without being given the opportunity to read them. Many were allegedly forced by agents to use false ages and addresses and, at times, false names. Reportedly, once in the host countries, migrants also had to pay agency fees that were usually higher than the maximum established by the Government of Indonesia. The fees varied according to the host country. Many Indonesian migrant workers were paid below the minimum wage and the majority of them were not entitled to their weekly rest days, while a considerable number suffered physical abuse. Furthermore, it was reported that returning migrants had to return through the specially designed Terminal 3 of Soekarno Hatta International Airport, where there had been reports of migrants experiencing rape and physical abuse and having to pay bribes in order to obtain basic information and services. Reportedly, migrants were required to be met upon arrival by family members. If not, they had to return home by transportation offered by agencies, at a price much higher than that of public transportation.

Observations

144. The Special Rapporteur would appreciate receiving the reply of the Government of Indonesia in relation to the allegations summarized above. Without coming to any conclusions as to the substance of the above-mentioned allegations, the Special Rapporteur would like to refer to the conclusions and recommendations contained in her main report to the Commission on Human Rights (E/CN.4/2004/76).

Israel

Communications sent to the Government

145. By letter dated 26 June 2003, the Special Rapporteur informed the Government that she had received additional information regarding the general situation of migrant workers in Israel (see E/CN.4/2003/85/Add.1, paras. 89-91).

146. The 250,000 migrants workers in Israel were said to represented 13 per cent of the Israeli labour force. Allegedly, less than 20 per cent of migrant workers received the legally required minimum wage, and many of them worked very long hours (allegedly up to 250 hours per month, while the average working time for an Israeli worker was 152 hours per month). The Special Rapporteur received also information according to which, in spite of the fact that the law did not allow mediation fees to be imposed on migrant workers, the majority of them borrowed money to pay for mediation services, which could be as high as US$ 9,000, in order to obtain a legal work permit. The Special Rapporteur was informed that, if the employer decided to terminate a worker's contract, the worker would lose his/her legal status immediately and would have to leave Israel.

147. While the Special Rapporteur learnt with satisfaction that a new regulation was passed in 2002 to allow migrant workers to change employers, she was concerned that this regulation benefited only migrants working in the home nursing business and that its application was still subject to the employer giving written consent. Furthermore, under the regulation the workers had only one month to find a new employer. The Special Rapporteur was also informed that when migrant workers lost their status, they were often in practice not granted the rights provided for by the Entry into Israel Law. In particular, the right to a hearing within 24 hours following arrest, the right to a period of 72 hours before deportation in which to appeal against the deportation decision to an assigned administrative tribunal, and the right to request bail within 14 days from detention were allegedly not fully respected and migrants, often not aware of their rights, were reportedly deported without being granted access to the relevant legal entities.

148. The Special Rapporteur also received information according to which migrant workers' complaints about minimum wage violations, poor lodging conditions, use of violence by the employer and passport confiscation were not properly acted on by the Police and Labour Ministry enforcement division. Passport confiscation was punishable by a year's imprisonment; however, despite thousands of alleged complaints and 8,000 passports reported confiscated by the police, nobody has been convicted for this offence. Passports confiscated by the police were reportedly often returned to employers or to embassies, but not directly to the workers.

149. By the same communication, the Special Rapporteur informed the Government that she had received information concerning the case of Dwidgi Kavita, an Indian national, who reportedly worked legally in Israel until January 2003 as a nurse for a disabled person. She was allegedly paid $250 per month, half the Israeli minimum wage, and her passport was reportedly confiscated by her employer. On 21 January 2003, Mrs. Kavita decided to leave her employer when her request to raise her salary to the local minimum wage was refused. She reportedly filed a complaint with the Police Immigration Authority for exploitation and passport confiscation. A civil hearing was scheduled for 4 June 2003. However, according to the information received, on 4 May 2003, the court issued a search warrant and a deportation order against Mrs. Kavita on charges that she was an "escapee".

150. On 8 September 2003, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health regarding Nelo Prisco, a Romanian citizen who was residing in Israel. Mr. Prisco had an accident when legally employed as a construction worker in Israel. Reportedly, an iron rod was driven against his stomach and as a consequence he had to be hospitalized for four months in the Soroka Hospital in Beer Sheva, Israel, where he reportedly received treatment including a newly developed procedure involving the implant of an apparatus into his stomach. Mr. Prisco was still under strict medical supervision and had been asked to remain in the vicinity of the hospital for monitoring. Mr. Prisco was declared 100 per cent disabled and was granted a monthly pension from the National Health Insurance.

151. According to the information received, on 1 January 2003, a bill was enacted preventing the granting of National Health Insurance pensions to persons residing in Israel without a residence permit. On 26 July 2003, Mr. Prisco reportedly received a letter from the Ministry of the Interior, requesting him to leave the country. An appeal was made to the Ministry to grant a residence permit to Mr. Prisco, but the request was reportedly denied on 26 August and Mr. Prisco was called upon to leave the country within 15 days. The treatment that Mr. Prisco needed was not available in his home country and, upon receiving the letter, Mr. Prisco wrote a complaint to the Ministry of the Interior. The Ministry reportedly set the deadline for his voluntary return for 10 September, after which he would have been reportedly subject to deportation procedures.

Observations

152. The Special Rapporteur would like to reiterate her interest in receiving the reply of the Government of Israel in relation to these allegations.

Lebanon/Sri Lanka

Communications sent to the Government

153. By letter dated 3 March 2003, the Special Rapporteur notified the Governments of Lebanon and Sri Lanka that she had received information regarding the case of Anthonyamma Mary Sandanam, a Sri Lankan woman recruited through an agent in Sri Lanka and his counterpart in Lebanon, to work as a housemaid in Chikka, northern Lebanon. She was in possession of a regular work permit.

154. According to the information received, during the first year Ms. Sandanam maintained regular contacts with her husband and family in Sri Lanka, but then suddenly contacts stopped. The husband reportedly tried to contact her personally and through the Bureau of Foreign Employment in Sri Lanka, without success. He also sought information from the Embassy of Sri Lanka in Lebanon on four different occasions but received no response. He then reportedly sent an e-mail to the General Security of Lebanon and received a response stating that Ms. Sandanam was working in Lebanon with her guarantor and that she had divorced from him. Fears were expressed that Ms. Sandanam might be prevented from contacting her family and obliged to continue working with her employer against her will.

Communications received from the Governments

155. By letter dated 19 May 2003, the Government of Lebanon provided the following information concerning the case of Anthonyamma Mary Sandanam.

156. Anthonyamma Mary Sandanam was granted a one-year residence permit until 13 March 2004, to work as housemaid for her new employer. She was in good health and she had a good relationship with her employer. Mrs. Sandanam had declared that her rights had always been respected and granted and that she had never been humiliated; that she wished to continue working for her employer and that she was corresponding with her family and received phone calls from them.

Observations

157. The Special Rapporteur would like to thank the Government of Lebanon for the response provided. She would appreciate receiving a response from the Government of Sri Lanka on the same case. She would also like to refer to the conclusions and recommendations contained in her report to the Commission on Human Rights (E/CN.4/2004/76).

Malaysia

Communications sent to the Government

158. On 14 October 2003, the Special Rapporteur, jointly with the Special Rapporteur on the right to freedom of opinion and expression and the Special Representative of the Secretary General on human rights defenders, sent a urgent appeal regarding the case of Irene Fernandez, director of Tenaganita, a women's non-governmental organization based in Kuala Lumpur which deals with health, domestic violence, migrant workers' rights and family law issues. Irene Fernandez was charged under section 8A (1) of the Printing Presses and Publication Act 1984 for "maliciously publishing false news" in 1995 for having issued the memorandum "Abuse, torture and dehumanized treatment of migrant workers at detention camps". Her trial, started on 10 June 1996, was still ongoing and, according to information received, in March 2003, after the conclusion of the presentation of Ms Fernandez's case by her defence counsel, the magistrate, Juliana Mohamed, set 17 March 2004 as the date for the judgement.

159. On 9 October 2003, Irene Fernandez's lawyers reportedly received a letter from the magistrate requesting them to send all written submissions by 11 October 2003 because the date

of the trial had been brought forward to 14 October 2003. A deadline for the defence submissions was also set for 10 October 2003. The senior counsel for the defence, M. Puravalen, was not in the country and would have been back only on 20 October 2003. Thus, it would have been impossible for him to send the written submissions or to be present in court on the date of the judgement.

Communications received from the Government

160. By letter dated 17 December 2003, the Government of Malaysia provided the following information concerning the case of Irene Fernandez.

161. As director of Tenaganita, Irene Fernandez released on 25 August 1995 a memorandum entitled “Abuse, torture and dehumanized treatment of migrant workers at detention camps”. She was subsequently arrested on 18 March 1996 on the charge of publishing false news concerning the condition of migrant workers at the Sementyih detention camp. The case was heard at the Kuala Lumpur Magistrate’s Court. According to the Notes of Evidence dated 13 June 2003, the court directed Ms. Fernandez’s lawyers to file their written statements before 30 June 2003. On 7 October 2003, the magistrate who was dealing with the case wrote to inform her superiors that she was planning to resign from her post and submitted a request for the date of the judgement to be brought forward to 14 October 2003, since she had been the presiding magistrate in the case. The request was accepted on 8 October 2003 and the following day the magistrate wrote to the parties to inform them of the new date of the hearing and to urge them to submit their written statements by 11 October 2003.

162. Ms Fernandez was allowed to make a statement from the dock with her lawyers. Irene Fernandez concluded her oral submission on 15 October 2003 and the judgement was rendered on 16 October 2003. The magistrate, in handing down the decision, found that the prosecution had been able to prove beyond reasonable doubt the falseness of the information contained in the memorandum and the malicious intent behind Irene Fernandez’s actions in making it public. The prosecution managed to prove 16 pieces of information contained in the memorandum to be false. The court itself conducted a visit to the Semenyih detention camp and found that the information contained in the memorandum was false.

163. The right to freedom of opinion and expression in Malaysia is guaranteed under article 10 of the Federal Constitution, but this does not mean that the right may be abused or exercised without due regard to the implications it may have. As for Irene Fernandez, the court found her guilty of the offence under section 8A (2) of the Printing Presses and Publications Act of 1984. She was tried in an open court in a fair and impartial manner with avenues of appeal still available to her. Gender was never an issue in the case against Irene Fernandez.

Observations

164. The Special Rapporteur would like to thank the Government for the response provided. She would appreciate being kept informed of any future developments in the case.

Mexico

Comunicaciones recibidas del Gobierno

165. El 24 de enero de 2003, el Gobierno mexicano transmitió a la Relatora Especial copia de un boletín de prensa mediante el cual el Instituto Nacional de Migración de México dio a conocer la adquisición de un predio de 30.000 metros cuadrados para la construcción de un albergue migratorio en Chapas, así como el inicio de las tareas de dignificación de las estancias migratorias de todo el país durante el 2003 y la próxima construcción de estancias migratorias en Tijuana, Baja California y en Los Cabos, Baja California Sur.

166. El 12 de marzo de 2003 el Gobierno proporcionó su respuesta y sus comentarios sobre el informe de la visita de la Relatora a México (E/CN.4/2003/85/Add.2). Agradeciendo las recomendaciones incluida en el informe, el Gobierno afirmó que las mismas estaban siendo analizadas detenidamente a fin de establecer políticas y cursos de acción dirigidos a su aplicación e informó la Relatora Especial que algunas de dichas recomendaciones ya estaban siendo atendidas e implementadas por las autoridades correspondientes.

167. Como reflejo del compromiso del Gobierno de México con la causa de los derechos humanos, el Presidente había presentado su primer informe sobre las políticas y alcances obtenidos en materia de derechos humanos y anunciado medidas que tenían como objetivo el desarrollo de una política integral para el respecto y la promoción de dichos derechos: la creación de la Comisión Intersecretarial de Política Gubernamental en Materia de Derechos Humanos con mandato de analizar y atender las diversas recomendaciones de los mecanismos internacionales de derechos humanos formuladas al país; y la instrumentación de una agenda de acciones inmediatas del Gobierno Federal contenientes un apartado relativo a los derechos de los migrantes.

168. A nivel jurídico, el Gobierno informó que había depositado los instrumentos de ratificación de los Protocolos a la Convención de Naciones Unidas contra la Delincuencia Transnacional Organizada para prevenir, reprimir y sancionar la trata de personas, especialmente mujeres y niños, y contra el tráfico ilícito de migrantes por tierra, mar y aire. También se había iniciado un proceso de revisión integral de la legislación nacional en materia migratoria para adecuarla a los estándares internacionales. El Gobierno señaló que por ninguna circunstancia los migrantes que exclusivamente han violado las leyes en materia migratoria en México serían procesados penalmente.

169. En relación a la observación la Relatora Especial de que los migrantes permanecen en una situación de vulnerabilidad a lo largo de su viaje por México, el Gobierno informó que se estaban adoptando medidas concretas para ampliar la capacidad del Instituto Nacional de Migración (INM) y la coordinación con otras instancias de los tres niveles de gobierno, con el fin de evitar situaciones de abuso contra migrantes que se encuentran en territorio mexicano.

170. Por lo que respecta a las condiciones de detención, el INM anunció que durante el 2003 se habría dado prioridad a la tarea de dignificar las estancias migratorias en todo el país. El Gobierno también proporcionó información sobre la asistencia dada a las personas que se encontraban en instancias migratorias: informaciones sobre sus derechos; auxilio, si necesario, de un traductor o interprete; informaciones sobre el derecho a la protección consular. En materia

consular, el Gobierno informó que estaba explorando conjuntamente con los otros países centroamericanos esquemas que les permitiera ampliar su capacidad de respuesta en la materia. En relación a la dinámica migratoria en la frontera sur del país, el Gobierno informó que estaba buscando impulsar el crecimiento y el desarrollo en esta parte del país con la implementación de diversos proyectos sociales de mejora a la infraestructura y la salud.

171. Como país de origen, transito y destino de emigrantes, para México una de las prioridades era la definición de políticas que abordaran de manera integral el fomento migratorio en México con objeto de brindar mejores condiciones de desarrollo en las poblaciones receptoras de migrantes. Respecto a la preocupación expresada por la Relatora Especial sobre la falta de acciones concretas de prevención del y atención al VIH/SIDA en la población migrante, el Gobierno proporcionó informaciones detalladas sobre las acciones implementadas en este sentido por la Secretaría de Salud. Respecto a la recomendación de la Relatora Especial de priorizar un programa concertado a nivel federal, estatal y municipal de promoción del desarrollo local en prevención de la migración, el Gobierno informó de la implementación del programa Desarrollo Humano Oportunidades, programa que coordinaba acciones de la Secretaría de Salud y del Instituto Mexicano del Seguro Social, dirigido al desarrollo y potenciación de capacidades de las familias en pobreza extrema mediante acciones que vinculaban integralmente salud, nutrición y educación.

172. Respecto a los esfuerzos de difusión de información dirigida a los potenciales migrantes irregulares sobre los peligros de cruzar las fronteras por determinadas zonas en mano de pasantes, destacaban el esfuerzo y la labor de los Grupos Beta, entre cuyas funciones se encontraba dar orientación al migrante sobre sus derechos y los riesgos que corren. Asimismo se informó sobre las labores de colocación de señalamiento de peligro en lugares de alto riesgo para los migrantes.

173. El 14 de marzo de 2003 el Gobierno proporcionó un resumen de las ponencias presentadas durante el taller “Capacitación sobre Derechos Humanos de los Migrantes”, que se celebró en Tuxtla Gutiérrez, Chapas, los días 27 y 28 de febrero de 2003. Asimismo remitió los resultados de la evaluación efectuada para los participantes sobre la actividad.

174. El 1 de septiembre de 2003, el Gobierno remitió el expediente proporcionado por la Coordinación de Relaciones Internacionales e Interinstitucionales de la Secretaría de Gobernación sobre el caso del asesinato en 1999 de José Ángel Martínez Rodríguez (véase E/CN.4/2003/85/Add.2, párr. 24), agente del Grupo Beta Tenosique, el cual constaba de copia de una averiguación con fecha del 1 de diciembre de 1999 con la cual se habría ejercido acción penal en contra del presunto culpable incriminado por el delito de homicidio calificado.

Observaciones

175. La Relatora Especial quisiera agradecer encarecidamente al Gobierno de México por la información proporcionada. La Relatora Especial recibió con beneplácito la información relacionada con el inicio de las tareas de dignificación de las estancias migratorias de todo el país durante el 2003 y la próxima construcción de otras estancias migratorias. La Relatora Especial quisiera agradecer al Gobierno también por haberle remitido informaciones detalladas sobre la implementación de las recomendaciones incluidas en su informe sobre la visita al país.

Morocco

Communications adressées au gouvernement

176. Par lettre datée du 10 novembre 2003, la Rapporteuse spéciale a informé le gouvernement qu'elle avait reçu des renseignements concernant le cas de Bright Oviawe, un garçon d'origine nigériane en captivité à la prison civile de Tanger. D'après les renseignements reçus, le 1er février 2000, trois jeunes hommes se seraient introduits dans sa chambre d'hôtel avec l'intention de le battre et de lui voler son argent. En autodéfense, Bright Oviawe aurait pris un petit couteau et pendant la querelle il aurait blessé mortellement l'un des deux agresseurs. Tout le monde dans l'hôtel se serait échappé, sauf Bright Oviawe, qui aurait attendu l'arrivée de la police. Après avoir été gardé pendant deux jours dans un poste de police, il aurait été informé de la mort de son agresseur blessé. La police aurait déclaré que l'accident se serait passé le 3 février 2000. Suite à son transfert en prison, Bright Oviawe aurait été jugé en mai 2000. Au procès, il n'y aurait eu aucun témoin pour sa défense, car tous ceux qui se trouvaient sur le lieu de l'accident auraient été des immigrants irréguliers et se seraient éclipsés avant l'arrivée de la police.

177. Bright Oviawe aurait été condamné sur la base des déclarations remises à la police, affirmations qu'il aurait souscrites sans avoir la possibilité de lire, dans une langue qu'il comprenait et sans l'assistance d'un interprète, le texte qu'il aurait signé, rédigé en arabe. D'après les renseignements reçus, il aurait été obligé de les souscrire sous menace de violences physiques. Pendant le procès, il aurait été questionné sur sa religion et invité à dire s'il avait des déclarations à faire. Après avoir déclaré être chrétien, il n'aurait plus eu la permission de parler. Il aurait été condamné à une peine de 10 ans de prison. Au procès d'appel, le 9 janvier 2003, la sentence aurait été confirmée. D'après les renseignements reçus, il souffrirait d'une forme de dépression causée principalement par des attitudes de discrimination fondées sur la race et la religion de la part d'autres prisonniers et pour les conditions de santé de sa mère hospitalisée au Nigéria. Le consul de son pays l'aurait assuré de son transfert au Nigéria, mais apparemment les autorités marocaines s'opposent au rapatriement de prisonniers, sauf s'ils obtiennent la grâce royale.

Communications reçues du gouvernement

178. Par lettre datée du 19 décembre 2003, le gouvernement a communiqué les développements ayant marqué la politique marocaine en matière de migration: le décision du Roi Mohammed VI de créer une direction de la migration et du contrôle de frontières ainsi qu'un observatoire de la migration, et les directives royales pour l'élaboration d'une stratégie nationale en matière de migration, dans le cadre du renforcement des capacités institutionnelles du Maroc en ce qui concerne la gestion migratoire, la prévention de la migration clandestine et la lutte contre les réseaux de trafiquants d'êtres humains; les efforts de mise à niveau de la législation marocaine en la matière et de sensibilisation menés au niveau national sur la problématique migratoire, à travers la promulgation de la nouvelle loi n° 02/03 relative à la migration et l'organisation de colloques nationaux sur la question; la prise de conscience des autorités marocaines de la situation des migrants clandestins subsahariens et originaires de l'Afrique de l'Ouest et les efforts qu'elles déploient, malgré le manque de moyens, pour favoriser leur rapatriement dans leurs pays, en coopération avec leurs gouvernements respectifs, comme cela a été le cas avec le Nigéria, avec lequel le Gouvernement marocain avait mené une opération

d'envergure de rapatriement de migrants clandestins à titre volontaire. Concernant la question des mineurs non accompagnés, celle-ci avait fait l'objet de pourparlers avec les autorités espagnoles. Le Maroc souhaitait que le problème des mineurs soit traité dans un cadre global garantissant les intérêts de l'enfant et favorisant son épanouissement et sa réinsertion dans son milieu familial. L'Espagne avait toujours privilégié l'aspect sécuritaire basé sur le refoulement des mineurs. La visite du Ministre de l'intérieur marocain en Espagne avait permis de faire progresser cette question. Ainsi, les deux parties ont finalisé, le 3 décembre 2003 à Rabat, un mémorandum d'entente sur le rapatriement assisté des enfants non accompagnés.

Observations

179. La Rapporteuse spéciale réitère son intérêt à recevoir une réponse du Gouvernement marocain sur ces allégations.

180. La Rapporteuse spéciale remercie le gouvernement pour les informations communiquées. Elle souhaiterait être informée des développements futurs en matière de migration ainsi que du suivi et de la mise en œuvre des recommandations contenues dans ses rapports de visite au Maroc et en Espagne.

Russian Federation/Tajikistan

Communication sent to the Government

181. By letter dated 9 August 2003, the Special Rapporteur notified the Governments of the Russian Federation and Tajikistan that she had received information on the situation of Tajik migrants in the Russian Federation. According to the information received, between 500 and 800 Tajik nationals travelled to Russia in search of employment each year. Reportedly, about 90 per cent of Tajik migrant workers were undocumented and were easy targets for exploitation. They often lived in cramped quarters, including crowded dormitories or disused railway cars. Reportedly, while employers were obliged to pay 4,600 rubles (approximately US$ 145) in fees for each migrant worker in addition to guaranteeing a return ticket, many passed on the fee to the migrants themselves. Employers also reportedly often withheld salaries. Furthermore, it was reported that the average wage for Tajik workers was much lower than that of Russian citizens. Reportedly, Tajik migrants were often victims of violence, either because they had been drawn into criminal activity, or because they had complained against harassment or abuse. It was reported that Tajik workers often worked several shifts, putting their health at risk. Furthermore, those in an irregular situation did not have access to health services. It was reported that the number of Tajik migrants who died in Russia was rising. Reportedly, thousands of Tajik citizens were in prisons in Russia, hundreds of whom died there each year. It was reported that about 1,000 Tajik citizens had been kept in prison for more than six months awaiting a decision on their deportation. According to information received, the steps taken by the Governments of the Russian Federation and of Tajikistan to address this disturbing situation did not decrease the number of irregular migrants.

182. By letter dated 26 November 2003 the Government of the Russian Federation informed the Special Rapporteur that an analysis of official statistical data on foreign labour migration showed that, in the first half of 2003, the number of citizens of Tajikistan who arrived to work in

the Russian Federation and established formal labour relations with employers and contractors in accordance with legislative requirements amounted to 8,320. A significant number of Tajik citizens were working without having obtained the necessary authorization documents.

183. As of 1 September 2003, about 253,500 citizens of the Republic of Tajikistan had entered the Russian Federation. Some employers were hiring workers from Tajikistan under conditions contravening the legislation, and not providing the migrant workers with adequate wages or conditions for their livelihood. The Federal Migration Service of the Ministry of Internal Affairs of the Russian Federation, with assistance from other interested federal government bodies, was doing as much as possible to counteract this practice. Thus, from January to August 2003, the migration subdivisions of the Ministry of Internal Affairs, the Central Internal Affairs Department and the internal affairs departments of the constituent entities of the Russian Federation investigated 118,336 legal and natural persons, examining their observance of the regulations concerning the recruitment of foreign workers. Some 37,000 violations were discovered as a result of these investigations and 14,097 cases were brought before the courts.

184. The Government reported that the fact that the Special Rapporteur's letter did not indicate the sources of the information obtained regarding the number of Tajik citizens who had died as a result of violence, from illness or under other circumstances made it difficult to take concrete measures to verify this information.

185. The immigration card that had been introduced in the Russian Federation was not intended to regulate the inflows of foreign citizens into Russia but only to keep a record of them, and this may not in itself have covered the total number of Tajik migrant workers. In order to regulate the labour activities of Tajik citizens within the Russian Federation and protect their rights as workers, the Ministry of Internal Affairs of the Russian Federation, along with other interested Russian ministries and departments and their Tajik counterparts, had developed a draft agreement between the Government of the Russian Federation and the Government of the Republic of Tajikistan on the labour activities and the protection of the rights of citizens of the Russian Federation within Tajikistan, and of citizens of the Republic of Tajikistan within the Russian Federation. This draft document had now been approved by both Governments and was being prepared for signing.

186. In accordance with an agreement reached with the Labour Ministry of the Republic of Tajikistan, the Federal Migration Service of the Ministry of Internal Affairs of the Russian Federation compiled and every six months sent to its Tajik counterpart a register of Russian employers who used foreign workers, including citizens of the Republic of Tajikistan.

Observations

187. The Special Rapporteur would like to thank the Government of the Russian Federation for its response. While noting with satisfaction that measures are being taken in this direction, the Special Rapporteur would like to encourage the Government, in cooperation with countries of origin of migrants, to continue in its efforts to ensure adequate protection of the human rights of migrants.

Saudi Arabia

Communications sent to the Government

188. On 7 July 2003, the Special Rapporteur, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the independence of judges and lawyers, sent an urgent appeal regarding the case of Sarah Dematera, citizen of the Philippines.

189. Sarah Dematera was sentenced to death by a court judgement issued on 14 November 1993 for bludgeoning to death the wife of her employer, four days after starting her job as a domestic servant in Saudi Arabia. According to the information received, Ms. Dematera reportedly was a witness to the killing and had described the alleged perpetrator as an Arab male, who ordered her to move and cover the body, clean the murder weapon and wipe up the blood. She was said to have always insisted on her innocence.

190. Ms. Dematera's trial took place on 4 October 1993 in Islamic Court No. 39/4 and, reportedly, she was not assisted by a lawyer or an interpreter during the proceedings. She reportedly did not speak Arabic and had a very limited command of English. It was also reported that the Philippines consular officials did not have access to her during the proceedings. The Saudi Ministry for Foreign Affairs reported that the execution had been postponed until the minor children of the deceased reached the age majority when they could decide, along with other heirs, whether to request the execution of the accused. The family of the accused could accept monetary compensation instead of the death penalty. It was also reported that, since 23 May 2003, the relatives of Ms. Dematera had not heard from her.

Communications received from the Government

191. By letter dated 29 October 2003, the Permanent Mission of Saudi Arabia to the United Nations Office at Geneva provided the following information regarding the living and working conditions of Bangladeshi migrant workers in Saudi Arabia (see E/CN.4/2003/85/Add.1, paras. 124-127).

192. The Government stated that the information received by the Special Rapporteur concerning Bangladeshi workers was fundamentally false and inaccurate. In particular, the allegation to the effect that 130 Bangladeshi migrant workers who arrived to Saudi Arabia in February 2001 were living in poor condition was totally unfounded. Furthermore, the assertion that most Bangladeshi workers found that they had no job, money, shelter, food or access to health care once they arrived in the country was untrue, since the relationship between workers and employers was governed by legal provisions regulating workers' rights and employers' obligations regarding their working activity, accommodation, etc. With regard to health care, health insurance for foreign workers was compulsory and an employer could not hire a foreign worker without fulfilling that requirement. The allegation that it was impossible for a foreign worker to leave the place of work without the written authorization of the employer was likewise untrue since workers had the right to unrestricted freedom of movement within the country and if they wished to leave the territory the only requirement was to present a document signed by their employer confirming that they had received all their entitlements.

193. Also, the alleged confiscation of workers' passports by their employers, leaving many workers subject to deportation by the police authorities, was incorrect since, upon arrival in Saudi territory, all foreign workers were issued with residence permits. Consequently, they did not need a passport in order to travel within the country. Moreover, neither an employer nor any other person had the right to confiscate passports. With regard to the treatment of foreigners who were arrested, and in particular the allegation that they could not be released until their employer appeared before the police, was also inaccurate because the procedures for arrest and release from custody were governed by the Code of Criminal Procedure which did not distinguish between citizens and non-nationals and did not make a worker's release conditional on the presence of the employer.

194. The Government also reported that it had taken numerous steps to safeguard the rights of foreign workers and to that end, had established labour tribunals—judicial bodies vested with the sole responsibility for protecting the rights of workers.

195. By letter dated 30 October 2003, the Permanent Mission of Saudi Arabia to the United Nations Office at Geneva provided the following information regarding the case of Sara Dematera.

196. The Permanent Mission reported that the allegation had already been received from Amnesty International and information thereon had been submitted by the Permanent Mission in 1998 within the framework of the 1503 procedure. In light of that information, concerning the grounds on which the judgement was based and the circumstances that might have led to the commutation of Sara Dematera's sentence and her potential release, the Commission on Human Rights at its fifty-fifth session decided to discontinue consideration of that case. The Permanent Mission added that it had on numerous occasions provided Special Rapporteurs with explanations of the procedures for the carrying out of the death penalty, which information should have been deemed sufficient.

Observations

197. The Special Rapporteur thanks the Government of Saudi Arabia for the response provided. The Special Rapporteur learnt with satisfaction about existing legislation to protect the rights of migrant and encourages the Government to continue its efforts to monitor its implementation with a view to ensuring full respect for national and international standards.

Spain

Comunicaciones enviadas al Gobierno

198. El 22 de mayo de 2003, la Relatora Especial transmitió una comunicación conjunta con el Relator Especial sobre la vivienda adecuada en la que se comunicó al Gobierno español que los Relatores Especiales habían recibido información sobre las Casernes de Sant Andreu, instalaciones militares abandonadas que se sitúan en el barrio de Sant Andreu Palomar de la ciudad de Barcelona. Según se informa, las Casernes de Sant Andreu habrían sido ocupadas por más de 400 personas, la mayoría de ellas inmigrantes.

199. En el año 2001 la prensa habría anunciado la compra de parte de los cuarteles por parte del Ayuntamiento de Barcelona para la construcción de equipamientos. La compra habría estado supeditada al previo desalojo del inmueble. El 27 de octubre del 2002 el Ministerio de Defensa habría interpuesto una demanda para que se desalojaran los cuarteles. El plazo habría finalizado el 7 de noviembre del 2002. Sin embargo, se habría certificado que los ocupantes llevaban más de un año residiendo en los cuarteles, por lo que éstos habrían pasado a considerarse como el domicilio de los mismos.

200. En Barcelona, según el censo de 2001, el número de extranjeros empadronados en la ciudad habría sido de 113.809, lo que habría representado más del 7 % de sus habitantes. La integración de esta población habría dependido de aspectos como la vivienda, la estabilidad laboral y los ingresos. La vivienda —junto con trabajo y residencia— habría sido, también, requisito para ejercer el derecho a la reagrupación familiar. El reagrupante, además del permiso renovado de residencia o trabajo, habría necesitado, para ejercer la reagrupación familiar, una vivienda en condiciones de habitabilidad, a su nombre. Sin embargo, según se informó, Cataluña habría carecido de pisos en régimen de alquiler, y el precio medio de compra de una vivienda en Barcelona sería demasiado elevado para los migrantes. Al elevado precio de los pisos habría que sumar las dificultades de los inmigrantes para obtener créditos bancarios debido a la precariedad en el trabajo, a la ausencia de avales —dificultades extensibles en la adquisición de viviendas de protección oficial, al ser requisito, entre otros, de un permiso de residencia permanente. Igualmente, la escasez de pisos en alquiler junto con la creciente demanda habría estado facilitando abusos por parte de los propietarios: precios excesivos, discriminaciones por razón de origen, alquiler de pisos que carecen de las condiciones mínimas de habitabilidad, entre otros.

201. El 15 de octubre de 2003 la Relatora Especial comunicó al Gobierno que, durante su visita a España, recibió información sobre una familia de seis personas compuesta por Yamina Abdel-lah Touami Yamina, de nacionalidad española, su hija Halima Hasnaoui (Embarek Hamed), Marroquí, y sus cuatro hijos, S.M.H., de 17 años; N.M.H., de 13 años; S.M.H., de 7 años; y H.M.H., de 1.5 años. Según las informaciones recibidas, Halima Hasnaoui, nacida en Nador (Marruecos), es hija de Embarek Hamed Al-Lal, de nacionalidad española, y Yamina Abdel-lah Touami. Halima Hasnaoui habría estado empadronada en Melilla junto a su familia desde el año 1975 hasta el año 2001 cuando por orden del Delegado del Gobierno habría sido dada de baja junto a sus cuatro hijos. El mayor de los hijos no se encontraría registrado “como nacido en Melilla” debido a que habría nacido en su domicilio particular en Melilla. Las tres hijas siguientes nacieron en el Hospital Comarcal de la Ciudad y pudieron registrarse.

202. Desde que se divorció de su marido, en 1994, Halima Hasnaoui habría estado tratando sin éxito de regularizar su situación en España. Pasado el tiempo, y tras muchos intentos de regularizar su situación en España sin lograr documento de identidad alguno, Halima Hasnaoui se habría visto obligada a solicitar el pasaporte marroquí.

203. Los hijos tampoco habrían podido regularizarse y correrían el riesgo, llegando a la mayoría de edad, de ser expulsados a un país del cual no conocen ni las costumbres ni el idioma. El hijo mayor habría tenido como formación escolar y profesional desde su nacimiento hasta su inmediata mayoría de edad un curso de “operario de viveros y jardines” de un programa de Garantía Social, y se habría visto obligado a matricularse en el Colegio Hispano-Marroquí de Melilla hasta los 14 años de edad —estudios que no serían reconocidos por el Estado español.

204. N., de 13 años, habría estado escolarizada durante los cursos académicos 1995 a 2001 cursando los estudios de 1º hasta 6º de educación primaria y, sin embargo, durante el curso académico 2002/03, se le habría negado la continuidad de su formación en el Instituto de Educación Secundaria "Reina Victoria Eugenia". A este respecto, la Relatora Especial fue informada que el día 4 de julio de 2001 se habrían pagado las tasas correspondientes a la matrícula solicitando la misma en dicho Instituto. Ante estos hechos, se habrían tomado las siguientes medidas: el día 24 de febrero de 2003, se habría solicitado a la Dirección Provincial del Ministerios de Educación, Cultura y Deportes que se realizaran las gestiones oportunas para la vuelta inmediata al colegio de la niña, aparentemente sin tener respuesta alguna. El día 28 de febrero de 2003, se habría presentado ante la Fiscalía de Menores un escrito en similares términos. El día 22 de abril de 2003, al no tener respuesta, se habría enviado un nuevo escrito a la Dirección Provincial del Ministerios de Educación, Cultura Y Deportes recordando el anterior y solicitando nuevamente la vuelta de N. al colegio. El día 5 de mayo de 2003, se habría informado nuevamente la Fiscalía de Menores sobre la situación de N.

205. Con fecha 4 de junio de 2003 se habría vuelto a solicitar a la Delegación del Gobierno en Melilla el permiso de residencia para todos los miembros de la familia, fundamentando tal petición en los supuestos contemplados en el artículo 31, apartados 3 y 4, de la vigente Ley de Extranjería. Sin embargo, según la información recibida, no se habría recibido respuesta alguna hasta el día de hoy.

Comunicaciones recibidas del Gobierno

206. Por cartas con fechas de 4 y 29 de septiembre de 2003, el Gobierno contestó a la comunicación enviada por la Relatora Especial y el Relator Especial sobre la vivienda adecuada el 22 de mayo de 2003, proporcionando las siguientes informaciones.

207. El Ministerio de la Defensa disponía de unas instalaciones en el Barrio de Sant Andreu de Barcelona, en las que se ubicaban diferentes unidades militares, que, como consecuencia de las medidas de redimensionamiento del Ejército de Tierra, fueron desocupadas en los últimos años del decenio de 1990-2000. A principios del año 2001 se habría detectado un pequeño grupo de ocupantes de dichas instalaciones cuyo número había ido aumentando en el transcurso de los últimos dos años. Los terrenos en que se hallan ubicadas las "Casernes de Sant Andreu" serían destinados a diferentes equipamientos sociales en colaboración con el ayuntamiento de la ciudad y la iniciativa privada. El Ministerio de Defensa estaría llevando a cabo una serie de actuaciones ante los tribunales para obtener el desalojo de las instalaciones.

208. Los ocupantes serían ciudadanos españoles, de Estados miembros de la Unión Europea y extranjeros extracomunitarios. La atención social de estas personas sería competencia de la generalidad de Cataluña que se ejerce a través de la Consejería de Bienestar y Familia y, en el caso de la ciudad de Barcelona, por su ayuntamiento.

209. No obstante, el Instituto de Migraciones y Servicios Sociales (IMSERSO) dependiente del Ministerio de Trabajo y Asuntos Sociales habría firmado el 2 de enero de 2002 una convenio para el desarrollo de actuaciones conjuntas en materia de acogida básica a inmigrantes con el Departamento de Bienestar y Familia de la Generalidad de Cataluña. Dicho convenio habría sido prorrogado por el año 2003. Existía también un segundo convenio de colaboración suscrito el 30 de diciembre de 1998 entre el Ministerio del Trabajo y Asuntos Sociales y el Departamento de

Bienestar Social de la Generalidad de Cataluña para el desarrollo de actuaciones conjuntas en materia de atención a inmigrantes, refugiados, solicitantes de asilo y desplazados. Se estaba preparando también un tercer convenio para acometer las actuaciones de carácter especial de atención a los inmigrantes en el Cuartel de Sant Andreu entre la Generalidad de Cataluña, la Cruz Roja y IMSERSO.

210. El Gobierno también proporcionó documentación de apoyo relativa al marco normativo básico en materia de derecho a la vivienda adecuada vigente en España. En detalle, se añadió el texto del Decreto 157/2002 del 11 de junio por el que se establece el régimen de las viviendas con protección oficial, se determinan las ayudas publicas en materia de vivienda a cargo de la Generalidad de Cataluña y se regula la gestión de las ayudas previstas en el Decreto Real 1/2002 de 11 de enero, sobre medidas de financiación de actuaciones protegidas en materia de vivienda y suelo. Además, el Gobierno proporcionó información sobre la normativa vigente en materia de extranjería. Se añadió el texto de la Ley Orgánica 8/2000 de 22 diciembre que modifica las disposiciones en materia de derechos y libertades de los extranjeros en España y su integración social codificadas en la Ley Orgánica 4/2000 de 11 enero. Esta ley, al artículo 13, establece, *inter alia*, que los extranjeros residentes tienen derecho a acceder al sistema publico de ayudas en materia de vivienda en las mismas condiciones que los Españoles.

211. Finalmente, se proporcionó una nota informativa sobre la legislación y las medidas contra la discriminación en materia de vivienda en España con explicaciones sobre la distribución de competencias entre el Estado, las Comunidades Autónomas y los ayuntamientos en materia de vivienda.

212. Por carta con fecha 17 de diciembre de 2003, el Gobierno proporcionó la siguiente información sobre la situación de 200 familias extranjeras que se encontraban en la ciudad de Melilla, así como sobre el caso de la Sra. Halima Hasnaoui y sus cuatro hijos menores.

213. Respecto a las 200 familias que se encontraban en la ciudad de Melilla sin ningún tipo de documentación, el Gobierno contestó que sería preciso contar con datos más exactos para poder valorar la situación real de las familias a las que la Relatora Especial se refería en su carta de alegaciones. El Gobierno informaba también que en los años 200 y 2001 se había llevado a cabo dos procesos de regularización a lo que pudieron acceder tosas aquellas personas con arraigo en la ciudad de Melilla. Esos dos procesos supusieron la regularización de un elevado número de personas que cumplieran unos requisitos mínimos siempre que, atendiendo a criterios muy flexibles, pudieran ser consideradas como residentes en Melilla.

214. Respecto al caso de la ciudadana marroquí Halima Hasnaoui, se informó que en el año 1982 la Sra. Hasnaoui contrajo matrimonio con el nacional marroquí Mohamed Haddú Abderrahman “Jil”, con el que estableció su residencia en Monte Arruit (Marruecos). Sus padres fijaron su residencia en Melilla, obteniendo documentación por el proceso de regularización del año 1986 y adquiriendo posteriormente la nacionalidad española por residencia. La Sra. Hasnaoui permaneció en Marruecos con su esposo. En su expediente existían diversos escritos de organismos oficiales marroquíes presentados por la interesada en el año 2000, en los que figuraba como residente en Marruecos, en la localidad de Farkhana, fronteriza con Melilla.

215. Existía constancia documental del divorcio de la Sra. Hasnaoui en el año 1994, pero, con posterioridad a esa fecha, figuraban dos hijas habidas por ella y su ex marido, S., nacida en 1996, e H., nacida en el año 2001. En la inscripción registral de los nacimientos, los padres figuraban como casados ante el Registro Civil, con matrimonio por el rito islámico según sus propias declaraciones. El Gobierno destacó que parecía deducirse que existía una ocultación fraudulenta de datos a la Administración, ante la que reiteraba su dependencia de sus padres por encontrarse divorciada, con la finalidad de obtener una documentación que le permitiera posteriormente reagrupar al resto de la familia.

216. El Gobierno también informó que el hecho que sus hijos menores hayan nacido en Melilla no era demostrativo de su residencia en esta Ciudad Autónoma, ya que en el Hospital Comarcal de Melilla, por razones humanitarias, se atendía a cualquier embarazada que se presentara con síntomas de parto, no otorgando el ordenamiento jurídico español ningún tipo de derecho de residencia por haber dado a luz en territorio español. La inscripción en el padrón municipal desde el año 1986 hasta 2001 no era, en una ciudad fronteriza como Melilla, prueba suficiente de residencia, al figurar inscritos en el padrón, en el domicilio de algún familiar, con mucha frecuencia, personas que no eran residentes en Melilla.

217. En relación con las solicitudes de documentación presentadas por la Sra. Hasnaoui, constaban en el expediente: Año 2000 —solicitud de extensión de visado y permiso de residencia inicial, basando su solicitud en residir en Melilla desde el año 1996, carecer de antecedentes penales y tener dos hijos nacidos en Melilla. Le fue denegada por quedar demostrada no ser cierta su residencia desde esa fecha y por no ser argumento suficiente el nacimiento de sus hijos en Melilla por las razones arriba-mencionadas. Año 2001 – solicitud de permiso de residencia y autorización para trabajar, acogiéndose al proceso de “arraigo”, reiterando en esencia los argumentos de la anterior solicitud que se deniega nuevamente al no acreditarse su residencia efectiva y detectarse las contradicciones ya expuestas sobre su estado civil y el nacimiento y registro de su hija S. (de la menos, H. no se hacía referencia). Contra esta resolución, dictada el 25 de octubre de 2001, se interpuso recurso de reposición con fecha 4 de diciembre de 2001, que fue desestimado. Año 2003 – por correo ordinario se recibió con fecha 8 de julio de 2003, un impreso de solicitud de permiso de residencia temporal por circunstancias excepcionales sin ningún otro documento (fotografías, fotocopia del pasaporte, etc.), haciendo constar expresamente la dirección de la Asociación Pro Derechos de la Infancia a efectos de notificación, por lo que con fecha 26 de agosto de 2003 se remitió a dicha dirección requerimiento de documentación complementaria. Al no recibirse respuesta, se remitió el requerimiento mediante envío por correo con acuse de recibo sin que tampoco se recibiera respuesta alguna.

218. Con fecha 16 de octubre de 2003, se dictó resolución archivando el expediente, a tenor de los dispuesto en la Ley 30/1992, de 26 de septiembre, de Régimen Jurídico de la Administraciones Públicas y del Procedimiento Administrativo Común, reformada por la Ley 4/1999, de 13 de enero. Continuaba pendiente de recibirse el acuse de recibo de esta resolución.

219. En relación con los hijos de la Sra. Hasnaoui, se permitió el ingreso en educación primaria de la menor N., condicionando a la acreditación de residencia en la Ciudad Autónoma. Finalizada la enseñanza primaria sin que se acreditara dicha residencia, se consideró más oportuna que la niña continuase sus estudios en su lugar de residencia, bajo la atención y los cuidados de su madre.

Observaciones

220. La Relatora Especial quisiera agradecer el Gobierno de España por la información proporcionada. La Relatora Especial, tomando en cuenta la legislación vigente y en virtud de la información que fue brindada a su atención durante la visita oficial a España, quisiera alentar al Gobierno a seguir monitoreando la situación en las "Casernes de Sant Andreu" y de sus ocupantes, así como en general la situación de la vivienda en Cataluña y en el resto del país y la situación de los menores Marroquíes en la Ciudad de Melilla, al fin de asegurar el respeto pleno de sus derechos humanos. A éste respecto la Relatora Especial quisiera también hacer referencia a las recomendaciones contenidas en su informe sobre la visita a España (E/CN.4/2004/76/Add.2).

Switzerland

Communications adressées au gouvernement

221. Par lettre datée du 9 août 2003, envoyée conjointement avec le Rapporteur spécial sur la question de la torture, la Rapporteuse spéciale a informé le gouvernement qu'elle avait reçu des renseignements sur le cas de Gilbert Kouam Tamo, un Camerounais retenu à l'aéroport de Zurich en attente de sa déportation, qui aurait reçu des coups de pied, de poing et de bâton de la part d'un groupe d'agents de police masqués qui seraient entrés dans sa cellule le 20 avril 2000 à 4 heures du matin. Ces faits se seraient déroulés en présence du directeur du centre de rétention. Plus tard, il aurait eu les mains et les pieds attachés et un casque aurait été serré sur sa tête. Ainsi immobilisé, il aurait reçu des coups de poing au visage. Il aurait ensuite été attaché à une chaise roulante et amené à un avion, où il aurait été attaché avec plusieurs ceintures dans un des sièges. Il aurait également reçu des coups de poing dans l'avion. Avant le décollage, on aurait essayé de lui injecter un calmant. Durant le vol, il aurait été privé d'eau et de nourriture. Un examen médical dans un hôpital camerounais aurait confirmé le 22 avril 2000 qu'il présentait plusieurs blessures au corps et au visage. Il aurait porté plainte en novembre 2000. Gilbert Kouam Tamo aurait par la suite reconnu avoir montré de la résistance envers les agents de police, mais, selon lui, parce qu'il craignait pour sa vie.

Communications reçues du gouvernement

222. Par lettre datée du 25 novembre 2003, le gouvernement a envoyé les informations suivantes concernant le cas de M. Gilbert Kouam Tamo.

223. Le faits relatés par les Rapporteurs spéciaux correspondraient seulement partiellement à la réalité. L'affirmation selon laquelle M. Gilbert Kouam Tamo aurait reçu des coups de pied, de poing et de bâton de la part des agents de police impliqués dans le renvoi, dans sa cellule, au poste de police et dans l'avion, serait inexacte. Comme il aurait opposé une vive résistance à son renvoi, il aurait été indispensable de recourir à certaines mesures de contrainte qui n'auraient jamais dérogé au principe de proportionnalité. Les agents de police impliqués dans cette opération auraient aussi contesté l'affirmation de M. Gilbert Kouam Tamo selon laquelle ils auraient essayé de lui injecter un calmant. L'assertion selon laquelle il aurait été privé de nourriture serait aussi totalement erronée; après avoir refusé de s'alimenter, il aurait finalement accepté la nourriture et les boissons qui lui auraient été proposées.

224. Dans le cadre de la procédure pénale initiée par le représentant légal de M. Kouam Tamo, tous les fonctionnaires de police impliqués dans l'opération auraient été entendus au sujet des faits litigieux par les autorités d'instruction compétentes soit en tant qu'inculpés soit en tant que personnes appelées à fournir des renseignements ou témoins. À l'exception du chef de service du centre de détention de l'aéroport, toutes les personnes inculpées seraient des membres de la police cantonale de Zurich dont l'identité serait connue des autorités en charge de l'enquête.

225. Le 5 décembre 2000, une plainte contre plusieurs inconnus ainsi que contre le chef de service du centre de détention de l'aéroport a été déposée devant le ministère public du canton de Zurich au nom et sur demande de Gilbert Kouam Tamo, pour lésions corporelles simples, omission de prêter secours et abus d'autorité. L'enquête pénale aurait été confiée au ministère public régional du canton de Zurich qui l'aurait suspendue par décision du 3 février 2003. Le recours contre la décision de suspension aurait été rejeté le 12 septembre 2003 par le juge chargé des affaires pénales du district de Bülach et l'entrée en force de la décision n'aurait toujours pas été fixée. Aucune éventuelle sanction ni mesure disciplinaire n'aurait été ordonnée dans l'attente de la décision passée en force dans le cadre de la procédure pénale. S'agissant de la plainte pour abus d'autorité, les autorités en charge de l'enquête pénale seraient parvenues à la conclusion que les fonctionnaires de police inculpés n'auraient agi ni dans le but d'obtenir un profit indu ni dans celui d'entraîner un préjudice contraire au droit. En outre, ils n'auraient pas fait recours à des moyens abusifs ou disproportionnés. S'agissant de la plainte pour lésions corporelles, les autorités auraient donné gain de cause aux inculpés invoquant la cause de justification liée à l'obligation de fonction. Quant à la plainte pour omission de secours, les autorités en charge de l'enquête seraient parties du fait que les blessures infligées par les agents n'allaient pas au-delà de contusions et d'éraflures et elles n'auraient pas jugé indispensable de fournir une assistance médicale et auraient estimé que les éléments permettant de conclure à la punissabilité des agents n'auraient été pas suffisants.

226. Gilbert Kouam Tamo aurait remis à l'Office fédéral des réfugiés un certificat médico-légal daté du 22 avril 2002 où le médecin camerounais aurait indiqué que M. Tamo présentait au moment de l'établissement dudit document de nombreux hématomes et plaies aux membres, au visage, à la poitrine et à l'abdomen. Le certificat médical n'aurait pas été établi au moment de l'arrivée de M. Toma dans son pays et, d'après les déclarations qu'il aurait faites aux autorités chargées de l'enquête pénale, il n'aurait pas été conduit immédiatement à l'hôpital mais aurait passé une nuit en prison.

227. L'Office fédéral des réfugiés aurait ensuite précisé que le Gouvernement du canton de Zurich a déjà dû se prononcer à plusieurs reprises sur les méthodes de rapatriement employées dans le cas de personnes récalcitrantes et violentes et dans ses avis il aurait toujours indiqué que l'exécution de ces rapatriements constitue une mission extrêmement difficile et délicate tout en précisant que l'ensemble des mesures de contrainte mises en œuvre devrait être en accord avec le principe de proportionnalité et que la protection des intéressés constituerait la priorité absolue. Ces mêmes principes auraient présidé à l'opération de rapatriement de Gilbert Kouam Tamo. La jurisprudence y afférente ainsi que les directives relatives aux rapatriements sous contrainte par voie aérienne ont été mises à disposition des Rapporteurs spéciaux.

Observations

228. La Rapporteuse spéciale remercie le Gouvernement suisse pour sa réponse prompte et détaillée.

Thailand

Communications sent to the Government

229. On 4 July 2003, the Special Rapporteur sent an urgent appeal regarding the situation of 420 workers from Myanmar. According to the information received, on 18 June 2003, 420 workers from Myanmar employed at the King Body Concept Co. factory, all legally registered under the Thai Ministry of Labour scheme, posted a statement on the notice board of the factory signed by all of them demanding: higher wages; to be allowed to keep their original work permits; to be allowed to elect a workers' representative; and improvement of their working environment. In the absence of a response from the employer, the workers reportedly sent a formal letter of complaint to the Tak Labour Protection and Welfare Office on 20 June 2003. The same day, the factory managers reportedly told the workers that there was no work for them that day and that the next two days would be a holiday, even though they usually worked on Saturdays and Sundays. On 23 June 2003, a labour official held a meeting with the factory owner and 10 representatives of the workers. The factory owner claimed that he wanted to dismiss the workers from Myanmar because they did not report to work for three days; the workers reportedly requested the payment of two months' compensation, in accordance with the Thai legislation. The factory owner allegedly paid the workers only their last month's salary. It was reported that, on the same day, the workers were then sent to the immigration detention centre and deported to Myanmar, in violation of a Thai law providing that registered workers have seven days to find a new job before they loose their registration and might be subject to deportation.

230. By letter dated 18 September 2003, the Special Rapporteur, jointly with the Special Rapporteur on torture and the Special Rapporteur on violence against women, informed the Government that she had received information on the case of Sandar Hlaing, a 25-year-old female migrant worker from Myanmar who was allegedly raped and killed by three men in Mae Sot, on the Thai border with Myanmar. One of the three perpetrators was reportedly identified as a factory security guard, a Thai national. However, it was alleged that no serious action had yet been taken by the police.

231. Sandar Hlaing had reportedly worked at the Ki Found knitting factory in Mae Sot for more than four years. On 31 August 2003, at 8 p.m., she went to get curry for dinner as usual. It was reported that the factory's 40-year-old security guard offered her a lift on his motorbike. According to information received, she refused at first but later accepted after he continued to pester her. According to three witnesses from the same factory, two more men on another motorbike left with them, but only the security guard was identified. After that, Sandar Hlaing reportedly disappeared.

232. It was reported that on the morning of 1 September 2003, the dead body of Sandar Hlaing was found along the Mae Sot-Phop Phra highway. Her body was taken to the Mae Sot hospital and the autopsy revealed that Sandar Hlaing had been assaulted, raped and stabbed to death.

According to information received, after hearing about the murder on the morning of 2 September 2003, about 1,000 Myanmar workers from the Ki Found knitting factory went on strike and attacked the security guard, reportedly because they didn't trust the police to investigate the case fairly and bring him to justice. The security guard was reportedly rescued by the manager and handed over to the police for questioning. He reportedly claimed to be innocent. It was reported that he was still being held at the police station. Although the district police chief told the workers that the police would investigate the case thoroughly, other reports suggested that this was not the case. Furthermore, there were allegedly indications that persons involved in the case were taking steps to cover it up. It was reported that the body of the victim was quickly cremated on the evening of 4 September 2003 despite attempts by NGOs to intervene. It was alleged that the factory management obstructed the NGOs' access to the victim's family, reportedly because of their efforts to have the body sent for a more thorough autopsy by forensic science specialists. Reportedly, at least one witness was said to have been threatened: it was reported that one of the three witnesses was taken away by other factory security guards for five hours on the night of 2 September, and he reportedly stopped speaking to other workers after he returned.

233. According to information received, in late May 2003, there was a similar incident in which six workers from Myanmar were killed in Mae Sot, but the only person charged with murder, a Thai national, was reportedly released on bail. It was alleged that there were other cases of migrants from Myanmar being raped and murdered in this region, without consequences for the perpetrators.

234. By letter dated 13 October 2003, the Special Rapporteur informed the Government that she had received information relating to the situation of 75 legal workers from Myanmar (64 females and 11 males) employed at the Siriwat Garments factory, Mae Sot.

235. According to the information received, they worked under severe conditions and without rest, from 19 to 21 September 2003. Allegedly, the workers were living in the factory dormitory in poor living conditions and their working environment did not meet health and security standards. In addition, they were allegedly not in possession of the original copies of their work permits, which were kept by their employer, thus preventing them from accessing health treatments provided under the government health care system.

236. It was reported that since 1 September 2003, the workers have had to work very long hours (from 8 a.m. to 5 p.m. and then again from 6 p.m. to 12 p.m., or 2 a.m. the next morning) without adequate remuneration: allegedly, they received only about 90-100 baht per day for an average of 15 hours of work. In addition, it was reported that each month the employer deducted 100 baht for accommodation and 400 baht for work permit fees, for a monthly salary of around 1,400-1,500 baht, extra working hours work included.

237. Allegedly, on 21 September, after the Myanmar workers refused to take on more extra working hours, the owner did not allow them to stay at the factory dormitory and the next day held a meeting with the manager and the workers during which he informed them, in the presence of two local policemen, that they would be dismissed unless they agreed to work extra hours. According to the information received, the same day, two officials of the Labour Protection Welfare Office in Tak, a representative of the Working Committee of the Ministry of Labour and members of some NGOs visited the factory. During the visit the workers presented

their claims and requests. The owner of the factory was not on the premises during the visit but he was convoked to a meeting at the Labour Protection Welfare Office on 24 September. Reportedly, both the workers and the manager of the factory were interviewed. It was reported that on 22 September the factory manager fired all the workers and paid them only their last month's salary of 1,500 baht. The workers refused to accept the money, claiming that they were awaiting a decision from the Labour Protection Welfare Office.

238. Reportedly, after some negotiations, the owner agreed to provide an extension of the contract but only for half of the workers. The others were fired and paid 2,500 baht for the last month's salary, with no compensation for their dismissal. Reportedly, all the Myanmar workers' work permits expired on 25 September and they were in the process of extending them. It was reported that their dismissal could result in a refusal to extend the work permits and in the workers being repatriation to Myanmar.

239. By letter dated 15 October 2003, The Special Rapporteur informed the Government that she had received information relating to the possible closure of Dr. Cynthia Maung's Mae Tao Clinic in the Mae Sot district of Tak province. Allegedly, officers from the Mae Sot District Office and the Immigration Department, accompanied by police officers, inspected the clinic and threatened to close it and to arrest, imprison or deport of Dr. Maung and her team.

240. By letter dated 20 November 2003, the Special Rapporteur informed the Government that she had received information concerning the case of Aye Min, Min Hein, Thein Naing, Ah Nge Lay, Maung Maung, Ah Nyar Thar and on the general situation of migrant workers from Myanmar.

241. According to the information received, on 14 May 2003, Thai men stopped a group of migrant workers as they were walking through fields near the Uni Ocean factory in the subdistrict of Mae Pa, Mae Sot district, Tak province, and attempted to extort money from them. One of the workers, Aye Min (22 years old), was reportedly taken by one of the Thai men to a nearby factory to extort 300 baht from workers there. It was reported that two of the remaining migrants were released, while the others were taken to the office of the Governor of Mae Sot where they were detained for several days and then released unharmed. Allegedly, these individuals were arrested because they did not pay bribes to the Thai men. In the meantime, the Thai men sent another migrant worker, accompanied by a Thai man, to the same factory compound. Migrant workers at the compound chased the Thai man away, believing him to be a drug trafficker. The migrants eventually caught with the Thai man and a fight ensued. Some of the original group of Thai men appeared and fired shots in the air, at which point some of the migrant workers fled. However, six of them—Aye Min, Min Hein (28 years old), Thein Naing (33 years old), Ah Nge Lay (19 years old), Maung Maung (24) and Ah Nyar Thar (22)—were seized by the Thai men, reportedly taken to the house of the village headman in Ban Song Khwe and beaten up. The six men were allegedly taken away the same day in a pickup truck by men dressed in uniforms. On 23 May, their bodies were discovered in a forest near Huay Kalok village, Mae Sot district. The bodies had been burned, and pistol cartridges were found at the scene. Reportedly, relatives of the victims filed a complaint with the National Human Rights Commission and the Law Society of Thailand, both of which sent representatives to Mae Sot. The Myanmar authorities also reportedly requested the Thai authorities to conduct an investigation, which was initiated by Region 6 of the Royal Thai Police. In the meantime, relatives of the victims and eyewitnesses to the beatings and abduction of the six men went into

hiding for fear of reprisals, and were reportedly under police protection. On 31 May, the police arrested a local *kamnan*, or head of the subdistrict, and charged him with the murder of the six migrant workers. Police officials reported that the evidence indicated that the *kamnan* had ordered members of a village security team to kill the workers. The Tak Province police chief reportedly instructed local authorities to deny him bail; but on 2 June, he was granted bail after villagers allegedly petitioned for his temporary release.

242. It was reported that the case was pending in the Thai courts. The wife of one of the victims, the only family member in Thailand, was reportedly willing to give power of attorney to the Law Society of Thailand. However, the court reportedly did not permit a Thai Law Society lawyer to represent the victim's wife because she did not possess a marriage certificate. As no legal counsel was permitted to represent the plaintiffs, only the public prosecutor formally initiated the case. Other witnesses for the plaintiffs had reportedly already been sent back to Myanmar. On 4-5 November 2003, witnesses' statements claiming extortion were examined.

243. The Special Rapporteur also received information regarding other incidents involving workers from Myanmar, whose identities were not disclosed. One of them was allegedly beaten to death on 13 April 2003 by Thai men in the presence of members of the *lehwah* at the football field near the Bangkok bus station in Mae Sot. Reportedly, there was no official investigation of the case. The other case brought to the attention of the Special Rapporteur related to a migrant of Myanmar origin arrested and detained at the Sa-O village checkpoint in Phop Phra township for working illegally. Reportedly, the police put him in a cage at the checkpoint that was used to keep dogs. The man managed to get out of the cage and tried to run away. The police chased, caught up with and surrounded him. As the migrant turned to walk back towards the police, a policeman allegedly shot him in the chest.

Communications received from the Government

244. By letter dated 16 December 2003, the Government of Thailand transmitted the following preliminary information relating to the possible closure of Dr. Cynthia Maung's Mae Tao Clinic in Mae Sot district, Tak province and the arrest, imprisonment or deportation of Dr. Maung and her staff.

245. The Government reported that in addressing the growing problems of undocumented migrant workers from neighbouring countries who had entered the country illegally, the Royal Thai Government had always adopted a policy that took into account humanitarian considerations as well as respect for human rights. The registration programme in September-October 2001 and the re-registration programme in February-March 2002 were special measures intended to help guarantee a better management of migrant workers in Thailand by granting work permits to all illegal workers, with or without employers, who registered with the Ministry of Labour and Social Welfare. In 2003, the Ministry extended the special registration programme for another year and requested all illegal workers wishing to work in Thailand to re-register by September 2003. Dr. Cynthia Maung and 30-40 members of her staff who were of Karen origin had also applied for re-registration with the Labour Office in Tak province. However, under the new programme, only workers with employers could be registered, which posed some difficulties for many of the staff at Dr. Maung's clinic as Dr. Maung could not be considered an employer, and the type of work carried out at the clinic was not included in the professions permitted under the relevant Thai regulations. Furthermore,

some of her staff were also displaced persons fleeing fighting in their country who, under the Thai law and for national security reasons, could only reside in assigned temporary shelters and were not permitted to work outside these shelters as it would have been be difficult for the Thai authorities to control their movements.

246. An official of the Tak Provincial Employment Office, accompanied by a BBC news reporter who was also acting as interpreter, went to visit Dr. Maung at her clinic to explain the new labour registration restrictions. Nevertheless, the Thai authorities concerned recognized the contribution of the humanitarian work done by Dr. Maung, who had also worked in close cooperation with the local health care authorities. During the meeting, the official did not threaten to close the clinic or repatriate Dr. Maung and her staff. He merely raised his concerns about the dilemma faced by the Thai authorities in addressing this delicate situation without, on the one hand, being criticized by other employers and illegal workers as being unfair and, on the other hand, causing any repercussions to the humanitarian work undertaken by Dr. Maung and her staff.

247. On 4 November 2003, the National Security Council organized an inter-agency meeting to consider the case of Dr. Maung. The meeting was informed that the Tak Provincial Employment Office had already issued work permits to those clinic staff who did not pose any problems and was considering the requests of the rest of the staff with problematic status. Under the existing Thai laws and regulations, the Thai authorities concerned were not allowed to issue work permits to displaced persons, but could permit those persons who resided in temporary shelters to register for continued volunteer work with Dr. Maung. The National Security Council has liaised with the Department of Immigration and requested the latter to give favourable consideration, within the scope of the Thai law, to the said group of persons who are not engaged in political activities and whose work makes an important contribution to health care and medical services for migrant workers, thereby also relieving some of the burden on the Thai local health care authorities.

248. The Royal Thai Government reaffirmed that it had never been the policy of the Thai Government to limit or put an end to the work of Dr. Maung. As for the status of the staff working for the clinic, the Thai authorities concerned were in the process of determining the most appropriate measures permitted within the scope of the existing Thai law. Dr. Maung herself was also fully aware of the policy. The Government attached a transcript of a press interview in which Dr. Maung stated that she was not worried because the Thai Health Department recognized her work and its effectiveness, and therefore she believed that the Thai authorities would give serious consideration to the situation.

249. By letter dated 7 January, the Government provided information concerning the allegations transmitted by the Special Rapporteur by letter dated 20 November 2003, relating to the situation of migrant workers from Myanmar in Thailand.

250. The Government reported that the case of the Uni Ocean factory was being taken up by the judicial process, while the information relating to other allegations was not sufficient for the Government to initiate investigations. The Thai authorities concerned, upon being informed of the incident, promptly initiated a thorough investigation into the case, with the objective of bringing the perpetrators to justice. At the time of the letter, six suspects involved in the incident had been arrested and the Mae Sot district police had submitted the file of the case to the public

prosecutor, who subsequently brought the six suspects before the Criminal Court in accordance with due process under Thai law. The court was proceeding with the hearing of the case. As it was alleged that the six men were taken away in a pickup truck by men dressed in uniforms, the police had investigated whether any police or military officer in the area was involved in the case. The outcome of the investigation indicated that no police or military officer was involved in the incident. It was also indicated that, despite the fact that there was no plaintiff representing the victims, the case was being pursued under the Criminal Code by the public prosecutor.

251. With regard to the allegations transmitted by letter of 18 September 2003 concerning the rape and murder of Sandar Hlaing, the Ministry for Foreign Affaire of Thailand was in the process of acquiring information from the authorities concerned and would supply the information to the Special Rapporteur once it was available.

252. Regarding the allegations contained in the communication dated 13 October 2003 concerning the King Body Concept Co. factory and the Siriwat Garments factory, the Government provided the following information. The King Body Concept Co. factory was engaged in the ready-made garments business. On 18 June 2003, the Myanmar migrant workers did not report to work, claiming that the electric water pump was out of order. When the employer had it fixed, the workers still did not return to work and requested the employer (in the Myanmar language) to comply with the Labour Protection Act by adjusting their wages by not less than 133 baht. On 20 June 2003, the labour officials of the Office of Labour Protection and Welfare of Tak province went to inspect the factory and did not find that the Myanmar migrant workers staging any kind of protest. The representative of the employer reported that the employer had not followed the proper practice with respect to setting the traditional holidays and annual leave days and calculating overtime wages, and had paid the Myanmar migrant workers less than minimum wages. As a result, the labour protection officials issued order No. 3/2546 dated 20 June 2003, requiring the King Body Concept Co. factory to correct the situation of the Myanmar migrant workers within 20 days on the following matters: setting no fewer than 13 days annual holidays; setting no fewer than 6 annual leave days; calculating overtime wages at no less than 1½ times the hourly rate per day, based on the number of working hours; paying wages of not less 133 baht per day, which was the official rate of Tak province.

253. On 23 June 2003, labour protection officials participated in the negotiations in which the Myanmar migrant workers requested to receive their wages for the period 1-17 June 2003 and their work permits back from the employer. Initially, the migrant workers were not willing to accept wages lower than the minimum wage of 133 baht, but later did agree with the employer on a rate. The labour officials informed the Myanmar migrant workers of their right to file complaints with regard to the minimum wage and overtime wage, in accordance with article 123 of the Labour Protection Act of B.E. 2541 (1998). However, the Myanmar migrant workers did not wish to proceed with the complaints. Accordingly, the King Body Concept Co. factory reported that it had legally applied for the work permits for 359 Myanmar migrant workers. On 18 June 2003, all the Myanmar migrant workers stopped working to demand a raise. The three-day stoppage resulted in damage to the employer's business. The King Body Concept Co. factory then decided to cancel the employment of all the Myanmar migrant workers. The Myanmar migrant workers then asked to go back to their place of origin. On 23 June 2003, the employer informed the Office of Employment, Tak province, of the cancellation of the employment. All the Myanmar migrant workers were subsequently taken to the Tak immigration police for deportation.

254. On July 2003, the Ministry of Labour issued order No° 141/2546 appointing advisers and a working group to solve the issues of the violation of migrant workers' rights. At the first meeting, on 31 July 2003, the group requested the Department of Labour Protection and Welfare to establish a working group to set the guidelines for the protection of migrant workers. The Department issued order No° 979/2546 dated 15 August 2546, establishing the working group. At the meeting on 22 August 2003, the group discussed the minimum wage, overtime wage, holiday wage, and the working environment.

255. On 30 July 2003, labour protection officials followed up the implementation of an order no. 3/2546 dated 20 June 2003 and found that: the employer of King Body Concept Co. Factory had set Monday to Saturday as working days, with 08.00-17.00 hrs as working hours with 12.00-13.00 hrs. break. The weekly holiday is Sunday. The overtime work period lasted from 18.00-21.00 hrs. The overtime wages were paid at the rate of 1.5 of the hour rate. The annual traditional holidays were 13 days. The annual leave days were 6 working days.

256. The employer did follow the order of the labour protection officials in all aspects. As regards the payment of minimum wages to 359 Myanmar migrant workers, who had been repatriated to Myanmar on 23 June 2003, the employer reported that no Myanmar migrant workers had ever claimed the unpaid wages and that he was unable to contact them. The said group of workers had not filed a complaint to the labour protection officials either.

257. On 2 September 2003, Offices of the Labour Protection and Welfare in Tak, and Khon Kaen and Labour Protection Welfare Area 7 (Bung Goom) reported that on 1 September 2003, the Managing Director of King Body Concept Co. Factory laid off a total number of 791 employees in 4 branch offices. The employer set the date for the negotiation on unpaid wages and compensation for the employees on 15 September 2003.

258. On 15 September 2003, the employerdid not pay compensation to the employees as agreed. The employees then filed a complaint to the labour officials of the Offices of the Labour Protection and Welfare in Tak, and Khon Kaen and Labour Protection Welfare Area 7 (Bung Goom). The above authorities were still in the process of gathering relevant information to submit the case to the prosecutor.

259. With regard to the Legal Myanmar Workers at Siriwat Garments Factory, Mae Sot, Tak Province the Government informed that the migrant workers received the wage of 50-70 baht per day with free accommodation. Three rice meals a day were provided on charge 20 baht per person per day. the Factory's working days were 6 days a week from Monday to Saturday from 08.00-17.00 hrs. The Factory's working schedules from 17 to 21 September 2003 were as normal, i.e. from 08.00 to 17.00 hrs./break from 12.00 to 13.00 hrs. On 17-18 September, however, it was stated that the employer had required the employees to work overtime from 18.00-22.00 hrs. On 19 September, the overtime work lasted from 18.00 until 08.00 hrs. of the following day. The employer had set two breaks for the said overtime period, which were 23.00-24.00 hrs. and 07.00-08.00 hrs. of the following day.

260. On 20 September, the employer then had the employees work at the normal schedule from 08.00 to 12.00 hrs. and let them take the rest of the afternoon off. On 21 September, there was no work since it was a weekly holiday. A representative of the employer reported to the labour officials from the Office of Labour Protection and Welfare, Tak Province that, in

subjecting the employees to work overtime from 17-21 September 2003, the employer had previously requested the cooperation from the employees, who agreed to do so. But, she did admit that the overtime wages given by the employer was 5 baht per person.

261. On 22 September 2003, labour protection officials went to inspect the Factory and met with a representative of the employer who informed the officials that the manager had delegated to her the authority of running Siriwat Garments Factory. On 25 September 2003, labour protection officials visited the Factory again and were told that the employer had applied for the extension of the work permits of 73 Myanmar migrant workers and proposed that the migrant workers shared half of the extension fees. After the extension of permits, 65 Myanmar migrant workers returned to work (7 males 58 females), and 8 resigned.

262. On 29 September 2003, labour protection officials were able to investigate the manager who admitted that some of the practices at the Factory were still inconsistent with the Labour Protection Act of B.E. 2541(1998), especially with respect to minimum wages, overtime wages, holidays wages, non-registration of employees, non-registration of payments of salary, etc.

263. On 8 October 2003, labor protection officials issued the order no. 29/2546 dated 8 October 2003, requiring the employer to comply with the Labour Protection Act of B.E. 2541 (1998) within 15 days from the date of receipt of orders on the following matters: The employer must inform the employees of the traditional holidays one year in advance; the number of holidays shall be no less than 13 days, including Labour Day; the employer must pay the overtime wages at the rate not less than one and half of the normal wage per hour, calculated on the number of work hours; the employer must pay holidays wages to the employees, who are not entitled to receive holidays wages, no less than double of the rate per hour, calculated on the number of work hours; the employer must pay the employees no less than the minimum wage of 133 baht per day, which was a normal rate for the local workers in Tak province; the employer must set out rules and regulations on employment; the employer must create the registration of employees; the employer must create the registration of payments, overtime wages, and holidays wages.

264. On 5 November 2003, labour protection officials followed up on the order no. 29/2546 and examined documents regarding the payment of wages in September 2003 and holidays wages from 19-20 September, which the manager had presented to them. The documents proved to be correct.

265. On 21 November 2003, labour protection officials went to the factory and investigated 3 representatives of the Myanmar migrant workers. They informed the officials that: the employer had set the working days from Monday to Saturday from 08.00-17.00 hrs. with a break from 12.00-13.00 hrs. Since 22 September 2003, no overtime work had ever been required; the employer did adjust the wages for the Myanmar migrant workers to the rate not less than 133 baht; the employer set the traditional holidays for the employees no less than 13 days a year; the employer arranged accommodation for the Myanmar migrant workers, with due respect to health concerns and with sufficient air ventilation; the employer provided necessary safety equipment such as dust covers for the Myanmar migrant workers while at work. However, most of the workers were declined to use them, claiming that they made it difficult to breathe. The officials concluded that the general working environment at the Factory was appropriate. The

representatives of the employees stated that they no longer wished for the labour protection officials to proceed with the complaint dated 22 September 2003, as the employer and the employees had reached a good understanding and were able to work happily together.

266. Thailand faced a tremendous influx of Myanmar migrant workers. The Department of Labour Protection and Welfare, Ministry of Labour, had circulated instruction to every provincial Offices of Labour Protection and Welfare, where the employment of migrant workers existed, stressing that the protection of migrant workers should be as equal as that of Thai workers and that the employer of migrant workers should strictly abide by the Labour Protection Act of B.E. 2541 (1998).

Observations

267. The Special Rapporteur would like to thank the Government of Thailand for the prompt and detailed response provided and for the cooperation extended to the mandate. She would appreciate being kept informed on future developments on ongoing investigations.

United Arab Emirates

Communications sent to the Government

268. By letter dated 9 August 2003, the Special Rapporteur informed the Government that she had received information concerning the case of Alisher Muradov, a citizen from Tajikistan, who died in the United Arab Emirates in 2000. Mr. Muradov arrived in the United Arab Emirates on 24 April 2000, found a job and obtained a visa permit for a year. Reportedly, his body was repatriated on 30 August 2000. The death certificate provided to the mother said that he had died of natural causes.

269. Reportedly, the mother of Mr. Muradov requested the City Attorney of Dushanbe to issue an order to exhume the body and conduct medical expertise. Since her son was in general good health conditions and he had complained about discrimination at the work-place, she was concerned that he might have been killed. The results of the expertise showed that the death of Alister Murodov was caused by multiple breaks in his liver and spleen, complicated by haemorrhage. The medical expertise did not reveal any illness which could cause death. No narcotic drugs were discovered in the inner organs of the body. Based on the medical expertise, the Attorney General of the Republic of Tajikistan initiated a criminal case on the killing of Alisher Murodov. Reportedly, in June 2001, the Ministry of Foreign Affairs of the Republic of Tajikistan by note verbale addressed to the Embassy of the United Arab Emirates in Moscow, requested the authorities to investigate the case. It was reported that the Government of the United Arab Emirates, in a note to the Ministry of Foreign Affairs of the Republic of Tajikistan, replied that the Department of Health had certified that Mr. Murodov had died of natural causes. A new note verbal was sent, requesting a joint medical expertise on the body of Alisher Muradov by experts of the two countries. In spite of some reminders, it was reported that no response had been received to this request.

270. By letter dated 10 November 2003, the Special Rapporteur informed the Government that she had received information concerning the case of Jovilyn Calanse, a 28 years old woman from Philippines, regularly working in the United Arab Emirates, who was allegedly raped on

17 May 2003 by an EAU citizen in the area of Sharjah. The alleged perpetrator reportedly abducted Jovilyn Calanse and a friend while they were waiting for a cab. He reportedly obliged them to get on his car and drove towards the desert. Jovilyn Calanse was reportedly able to jump out of the car and called the police with her mobile phone. When the police patrol arrived, they found Jovilyn Calanse unconscious and undressed. The officers were also able to catch the perpetrator. Jovilyn Calanse was hospitalized for 10 days and she filed a complaint to a Court. Reportedly, prior to her court hearing, Jovilyn Calanse contacted the Philippine Embassy and she received a visit by the consul, the labour attaché and a social worker. She was advised by the consul to seek the help of a lawyer. Reportedly, during the court hearing, her lawyer did not appear in court. Also, it was reported that she was not assisted by a translator. Reportedly, Jovilyn Calanse did not understand the hearing's proceedings because it was conducted in Arabic and she allegedly admitted to untrue accusations. Two cases were filed against Jovilyn Calanse and she was reportedly imprisoned on 26 May. On 27 July she was reportedly sentenced to two months imprisonment followed by deportation by the Dubai Misdemeanour Court for intoxication and adultery.

Communications received from the Government

271. By letter dated 17 November 2003, the Government provided the following information concerning the case of Alisher Murodov.

272. The competent authorities in the State of the United Arab Emirates informed that Mr. Murodov's death was due to natural causes. This matter was discussed with the Government of Mr. Murodov's country almost one year ago and neither the hospital tests nor the forensic doctor gave any indication that there had been foul play or that foul play was suspected. Accordingly, Mr. Murodov's family asked for the body of the deceased to be released and sent back to his country. Since, in order to do this, it was necessary to embalm and cleanse the intestines, the hospital undertook to perform this procedure, which consists of severing the femoral artery, measuring 5 centimetres in length, and inserting into the abdominal cavity a thick, 40-centimetre-long, metal tube that is attached to a powerful suction device. The tubes are then revolved in different directions to empty the abdominal cavity and intestines of their contents. This process causes tearing to all the organs in the abdominal cavity, including the liver, spleen and kidneys. The competent authorities concluded that there were no signs of external injuries on the body of the deceased. This would have been confirmed by the medical examination report issued by the Rashid Hospital and by the police officers and emergency staff who were at the scene when the death occurred. The body of the deceased was exhumed in his native country pursuant to an autopsy request (dated 29 January 2001). The autopsy that was performed in Tajikistan was done five months after the death, at a conservative estimate. The Tajik forensic doctor who examined the body did not mention the presence of any external injuries. Neither did he mention the fact that the body had been embalmed. In the government's view, the internal injuries described by the Tajik forensic doctor occurred after the death and were the result of the embalming procedure.

273. The relatives of the deceased took delivery of the body and did not make any mention, at the time, of suspicion of foul play or that Mr. Morodov's death had been due to anything other than natural causes. His body was buried and it was only five months later that the issue of

suspected foul play was raised. In the Government's view, there is no evidence to suggest that Mr. Morodov's death was the result of foul play. Had it been otherwise, it would have been necessary under the laws in force to launch an immediate criminal investigation.

Observations

274. The Special Rapporteur would like to thank the Government of the United Arab Emirates for the response provided and reiterate her interest in receiving information concerning the case of Jovilyn Calanse.

United States of America

Communications sent to the Government

275. By letter dated 20 May 2003, the Special Rapporteur informed the Government that she had received information relating to the case of Mr. Arafi Mohamed, who was born in Western Sahara on 4 October 1970 and moved to the United States in 1985. His visa expired in 1987 and he overstayed irregularly in the country until 2001 when he was detained by the Immigration Service. On 2 December 2001, a Judge ordered his deportation to Western Sahara; however the Government of Morocco refused to allow the deportation on the grounds that he was not a Moroccan citizen. He reportedly applied for Habeas Corpus with the Federal Court. Reportedly, the Court ruled that he should remain in detention while arrangements were made for his deportation to a third country. Since then, Mr. Arafi had remained detained in the Bradenton Detention facility in Florida awaiting a decision on his case.

276. By letter dated 2 September 2003, the Special Rapporteur expressed her concern to the Government at the high number of unaccompanied children detained and at the length of some of these detentions, as well as at the condition in which minors were at times reportedly detained. Reportedly, claims for relief during removal proceedings were difficult to present especially for the lack of access to legal representation and other forms of assistance in detention. Often children were reportedly not informed about the forms of relief available and about their rights upon arrest. Lists of pro-bono lawyers were reportedly not provided to the children, and even when they were, it was reportedly difficult for them to access lawyers without some support, especially when they did not speak the language.

277. Allegedly, in the absence of clear guidelines for determining whether a child should be placed in foster care, only a limited number of children were placed in foster care and often on an ad-hoc basis. Reportedly, the majority of unaccompanied children were held in secure detention in often inadequate and inappropriate conditions, in facilities designed for the incarceration of youthful offenders. Allegedly, children with behavioural problems related to previous trauma or mental health issues, were placed in secure facilities without a professional determination of their health conditions. Often unaccompanied migrants were reportedly detained with juvenile offenders. Reportedly, the staff of these centres was unaware of the reasons for a child's arrest and it was difficult to distinguish those in immigration detention from the rest of the population, also because they all had to wear uniforms. Allegedly, as a result, unaccompanied children often ended up being subjected to the same restrictive rules and regulations as juvenile offenders. Furthermore, they were reportedly at high risk of physical and mental abuse.

278. Reportedly, some of the children spent months or even years in detention, even though a parent, close relative or an appropriate adult or organization might have been willing to take care of them in the United States. Reportedly, the release decision was not always taken keeping the best interest of the child in mind. Reportedly, children in immigration custody, including mentally ill children, could be subject to cruel disciplinary technique, including solitary confinement, deprivation of exercise and education. It was reported that unaccompanied children were frequently unnecessarily placed in mechanical restraints, including during transportation, in courtrooms, and in some detention facilities as a form of punishment. In general it was reported that several of the facilities utilized by immigration authorities did not live up to international standards governing access to exercise and outdoors activities. Children, reportedly had often insufficient access to health care.

Communications received from the Government

279. In relation to the letter dated 18 September 2002, sent by the Special Rapporteur jointly with the Special Rapporteur on the Independence of Judges and Lawyers and the Special Rapporteur on Torture regarding cases of detention of many individuals, particularly non-US nationals, since September 11 (see E/CN.4/2003/85/Add.1, paras. 254-273), the Permanent Mission of the United States to International Organizations in Geneva provided the following information by letter dated 1 April 2003.

280. For what concerned the individual cases, the Government responded that it would refrain from disclosing information the release of which could jeopardize the conduct of ongoing investigations, the safety and privacy of aliens and the public safety and interest. No comment was therefore sent on the individual cases raised in the above-mentioned letter.

281. Since 11 September 2001, the United States had mobilized unprecedented resources to prevent further attacks against the country while at the same time ensuring for civil liberties. To this end, the US Department of Justice has used the full weight of the federal justice system as a method of neutralizing potential terrorist threats by prosecuting those who violated the law and thereby posed a national security risk. In some cases the Department of Justice had prosecuted individuals for crimes not directly related to terrorism, including enforcement of its immigration laws. In this regard, the September 11 investigations led to the arrest and detention of many aliens found in the US in violation of the Immigration and nationality Act (INA). Their treatment while in INS custody was consistent with the protection afforded aliens under US law.

282. As for the concerns raised on the non disclosure of a list of individuals detained on immigration law violations or who were deemed by the Government to have associations or information relating to the September 11 and related terrorist investigations, it was reported by the Government that such a policy was based on the professional judgment of senior law enforcement officials, including those from the Criminal Division of the Department of Justice and the FBI with leading roles in September 11 investigations. Disclosure of identities of detainees would have endangered the ongoing investigations, the detainees themselves and could have revealed sources and methods of investigation to terrorist organizations.

283. Several actions had been taken in order to guarantee the nation’s continued security and the integrity of the September 11 investigations; these include, inter alia, the following measures: withholding of public disclosures of some information regarding the detainees; closing their

immigration court hearings to the public for as long as the aliens concerned remained of interest to the investigation. Making public such information could have revealed roadmaps of the investigations and allowed terrorist organizations to alter further attacks plan, to intimidate witnesses, to fabricate evidence.

284. In responding to concerns expressed by the special Rapporteurs about the resulting detentions of non-US nationals, the government reported some details regarding the numbers of individuals detained in INS custody as a result of September 11 investigations: as of 28 March 2003, the INS had detained 766 aliens on immigration violations at some time since the attacks of September 11 2001 and in connection with the investigations related to that event. Of these 766, 505 had been deported or had left the country voluntarily. Only 1 of these aliens remained in custody as part of active September 11 investigation.

285. As for individuals held on immigration charges in custody of the Department of Homeland security (DHS), they were entitled to due process protections in accordance with US law. All detainees had been notified of the removal charges against them and were given the right to contest said charges in some type of an immigration proceeding. They were also given lists of *pro bono* counsel and advised of their rights to retain a lawyer at no expense to the government. They were also given the opportunity to seek release on bond, continuances to prepare their cases, an opportunity to examine the evidence against them and to apply for discretionary relief from removal, a right of appeal to the Board of Immigration Appeals and judicial review in federal courts. In addition, the United States adhered to its obligations pursuant to the Vienna Convention on Consular Relations to notify aliens of their rights to consular notification, communication and access.

286. Once an alien received a final order of removal, that order was enforced as soon as circumstances permitted; there were some aliens with final orders of removal who were still waiting for removal. The DHS was making every effort to remove them from the country as soon as practicable. While detained in DHS custody, aliens were provided treatment and care. Detainees could be placed in administrative segregation (understood as detention in which restricted conditions of confinement are required to ensure the safety of detainees or others, the protection of property or the security or orderly operation of the facility) when their continued presence in the general population posed a threat to life, property staff or other detainees. All DHS detention centres and contract facilities were required by DHS detention standards to provide medical care and appropriate treatment to DHS detainees. The US Public Health Service or a local provider provided such a treatment.

Observations

287. The Special Rapporteur thanks the Government of the United States of America for the responses provided. She would appreciate receiving information in relation to the cases for which she has not yet received a response. Without coming to any conclusions as to the substance of the above-mentioned allegations, for what concerns the conditions of detention of minors, the Special Rapporteur would like to refer to the recommendations contained in her report to the 59th session of the Commission on Human Rights (E/CN.4/2003/85).
