



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2003/85/Add.1
30 January 2003

ENGLISH/FRENCH/
SPANISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-ninth session
Item 14 (a) of the provisional agenda

**SPECIFIC GROUPS AND INDIVIDUALS
MIGRANT WORKERS**

**Report of the Special Rapporteur, Ms. Gabriela Rodríguez Pizarro, submitted
pursuant to Commission on Human Rights resolution 2002/62**

Addendum

Communications sent to the 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

Communication sent to the Government

1. By letter dated 7 November 2002, the Special Rapporteur brought to the attention of the Government the following information.
2. On 26 August 2001, 438 asylum-seekers - mostly of Afghan and Iraqi origin- travelling on an Indonesian fishing boat were reportedly rescued by the Norwegian freighter MV *Tampa*. It was alleged that although the crew of the Norwegian boat transmitted medical distress messages on behalf of some of the rescued asylum-seekers, both the Australian and the Indonesian authorities denied permission to land on their territory for eight days, during which the asylum-seekers remained on the Tampa's deck, in hot and overcrowded conditions. They were finally allowed to moor in Australian territory. Reportedly, while some of them were subsequently granted temporary visas in Australia, most of them, including children, were deprived of their liberty for more than 12 months without charge, trial or independent review of the legality and necessity of their detention, while their requests for asylum were being processed. Many of the rescued migrants were reportedly still awaiting a final decision on their future at the time the Special Rapporteur transmitted these concerns to the Government.
3. The Special Rapporteur also received information regarding so-called "Operation Relax", reportedly run by both military and civilian authorities and aimed at detecting, intercepting and turning back any vessel suspected of transporting asylum-seekers. It was reported that new legislation had been passed to allow Australian warships to fire upon suspected boats refusing to cooperate. It was reported that two individuals, Nurjan Husseini (f), aged 55, and Fatima Husseini (f), aged 20, drowned during an incident that occurred in the context of "Operation Relax" on 8 November 2001 near Christmas Island. According to the information received, the civilian authorities had not yet decided whether it was appropriate to hold a judicial investigation.
4. According to the information received, migrants with temporary visas were not entitled to the right to be reunited with members of their families, including children and spouses, who had not already been accepted in Australia. Reportedly, if they visited relatives abroad they would lose their visas and consequently be unable to return to Australia. Fears had been expressed that temporary visa conditions could separate family members for prolonged periods. Sondos Ismael, a 27-year-old woman and her children, reportedly attempted to travel illegally to Australia in October 2001 to meet their husband and father, who was living in the country with a temporary refugee visa. In the attempt to reach Australia, three of Mrs. Ismael's daughters died on 19 October 2001, when the boat in which they were traveling sunk off the Indonesian coast. The Special Rapporteur transmitted to the Government of Indonesia a communication jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions regarding this incident on 29 October 2001 (see E/CN.4/2002/94). The Special Rapporteur was informed that after the death of his three young daughters, Mrs. Ismael's husband requested exceptional permission to

travel to Indonesia without losing his visa. Reportedly, this was granted only eight months after the incident.

Communications received from the Government

5. By letter dated 12 December 2002, the Government of Australia reported that the relevant authorities were preparing a response to the allegations transmitted by the Special Rapporteur and that, in view of their seriousness, the matter involved a range of government departments and the endorsement of the response by ministers. The Government stated that a response could be expected by early February 2003.

Observations

6. The Special Rapporteur would like to thank the Government of Australia for informing her about the status of the response and to express her appreciation for the commitment of the Government to fully investigate the allegations that she had brought to its attention. In view of existing deadlines for the submission of reports, it was not possible to reflect the response of the Government in the present report. It shall be reflected in the Special Rapporteur's next report to the Commission.

7. The Special Rapporteur would like to recall that, as stated in her first report to the Commission (E/CN.4/2000/82), "The following can be considered as migrants:(a) Persons who are outside the territory of the State of which they are nationals or citizens, are not subject to its legal protection and are in the territory of another State; (b) Persons who do not enjoy the general legal recognition of rights which is inherent in the granting by the host State of the status of refugee, permanent resident or naturalized person or of similar status; and (c) Persons who do not enjoy either general legal protection of their fundamental rights by virtue of diplomatic agreements, visas or other agreements."

Cambodia

Communications transmitted to the Government

8. On 13 August 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Rapporteur on violence against women on behalf of N. T. N., aged 16, L.T. L., aged 18, T. T. B., aged 18, D. T. Y., aged 18, N. T. L., aged 18, L.T.N., aged 18, N. T. H., aged 18, Lam Thy Tiet Hvieng, aged 19, Tham Ngok Thav Ngvieng, aged 20, and Le Thing Ngok Vin, aged 22, all Vietnamese women allegedly trafficked from Viet Nam into Cambodian brothels (full names transmitted to the Government). They were reportedly found guilty of illegal entry, sentenced to between two and three months' imprisonment and ordered to be immediately deported on release. Chang Thy Gnok, aged 37, Vin Kang Ying, aged 40, Vann Ngok Ean, aged 43, and Le Thy Ngok Than, aged 53, also Vietnamese women, were allegedly complicit in the trafficking of the aforementioned 10 individuals but were reportedly not charged in respect of these allegations. They were reportedly sentenced to up to three months' imprisonment on charges of illegal entry into Cambodia and ordered to be deported. Four other girls working in local brothels, T. T. K. V., aged 13, C. T. C. L., aged 14, Y. T. H., aged 15, and N. T. T., aged 18,

were reportedly charged with the same offence before it was found that they were actually born in Cambodia (full names transmitted to the Government).

Observations

9. The Special Rapporteur would appreciate receiving the reply of the Government of Cambodia in relation to the allegations summarized above. The Special Rapporteur, without implying any conclusions as to the facts of the cases, would also like to recall article 6 of the Convention on the Elimination of All Forms of Discrimination against Women, which provides that states parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of the prostitution of women. Also, the Special Rapporteur would like to recall the Recommended Principles and Guidelines on Human Rights and Human Trafficking, of which guideline 4 says that States should consider ensuring that legislation prevents trafficked persons from being prosecuted, detained or punished for the illegality of their entry or residence in countries of transit and destination, or for the activities they are involved in as a direct consequence of their situation as trafficked persons (para.5).

Costa Rica

Comunicaciones enviadas al Gobierno

10. El 7 de noviembre de 2002, la Relatora Especial comunicó al Gobierno que recibió información sobre las condiciones de vida en el centro de detención ubicado en la V Comisaría de San José. Este centro habría tenido una capacidad de acogida para aproximadamente 80 personas pero en algunas ocasiones, los migrantes detenidos habrían tenido que dormir en el suelo por falta de espacio. Se informó a la Relatora Especial de que el centro habría carecido de condiciones higiénicas adecuadas. Las duchas no habrían tenido puertas y habrían existido solamente dos lavabos para la totalidad de los reclusos. El Centro no habría proporcionado artículos para el aseo personal de los internos, que habrían tenido que contar con la asistencia de sus familiares y amigos para obtenerlos. Se alegaba también que el centro no habría dispuesto de teléfonos públicos y que a los migrantes detenidos en él no se les habría permitido llamar a sus familiares o amigos. De acuerdo con la información recibida, menores de edad también habrían sido detenidos en este centro.

Observaciones

11. La Relatora Especial agradecería recibir la respuesta del Gobierno de Costa Rica en relación con estas alegaciones. Sin implicar ninguna conclusión respecto a dichas alegaciones, la Relatora Especial quisiera hacer referencia a las conclusiones y recomendaciones contenidas en su informe principal (E/CN.4/2003/85)

Cuba

Comunicaciones enviadas al Gobierno

12. El 1 de agosto de 2002, la Relatora Especial transmitió un llamamiento urgente en relación al caso de Graciela Roque de Muñiz y su hijo, William Muñiz Roque, de 10 años. Graciela Roque de Muñiz, doctora en medicina, habría tramitado ante el Gobierno de Cuba una autorización para salir de Cuba junto con su hijo a fin de reunirse con su esposo y padre del niño, Reinaldo Muñiz, en los Estados Unidos de América. El Gobierno de Cuba no habría autorizado el viaje de Graciela Roque de Muñiz y su hijo, William Muñiz Roque, a pesar de contar éstos con la visa requerida para ingresar a dicho país. La negación de la autorización de salida habría sido fundamentada en una resolución del Ministerio de Salud que impide la salida de los médicos del territorio cubano. Según las informaciones proporcionadas, Graciela Roque de Muñiz habría dejado de ejercer su profesión durante los últimos cuatro años.

13. El 1 de agosto de 2002, la Relatora Especial transmitió un llamamiento urgente en relación al caso del niño U.R.A., de cinco años, hijo de dos ciudadanos cubanos residentes en los Países Bajos. El padre, Israel Rivera Rabelo, habría estado realizando un doctorado de cuatro años en la Universidad Tecnológica de Delft (Países Bajos). El título y tema de la tesis habrían sido aprobados por diversas instituciones y ministerios cubanos, en particular por el Ministerio de Educación Superior de Cuba. La Universidad Tecnológica de Delft habría extendido una invitación a la esposa y al hijo de Israel Rivera Rabelo para que le acompañaran el tiempo de su estadía en los Países Bajos. Ante la solicitud formulada, el Ministerio de Justicia de Holanda habría otorgado una visa de residencia a la esposa y al hijo en septiembre de 2000. La esposa habría iniciado los trámites para la autorización de su salida y la de su hijo ante la Delegación Territorial de Inmigración y Extranjería de Villa Clara en febrero de 2001. La Empresa Geominera del Centro de Cuba y el Consulado de Cuba en Rotterdam habrían emitido cartas confirmando respectivamente que no existía motivo para oponerse al viaje del niño. Sin embargo, en abril de 2001 sólo la esposa habría recibido la autorización de viajar y no así su hijo. El motivo de la negativa de autorización de viaje del niño habría sido la falta de emisión de una carta del Ministerio de la Industria Básica donde se plantee que no hay objeción al viaje del menor. Según la información recibida, dicho Ministerio se habría negado a emitir el documento de “no-objeción” debido a una resolución interna que estipulaba que los familiares de los estudiantes no estaban autorizados a viajar fuera del país con el objetivo de la reunión familiar.

14. El 11 de noviembre de 2002, la Relatora Especial transmitió un llamamiento urgente en relación al caso de Juan López Linares, un físico cubano de 31 años que estaba cursando un postdoctorado en la Universidad de Campinas, Sao Paulo (Brasil). De acuerdo con esta información, Juan López Linares habría tenido prohibido el regreso a Cuba, supuestamente por haber proseguido sus estudios al extranjero sin las debidas autorizaciones.

15. En 1998 el estudiante habría obtenido una beca para seguir un curso de especialización en Trieste (Italia), al término del cual habría solicitado continuar sus estudios en el extranjero. A pesar de que la solicitud le habría sido denegada, Juan López Linares habría optado por viajar a Brasil y cursar un doctorado allí. De acuerdo con una comunicación con fecha del 15 de agosto de 2002 transmitida por el Embajador de Cuba en el Brasil a un senador brasileño, el Sr. Linares habría abandonado una misión oficial que cumplía en representación de un organismo estatal

cubano, acto que según las regulaciones migratorias cubanas sería punible con la prohibición de regreso al país durante cinco años.

16. Habría presentado dos solicitudes de entrada a Cuba, en julio de 2000 y el 10 de enero de 2002 respectivamente, pero ambas le habrían sido denegadas verbalmente y sin ninguna justificación escrita. Según la información recibida, Juan López Linares tenía un hijo de 3 años residente en Cuba que todavía no había podido conocer debido a la supuesta prohibición de entrada al país. Una denuncia habría sido interpuesta ante la Comisión Interamericana de Derechos Humanos

17. El 25 de noviembre de 2002, la Relatora Especial transmitió un llamamiento urgente en relación al caso de Francisca Alonso Lotti y su hijo de 11 años, J. E. G. A.. Según la información recibida, estas personas no habrían tenido la autorización de salir de Cuba. El marido de Francisca Alonso Lotti y padre de J. E. G. A., el Dr. Manuel A. Galguera, habría salido del país en 1993 y residiría en los Estados Unidos de América. No se habrían visto desde entonces. A pesar de que madre e hijo habrían obtenido un visado para entrar en los Estados Unidos el 15 de febrero de 2002, todas las solicitudes para poder reunirse con él habrían sido denegadas por las autoridades cubanas. De acuerdo con la información recibida, éstas no les habrían concedido el permiso para salir de Cuba. Francisca Alonso Lotti, médico especialista en genética clínica, se habría encontrado sin trabajo desde hace 22 meses y tanto ella como su hijo vivían del dinero que Manuel A. Galguera les enviaba desde los Estados Unidos. Se alega que un oficial de Migración del Ministerio del Interior de Cuba visitó a Francisca Alonso Lotti y su hijo en el domicilio familiar el 29 de octubre de 2002 y les citó al Departamento de Migración, donde habrían abierto un expediente sobre su caso. Asimismo, les habrían informado oralmente de que como Francisca Alonso Lotti es médico, el permiso de salida requería el acuerdo del Ministerio de Salud Pública. Éste podía demorar aproximadamente cinco años. Los funcionarios del Departamento de Migración se habrían negado a proporcionar esta misma información por escrito. A su vez, Francisca Alonso Lotti habría solicitado el permiso necesario al Ministro de Salud Pública y su marido habría pedido al Cónsul de Cuba en Washington que considerara el caso. Según la información recibida, todavía no se había obtenido respuesta.

Observaciones

18. La Relatora Especial reitera su interés en recibir la respuesta del Gobierno de Cuba en relación con estas alegaciones. Sin que ello implique, en modo alguno, una conclusión sobre los hechos, la Relatora Especial quisiera referirse al párrafo 2 del artículo 13 de la Declaración Universal de Derechos Humanos que dispone que “toda persona tiene derecho a salir de cualquier país, incluso el propio, y a regresar a su país”. A su vez, en la resolución 2002/59, de la Comisión de Derechos Humanos, intitulada “Protección de los migrantes y de sus familias”, se exhorta a los Estados “a que faciliten la reunificación de modo expedito y eficiente”. Así mismo la Relatora Especial quisiera recordar los contenidos de los artículos 9 y 10 de la Convención de Derechos del Niño.

Dominican Republic

Comunicaciones enviadas al Gobierno

19. El 19 de septiembre de 2002, la Relatora Especial comunicó al Gobierno que recibió información según la cual a numerosas personas “con aspecto haitiano” se las habría detenido en sus lugares de trabajo o en sus hogares, y se las habría sacado del país por la fuerza a las pocas horas de su detención inicial, sin tener la oportunidad de recurrir el acto de expulsión, recoger sus pertenencias, avisar a sus familiares, ni demostrar su nacionalidad dominicana o su condición migratoria. La documentación presentada a funcionarios públicos por migrantes haitianos o dominicanos de origen haitiano interceptados por funcionarios públicos habría sido en muchas ocasiones confiscada o destruida por los primeros. También se habrían dado múltiples casos de sobornos, extorsiones y malos tratos por parte de funcionarios públicos.

20. En su comunicación, la Relatora Especial expresó su preocupación por el impacto que las deportaciones realizadas en las condiciones arriba mencionadas tiene en los familiares de los deportados. Muchos niños habrían quedado seriamente traumatizados tras ser separados de esta manera de sus padres. Además, la amenaza constante de ser deportado de improviso habría hecho que los haitianos y los dominicanos de origen haitiano prefirieran aislarse en sus bateyes, donde los funcionarios de inmigración no solían entrar, y evitaran ir a las ciudades. Además de no facilitar su integración en la sociedad dominicana, esta situación habría contribuido a asegurar el suministro de mano de obra barata para la industria azucarera.

21. La Relatora Especial también recibió alegaciones según las cuales se habría denegado la nacionalidad dominicana a descendientes de haitianos nacidos en la República Dominicana, contrariamente a las disposiciones de la Constitución nacional. Se alegaba también que en muchas ocasiones el personal médico se habría negado a proporcionar a los padres de los recién nacidos la prueba de nacimiento de sus hijos. Al carecer de documentos de identidad, muchos niños habrían tenido problemas para acceder al sistema educativo, sobre todo a la escuela secundaria y a la universidad.

22. La Relatora Especial también comunicó al Gobierno que recibió información sobre los casos que se enumeran a continuación.

23. Un total de 137 haitianos y dominicanos de origen haitiano habrían sido deportados del país el 13 de abril de 2001, tras haber sido acusados de quemar una bandera dominicana el mismo día durante un festival en La Romana, en la parte oriental del país. Un contingente de funcionarios de inmigración habría tomado por asalto a los participantes de los actos festivos y, ayudados por agentes de la policía local, habrían empezado a golpear a todas aquellas personas que estaban bailando. Acto seguido, habría empezado la deportación inmediata de 137 personas que no habrían podido presentar en aquel momento documentos de identidad. Otras 106 personas habrían sido conducidas a la Prisión Preventiva de La Romana, donde habrían permanecido recluidas, acusadas de haber quemado una bandera. Algunos grupos políticos y medios de comunicación habrían dado publicidad del incidente, calificándolo como de muestra del peligro haitiano, suscitando sentimientos racistas entre la población. Agentes de la policía local así como el alcalde de La Romana habrían afirmado posteriormente que no habrían visto al grupo quemar dicha bandera. El fiscal que se ocupó de investigar el caso no habría hallado ninguna

prueba sobre la supuesta quema de bandera y habría concluido que las falsas acusaciones habrían sido únicamente un intento por parte de ciertas personas de denigrar a la comunidad haitiana. Seguidamente, las personas detenidas durante este incidente habrían sido puestas en libertad.

24. En febrero de 2001 unas 80 personas, presuntamente de origen haitiano, habrían sido detenidas por agentes de inmigración durante batidas contra migrantes en el mercado de Barahona. Seguidamente habrían sido confinadas durante varias horas en la cárcel de San Cristóbal, donde habrían sido encerradas junto a la población reclusa y habrían sido privadas de alimento. Los detenidos que no podían presentar documentos de identidad válidos habrían sido transportados en autobús hasta la frontera. Ninguno de ellos habría podido recoger sus pertenencias ni contactar con su familia antes de ser deportado.

25. David Pere Martínez, un joven de 21 años de origen haitiano nacido en la República Dominicana, habría sido deportado a Haití en febrero de 2000 tras ser detenido por un grupo de militares en la calle Máximo Gómez, en Santo Domingo. Habría sido golpeado dos veces y obligado a subir a un autobús en el que se habría encontrado con otra veintena de personas de piel oscura. El grupo habría sido transportado directamente a Jimaní, en la frontera con Haití, y los detenidos habrían sido obligados a cruzar la frontera a pie. David Pere Martínez habría llegado a Haití solo y desorientado, puesto que, según la información recibida, desconocía el país y no hablaba ni entendía el criollo. El padre de David Pere Martínez, al ser informado de la deportación de su hijo por un familiar que habría presenciado los hechos, habría viajado a Haití donde lo habría encontrado dos meses más tarde en el mercado de Malpasse. Los dos habrían regresado a la República Dominicana. Desde su deportación, el joven se habría sentido atrapado en Batey 7, donde el único empleador sería la empresa azucarera de Barahona. Tras la experiencia supuestamente vivida, no se habría atrevido a volver a trabajar en Santo Domingo, a pesar de que allí habría podido encontrar un trabajo mejor pagado. Habría obtenido un certificado especial emitido por la policía local, en el que se establece su nacionalidad dominicana y en el que constaba su número de documento de identidad pero aun así, se expresaron temores de que habría existido un peligro de deportación sumaria.

26. Johnny La Guerre, nacido en Haití en 1943, se habría trasladado legalmente a la República Dominicana en 1963, donde habría trabajado y vivido en la azucarera La Romana hasta su deportación en 2000. En octubre de 2000, cuando se dirigía a su casa tras el trabajo, habría sido interceptado por un funcionario de inmigración quien, sin ni siquiera pedirle la documentación, le habría espetado: "Tú, te voy a mandar a Haití". Posteriormente, Johnny La Guerre habría sido colocado en un autobús en el que se encontraban ya varias docenas de personas. Otros agentes habrían detenido a más personas en la calle durante las horas siguientes, golpeando a los que se resistían. Seguidamente, los detenidos habrían sido conducidos por los guardias a las dependencias militares de Monte Plata donde habrían pasado la noche. A la mañana siguiente habrían sido conducidos en autobús a Jimaní y deportados. Johnny La Guerre habría tenido que mendigar para comer y habría dormido en el suelo de un restaurante local, hasta que un miembro de una organización no gubernamental local le habría ayudado a encontrar un alojamiento más digno. Desde su deportación, no habría podido contactar con su esposa, Andrenie Joseph, ni con sus tres hijos, el menor de los cuales tenía 4 años.

27. Jorge Rene Méndez, un joven dominicano de 23 años de ascendencia haitiana, habría sido deportado dos veces de la República Dominicana. El 1 de marzo de 1999, habría sido

detenido por agentes dominicanos de migración en la calle Máximo Gómez, en Santo Domingo, y obligado a subir a un autobús junto con otros 50 detenidos. Los detenidos habrían sido conducidos a la cárcel de San Cristóbal, donde se habrían reunido con cientos de otros detenidos que aguardaban su deportación. Jorge Rene Méndez habría pasado varias noches en la cárcel, hasta que habría sido finalmente conducido a la localidad fronteriza de Jimaní, donde se le habría ordenado cruzar la frontera andando. Era supuestamente la primera vez que el joven iba a Haití, y se encontraría además sin dinero. Durante los ocho primeros días habría mendigado para conseguir comida y alojamiento, hasta que un *buscón* (persona que conduce a otras ilegalmente a través de la frontera) se habría ofrecido a retornarle a la azucarera de Barahona, donde su familia todavía trabajaba. La Relatora Especial ha sido informada de que en la frontera, los guardias dominicanos habrían saludado al *buscón* sin verificar su documentación ni la de sus acompañantes. Jorge Rene Méndez habría sido nuevamente detenido por funcionarios de migración el 25 de febrero de 2000 en la calle Duarte, en Santo Domingo. Al solicitarle los agentes su documentación, Jorge Rene Méndez les habría mostrado una fotocopia de su cédula, el documento oficial de identidad. Los guardias la habrían roto y le habrían subido a un autobús que le habría transportado, junto con otras personas, hasta la frontera de Jimaní. Tras mendigar durante cinco días en Haití, habría decidido volver a su hogar, recorriendo 80 kilómetros a pie. A pesar de haber nacido en la República Dominicana y de poseer una cédula de identidad dominicana y de las posibilidades de encontrar un trabajo mejor remunerado a Santo Domingo, Jorge Rene Méndez habría decidido no volver a la ciudad por temor a ser deportado de nuevo.

28. Lucía François habría nacido en Haití en 1969 y se habría trasladado a la República Dominicana en 1993. Entre 1993 y 1999 habría tenido cinco hijos, todos nacidos en Santo Domingo. Según la información recibida, en febrero de 2001, ella, sus tres hijos mayores, su hermana, Delicina François, y dos de sus sobrinos habrían sido interceptados por agentes uniformados que les habrían pedido su documentación en una calle de Santo Domingo. Cuando Lucía François habría respondido carecer de documentos, el grupo entero habría sido conducido a una comisaría de policía del otro lado de la capital donde habría pasado la noche, junto con medio centenar de detenidos más. Las dos mujeres y los niños habrían dormido en un colchón en el suelo en un solar sin techo. Se les habría proporcionado agua pero no alimentos. Durante su detención, habrían presenciado cómo otros detenidos habrían sido golpeados por guardias. A la mañana siguiente habrían sido conducidos en autobús hasta la localidad fronteriza de Dajabón para su deportación. Al no conocer a nadie en esta zona del país, las dos mujeres habrían mendigado durante unos días para poder sobrevivir. Desde su deportación, Lucía François no habría podido contactar con sus otras dos hijas: Diela, de 6 años, y Yanne, de 4, ni con su marido, que habrían permanecido en la República Dominicana. Delicina François también habría dejado atrás a cinco hijos pequeños y desde su deportación no habría podido establecer contacto con su marido.

29. Marlene Mésidor, su marido y sus hijos, todos menores de 10 años, habrían sido detenidos el 1 de diciembre de 2000 por funcionarios de migración que habrían aporreado la puerta de su hogar en Villa Faro. Al carecer de documentación, la familia habría sido sacada de su hogar de manera humillante y hacinada en un autobús en el que había aproximadamente 60 personas. Habrían viajado todo el día sin comer, hasta que habrían llegado a la localidad fronteriza de Jimaní, donde habrían tenido que cruzar la frontera a pie.

30. Fayette Baltasar, un haitiano que trabajaba en la República Dominicana desde 1958, cuando ingresó legalmente en el país como bracero para trabajar en los campos cercanos a San Pedro de Macorís, habría sido deportado a sus 70 años. En diciembre de 1999 se habría cortado un dedo cuando cortaba caña y habría tenido que buscar asistencia médica en un hospital. De regreso, lejos aún de su casa en Batey Cecilia, habría sido interceptado por tres miembros del ejército. Sin solicitarle su documentación, los militares lo habrían retenido en dependencias militares durante una hora y posteriormente embarcado en un autobús rumbo a Haití. Habría sido deportado el mismo día, sin dinero y con sólo la ropa que llevaba puesta.

31. Jacuelín Baluisa, una dominicana de origen haitiano, habría carecido de documentación a pesar de haber nacido en la República Dominicana. De acuerdo con la información recibida, en 1996 dio a luz a su hija Victoria en el hospital Los Minas de Santo Domingo, y en 2000 a su hija Catherine. En ambos casos se le habrían negado las actas de nacimiento. El personal del hospital le habría comunicado que sólo podría registrarse a los bebés si ella misma contaba con documentación dominicana.

32. Jesús de la Cruz Pena y su esposa, Cecilia Martínez, dominicanos de segunda generación, habrían nacido en Batey 7 y habrían obtenido cédulas dominicanas que demuestran su nacionalidad. Habrían tenido tres hijos en la República Dominicana: Nelson, de 14 años, Papilín, de 13 años, y Címena, de un año. Los tres habrían estado indocumentados. El 18 de enero de 2001, cuando Jesús de la Cruz Pena habría tratado de obtener en el registro de San Cristóbal actas de nacimiento para sus tres hijos, el director de la oficina de registro le habría comunicado que no podía expedir las actas porque “la Junta Central prohíbe inscribir a haitianos”.

Observaciones

33. La Relatora Especial reitera su interés en recibir la respuesta del Gobierno de la República Dominicana en relación con estas alegaciones.

Ecuador

Comunicaciones enviadas al Gobierno

34. El 4 de junio de 2002 la Relatora Especial transmitió un llamamiento urgente en relación con la situación de 250 ecuatorianos que habrían estado esperando su deportación de Puerto Madero (México). Los migrantes habrían partido de Ecuador a bordo de dos embarcaciones y habrían sido interceptados y rescatados por un guardacostas estadounidense. De acuerdo con la información recibida, una de las embarcaciones se estaba hundiendo cuando fue interceptada por el guardacostas.

Observaciones

35. La Relatora Especial agradecería recibir información relacionada con los hechos descritos.

Georgia

Communications transmitted to the Government

36. On 22 July 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative of the Secretary-General on human rights defenders on behalf of Nugzar Sulashvili. It was reported that on 15 July 2002, at about 11.00 a.m., Mr. Sulashvili, Chairman of the International Union "Center for Foreign Citizens' and Migrants' Rights and Security" (FCRS), a human rights organization based in Tbilisi, and his family were victims of an armed attack at their home. According to the information received, the perpetrator of the attack was presumably a member of the secret services, who attacked them with the apparent intention of killing Mr. Sulashvili, his wife and daughter. Mr. Sulashvili is a human rights activist who has been documenting and denouncing the involvement of government officials in the trafficking of persons. It was also reported that the presumed perpetrator was arrested and immediately afterwards, released without any investigation having been initiated. Mr. Sulashvili and his family, as well as other members of the organization, had already been victims of several acts of harassment and threats. The offices of the organization had also been vandalized by unidentified persons on several occasions, and the equipment as well as important documentation and materials on their work had been destroyed.

Communications received from the Government

37. By letter dated 19 September 2002, the Government transmitted information provided by the Prosecutor-General's Office according to which on 15 July 2002 Nigzar Sulashvili's wife complained to the Vake-Saburtalo district police station that their neighbour had rushed into their flat and threatened them with a knife. An inquiry into this incident was subsequently carried out by the second police department of Vake-Saburtalo district. The case was considered as a civil matter and sent to Vake-Sburtalo court, where it was under discussion at the time of the Government's reply. Information according to which the aggressor was arrested and later released could not be confirmed by the Prosecutor's Office. Regarding allegations of previous acts of harassment, the Prosecutor's Office reported that under its instruction and after having questioned Nigzar Sulashvili, the Vake-Saburtalo and Ristavi prosecutor's office re-examined the case and the Vake-Saburtalo district police was requested to take measures to prevent any actions directed at the physical abuse of Nigzar Sulashvili and his family.

Observations

38. The Special Rapporteur thanks the Government of Georgia for its prompt reply. She would appreciate being kept informed of the results of the investigation.

Germany

Communications sent to the Government

39. By letter dated 12 September 2002 sent jointly with the Special Rapporteur on torture and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and

related intolerance, the Special Rapporteur transmitted to the Government information she had received on the following individual cases.

40. Denis Mwakapi, a 33-year-old man originally from Kenya, and his German wife, Ursula, were reportedly approached by two American men and their two female companions, who believed that Mr. Mwakapi was harassing his wife in Nuremberg's city centre on 23 December 2000. Mr. Mwakapi had reportedly been talking loudly in an animated fashion but not in a manner which could have been construed as being aggressive. The two American men reportedly began punching and hitting Mr. Mwakapi before his wife could explain to them that he was her husband. When this was done, Mr. Mwakapi reportedly accepted the two Americans' apologies, even though he had a swollen upper lip as a result of the assault. Three police vehicles reportedly arrived at the scene shortly afterwards. The two American men were allegedly allowed to leave after the police officers checked their identification. Upon complaining about the attack, Mr. Mwakapi was reportedly arrested after he became agitated and refused to calm down. One of the police officers (whose name is known to the Special Rapporteurs) allegedly grabbed Mr. Mwakapi's right arm and forcefully twisted it behind his back in order to arrest him, fracturing it in the process. The police officers reportedly subsequently handcuffed Mr. Mwakapi and put him in a police vehicle in spite of his repeated requests for a doctor and cries of pain. Mr. Mwakapi was then reportedly driven to a Nuremberg police station, where he was held until his release some hours later. A medical examination conducted on 23 December 2000 at the Emergency Clinic in Nuremberg reportedly revealed that he had suffered a fractured arm which required immediate medical attention. He was reportedly hospitalized on 26 December 2000 in order to undergo an operation to insert a metal plate and multiple screws into the bone of his right arm. He reportedly remained in the hospital until 5 January 2001 and required ongoing out-patient medical treatment thereafter. Mr. Mwakapi reportedly lodged criminal complaints of physical assault and denial of assistance against the police officers with the Public Prosecutor's Office. The Office reportedly informed Mr. Mwakapi's former lawyer on 4 July 2001 that it had closed the file. A subsequent attempt by Mr. Mwakapi's lawyer to have the investigation reopened reportedly failed. The injury to Mr. Mwakapi's arm has reportedly had long-term effects on his ability to resume work.

41. Doviodo Adekou, a 59-year-old Togolese who had applied for refugee status in Germany, had an appointment on 1 October 2001 at the Office for Foreigners in Mettmann to discuss whether his temporary right to remain in the country would be extended. In the course of the meeting, Mr. Adekou reportedly was told that he would be deported on 12 October 2001. He reportedly requested a copy of the formal decision in writing and to be allowed to consult his legal adviser. A police official reportedly then entered the room and handcuffed Mr. Adekou's left hand, informing him that he was being taken into custody. The police officer reportedly attempted to handcuff Mr. Adekou's other hand but had to call two more police officers into the room when his attempts failed. The three police officers allegedly grabbed Mr. Adekou's arms and pulled him face-down onto the floor. While he was lying on the floor, one of the police officers reportedly punched him, causing his right eye to bleed heavily. The Office for Foreigners' employee reportedly shouted at the police officers to leave Mr. Adekou alone and they gave up their attempts to handcuff him. He was reportedly transferred to Wuppertal clinic, where he was said to have been kept for treatment until 9 October 2001. According to a medical report dated 11 October 2001, Doviodo Adekou was treated for a rupture of the covering of the

eye which had caused bleeding in the vitreous humour. A complaint of serious criminal assault was reportedly lodged with the Mettmann District Police Authority.

42. Svetlana Lauer, originally from the former Soviet Union, was reportedly ill-treated by several police officers at her home in Hallstadt, located outside the city of Bamberg, in the afternoon of 20 February 2002. Four police officers reportedly arrived at her apartment with a verbal warrant issued by the State Prosecutor's Office to search the apartment for the purpose of securing evidence against her then 17-year-old daughter, who had been arrested earlier on suspicion of shoplifting. It was reported that as Ms. Lauer resisted their entry, a female police officer grabbed her by the back of her neck and hit her head against an adjacent wall. A male police officer allegedly grabbed her arm and twisted it behind her back. With his other arm he allegedly grabbed her hair and repeatedly hit her head against various doors and walls while leading her through the hallway of the apartment. Once Ms. Lauer was handcuffed, the female police officer reportedly pulled her hair tightly, causing her considerable pain. Her eight-year-old twin daughters reportedly witnessed the incident and started crying. As Ms. Lauer struggled to free herself from the female police officer repeatedly spitting at her, her head was reportedly hit against a wall and her hair pulled. Her head was reportedly twisted back and forth and she was violently pulled on her handcuffed hands. The upper part of her house coat was reportedly torn away from her in the process. The police officers then reportedly searched her daughter's room but were unable to find any evidence. Ms. Lauer reportedly scratched two of the police officers after one of her arms was freed. Reportedly her head was again hit against a wall and she was dragged through the hallway of the apartment into a room, where she was reportedly kicked. A police officer was then alleged to have placed his foot on her back and continued to hit her as she lay on the floor. She was reportedly taken to a police car semi-naked and barefoot and driven to Hallstadt police station, where she was later charged with resisting arrest and physically assaulting the police officers. Ms. Lauer reportedly remained semi-naked during the two hours she spent at the police station, during which she was interviewed by several male police officers. According to a medical report issued on 26 February 2002, Ms. Lauer's injuries included multiple bruising and grazing to the head, shoulders, right thorax, back, bottom, arms and legs.

Communications received from the Government

43. By letter dated 14 November 2002, the Government of Germany transmitted the following information.

44. Denis Mwakapi was taken to Nuremberg Central Police Station for clarification concerning the above-mentioned incident because he was reportedly unwilling to clear up the facts on the spot. Physical coercion was needed during his transfer since he put up resistance and behaved aggressively. He was placed in preventive detention after his wife expressed fears that she could not cope with him, in particular due to his drunkenness. When he complained about the pain in his arm some hours later, the police officers did not believe him, because there were no visible signs of injury and he repeatedly expressed his desire to continue celebrating in the city centre. The investigations carried out by the Public Prosecution Office against the two police officers accused of causing bodily harm, failure to lend assistance and prosecution of innocent persons did not result in facts sufficient to constitute an offence. The behaviour of the accused police officers was considered, under these circumstances, correct, necessary and proportionate. It was not clear whether the spiral fracture of the right forearm that he sustained was the result of

the police officers' coercion or of the fight he previously had with the Americans. The Nuremberg-Fürth Public Prosecution Office closed the investigation. The appeal against the closing order brought by Mr. Mwakapi was not granted by administrative decision of the Regional Prosecution Office attached to Nuremberg Higher Regional Court. After further investigations were conducted, upon the application of Mr. Mwakapi, the Nuremberg-Fürth Public Prosecution Office again closed the investigation and the Regional Prosecution Office rejected an appeal to reopen them again. Finally, his application for a judicial decision to force the Public Prosecution Office to prefer criminal charges was rejected as unfounded in a ruling by the Criminal Division of Nuremberg Higher Regional Court dated 27 May 2002.

45. In relation to the case of Daviodo Adekou, the Government reported that in the light of the upcoming deportation date and because of the suspicion, based on the fact that he had abandoned his living quarters, that he would have sought to avoid deportation, the Mettmann district enforcement officers decided to place him in custody and to bring him before a magistrate to issue an arrest warrant in order to ensure his deportation. A struggle started between Mr. Adekou and officers of the District Administration at the moment of his arrest on 1 October 2002. As a result, the enforcement officers sustained injuries and Mr. Adekou was seriously wounded on his right eye, which could not be saved. The deportation scheduled for 12 October 2001 was cancelled. An investigation was initiated following Mr. Adekou's complaint, filed on 24 January 2002 at the Mettmann District Police Authority, of coercion and serious bodily harm during the performance of official duties. A date for the completion of the investigation could not be foreseen at the time of the Government's response. The Government also reported that after this incident, it had been decided by the District Administration that arrests would only be carried out in consultation with police officers and that the enforcement officers would also be trained more thoroughly in arrest techniques.

46. In connection with the case of Sveltana Lauer, the Bamberg Public Prosecution Office launched an investigation against the police officers involved in the incident after she filed a criminal complaint on 22 February 2002. According to the results of this investigation, which was not yet completed, she was not abused, insulted, hit, kicked, or humiliated by word or act, and the officers did not intentionally hit her head against the wall nor pull her hair. She was not pulled by the handcuffs from the hallway into the room that had been searched. Instead, it was reported that Ms. Lauer behaved very aggressively and that it cannot be ruled out that she hit her head or other body parts against the wall during the physical fight that took place between her and the female police officer when the latter attempted to restrain Ms. Lauer. According to a medical examination carried out on 28 February 2002, it could not be conclusively determined, from a forensic medical point of view, whether the documented injuries were the result of mistreatment by the police officers. On the other hand, an investigation of the facts is proceeding against Ms. Lauer based upon obstructing enforcement officers in the execution of their official duties, defamation and bodily harm.

Observations

47. The Special Rapporteur thanks the Government of Germany for its prompt and detailed response. In the case of Daviodo Adekou, the Special Rapporteur welcomes the information stating that after the incident the District Administration adopted measures to improve the conditions under which arrests are carried out, including appropriate training in arrest

techniques. The Special Rapporteur takes the opportunity to recommend that such efforts be accompanied by additional measures aimed at ensuring that “police and immigration authorities treat migrants in a dignified and non-discriminatory manner, in accordance with international standards, through, inter alia, organizing specialized training courses for administrators, police officers, immigration officials and other interested groups”, in accordance with the Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (para. 30 (e)). The Special Rapporteur would appreciate receiving the final conclusions of the investigations in the cases of Doviodo Adekou and Sveltana Lauer.

Greece

Communications sent to the Government

48. On 4 July 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on torture regarding Joseph Emeka Okeke, a Nigerian deportee detained at the General Police Directorate of Attica (GADA). It was reported that at 4 a.m. on 25 June 2002, he was roughly awakened by three policemen who subsequently started kicking him and beating him with a large rectangular black object that had two claw-like extensions transmitting electric shocks. According to the information received, when his wife, upon being alerted by another inmate, went to the General Police Directorate, she was not allowed to see her husband. Mr. Okeke was reportedly taken to Eleftherios Venizelos airport, where he was put on an Alitalia flight which was scheduled for departure at 6.30 a.m.. Due to protests by the Alitalia stewardesses, notably concerning the fact that his feet were tied and his hands handcuffed and that the police were trying to tape his mouth shut, he was reportedly taken off the aircraft and transferred to the Pallini Police Department, where he was beaten again, and eventually to the GADA detention centre. Mr. Okeke's trial for "resistance against the authorities" on 27 June 2002 was reportedly postponed until 10 July 2002, in order to allow time to subpoena the aforementioned witnesses. Following a complaint filed on this case, the Minister of Public Order reportedly ordered a Sworn Administrative Inquiry (EDE) to be carried out by a high-ranking officer and a medical examination was scheduled for 27 June 2002. It was reported that on 28 June 2002 Mr. Okeke was interrogated without his lawyer and subjected to intimidation by police officers. He was then allegedly forced to sign a document that he did not understand and subsequently transferred to a single cell where he was denied access to a telephone. Fears had been expressed that Joseph Emeka Okeke may continue to be at risk of torture and other forms of ill-treatment.

49. By letter dated 4 September 2002 sent jointly with the Special Rapporteur on torture, the Special Rapporteur notified the Government that she had received the following information on the conditions of detention of migrants at GADA and in Korydallos Prison.

50. GADA, located at Alexandra Avenue, Athens, was reported to house approximately 150 detainees, despite having reportedly been designed to hold about 80. Detainees were allegedly distributed throughout 19 narrow rooms of approximately 12 square metres and some were also believed to spend their days and to sleep on the floor of the corridors. In particular, it was alleged that 12 detainees shared four single mattresses in one of the corridors. It was reported that the centre was infested with cockroaches. Soap and toilet and laundry articles were said to be bought by the detainees themselves from police officers at high prices. Detainees were reported to have

complained that the amount of food served was insufficient and nutritionally deficient. Detainees were also believed to have been deprived of exercise, educational programmes, fresh air and enough light after sunset. According to the information received, detainees had no proper access to physicians and lawyers and did not receive information regarding the reasons and length of their detention, their family members, or the status of their asylum claims when such claims had been filed.

51. Korydallos Prison, Athens, was reported to house a number of undocumented migrants who were said to have already served their sentences but who cannot be deported in view of the situations in their respective countries. Inmates at Korydallos Prison, including those detained beyond the length of their original sentence, reportedly lived in severely overcrowded conditions. The prison, reportedly designed for 640 inmates, allegedly had over 2,200 prisoners. It was reported that most of the foreigners detained in Korydallos Prison were not informed about their current legal status and about the length of their detention.

52. By letter dated 17 September 2002 sent jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur notified the Government that she had received information on the following individual case.

53. Gentjan Çelniku, a 20-year-old migrant from Albania, reportedly died after being shot in the head by a police officer during an identity check at a cafeteria in central Athens on 21 November 2001. The Special Rapporteurs were informed that according to a police report on the incident, the police officer observed Mr. Çelniku, a suspected violent criminal, making a suspicious movement. When the officer attempted to handcuff the young man, his pistol accidentally fired. However, at a hearing before an investigating judge on 23 November, the officer reportedly stated that when he saw Mr. Çelniku put his hand into his jacket he approached him, pistol in hand, warning him not to move, whereupon Mr. Çelniku kicked his hand, causing the pistol to discharge.

54. Concerns were raised as to the impartiality of the investigation in this case. According to his testimony, the police officer sought to arrest Mr. Çelniku because he was suspected of having assaulted and injured two other Albanian immigrants in Athens, on 9 November 2001. However, the incident was reported to the police only on 22 November, between 4 and 5.30 a.m., when the two Albanian men were taken to a police station by the police. The same day, the two men reportedly underwent forensic medical examination and were found to have sustained injuries. However, the forensic medical reports did not make any reference to any person or persons responsible for the injuries. Relatives of the two victims reportedly gave statements to the police on 21 November, after Mr. Çelniku's death. According to the allegations received, it appeared that measures to investigate the incident of 9 November and to establish whether Mr. Çelniku was guilty of criminal assault were taken only after his death, raising doubts as to a possible intent to present evidence of his responsibility in the incident and somehow diminish the responsibility of the police officer who shot him.

55. The police officer concerned was reportedly detained and charged with reckless homicide and then released on bail on 23 November. According to the information received, he was not suspended from duty pending investigation, despite the gravity of the charge against him, and the fact that he had taken part in this operation against the orders of his superior. The police

authorities allegedly ordered an administrative inquiry, but as far as the Special Rapporteurs were informed, disciplinary proceedings relating to the inquiry had not been concluded. It was reported that, on 9 July 2002, the public prosecutor presented the case to the competent judicial council with the proposal that the defendant be referred for trial on charges of manslaughter (rather than reckless homicide). According to the prosecutor, the pistol had fired accidentally after Mr. Çelniku, who was seated, kicked the defendant's hand. In his written proposal, the prosecutor stated that it had been confirmed that Mr. Çelniku had a knife in his jacket, but did not substantiate this statement with evidence. His assertion conflicted with the testimony of a witness, Antonis Karras. The latter, on 23 November, stated before the investigating judge that he happened to be passing by shortly after Mr. Çelniku was shot and saw his body being searched, and a knife taken out of his back trouser pocket or a sheath attached to his trouser belt. Shortly afterwards he saw the knife being handed over to a police commander. As the body was removed from the scene, the knife was placed on the spot where the body had lain. In clear contravention of the rules of evidence-taking, the police officer who shot Mr. Çelniku took part in the collection of evidence and in fact handled the knife (his superior officer later testified that he had reprimanded him for this).

56. According to the information received, on 27 July 2002, a lawyer representing relatives of Mr. Çelniku submitted a memorandum to the judicial council raising objections to the prosecutor's proposal that the defendant be referred to trial on the lesser charge of manslaughter. The memorandum argued that the investigation had been defective: the investigating judge had failed to summon for examination the witnesses (including eyewitnesses) who had given statements to police officers during the preliminary investigation and, as a result, certain crucial facts had not been clarified. The memorandum reportedly noted, moreover, that the police officers who had taken the statements were colleagues of the defendant, and as such were liable to be biased in his favour. The memorandum reportedly stressed that the prosecutor had offered no explanation for the fact that the forensic examination found two wounds on the victim's head, although he had been shot with only one bullet which had not exited. Additionally, the memorandum pointed to inconsistencies in the evidence, and argued that the claim that Mr. Çelniku had caused the pistol to fire by kicking the defendant's hand conflicted with forensic evidence which showed that Mr. Çelniku had been shot from behind. The Special Rapporteurs had not been informed that the judicial council had issued a decision on this case.

57. By letter dated 17 September 2002 sent jointly with the Special Rapporteur on torture, the Special Rapporteur notified the Government that she had received information on the following cases.

58. Arjan Hodi, a 24-year-old Albanian national, was reportedly arrested by two police officers on 27 March 2001 in Mytilene. It was alleged that he had previously reported to the police that he and some of his compatriots had been denied entry to a nightclub because of their nationality. Upon his arrest, he was reportedly taken to Mytilene police station, where he was allegedly beaten with a truncheon by a police officer and threatened with arrest and deportation. Upon release, Mr. Hodi was reportedly hospitalized due to several injuries resulting from the treatment he received while in custody. On 29 March 2002 criminal proceedings were reportedly started against the officer concerned. Other police officers who allegedly witnessed the ill-treatment were also reportedly charged. However, Mr. Hodi allegedly withdrew his criminal complaint after the police officers involved apologized and paid his hospital fees. An

administrative inquiry reportedly concluded that two officers had unlawfully arrested and tortured Mr. Hodi, referred the case to a disciplinary board, and recommended the dismissal of one of them from service and a lesser sanction for the other officer.

59. Mr. Hodi and three fellow Albanians were reportedly tried in Mytilene on charges of being members of a gang, possessing and using weapons, making threats and causing dangerous bodily injuries, due to their alleged involvement in a fight between a group of Albanians and the owner and employees of a bar on 30 July 2001. It was alleged that Mr. Hodi's three co-defendants were tried without a defence lawyer since they were unable to provide documented proof that they lacked sufficient funds to hire one and therefore could not request the services of a public defence lawyer. The four men were reportedly convicted and sentenced to a suspended sentence of 37 months' imprisonment each, and their immediate deportation from Greece. After this incident, angry local citizens appeared on local television brandishing guns and making threatening statements against Albanians. An ultimatum was issued by people from the nearby village of Loutra requesting all Albanians in the village to leave by 5 August 2001. The Special Rapporteurs were informed that by that date some 150 Albanians and 15 other foreign workers, including families with children who were born in Loutra, reportedly fled. On 8 August, the Mytilene City Council reportedly declared that any legal foreign worker could return to the island. It was alleged that the Mytilene prosecuting authorities subsequently ordered a preliminary examination into the events in Loutra but no prosecutions has since been reported in connection with these events.

60. Rangasamy Nadaraja, a Tamil from Sri Lanka who had reportedly been subjected to ill-treatment in his country, was arrested on 12 June 2001 at Venizelos airport, Athens, for carrying a forged passport. He was allegedly taken, handcuffed, to the airport police station, where he was given some documents in Greek to sign despite the fact that he could not understand them. Reportedly, he had no legal representation and had an interpreter who spoke to him in English, a language which he understands poorly. He was reportedly held in the airport police holding cells for two months and was never informed about possible deportation. According to the information received, on 12 July he was asked to sign a Sri Lankan passport without being informed that this was part of the procedure for his deportation. When on the following day he realized that he was actually being deported, he reportedly refused to board the plane. Allegedly, he fell down and one of the guards who were escorting him kicked him all over his body. He was reportedly pushed and shoved by the other guards. He was eventually returned to the airport police station cells where he was kept until 9 August 2001, when he was transferred to the Hellenikon Holding Centre, at the former Athens airport. He was released in mid-September on the expiry of the maximum period - three months - allowed for detention pending deportation.

61. A., aged 17, O. E., aged 17, Hanafi Alton (also spelled Altun Hanifi), aged 36, Bülent Sahin, aged 27, Halil Gilgil, aged 20, F.D., aged 18, Gehad Korlalg, aged 26, Khalid Bagish, aged 29, Mehmet Nuri Aktay, aged 29, and Rahme (also spelled Rahmi) Tunc, aged 29, were among a number of foreigners who were reportedly beaten by members of the coast guard in May 2001. The incident reportedly took place after the Turkish fishing boat in which they were travelling was towed into Souda Harbour, Crete, by the Coastal Rescue Service, which had earlier received a call for help from the boat which was en route to Italy. On board there were reportedly 164 foreign nationals, including women and children, as well as asylum-seekers, mostly Kurds from Turkey, Iraq and the Islamic Republic of Iran, and other Turks, Afghans,

Pakistanis, Eritreans and Ethiopians. Upon disembarking, four Turks were reportedly arrested on charges of people-smuggling. The migrants were held for several days in the old Academy of the Merchant Navy at Souda, Hania, where members of the coast guard in charge of the group allegedly assaulted and beat the above-named men. On 6 June 2001, local doctors reportedly examined members of the group who claimed that they had been beaten. The doctors observed injuries on at least 16 of them. The injuries were apparently consistent with the allegations. Five of them were reportedly transferred to the hospital for further medical check-ups and treatment.

62. On 8 June 2001, the Chief of the Port Authority reportedly ordered an administrative inquiry after a non-governmental organization allegedly publicized its concerns about the treatment and the conditions of detention of these asylum-seekers and immigrants. The group was reportedly later moved to the premises of the old airport of Hania. It was reported that in these facilities, the group was detained behind bars in a room of 100-150 m², with only three toilets and no possibility of exercise in the open air. According to the information received, women and children were held together with men and conditions were further aggravated by the high summer temperatures. By mid-June all members of the group had been reportedly transferred to Athens. It was reported that the Ministry of the Merchant Navy stated that an administrative inquiry had been undertaken to establish the Port Authority's responsibility for "omissions or irregular acts" during the detention of the group, and that on the basis of its findings disciplinary proceedings had been started against one ranking officer and five members of the coast guard for "irregular performance" of their duties. The Chief of the Port Authority was, however, reported to have concluded that the officer had used violence "in a non-preventative manner" and had concealed the incident, while five members of the coast guard were guilty of physical or emotional abuse, homophobic denigration, and inflicting a "military-style punishment" (forcing one of the detainees to hop like a rabbit). According to the information received, one officer and one member of the coast guard had each been punished with 20 days' confinement to barracks, and the other members with 30 to 50 days in jail.

63. R.T. (full name provided to the Government), a 16-year-old Albanian national, reportedly traveled in an irregular manner in December 2000 to Greece where he found a job. On 8 February 2001, three plain-clothes police officers reportedly carried out a raid on a house in the Aghios Stephanos quarter of Athens where R.T. and other Albanians were staying. It was reported that he was taken outside, pushed to the ground and kicked, in particular on his stomach and legs. His eyes were reportedly dazzled with an electric torch. According to the information received, R.T. and another Albanian were taken to the police station in Aghios Stephanos, where they were put in a cell. Although R.T. allegedly became ill while in custody, instead of summoning medical aid, police reportedly turned him out onto the street. It was alleged that the police failed to record the detention and release of R.T. and the names of the arresting officers. Early the next morning he was reportedly taken by his relatives to the "G. Gennimatas" General State Hospital of Athens, where he was admitted to the intensive care unit and where he was diagnosed with a double rupture of the spleen and underwent an emergency operation for its removal.

64. On 17 February 2001 he was reportedly taken to Papagos police station, Athens, where he was detained pending deportation. It was alleged that a relative who protested was also taken by the police to Papagos police station where he reported the beating which R.T. had suffered on 8 February. According to the information received, R.T. and his relative were subsequently sent

to Police Headquarters in Athens, where they filed a complaint against the three officers who had beaten R.T. The relative was reportedly released but R.T. was transferred to Aghia Paraskevi police station, where he identified one of the three officers who had beaten him on the night of 8 February. Although R.T. was still weak and in pain and his doctors had recommended particular care in order to prevent infection, he was reportedly held in a cramped and unhygienic cell, together with five adult immigrants. He was reportedly denied food for two days and not permitted visits from a relative. He was only allowed to leave the cell to go to the toilet twice a day. During the two first days of detention he was allegedly not given the prescribed medicine. According to the information received, on 22 February 2001, R.T. was ordered by the Ministry of Public Order to leave the country within 15 days, although his doctors had recommended that he remain under medical supervision for at least two months. It was, however, reported that shortly before his release his health condition seriously deteriorated. He was allegedly taken in handcuffs from the police station, with a high fever and internal bleeding, to the Sismanoglio Hospital, where he remained until 5 March 2001. On 26 February 2001, his lawyer reportedly filed an appeal against his deportation. It was reported that following the intervention of the Ombudsman, R.T. was subsequently granted leave, on exceptional grounds, to remain in Greece for a further six months. This leave has since been extended. The Special Rapporteurs were informed that criminal proceedings were initiated by the police department against the officer identified by the alleged victim and other unknown police officers. An administrative inquiry was also said to have been opened. It was also reported that R.T.'s family had filed a civil claim on his behalf for compensation.

65. Ferhat Çeka, a 67-year-old Albanian pensioner, was reportedly shot near the border between Albania and Greece on 8 March 2002. It was alleged that since 1991 Mr. Çeka had been spending several months a year working on farms in Greece to supplement his pension and support his family in Tirana. According to the information received, on the evening of 8 March he was apprehended by soldiers close to the military outpost of Aghia Ioanna, shortly after crossing irregularly into Greece. The pensioner was reportedly alone and unarmed. It was reported that a dog caught him by his jacket and that shortly afterwards a group of soldiers called off the dog and proceeded to search him. The soldiers reportedly stripped him of all his belongings. He was reportedly ordered to lie face down on the ground and subsequently kicked and beaten with rifle-butts on his side, back and shoulders by the soldiers. He was later reportedly ordered to stand up and walk, and was then shot with a pistol. According to the information received, he was left lying on the ground until a military doctor came. It was reported that Mr. Çeka was then taken by a military jeep to an ambulance and transported to the hospital in Kastoria, where he underwent an operation. While he was in the hospital, he was reportedly questioned without the assistance of a lawyer or of an interpreter and was asked to sign a document he could not understand because it was written in Greek. Mr. Çeka was reportedly returned to Albania on 21 March 2002.

66. A medical report issued by the hospital that day reportedly stated that Mr. Çeka was admitted with a bullet wound which entered the right side of the kidney and exited from the right abdomen, and that he underwent an operation to remove his right kidney and a part of the liver. Reportedly, in March 2002, the Greek military authorities initiated an administrative inquiry into this incident. The results of this inquiry were reportedly not made public but were forwarded to higher military authorities for review. It was alleged that the case was subsequently referred to

the Military Prosecutor of Thessaloniki, but the Special Rapporteurs had not been informed whether the latter had decided to initiate criminal proceedings.

67. A.S. (full name provided to the Government), a 15-year-old Albanian, was reportedly wounded by border guards on the night of 7 June 2001 when a group of 12 Albanians crossed the border into Greece irregularly. It was alleged that they were approaching the town of Kastoria when they realized that they had been sighted by border guards who had allegedly ordered them to halt. The group of migrants scattered and fled in the dark. It was reported that the border guards fired after them, hitting A.S. in the spine. The teenager was allegedly found some hours later by the border guards and taken to hospital in Kastoria. It was reported that because of the severity of his injuries, he was transferred from Kastoria to the hospital in Thessaloniki, where he underwent an operation. His injuries reportedly left him permanently paralyzed from the waist down. His family later brought him back to Albania and filed a civil claim on his behalf for compensation. The Special Rapporteurs were informed that following a preliminary investigation by the local Greek police authorities, the case file was forwarded to the Prosecutor's Office in Kastoria, which allegedly ruled that there were no grounds for bringing charges against any border guards. This decision was reportedly confirmed by the Appeals' Prosecutor. According to a press report, the decision stated that a border guard who had fired into the air (in the dark), to "frighten off" the Albanians had accidentally wounded A.S. According to the allegations received, there appeared to be no suggestion that the border guard fired in self-defence or that there was any imminent threat of death or serious injury. The use of firearms in this incident would consequently appear to contravene international standards, in particular the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

68. K.S. (full name transmitted to the Government), a 17-year-old Albanian, left his home in Frashtani village, Fier district, Albania, on 16 November 2000, together with his brother and two other young men. According to the information received, when they were already on Greek territory, they came across a border patrol. They were reportedly stopped by strong projector lights. Immediately after the lights went on, there was allegedly a burst of gunfire. The soldiers reportedly approached the migrants and started to beat them. The Special Rapporteurs were informed that the four young men were taken to a small barracks, where they were allegedly kicked and beaten again. K.S. was reportedly forced to run in the direction of a nearby wood by a soldier who allegedly fired aiming close to the teenager's feet. When he started running, a police dog reportedly chased him and bit his left leg, releasing him only upon the order of a soldier. On 18 November, the four Albanians were reportedly transported to Kakavija border post. From there, K.S. was reportedly taken to the hospital in Gjirokastra (Albania), where he was interviewed two days later, still in state of shock.

69. By letter dated 17 September 2002, sent jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture, the Special Rapporteur transmitted to the Government information on the following cases.

70. Bledar Qoshku, a 23-year-old man from Babje village, Librazhd district, Albania, was reportedly shot dead by border police in the early hours of 1 November 2000. According to police sources, Mr. Qoshku was leading a group of six other men who had paid him to guide them across the border, when they were identified by a thermal camera. Mr. Qoshku was allegedly armed with a Kalashnikov with a sawed-off barrel. It was reported that when he

realized that he had been spotted, he pointed his gun at the patrol to shoot, but was dazzled by the projector lights directed at him. He was allegedly shot by the patrol before he could fire. The six other migrants were reportedly taken to Florina for questioning and later released and returned to Albania. This account was reportedly disputed in Albanian press reports which cited statements by members of the group who denied that Mr. Qoshku was armed. One of them, Haqif Riza Kurta, reportedly claimed that, while in police custody in Florina, the police beat him and the other members of the group with the intention of making them confess that Mr. Qoshku had a Kalashnikov. It was also reportedly claimed that they had denied, before an investigating judge, that Mr. Qoshku was armed. Reportedly, at least another two of the six men involved gave statements to the Tirana District Prosecutor's Office denying that Mr. Qoshku was armed. The Special Rapporteurs were informed that, according to the prosecuting authorities in Kastoria, an investigation had concluded that when the Greek border guards sighted the group they ordered them to halt in Albanian. Mr. Qoshku, however, pointed the Kalashnikov, loaded and primed, at the guards who shot him in self-defence. According to this investigation, all six members of the group testified in Greece that Mr. Qoshku was armed. The case was accordingly dismissed and filed, a decision that was subsequently confirmed by the Appeals' Prosecutor of Western Macedonia.

Communications received from the Government

71. By letter dated 26 August 2002, the Government transmitted the following information on the case of Joseph Emeka Okeke.

72. Joseph Emeka Okeke entered the country illegally at an unknown time and was arrested in 1998 for a narcotics related offence and detained at Korydallos Prison. He was sentenced to three years' imprisonment and a fine. The execution of the sentence was suspended indefinitely and his permanent deportation was ordered. However, deportation was not feasible, because he initially declared that he was a citizen of Rwanda, which is not represented in Greece, making it impossible to issue travel documents. He was therefore released and advised to depart within three months to a country of his choice. On 11 January 2001, he was granted a stay permit as the husband of a Greek citizen. He was arrested again on 16 February 2002 after he attempted to travel to Nigeria with documents belonging to another person, an offence for which he was later found not guilty. On 25 June 2002, he reportedly caused damage to the watch of an escorting police officer during an attempt to execute the pending judicial deportation order. A second attempt to deport him was made under a judicial order on 26 June 2002. It was reported that when he realized that he was about to be deported, he started yelling and inciting the other detainees to prevent the deportation. During his transfer to Spata airport "Eleftherios Venizelos" and during boarding onto the craft, he reportedly showed violent resistance and the pilot and crew of the aircraft asked that he be taken off. Criminal charges were brought against him in this connection. He was subsequently taken to a special detention facility of Korydallos Prison. Another attempt at deportation was made on 27 July 2002 but he showed resistance again and for reasons of security, invoked by the pilot, he was not deported. Further criminal charges were brought against him and he was referred for trial. Reportedly, Mr. Okeke did not intend to press charges against the police officers. The report of the medical examination he underwent did not record any burn or other residue or any contact with electricity. According to the same report, the scratches he presented were superficial and did not constitute a significant injury. According to the conclusions of the administrative examination carried out under oath by a high-ranking

officer at the Hellenic Police Headquarters concerning the complaints for ill-treatment filed by a human rights group, the police officers involved in the deportation procedure acted within lawful limits and the violence exerted was necessary for the execution of the judicial order.

73. By letter dated 6 November 2002, the Government transmitted the following information regarding the conditions of detention in General Police Directorate of Attica and Korydallos Prison.

74. The detention of aliens pending deportation was a major concern for Greek authorities and efforts were under way to minimize their prolonged periods of detention. Orders were given to regional police to carry out inspections in all detention facilities, to give further strict orders and clear instructions concerning the sanitary and other equipment of all detention facilities and to monitor compliance. In addition, a senior officer had been ordered to conduct a local inspection of all facilities where aliens were detained pending deportation. As far as the detainees' meals were concerned, the board allowance was reportedly doubled in 2001 with a view to improving the quality and quantity of food. When adequate health care was not possible in the place of detention, the detainee would be transferred to the nearest hospital. According to the law, police officers were obliged to allow and facilitate detainees' communication with their relatives and the consulate of their country. However, these rights were said to be restricted when they could compromise the investigation. The Government also reported that a programme was being implemented to improve the building infrastructure of the Hellenic police. On the other hand, the jail located on the seventh floor of GADA Headquarters at Alexandra Avenue was to be decommissioned.

75. By note verbale dated 6 January 2003, the Permanent Mission of Greece to the United Nations Office at Geneva reported that a sworn administrative inquiry had been opened on the case of Arjan Hodi. As a result, a fine was imposed on a police officer and the case of two other police officers of the Mytilene security station had been reviewed by the First Degree Disciplinary Council, which did not impose any penalty on them. The Head of the Administrative Branch lodged an appeal against this decision with the Secondary Disciplinary Council. Penal proceedings were opened against a police officer for torture and the case was still pending at the time the response was received.

76. On the case of R.T., the Government reported that he was subjected to ill-treatment in the police station of Agios Stephanos, Attica, and that a sworn administrative inquiry had been carried out. The two police officers who were found responsible were dismissed and discharged by the First Degree Disciplinary Council. The Public Prosecutor opened penal proceedings against one of the officers for serious physical injuries. The case was still pending. Also, a civilian claim had been filed and was still pending.

77. On the case of Centaj Çelnicu, the Government reported that on 21 November 2001, at 12 Lefkosias Street in Athens, a police officer tried to immobilize Mr. Çelnicu who was wanted for causing serious physical injuries to another Albanian man. In the attempt to immobilize him the officer's gun went off accidentally. Mr. Çelnicu reportedly failed to obey the order of the police officer to put his hands up. The police officer concerned was arrested and the Public Prosecutor started criminal proceedings against him for intentional homicide. The examining judges, after

taking his statement, released him under restrictive conditions. A sworn administrative inquiry was ongoing.

78. On the case of A.S., the Government reported that on 3 and 4 June 2001, between 10. p.m. and 7. a.m., two border guards serving at the police border post of Krystalopigi were patrolling the area searching for migrants trying to cross the border illegally. At 4. a.m. they spotted a group of 12 irregular migrants on the Kastoria-Florina road and shot in the air to get them to halt. Reportedly, one of the police officers stumbled and fell and his gun went off, injuring A.S. in the abdomen. A.S. reportedly stated that he did not want criminal proceedings to be opened against the border guard. He was immediately transported to the Kastoria hospital and the next day to the Thessaloniki hospital suffering from paralysis of the lower limbs. The case was reportedly put in both the criminal and disciplinary files.

79. The Government reported that according to the case files, the six foreigners who were led by B. Qoshku were tried on charges of illegal entry into Greece. They testified that Mr. Qoshku was armed while he was leading them. Taking into account their statements and those of the border guards, the prosecutor decided not to open criminal proceedings for lack of sufficient evidence and filed the case in accordance with article 43 of the Code of Criminal Procedure. The prosecutor concluded that there was not enough evidence that the guards had exceeded the limits of self-defence (art. 22, Penal Code). The decision was confirmed by the Appeal Prosecutor of Western Macedonia.

80. The Government reported that it had not received any complaints regarding the case of Rangasamy Nadaraja and stressed that any incidents of ill-treatment by the police, of Greek citizens, as well as foreigners, was treated with severity and the perpetrator brought to justice.

Observations

81. The Special Rapporteur thanks the Government of Greece for the information submitted and its willingness to cooperate with the mandate. She was particularly pleased to learn that the building infrastructure of the Hellenic police will be upgraded and hopes that these changes will improve the conditions of detention of migrants. The Special Rapporteur would appreciate receiving information in relation to the cases for which she has not yet received a response and asks to be kept informed of any developments in the investigations and prosecutions in the cases of Arjan Hodi, R.T. and Centaj Çelnicu.

Guatemala

Comunicaciones enviadas al Gobierno

82. El 10 de octubre de 2002, la Relatora Especial transmitió un llamamiento conjunto con la Relatora Especial sobre ejecuciones extrajudiciales, sumarias o arbitrarias y la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos sobre el caso de Egon Hidalgo Salvador y Salvador, de la Pastoral de la Movilidad Humana de la Diócesis de San Marcos. Éste habría sido objeto de amenazas de muerte el 27 de septiembre y el 1 de octubre de 2002 por parte de una persona que no se habría identificado. Dicha persona le habría comunicado que si no dejaba de realizar actividades relacionadas con la protección de los

derechos humanos de los migrantes en la zona, podría sufrir consecuencias graves tales como la muerte. De acuerdo con la información recibida, la Pastoral de Movilidad Humana de la Diócesis de San Marcos trabajaba conjuntamente con la Oficina de Derechos Humanos de la Casa del Migrante en proyectos de sensibilización, información y formación sobre el fenómeno migratorio. También llevarían a cabo actividades directamente dirigidas a aquellas personas que deciden emigrar para informarlas sobre sus derechos y alertarlas sobre los riesgos de su decisión.

83. El 7 de noviembre de 2002, la Relatora Especial comunicó al Gobierno que recibió información sobre los casos individuales siguientes:

84. José Oscar Romero Mancilla y Rolando Molina, ambos de nacionalidad hondureña, habrían sido interceptados junto a otros cinco migrantes, entre ellos dos menores, el 12 de abril de 2002 por agentes de la Policía Nacional Civil (PNC) en Tecún Umán. Los migrantes habrían sido conducidos a la subestación policial, donde habrían sido interrogados acerca de una persona que, según la policía, les habría ayudado a pasar la frontera. Se alegaba que los agentes habrían pedido dinero a los migrantes a cambio de dejarles en libertad. Como los migrantes se habrían negado a pagar, habrían sido recluidos durante seis días. Los dos menores y la mujer que viajaba con ellos habrían sido puestos en libertad poco después de su intercepción. De acuerdo con la información recibida, durante su detención los otros reclusos les habrían robado el dinero. José Oscar Romero Mancilla y Rolando Molina habrían sido posteriormente puestos a disposición judicial por falta contra las buenas costumbres.

85. Amilcazar Ganuza, César Calderón y Luis Calderón habrían sido interceptados por tres agentes de la PNC el 16 de abril de 2002 cuando se dirigían a las instalaciones de la casa del Migrante de Tecún Umán. Los tres migrantes habrían presentado su documentación pero los agentes habrían alegado que los documentos no eran válidos. Los agentes les habrían pedido una gran cantidad de dinero a cambio de no ser conducidos a la subestación policial. Uno de los migrantes acabó pagando una parte del dinero y los agentes habrían dejado ir a los tres hombres al mismo instante. Una denuncia sobre este caso habría sido interpuesta ante la Procuraduría de Derechos Humanos, Auxiliatura de Coatepeque. Los tres agentes involucrados en estas alegaciones habrían sido identificados por los migrantes.

86. Kanu Okany Patel, un ciudadano indio de 35 años que habría sido detenido en México y posteriormente trasferido a Guatemala junto a 42 otros migrantes procedentes de la India, se habría quitado la vida ahorcándose el 4 de diciembre de 2001. De acuerdo con la información recibida, el migrante se encontraba retenido en el supuestamente hacinado albergue de la Dirección de Migración de la zona 1 de la Ciudad de Guatemala, en espera a ser expulsado. Kanu Okany Patel, quien habría padecido de fuertes dolores en el corazón habría solicitado atención médica, pero ésta le habría sido denegada. Habría sido privado de su libertad bajo dichas condiciones durante cuatro meses. Se alegaba que antes de ser llevado a Guatemala, el grupo de migrantes había sido retenido durante cinco meses en México.

Observaciones

87. La Relatora Especial reitera su interés en recibir la respuesta del Gobierno de Guatemala en relación con estas alegaciones.

88. La Relatora Especial quisiera reiterar que el trabajo de las organizaciones no gubernamentales para la protección de los derechos humanos de los migrantes es esencial para asistir a los Estados en la promoción y protección de dichos derechos. En este sentido la Relatora Especial considera que parte de su tarea consiste en brindar a la atención de los gobiernos alegaciones sobre amenazas y violaciones de los derechos humanos en contra de las organizaciones que trabajan para promover y proteger los derechos humanos de los migrantes con miras a asistir los gobiernos en sus esfuerzos para asegurar una protección plena y efectiva de los derechos humanos de los migrantes.

Israel

Communication sent to the Government

89. By letter dated 19 September 2002, the Special Rapporteur transmitted to the Government information she had received on the situation of migrant workers in Israel.

90. According to the information received migrant workers were tied to a single employer upon their arrival in Israel. This bondage reportedly resulted in inferior working conditions and salaries. The Special Rapporteur was also informed that complaints of abuses by employers against migrant workers are not duly followed through. Reportedly, if a foreign employee tried to quit his job because the terms of the contract were not respected, his/her action would be considered illegal. The migrant's work permit would be invalidated and the migrant would consequently face arrest and deportation. It was further reported that there was a widespread practice among employers of confiscating migrant workers' passports, which was considered a criminal offence under the national law. However, it was alleged that nobody had been indicted on these grounds. It was also reported that many employers collected a fee from their employees for returning their passports. As the law required the presentation of an ID document upon police request, workers caught by a policeman or inspector without their passports would face serious consequences. Moreover, Social Security and insurance companies allegedly did not handle compensation claims for work accidents if the victims were not in possession of their passports.

91. The Special Rapporteur also received information according to which employers used violence as a means of silencing worker's complaints. In particular, it was alleged that Chinese construction workers quitting their job due to contract violation or poor conditions of work would be subjected to violent reprisals. The construction companies reportedly demanded from Chinese employment agencies large amounts of money as a guarantee against the worker's departure before the end of their contracts. It was alleged that the Chinese agencies, in turn, required the workers to sign documents stating that they would pay considerable amounts of money in case they left their employer. Chinese agencies were also thought to have used abduction, confinement, robbery and beatings in order to prevent the Chinese migrant workers from quitting their employment. It was reported that the legal system severely condemned the infringement of workers' rights, in particular when violence was involved. However, according to the information received, many police files dealing with violence against foreign workers had been dismissed due to "lack of public interest" or "lack of sufficient evidence".

Observations

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

Japan

Communication sent to the Government

93. By letter dated 7 November 2002, sent jointly with the Special Rapporteur on the question of torture, the Special Rapporteur informed the Government that she had received information according to which migrants were allegedly at risk of ill-treatment by immigration authorities. This reportedly occurred during interrogations in Special Examination Rooms and by private security guards in detention facilities located in Narita Airport and other Japanese ports of entry, in particular in airport premises known as Landing Prevention Facilities (LPFs) and at an “airport rest house” outside the airport. It was alleged that foreign nationals had been strip-searched, beaten or denied food by security guards. Some LPF detainees had also been held incommunicado and not allowed to communicate with independent legal advisors or with their consular or diplomatic missions. Reportedly, in many cases, detainees at LPFs had been denied medical treatment by the staff of security companies and by immigration officials. Some detention cells located in the LPFs, where migrants had been held for several weeks, were reported to have no windows.

94. The Special Rapporteurs were also informed that foreign nationals, including migrants, would be transferred from the Special Examination Rooms of the immigration authorities to their detention facilities, and back from the detention facilities to the air carriers on the day of their flight, by private security companies. It was also reported that private security companies had been contracted to monitor those detained in the LPFs. At least one of these private companies was believed to have asked the detainees to pay for their “accommodation”. It was alleged that detainees who refused to pay had been strip-searched. Force was also reportedly used by staff of the security company against detainees who protested these requests. The Special Rapporteurs were informed that no investigation on these allegations had been carried out by the authorities.

95. Finally, the Special Rapporteurs were informed that, in many cases, the denial of entry as well as human rights abuses were linked to the nationality of the person. It was reported that since 11 September 2001, several asylum seekers had been refused entry into Japan only because they came from Afghanistan or the Middle East. According to the information received, between 11 September 2001 and 30 April 2002 at least 14 Afghan asylum-seekers had been denied entry into Japan at Narita Airport. It was alleged that they were detained at the Narita Airport LPF for as long as several weeks and later transferred by the immigration authorities to the East Japan Immigration Centre in Ushiku. It was alleged that their claims for refugee status were all rejected and deportation orders were issued. However, the Special Rapporteurs were informed that in May 2002 almost all Afghan asylum-seekers in Tokyo were granted provisional release.

96. Ali Ahmad, a 19-year-old Afghan asylum-seeker member of the minority Shia community, was reportedly detained at the LPF in Kansai Airport, Osaka, in September 2001. According to the information received, Ali Ahmad was a member of Hekb-e Wahdat and had

been involved in fighting against the Taliban forces. Reportedly his application to enter Japan and his asylum claims had been rejected. An order to leave Japan was reportedly issued two days later. He was allegedly transferred to an Immigration detention room within Kansai Airport for another 15 days. It was reported that he was interviewed three times by immigration officials who allegedly yelled at him. Reportedly, he was so scared to be subjected to physical violence that he signed all documents that he was asked to sign, including a document waiving his right to appeal the decisions taken by the immigration officials. The Special Rapporteur was informed that, following interventions by a lawyer and some friends who were aware of his detention, the Osaka immigration officials cancelled the deportation order on 18 February 2002, five months after the first deportation order had been issued, and he was reportedly granted a provisional release. It was alleged that during the first three months of his detention, Ali Ahmad lost 35 kilograms.

Observations

97. The Special Rapporteur would appreciate receiving the reply of the Japanese Government in relation with these allegations. The Special Rapporteur, without implying any conclusions as to the facts of the allegations, would like to refer to the conclusions and recommendations contained in her main report (E/CN.4/2003/85).

Kazakhstan

Communication sent to the Government

98. By letter dated 7 November 2002, the Special Rapporteur notified the Government that she had received information concerning Nasypa Kadyrova and Cholpon Keneshbaeva and a number of Kyrgyz, Uzbek and Tadjik migrants who were reportedly arrested by agents of the General Department of the Interior on 20 September 2001 in the "Bolashak" market in Almaty. It was reported that at least 400 migrants were arrested that day. The Special Rapporteur was informed that in accordance with the law, the arrested migrants had previously registered with the Regional Department of the Interior in Jetisui. However, their registration certificates for temporary stay and their passports were reportedly confiscated. Those arrested in the market were reportedly transferred to Lobachevski prison, which was overcrowded. They were reportedly told by a judge of the Bostandyk Regional Court that their documents had been cancelled and that they had to pay 15,500 tenge to get passports from the Bostandyk Regional Department of the Interior. The migrants reportedly lodged a complaint with the Office of the Public Prosecutor, the Jetisui Regional Department of the Interior and the city court but, according to the information received, they have received no reply.

Communications received by the Government

99. By note verbale dated 23 December 2002, the Government of Kazakhstan reported that in the course of a check conducted by the Almaty City Procurator's Office, it had been established that Nazipa Kadyrova, a citizen of the Kyrgyz Republic, and Cholpon Keneshbaeva, were not taken to the police holding unit on Lobachevsky Street in Almaty by officers of the Almaty City Internal Affairs Authority. Reportedly, it had been ascertained that on 21 September 2002 Bostandyk District Court in Almaty imposed an administrative fine of 15,500 tenge on

Nasibatkhan Atamirzaevna Kadyrova, a Kyrgyz citizen born in 1970, under article 394 of the Code of Administrative Procedure of the Republic of Kazakhstan (breach by a foreigner or stateless person of the regulations on remaining in the Republic of Kazakhstan). Reportedly, this decision by the court was not appealed to the procuratorial bodies or to the city court. In this instance, Almaty City Internal Affairs Authority was responsible for examining and investigating the complaint regarding the actions of the internal affairs officers. Moreover, a check by way of follow-up to the letter had established the unjustified nature of Ms. Kadyrova's administrative detention and the proceedings against her. The Almaty Procurator's Office had recommended to the migration police of the Almaty City Internal Affairs Authority that it rectify these breaches of the law, and had also lodged a protest with the supervisory division of Almaty City Court, requesting it to annul the aforesaid lower court ruling. The Government reported that there was no record of the detention of 400 citizens of Kyrgyzstan, Uzbekistan and Tajikistan by the internal affairs bodies in Almaty, nor of administrative proceedings against Cholpon Keneshbaeva.

100. The Government further reported that the Ministry of Internal Affairs of the Republic of Kazakhstan stated that on 21 September 2001, the Bostandyk court in Almaty took administrative action under article 394 of the Code of Administrative Procedure of the Republic of Kazakhstan against Ms. Kadyrova, a citizen of Kyrgyzstan, for breach of the regulations on the presence of foreign citizens in the Republic of Kazakhstan (unregistered residence). She was fined 15,500 tenge and ordered to be subsequently deported from Kazakhstan. However, Ms. Kadyrova did not attend the court hearing and failed to pay the fine. The court's decision was not appealed within the statutory deadline. Accordingly, on 1 October 2001 her national passport No. A-1045732 was forwarded by the court to the migration police unit of Bostandyk District Internal Affairs Authority, where it was being held.

101. It was further reported that the Ministry of Internal Affairs of the Republic of Kazakhstan stated that, according to incoming correspondence addressed to the Almaty City Internal Affairs Authority, no complaints had been received about this matter. There was no information about the presence of Ms. C. Keneshbaeva in the Republic of Kazakhstan, nor was there any record of administrative proceedings against her. The Migration and Demography Agency had no knowledge of the allegations transmitted by the Special Rapporteur and the responsibility for conducting an inquiry lay with the Almaty Migration Police.

Observations

102. The Special Rapporteur would like to thank the Government of Kazakhstan for the prompt reply to her letter and asks to be kept informed on future developments on the case of Ms. A. Kadyrova.

Malaysia

Communications sent to the Government

103. On 22 August 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the question of torture and the Chairman-Rapporteur of the Working Group on Arbitrary Detention concerning the amendments to the Immigration Act that entered into force

on 1 August 2002 in Malaysia. These amendments reportedly imposed fines, up to five years' imprisonment, as well as mandatory whipping of up to six strokes of the cane, for foreigners who were in Malaysia illegally. It was reported that many irregular migrant workers who were at risk of being whipped in accordance with this law were actually victims of trafficking or subjected to abusive labor conditions. A number of asylum seekers were also said to be at risk to undergo corporal punishment if this new law was applied. It was also alleged that whoever employed more than five undocumented workers was also liable to mandatory whipping and up to five years' imprisonment. A list of at least 64 undocumented migrant workers who were said to have been charged under this new Immigration Act was also transmitted to the Government. They had allegedly been sentenced to up to three years' imprisonment and one to six strokes of the *rotan*, a long bamboo rod.

104. By letter dated 25 September 2002, the Special Rapporteur notified the Government that she had received information on the following individual cases.

105. Mohammad Zaheer, Zaki Sarwar, Nadeem Akhtar Chaudry, Abdul Hafeez Mohammad, Amarjit Singh, Muhammad Basar, Wazed Ali, Mohammad Shalim, Shaheen Raja, Abdul Wadud Abdul Jalil, Mohammad Masud Iqbal, Supriani Bt. Samirin, Ghafoor Ahmed Qureshi and Muhammad Iqbal, along with 148 other Bangladeshi, Indian, Indonesian and Pakistani migrant workers reportedly filed over 39 complaints with the Industrial Relations Department, Industrial Court, or the Labour Department, between 1997 and 2001. According to the information received, most of them claimed that they had been abused by their employers, wrongfully dismissed, not paid for their work, defrauded by manpower agencies or subjected to discriminatory practices. It was reported that, while waiting for the settlement of their complaints, the 148 migrant workers were staying in the country on a special pass, which had reportedly to be renewed on a monthly basis at a cost of RM 100. The Special Rapporteur had also been informed that the Employment Restriction Act binds the migrant worker to the job stipulated in the work permit and obliges him/her to leave the country in order to obtain a different work permit. Allegedly, workers who had filed complaints were denied the right to work while they were waiting for the solution of their cases. Fears had been expressed that this could discourage migrant workers from denouncing the abuses to which they had been subjected and to seek redress and reparation. It was also alleged that the fact that passports were often kept by the employers or the Immigration Department could prevent migrant workers from filing complaints for unfair or discriminatory conditions of work or dismissal.

106. Mohd Mohiuddin, a migrant worker, was reportedly questioned and subsequently arrested in his room on the night of 8 July 2001 by police officers in plain clothes. It was alleged that when he showed his passport and special pass, he was slapped twice by the police officers, kicked and insulted. He was reportedly beaten again when he allegedly informed the police officers that he had filed a complaint with the Labour Department and that he was waiting for a decision on his case. According to the information received, he was taken to Port Klang police station at around 12.30 a.m. and kept in a lock-up for 16 hours. It was alleged that while in detention he was kicked, and prevented from sleeping and eating by two other inmates.

107. Dioh Binti Sharif, a 40-year-old Indonesian domestic worker, reportedly arrived in Malaysia on 7 March 1998 and started working as a housemaid in September 1998. Despite having reportedly been promised RM 350 a month, she was eventually paid only RM 500 for a

period of 22 months. According to the information received, during this period she was subjected to physical and verbal abuse by her employer. It was further reported that she had been repeatedly kicked and beaten with a *rotan*. Once she was allegedly locked up in a toilet for four hours and in two other occasions she was abandoned for several hours by the roadside. The Special Rapporteur was informed that, on 7 July 2000, she was severely hit with a cane on her head and back by the employer. The neighbors heard her screams and called the police who brought her to the office of a non-governmental organization. Reportedly, the police officers said that they would come back the following day to take Dioh Binti Sharif for medical examination but did not do so until 3 August 2000, when her bruises had already disappeared. In order to have the case investigated by the police, Dioh Binti Sharif had to apply for a special pass from the Immigration Department which would allow her to stay in Malaysia. Such pass had to be renewed monthly at a fee of RM 100 per month. She also had to find out who was keeping her passport and eventually managed to get a copy of the first page of it from her former manpower agency. According to the information received, the employer was not charged until 12 February 2001. The hearing for criminal proceedings was reportedly scheduled for 29 June 2001. The Special Rapporteur would appreciate receiving information on the current status of the case.

Communications received from the Government

108. By letter dated 25 November 2002, the Government confirmed that the Immigration Act 2002 as amended provided for the caning of irregular migrants and their employers as a deterrent to irregular migration. The Government specified that caning was not mandatory and it was not applied against women nor against men older than 50. According to the Malaysian Penal Code, caning could only be administered on certain parts of the body, and the cane used could not be more than half-an-inch in diameter. Each sentence was accurately monitored by a medical officer and ceased when the latter considered that the sentenced person was unfit to be whipped. The Government considered itself as having been just and fair in implementing the Immigration Act.

109. The Government also informed that only a minority of the irregular migrants in Malaysia were trafficked persons. With regard to smuggled migrants, the Government transmitted its assurances that the Royal Malaysia Police and the Malaysian Immigration Department would rescue them when possible and turn them over to their respective embassies to ensure their safe return. As far as asylum-seekers were concerned, the Government had reportedly assisted the UNHCR by not returning them to their countries and by placing them in camps pending their subsequent resettlement in a third country.

Observations

110. The Special Rapporteur thanks the Government of Malaysia for its prompt and detailed response regarding the urgent appeal dated 22 August 2002. In this connection, the Special Rapporteur would like to refer to Commission on Human Rights resolutions 1997/38 (para. 9), 1998/38 (para. 3), 1999/32 (para. 3), 2000/43 (para. 3), 2001/62 (para. 5) and 2002/38, stating that "corporal punishment, including of children, can amount to cruel, inhuman or degrading punishment or even to torture." The Special Rapporteur would appreciate receiving information in relation with the cases for which she has not yet received a response.

Mexico

Comunicación enviada al Gobierno

111. El 11 de abril de 2002, la Relatora Especial transmitió una comunicación al Gobierno de México en la que agradecía la acogida que recibió durante su visita al país en febrero y marzo del mismo año y le solicitaba información sobre los casos de las personas siguientes: Víctor Manuel Torrente Márquez, un migrante de nacionalidad Nicaragüense, detenido en el Centro de Readaptación Social (CERESO) de Tapachula, Chiapas, desde 2001; Wendy Yumana Hernández, una migrante de nacionalidad guatemalteca detenida en el Centro de Prevención y Readaptación Social Femenil Número 4, Tapachula, Chiapas y que habría sido sometida a malos tratos para obtener su confesión sobre un delito de robo; Luis Castillo Sepúlveda, un migrante de la República Dominicana detenido en la Estación Migratoria de la Ciudad de México que alegó haber sufrido malos tratos por parte de un funcionario del Instituto Nacional de Migración (INM) y dos oficiales de seguridad pública; Germán Italo Sojos Ortiz, conocido también como José Luis Ortiz Calderón, y Luis Humberto Quinde Mocha, conocido también como Wilson Patricio Escobedo Figueroa, dos migrantes de nacionalidad ecuatoriana reclusos en el CERESO Cerro Hueco de Tuxtla Gutiérrez, Chiapas. La Relatora Especial también transmitió dos casos enviados por la Defensoría del Pueblo de Azuay del Ecuador que concernían Ángela Rosa Escamilla Meza y Carmen Liliana Melgar Aguilar. Estas dos mujeres de presunta nacionalidad mexicana se habría encontrado en el Ecuador irregularmente y habrían manifestado su interés en ser repatriadas a México tras haber sido víctimas de violencia intrafamiliar en el Ecuador

Comunicaciones recibidas del Gobierno

112. El 8 de octubre de 2002, el Gobierno transmitió los expedientes proporcionados por el INM sobre Víctor Manuel Torrente Márquez, Wendy Yumana Hernández, José Luis Ortiz Calderón y Wilson Patricio Escobedo Figueroa e indicó que Víctor Manuel Torrente Márquez habría sido puesto en libertad el 18 de junio de 2002. El 4 de diciembre de 2002, se proporcionó a la Relatora Especial información sobre Luis Castillo Sepúlveda. Los expedientes proporcionados a la Relatora Especial incluyen la ficha de ingreso o identificación de estas personas, la resolución mediante la cual se dictó auto de formal prisión y su sentencia condenatoria. Wendy Yumana Hernández habría obtenido libertad bajo caución el 15 de mayo de 2002. José Luis Ortiz y Wilson Patricio Escobedo Figueroa habrían sido condenados en sentencia definitiva; el primero por el delito de transportar por territorio nacional a extranjeros indocumentados, con propósito de tráfico y con la finalidad de ocultarlos para evadir la revisión migratoria, y el segundo por llevar por territorio nacional a extranjeros con el propósito de internarse a otro país sin la documentación correspondiente. Luis Castillo Sepúlveda habría sido interceptado el día 30 de noviembre de 2001 y asegurado el 7 de diciembre de 2001 en la Estación Migratoria del Instituto Nacional de Migración del Distrito Federal. Habría salido en custodia el día 14 de abril de 2002.

113. El 22 de noviembre de 2002, la Misión Permanente de México proporcionó información sobre las medidas adoptadas por el INM para el reordenamiento de la Estación Migratoria ubicada en la Delegación de Ixtapalapa en el Distrito Federal (véase E/CN.4/2003/85/Add.2, parr.30). Entre las medidas destacan un operativo de verificación sin previo aviso para examinar el respecto de los derechos humanos de las personas aseguradas, las condiciones de operación de

la estación migratoria, el cumplimiento de la normatividad aplicable en el funcionamiento y el desempeño de los servidores públicos adscritos al centro. Este operativo permitió detectar la presencia de armas blancas en las instalaciones, bebidas alcohólicas, teléfonos celulares, comercialización de productos entre la población de la estación y el incumplimiento de procedimientos administrativos. A tenor de ello, la Procuraduría General de la República y la Secretaría de la Controlaría y Desarrollo Administrativo llevaron a cabo investigaciones para determinar las responsabilidades administrativas y penales en estas irregularidades. Durante las investigaciones, los servidores públicos encargados del funcionamiento del centro y diverso personal operativo habrían sido separados de sus funciones. El programa de reordenamiento también tendría como objetivo acelerar las resoluciones de los casos de aseguramiento prolongado así como mejorar el funcionamiento del centro y garantizar el cumplimiento de la normativa vigente y el respeto de los derechos humanos de los asegurados. Entre otras cosas, hasta la fecha, se habría resuelto el 60% de los casos de estancia prolongada, se habrían mejorado las condiciones de infraestructura, de alimentación e higiene, se habrían contratado intérpretes de chino e inglés, se habría reiniciado la comunicación diaria con las representaciones consulares, se habría facilitado las tareas de asistencia y supervisión de ONG y organismos internacionales y de derechos humanos, se habrían regularizado los procedimientos de adquisición de bienes de consumo y se ha incrementado la seguridad en el centro.

Comunicaciones enviadas al gobierno en seguimiento a las respuestas recibidas

114. El 7 de enero de 2003, la Relatora Especial transmitió una comunicación al Gobierno de México en la que agradecía la información sobre las medidas adoptadas por el Instituto Nacional de Migración (INM) para el reordenamiento de la Estación Migratoria ubicada en la Delegación de Ixtapalapa en el Distrito Federal y transmitía al Gobierno información recibida posteriormente a la fecha de la carta del Gobierno según la cual varias organizaciones no gubernamentales habrían tratado sin éxito de coadyuvar en la averiguación previa que se hubiera desprendido del operativo de verificación llevado a cabo por el INM. Según la información proporcionada, a dichas organizaciones, después de múltiples gestiones para aportar elementos y testigos a la investigación realizada por la Secretaría de la Controlaría y Desarrollo Administrativo (SECODAM) y la Procuraduría General de la República, se les habría negado acceso a la información para conocer de los avances de la investigación y a los datos básicos de la averiguación previa, lo cual habría impedido que las ONG interesadas pudieran aportar evidencias y testigos. Además las aportaciones de dichas organizaciones se habrían encontrado registradas en actas circunstanciadas y no se habrían utilizado dentro de la averiguación previa, única figura legal para la investigación de los delitos y su posible persecución.

Observaciones

115. La Relatora Especial quisiera agradecer el Gobierno de México por la información proporcionada y por el importante y constante apoyo que brinda al mandato. La Relatora Especial recibió con beneplácito la información relacionada con el reordenamiento de la Estación Migratoria en el Distrito Federal. En este contexto la Relatora Especial quisiera reiterar la importancia de continuar en los esfuerzos para combatir a la corrupción de algunos agentes de migración y las violaciones de los derechos humanos con ella relacionadas. También se necesitan investigaciones y medidas prontas y eficaces para sancionar a los responsables, con el fin de no poner en riesgo a los testigos y las organizaciones de defensa y promoción de los

derechos humanos de los migrantes. La Relatora Especial agradecería permanecer informada sobre los avances de las investigaciones que se están llevando a cabo y sobre el impacto de las nuevas y futuras medidas tomadas para mejorar el funcionamiento y las condiciones de vida en la estación. Igualmente la Relatora Especial agradecería permanecer informada sobre los avances de las investigaciones en el caso de Luis Castillo Sepúlveda.

Myanmar

Communications sent to the Government

116. By letter dated 3 September 2002, the Special Rapporteur transmitted to the Government the following allegations.

117. It was reported that migrants deported from Mae Sot, Thailand, and kept in Myawaddy holding centre, Myanmar, faced mandatory HIV tests. It was alleged that the purpose of the detention in the holding centre was to facilitate the migration process between Myanmar and Thailand. Those with legal documents were reportedly allowed to return to work legally in Thailand while the others were offered vocational training at the centre. However, it was alleged that internees of the centre were subjected to a number of lengthy interviews, obliged to pay 3,000 kyats and threatened with six months' imprisonment if they were returned to the holding centre a second time. Moreover, they were believed to be forced to undergo HIV tests. According to the information received, those who allegedly tested HIV-positive were segregated and later sent to a hospital in Rangoon. Fears had been expressed that, in addition to being a discriminatory measure, the segregation of HIV-positive people entailed separation from their relatives.

118. By letter dated 13 November sent jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur informed the Government that she had received information according to which Luon Kon, aged 56, Sai Ohn Ta, aged 38, Sai Nyunt, aged 34, Pa Pan (f), aged 43, Nang Leng (f), aged 27, and N. N. (f) (full name provided to the Government), aged four months, all originally from Loi Saan village, Ham Ngaai tract, Murngkerng town, were reportedly found dead on 30 January 2002 near the border with Thailand. According to the information received, the group was migrating to Thailand and had spent the night in an empty building at Border Point 1, Murngton township. They reportedly changed their Myanmar currency into Thai bath upon the advice of a local trader. It was alleged that the next day they hired an off-duty soldier in plain clothes to guide them across the border to Nong Ook village in Chiang Mai Province, Thailand. The Special Rapporteurs were informed that the guide took them on an alternative route to avoid two checkpoints, but on the way the group encountered troops from Infantry Battalion 281. The troops reportedly stole all their Thai money and possessions and shot them. The Special Rapporteurs were informed that the motivation for the killings was not clear. It was reportedly not known whether soldiers from Infantry Battalion 281 were acting on orders from their commanding officers. It was believed that this group of migrants was not killed in the context of counter-insurgency activities, since there were no SSA-South troops in the area.

Observations

119. The Special Rapporteur would appreciate receiving a response of the Government of Myanmar in relation with the above-mentioned allegations.

Republic of Korea

Communication sent to the Government

120. By letter dated 17 September 2002 sent jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, the Special Rapporteur transmitted to the Government information she had received on the following individual case.

121. Kabir Uddin, Mohammad Bidduth and 11 other Bangladeshi workers in Songseng Industrial Zone, Masok district, were reportedly arrested in the morning of 2 September 2002. Mr. Uddin and Mr. Bidduth were reportedly leaders of the Bangladeshi migrants' community and members of the Equality Trade Union-Migrants Branch. According to the information received, they participated in a sit-in inside the Myongdong cathedral from 28 April to mid-July 2002 in order to protest against the Government's migration policy. It was reported that upon arrest, they were taken to Namyang-ju police station, although some of them were still barefoot or in night clothes. They were allegedly questioned about their supposed involvement in a recent rally opposing the South Korean Government's migration policy. According to the information received, Mr. Uddin and Mr. Bidduth were handcuffed and beaten up while in custody. They were believed to be detained in Hwasu Detention House, in Suwon, two hours from the outskirts of Seoul.

Communication received from the Government

122. By letter dated 9 December 2002, the Government informed the Special Rapporteur that Kabir Uddin and Mohammad Bidduth were arrested on charges of irregular stay in the context of an operation conducted by agents of the Ministry of Justice, the National Intelligence Service and the Namyang-ju police station. When the law-enforcement agents asked the residents of a building in the Songsang Industrial Zone known for housing a number of Bangladeshi irregular migrants to show their passports, Mr. Uddin and Mr. Bidduth resisted the search. In order to prevent them from escaping, the law enforcement agents decided to handcuff them. However, the Government reported that violence was not used against them. The above-mentioned migrants, along with 11 Bangladeshi workers who did not possess a valid passport, were taken to the vacant lot of Namyang-ju City Hall. Since the 11 Bangladeshi migrants had previously reported to the relevant authorities their irregular stay in the country, they were subsequently released. This was not the case of Mr. Uddin and Mr. Bidduth, who had never notified authorities of their irregular stay in the Republic of Korea and kept showing resistance. The Government reported that a deportation order against them had been issued on 3 September 2002. The two men were transferred to a protection facility for foreigners located in Hwasung, Kyunggi-do, where they were held until 21 November 2002. They were released upon the promise that they would leave the country within three months. No complaint in connection with the allegations submitted by the Special Rapporteur had been lodged.

Observations

123. The Special Rapporteur thanks the Government of the Republic of Korea for its prompt and detailed response.

Saudi Arabia

Communication sent to the Government

124. By letter dated 3 September 2002, the Special Rapporteur informed the Government that she had received the following information on the living and working conditions of Bangladeshi migrant workers in Saudi Arabia.

125. According to the information received, a number of Bangladeshi workers were regularly brought by manpower agencies to Saudi Arabia. Upon arrival, most of them reportedly found that they had no job, money, shelter, food or access to health care. In addition, many migrants were allegedly forbidden to leave their premises. It was reported that, according to the Saudi law, non-national workers must be sponsored by a Saudi national and that they need written authorization from this sponsor to leave the country, travel outside the city of employment, change job or rent an apartment. The Special Rapporteur was informed that, in a number of cases, employers confiscated workers' passports, which left them subject to possible deportation if arrested. In case the migrant decided to return to his country of origin, he or she would reportedly be forced to pay large amounts of money.

126. The Special Rapporteur also received information according to which approximately 130 Bangladeshi migrants went to Saudi Arabia in February 2001 and were subsequently misled by their recruiting agents. It was reported that these migrant workers had been living in poor conditions since their arrival in Saudi Arabia, in two camps in Shumaisy and Malaz districts, in Riyadh. According to the general manager of the manpower-supplying company involved, these camps were meant to be used as transit points before the migrants were transferred to their work place, outside Riyadh. It was reported that the facilities where they had been housed lacked space, mattresses and proper kitchen and bathroom. The centres were not equipped with air conditioners and due to the extreme temperatures, migrants chose to sleep outside, on lawns and pavement adjacent to the camp. A number of these migrants had fallen ill because of the living conditions and malnutrition. According to the information received, although the above-mentioned Bangladeshi migrants had been overworking since their arrival in Saudi Arabia, as of June 2001, they had not received any salary.

127. It was also reported that when migrant workers were arrested, they could not be released before their employer, known as *kofil*, appeared before the police. As *kofils* usually took time to do it, migrant workers who were arrested would risk prolonged detentions. The Special Rapporteur was further informed that, according to the law, Saudi authorities could not intervene in migrants' matters unless the migrants' State of origin requested them to do so. On the other hand, the Special Rapporteur had received concerns according to which Bangladeshi migrants did not receive adequate assistance from their embassy.

128. The Special Rapporteur welcomed the information received according to which the Saudi Minister of Labour signed labour rules that allowed national and foreign workers to create committees to defend their rights at workplaces with at least 100 employees. However, it was reported that Saudi law gave employers vast power over their foreign workers and placed important restrictions on workers' freedom of movement. In some cases, these restrictions allegedly led to conditions of forced labour, in particular when workers lived and worked in rural areas, private compounds or private homes. Fears were expressed that these restrictions fostered the dependency of the migrant on his or her employer and gave employers the power to force migrants to work under conditions other than those specified in the contract. The Special Rapporteur also received allegations according to which judges frequently ruled in favour of Saudi nationals when adjudicating disputes involving nationals and foreigners. In connection with these allegations, it was reported that some employers resorted to the threat of arrest on false charges in order to pressure workers to give up their legal claims.

Observations

129. The Special Rapporteur would appreciate receiving the reply of the Government of Saudi Arabia in relation with the above-mentioned allegations.

Singapore

Communication sent to the Government

130. By letter dated 7 November 2002, the Special Rapporteur informed the Government that she had received the following information regarding the working conditions of migrants in Singapore.

131. She had been informed that, upon being hired, migrant domestic workers' passports were kept by their employer in order to prevent them from running away. It was reported that some migrant domestic workers had no rest time and were prohibited from leaving their employers' homes. Many women migrant domestic workers had allegedly been beaten and raped by their employers. It was reported that they were required to take pregnancy tests every few months and they would be deported when the test was positive.

132. It was also reported to the Special Rapporteur that migrant nurses faced poor conditions of work. In particular, the Special Rapporteur received information on the conditions of work of nurses hired by ECON Nursing Home Services. It was reported that, before leaving their countries, migrants signed a contract stipulating a monthly wage of S\$ 450. However, upon their arrival in Singapore the company would issue another contract with a wage of S\$ 400. Migrant nurses hired by this company allegedly worked 12 hours a day and had only one day of rest during the first year. Finally, it was reported that in the contract it was stipulated that workers would have to pay S\$ 1,000 to the company if they left their job before completing the two-year contract.

133. Between January and June 2001, approximately 2,600 migrant workers reportedly filed a complaint with the Ministry of Manpower (MOM) to denounce employers who had not paid their salaries or who had made unjustified deductions from their wages. In this respect, the

Special Rapporteur expressed her interest in receiving information on the measures taken by the authorities to investigate these complaints and to guarantee that migrant workers fully enjoyed their labor rights.

134. The Special Rapporteur informed the Government that she was also aware that the Penal Code provided protection for maids and that in April 1998 the parliament passed a bill increasing penalties for abusive employers. The Special Rapporteur asked for information on cases where abusive employers had actually been prosecuted and migrants compensated for the abuses or violations suffered.

135. The following are two individual cases which were brought to the attention of the Special Rapporteur and that appear to corroborate the above-mentioned general allegations.

136. K. Shankar, a 40-year-old Indian, reportedly worked legally from 1997 to 2001 in Singapore, rolling and bending steel wires and rods. It was reported that upon his arrival he was informed that his employer would not be the one he was told by the recruiting agency prior to his departure. His new employer allegedly confiscated his passport and work permit. His mobility was allegedly severely restricted. Reportedly, the conditions of work were very poor and the wages insufficient for survival. Moreover, it was alleged that the employer did not pay the worker insurance, as promised.

137. Prabhakaran, a 34-year-old Indian, reportedly arrived in Singapore with a work permit in 1999. It was alleged that the employer company misled him about the wage and working-hours and that he was forced to work under poor conditions. According to the information received, after working for six months, the company stopped its operations and he lost his employment. However, he allegedly stayed in Singapore and tried to find another job. It was reported that he was later detained by the police, allegedly without any judicial order, on the grounds that his work permit was invalid. He was allegedly beaten with a cane by police officers while in detention.

Communications received by the Government

138. By letter dated 20 January 2003, the Government reported that the Employment Act governed the basic terms and conditions of employment in Singapore and applied to both local and foreign employees. Certain categories of workers, both local and foreign, were excluded from the Act, such as executives, managerial staff, seafarers and domestic workers. The exclusion was based on the nature of the work and not on the nationality and female foreign domestic workers were covered by the Women's Charter like any other citizen. The Charter and the Penal Code gave protection in respect of specific offences against women, such as rape, sexual abuse and procurement, trafficking, and harbouring or detention of a woman or a girl for the purpose of prostitution. In order to obtain a work permit, foreign workers were obliged to undergo medical check-ups to ensure that they were physically fit for work. Certain categories of workers also have to undergo regular medical check-ups, including pregnancy tests, to ascertain their fitness for continued employment.

139. The Government further reported that foreign domestic workers worked under terms mutually agreed upon between the workers and the employer, sometimes with the assistance of

recruitment agencies and embassies. The contract governed the terms of employment, including salary, rest days and medical benefits. Since 1 May 1997 it has become obligatory for employers of foreign domestic workers to cover their workers under Personal Accident Insurance (PAI) policies. A Foreign Workers Unit and a toll-free number were established in order to provide information to foreign domestic workers concerning issues such as home leave, procedures for changing employers and cost of repatriation. It was reported that between 1999 and 2000, all 482 complaints received from foreign domestic workers were resolved through the Ministry of Manpower. The Ministry also produced information kits and handbooks for employers and foreign workers. The Ministry further introduced an accreditation system for employment agents and it was expected that in two years' time all employment agents would need to meet minimum business and ethical standards for their licences to be renewed.

140. The Government reported that all incidents of abuses and ill-treatment of foreign domestic workers were treated seriously and severe penalties imposed upon violators. The number of substantiated abuse cases dropped from 157 in 1997 to 8 as of June 2002. The Government also provided examples of recent successful prosecutions of offences committed by employers against foreign domestic workers.

141. On the issue of the retention of passports, the Government reported that employers had no legal authority to retain domestic workers' property without their consent.

142. The Government also reported that between January and June 2001, the Labour Relations Department of the Ministry of Manpower received salary claims and complaints involving a total of 2,006 foreign workers. Reportedly, the most common request for assistance concerned the recovery of arrears of salary. Upon lodging of a complaint, the Labour Relations Department would arrange a meeting with the parties involved. The employer would have to prove that salaries had been paid on time and correctly to refute the employee's claim. If an amicable solution could not be reached, the employee could then file a claim for adjudication by the Commissioner of labour. The Commissioner of labour could, after an inquiry, issue an order in favour of the employee if he was satisfied that he/she was indeed owed wages by the employer. Such order would be enforceable in civil court.

143. On the cases of Prabhakaran and K Shankar, the Government reported that the Ministry of Manpower had not received any complaint consistent with the allegations transmitted. Further, the Ministry had not received any complaints against Econ Nursing Home Services (ENUS). However, the Ministry investigated the situation based on the information provided by the Special Rapporteur. The Ministry concluded that the terms and conditions of employment were consistent with the Employment Act. Some newly recruited nursing aides informed ENUS that they had been given wrong information on the terms and conditions by the recruitment agency in the Philippines. Reportedly, ENUS wrote immediately to the local recruitment agency to clarify the terms and conditions of employment. It had not received any reply at the time of the Government's response. The Government reported that if the nursing aides had any employment disputes they could lodge a complaint with the Ministry of Manpower.

Observations

144. The Special Rapporteur would like to thank the Government of Singapore for the information provided and welcomes the efforts undertaken by the Government to ensure better protection of migrant domestic workers from abuses. The Special Rapporteur shall continue to follow up on the situation of migrant domestic workers in the country.

South Africa

Communication sent to the Government

145. By letter dated 25 September 2002, the Special Rapporteur informed the Government that she had received the following information on the situation of migrants detained in the transit zone of the Johannesburg international airport.

146. According to the information received, the detention of migrants in these facilities was carried out under no clear legal authority. It was reported that in some occasions, airline companies or private carrier companies, instead of immigration officers, ordered the detention of individuals without having previously informed the Department of Home Affairs (DHA). It was believed that these private companies were involved in the detention of migrants in order to avoid the fines imposed for bringing undocumented people to South Africa.

147. It was reported that the immigration detainees were held in several rooms that had been set at the Protea Hotel within the transit area of the airport. The rooms were reportedly guarded by private security guards allegedly paid by the airline companies and private carriers, who also delivered food to the detainees. It was alleged that, although the hotel kept records of those staying in its rooms, the DHA did not have its own record of the length of time of detention. On average, people were allegedly detained for one week but in some cases, migrants had been kept for up to one month. Reportedly, the rooms were not regularly cleaned and there were no provisions to separate men from women, or children from adults other than family members. It was also reported that in the event of illness, there was no system in place to ensure appropriate access to medical assistance. Furthermore, lawyers and human rights organizations faced great difficulties in having access to those detained in the hotel. Fears were expressed that the difficulties for those held there to reach any outside assistance could jeopardize their rights to challenge the lawfulness of the detention.

148. It was also reported that among the detained persons there were asylum seekers who were allegedly repatriated without having been given the opportunity to apply for asylum. This would be contrary to the Refugee Act, which provides that no one may be refused entry into South Africa, or returned to any other country if as a result he or she might be subject to persecution. Under regulation 2(2) of this Act, a permit must be given for 14 days to allow for an application for asylum to be made to a refugee officer at a refugee reception office. It was alleged that in some cases DHA officials at the airport interviewed asylum applicants and decided themselves whether the case was founded. In some instances, they reportedly did not allow individuals to make a formal application for asylum as provided by the legislation. A number of individuals were reported to have been denied the right to appeal the decision to refuse refugee status.

Observations

149. The Special Rapporteur would appreciate receiving the reply of the Government of South Africa in relation with these allegations. Without implying any conclusions as to the facts of the above-mentioned allegations, the Special Rapporteur would like to refer to the conclusions and recommendations contained in her main report (E/CN.4/2003/85).

SpainComunicaciones enviadas al Gobierno

150. El 4 de septiembre de 2002, la Relatora Especial comunicó al Gobierno que recibió información en relación con la intercepción y detención de inmigrantes en las Islas Canarias. De acuerdo con esta información, tras ser interceptados, muchos de los inmigrantes habrían sido conducidos a comisarías donde habrían permanecido en celdas atestadas durante entre una y tres noches. Muchos de ellos no habrían tenido acceso a un intérprete o traductor ni habrían sido informados sobre sus derechos durante el momento de la intercepción y posterior detención. El derecho a una asesoría legal y una representación efectiva por parte de un abogado incorporado en la legislación española no habría siempre sido respetado. También se informó de que los juzgados no habrían proporcionado una atención individualizada a las personas inmigrantes, una valoración precisa de la necesidad de internamiento, ni una supervisión adecuada del proceso de detención.

151. La Relatora Especial recibió información relativa a las condiciones de detención en las instalaciones de Fuerteventura y Lanzarote, ubicadas en terminales en desuso de los antiguos aeropuertos y convertidas en centros de detención para inmigrantes. Respecto a las instalaciones del aeropuerto de Fuerteventura, se informó a la Relatora Especial de que se ubicaban en la antigua sala de llegada de equipaje y no contaban con lugares abiertos, con un sistema adecuado de ventilación, ni con espacios recreativos. Las personas detenidas allí habrían vivido y dormido en el mismo espacio, sin tener nunca la posibilidad de salir fuera y poder respirar aire fresco. Además estas instalaciones habrían tenido un problema grave de masificación. Según la información recibida, el área de las instalaciones de Fuerteventura asignada a los hombres habría tenido unas medidas adecuadas para alojar a 50 detenidos pero una media de 300 hombres (que pudo superar los 500, dependiendo del número de llegadas de inmigrantes a la isla) habrían vivido en este espacio. Dado que dicho espacio se habría encontrado atestado de otras personas, cintas de equipaje, colchones y literas, los detenidos no habrían tenido la posibilidad de hacer ejercicio. Además, las instalaciones no habrían tenido suficientes retretes para todos los detenidos y las tres duchas existentes no habrían contado con agua caliente.

152. Según la información recibida, hasta el mes de enero de 2002, el centro habría sido visitado regularmente por médicos e enfermeras voluntarios pero éstos habrían decidido poner fin a su prestación como protesta contra las condiciones higiénicas y sanitarias de detención. Los voluntarios habrían expresado su preocupación sobre la posibilidad de que las condiciones de detención descritas y la falta de controles médicos rutinarios pudieran generar epidemias. La Relatora Especial fue informada de que desde entonces las instalaciones de Fuerteventura habrían carecido de personal médico. Por otra parte, no habría existido ningún sistema de limpieza y los detenidos habrían tenido que limpiar ellos mismos las instalaciones con productos

de limpieza ofrecidos por la Cruz Roja. Tampoco habría existido ningún tendedero o espacio donde secar la ropa que los detenidos mismos habrían tenido que lavar. Muchos de los inmigrantes habrían permanecido recluidos en estas condiciones durante períodos de hasta 40 días.

153. En relación con los contactos con el mundo exterior, se ha informado a la Relatora Especial de que no había teléfonos disponibles para los inmigrantes detenidos en Fuerteventura. Éstos tampoco habrían podido recibir llamadas, correo ni visitas. Las familias de los inmigrantes tampoco habrían podido acceder a información acerca de los detenidos. Por otra parte, ni en las instalaciones de Fuerteventura ni en las de Lanzarote habría un servicio de abogados permanente o un sistema de visitas regulares. Los abogados que trabajaban para organizaciones no gubernamentales habrían tenido prohibido visitar, asistir o representar legalmente a los inmigrantes detenidos. Consecuentemente, los inmigrantes detenidos no habrían tenido acceso a una asesoría legal durante su detención. Por ejemplo, muchos de ellos habrían desconocido la posibilidad de recurrir contra su detención o denunciar las condiciones de detención. A ello se habría sumado una falta de información precisa en los centros de detención acerca de la legislación sobre inmigración y los procesos por los que tenían que pasar los inmigrantes detenidos.

154. Finalmente, la Relatora Especial recibió información sobre la supuestamente limitada calidad y disponibilidad de los servicios de traducción e interpretación. Además, los solicitantes de asilo habrían tenido a su disposición muy poca información acerca de sus derechos y del procedimiento para solicitar asilo y los abogados con formación específica en cuestiones de asilo disponibles habrían sido escasos. A ello se habría sumado una interpretación restrictiva de las disposiciones legislativas relativas al tiempo límite o a la documentación necesaria para poder demandar asilo en detrimento de los solicitantes de asilo. Se informó también sobre prácticas discriminatorias en relación a la validez de la solicitud de asilo de los inmigrantes provenientes de ciertos países africanos y sobre el riesgo que habrían corrido estos de ser deportados antes de ser capaces de acceder a la asesoría o de demostrar la validez de su petición.

155. El 4 de septiembre de 2002, la Relatora Especial transmitió una comunicación conjunta con el Relator Especial sobre la cuestión de la tortura, y el Relator Especial sobre el racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia, en la que se comunicó al Gobierno que los Relatores Especiales recibieron información sobre los casos individuales que se enumeran a continuación.

156. Boaventura Simão Vaz, ciudadano de Guinea-Bissau, habría sido detenido el 1 de marzo de 2001 cuando estaba comiendo con otras dos personas en un bar de Madrid. De acuerdo con la información recibida, un agente de la Policía Nacional vestido de civil le habría pedido los documentos de identidad. Posteriormente, habría sido arrastrado al exterior del local, esposado y conducido a una comisaría de policía, donde le habrían comunicado que era sospechoso de traficar con drogas, lo que él habría negado. En la comisaría habría presenciado como un agente golpeaba a otro detenido y habría protestado por ello. Acto seguido tres agentes le habrían propinado puñetazos y patadas, lo habrían empujado al suelo y lo habrían amenazado con una pistola. También habrían proferido insultos racistas, como «negro de mierda». En la comisaría no habría recibido la atención médica necesaria. Más tarde habría acudido a los servicios de urgencias del Hospital San Carlos con un dolor intenso en el lado izquierdo del pecho. Un

informe médico emitido por el hospital el 7 de marzo habría confirmado la rotura de cinco costillas y una hemorragia interna. Habría estado varios días hospitalizado. El 13 de marzo de 2001, habría interpuesto una denuncia ante un juzgado de Madrid.

157. Marta Elena Arce, una antropóloga costarricense residente en Cataluña desde 1999, habría sido detenida por atentado contra un agente policial el 2 de abril de 2001 en Barcelona, donde se reunía diariamente con otros inmigrantes. Según la información recibida, con anterioridad a su detención habría participado en un encierro de inmigrantes en la iglesia de Santa María del Pi (Barcelona) para protestar contra las políticas de extranjería. En el momento de su detención cuatro o cinco agentes se habrían acercado a un grupo de personas con las que se encontraba y les habrían pedido los teléfonos móviles. Al preguntarles el motivo, los agentes habrían contestado que se había denunciado el robo de un teléfono móvil. Marta Arce habría preguntado por qué les pedían a ellos concretamente y se habría entablado una discusión. Los agentes habrían insultado a Marta Elena Arce con expresiones como «sudaca de mierda», «puta» y «subnormal» y la habrían golpeado. Habría sido conducida a la comisaría de policía de Rambla Nova. Tras su petición, habría sido trasferida al Hospital del Mar, en la zona de Drassanes, donde se habría expedido un certificado médico. Los cuatro agentes que la habrían llevado a la comisaría la habrían acusado de agresión a un agente con un bote de gas. Ella habría admitido que llevaba uno en el bolsillo y éste habría estallado cuando la tiraron supuestamente al suelo. Habría permanecido detenida en la comisaría hasta las 11 de la noche del día siguiente. A continuación, habría sido trasladada al Centro de Internamiento de Extranjeros de la Verneda y tras pasar la noche allí, habría comparecido ante un juez. Por la tarde del mismo día habría sido puesta en libertad. De acuerdo con la información recibida, durante el tiempo que habría estado recluida en la comisaría, habría tenido que dormir en un colchón sobre el suelo, la primera noche no le habrían dado mantas y no habría podido hablar por teléfono con un abogado ni con familiares o amigos. Los Relatores Especiales fueron informados de que no habría podido ver a un abogado hasta el 4 de abril.

158. Ibrahim Saad Llah, un hombre de origen palestino nacido en Libia, habría sido agredido por efectivos de la Policía Nacional el 9 de mayo de 2001, cuando supuestamente acudía a la comisaría para solicitar la documentación necesaria para salir de Ceuta y viajar a la península. En la comisaría dos agentes lo habrían golpeado con porras mientras otros dos le habrían propinado puñetazos. Habría recibido golpes en el costado, las piernas, la cabeza y el tórax. Habría permanecido detenido en la comisaría durante dos días. De acuerdo con la información recibida, habría habido un intento de expulsarlo a Marruecos, pero las autoridades marroquíes se habrían negado a admitirlo. Tras este intento de expulsión, habría sido abandonado en las inmediaciones de Sidi Embarek, en la zona de Rosales. Unos individuos lo habrían llevado al hospital de la Cruz Roja, donde se habría extendido un parte médico que habría sido entregado al tribunal. Ibrahim Saad Llah habría presentado una denuncia ante la Audiencia de Ceuta contra cuatro policías nacionales.

159. Abdelhak Archani, un ciudadano marroquí residente en el municipio barcelonés de Badalona, habría sido apresado en julio de 2001 por tres agentes de policía vestidos de civil, que le habrían propinado una paliza. Según la información recibida, los hechos habrían ocurrido al intentar poner una denuncia por la sustracción de un pasaporte. Los agentes lo habrían introducido en un vehículo y lo habrían trasladado al arcén de una autopista, donde lo habrían golpeado con porras y sometido a insultos de índole racista. Posteriormente habría ingresado al

Hospital de l'Esperit Sant en Santa Coloma de Gramanet, donde habría recibido atención médica. Más tarde, dichos policías habrían afirmado que habían encontrado a Abdelhak Archani ebrio en la calle y que se habrían limitado a llevarlo a su casa. Los Relatores Especiales fueron informados de que se habría iniciado una investigación judicial sobre los hechos.

160. Nouredine Hathout, ciudadano marroquí y gerente de una empresa de exportación en Granada, habría sido insultado y agredido por tres policías en Málaga el 24 de noviembre de 2001. Según fueron informados los Relatores Especiales, Nouredine Hathout estaba esperando en la estación de autobuses de Málaga cuando vio que un anciano marroquí estaba siendo zarandeado por un joven. Al intervenir, junto con varias personas más, el joven se habría identificado como agente de policía. Nouredine Hathout le habría explicado en árabe al anciano que el individuo era policía y que era aconsejable no oponer resistencia. Se habrían llevado al anciano a una sala situada cerca de allí, de la que habría salido poco después diciendo que lo habían insultado y que dentro había otro marroquí que no hablaba español. Nouredine Hathout habría llamado a la puerta para ofrecerse como traductor pero un agente le habría aconsejado que no se entrometiera, le habría dado un empujón y le habría pedido los documentos de identidad. Cuando Nouredine Hathout habría protestado por sus modales, el agente lo habría agarrado por la pechera y lo habría empujado contra la pared. Acto seguido lo habría metido en la habitación, donde tres agentes lo habrían insultado con expresiones racistas. Tras ser cacheado, habría sido acusado de traficar con drogas y amenazado con la paralización de sus trámites para obtener la nacionalidad española. A continuación lo habrían llevado a una comisaría de policía, donde durante una hora le habrían negado el derecho a contactar con un abogado y a ser llevado al hospital. Más tarde, cuando aparecieron otros agentes, habría sido trasladado a la clínica Carlos Haya, donde le habrían practicado un reconocimiento médico cuyo informe habría constatado la presencia de contusiones y erosiones en ambos lados del cuello. Después habrían vuelto a llevarlo a la comisaría, donde habría sido golpeado otra vez. En la comisaría habrían intentado hacer pasar por suya una navaja que no lo era. Habría quedado en libertad 10 horas después de los incidentes de la estación de autobuses. El relato policial que la Subdelegación del Gobierno habría ofrecido a la prensa habría contradicho esta versión. Los Relatores Especiales fueron informados de que según el relato policial, Nouredine Hathout se habría dirigido a los agentes cuando estaban identificando a un ciudadano marroquí y les habría llamado racistas, tras lo cual, al pedirle la documentación, habría golpeado a uno de ellos en la cabeza. Según este mismo informe, después de llevarlo a la comisaría de policía lo habrían trasladado al hospital y más tarde habrían descubierto que llevaba una navaja. El 26 de noviembre se habría presentado una denuncia contra los agentes ante el juzgado de guardia de Granada.

161. Los Relatores Especiales recibieron información según la cual el 22 de enero de 2002 la policía habría cargado contra inmigrantes indocumentados que se manifestaban pacíficamente en la Alcazaba de Almería para apoyar su reivindicación de los permisos de trabajo y residencia. La manifestación habría acabado con 11 detenciones y hasta 20 heridos. La policía habría intervenido con gases lacrimógenos y balas de goma para dispersar a unos 300 manifestantes. Los manifestantes detenidos habrían sido conducidos a una comisaría de policía donde habrían sido nuevamente golpeados, les habrían impedido ir al cuarto de baño y les habrían tenido sin alimentos ni mantas para abrigarse durante 48 horas. El gobierno habría informado de que sólo había habido dos heridos leves, pero la Cruz Roja habría señalado que hasta 20 personas habían resultado afectadas por el gas lacrimógeno, o habían sido golpeadas por la policía o atropelladas por otros manifestantes en su huida precipitada de la carga policial. Se habría cursado ordenes de

expulsión habrían sido cursadas contra dichos inmigrantes y ocho marroquíes habrían sido trasladados a un centro de internamiento de extranjeros (CIE) de Valencia, donde habrían permanecido cuatro días sin recibir asistencia médica, a pesar de haber llegado allí en un estado lamentable.

162. Los Relatores Especiales también recibieron información sobre las condiciones de vida en diversos centros de acogida para jóvenes inmigrantes administradas por las Consejerías de Bienestar Social de Ceuta y Melilla, en particular en el Centro de Fuerte de la Purísima Concepción de Melilla y el Centro San Antonio de Ceuta, donde los niños habrían vivido en condiciones de hacinamiento grave. El Centro San Antonio habría tenido una capacidad para una treintena de personas pero habría albergado a más de 100 menores. Por falta de espacio, algunos de ellos habrían dormido en el suelo o sobre mesas. También informó que los internos habrían compartido un solo baño. Los menores se habrían quejado de la suciedad de las sábanas y de la carencia de ropa. Con respecto a la alimentación, muchos de las comidas habría contenido carne de cerdo, alimento que una gran parte de los internos no podría comer por razones religiosas. En ninguno de los dos centros los niños habrían tenido servicios de recreación. En estos centros niños y niñas habrían sufrido extorsiones, robo o violencia física por parte de internos mayores o habrían sido sometidos a prácticas disciplinarias abusivas por parte de miembros del personal, quien también habría recurrido frecuentemente a amenazas de expulsión. De acuerdo con la información recibida, niños internos en el Centro San Antonio habrían sido encerrados en un cuarto pequeño, oscuro y sucio con tan solo unos colchones y sin retrete durante una semana, como castigo por haber cometido infracciones tales como fumar, salir sin permiso o escaparse. Según la información recibida, el Defensor del Pueblo habría presentado una queja relativa a las condiciones de esta celda de castigo en 2000. Desde entonces, el personal del centro habría mejorado la habitación añadiéndole luz y una ventana. Una noche de octubre de 2001, todos los menores del centro Fuerte de la Purísima Concepción habrían tenido que salir y esperar durante horas en el exterior porque uno de ellos habría robado una sábana.

163. En ambas ciudades, pero con más frecuencia en Ceuta, estos menores habrían visto denegado el acceso a atención médica y a la educación. Niños y niñas mayores de 16 años habrían visto denegado el pleno acceso a la capacitación vocacional puesto que la Consejería de Bienestar Social se habría negado a solicitar el permiso de trabajo necesario. También se transmitió a los Relatores Especiales preocupación en cuanto a los métodos realizados para determinar la edad de los niños no acompañados indocumentados. Esta determinación es crucial para determinar los derechos de los menores. Sin embargo los métodos utilizados habrían tenido un carácter demasiado arbitrario. De acuerdo con la información recibida, la policía habría calculado visualmente la edad de los niños y aquellos que hubieran aparentado más de 18 años habrían sido expulsados inmediatamente. El personal de los centros de acogida también habría estimado visualmente la edad de los niños y solo los que aparentaran menos de 18 años habrían sido admitidos en los centros. En caso de dudas, los niños habrían sido referidos para examen médico. Según la legislación, la determinación de la edad se haría a través de un examen forense de la muñeca realizado con rayos X. Según expertos, este método comportaría un amplio margen de error y expondría los niños a una radiación innecesaria.

164. Según la legislación española, los menores de edad no acompañados que no pueden retornar a sus familias o quedar a disposición de los servicios de protección de menores de su país de origen tienen el derecho de permanecer legalmente en España a instancia del organismo

que ejerce su tutela. Sin embargo la ley no exigiría a estos organismos la solicitud de permisos de residencia y en muchas ocasiones esta solicitud no se realizaría. Al no tener el permiso de residencia legal, los jóvenes inmigrantes podrían ser expulsados del país al cumplir los 18 años. De acuerdo con la legislación española, lo menores que hayan cumplido 14 años y hayan estado bajo tutela de una institución pueden optar por la nacionalidad española, pero los obstáculos burocráticos serían tales que muy pocos niños la habrían obtenido. Tanto en las solicitudes de residencia como en las de nacionalidad, los menores carecerían de asesoramiento.

165. También se informó de que con frecuencia si habría expulsado sumariamente a Maruecos a niños no acompañados. Esto violaría las disposiciones de la legislación española que disponen que los menores sean entregados únicamente a su familia o a los organismos de bienestar social de sus países de origen, siempre y cuando el regreso no suponga un riesgo para el niño y su familia. Además, se informó a los Relatores Especiales de que niños y niñas inmigrantes habrían sido golpeados, aporreados y pateados por efectivos de la policía española durante operaciones de expulsiones forzadas.

166. De acuerdo con la información recibida, no habría existido ningún organismo oficial activamente responsable de garantizar que los niños no acompañados en Ceuta y Melilla recibieran el cuidado y la protección a los que tienen derecho por ley. Tampoco haría existido ningún mecanismo efectivo para facilitar que estos menores pudieran interponer denuncias o ejercer el derecho a ser escuchados. Los funcionarios del gobierno habrían delegado tales responsabilidades a las autoridades locales quienes, a su vez y por falta de medios, habrían confiado a los centros de denuncia y a la policía la denuncia de los abusos.

167. Los Relatores Especiales también recibieron información sobre los casos individuales que se enumeran a continuación.

168. M.G., un niño de 13 años, habría sido detenido en la calle por una patrulla de la policía de Ceuta y conducido al centro de acogida de San Antonio. Allí, dos cuidadores lo habrían llevado a una celda de castigo donde lo habrían desnudado, golpeado con las manos y con un palo, y abofeteado. No le habrían dado suficientemente de comer, le habrían confiscado la almohada y lo habrían obligado a tumbarse en el suelo. El menor se habría escapado del centro y, acompañado por el representante de una organización no gubernamental, habría acudido a una clínica, donde habría recibido tratamiento médico por las lesiones sufridas. El 29 de junio de 2001 habría interpuesto una denuncia ante el Juzgado de Instrucción número 2 de Ceuta. Previamente ya habría presentado otra denuncia ante la Dirección General de la Policía de Ceuta. Según la información recibida, en el año 2000, la Fiscalía de Menores de Ceuta habría abierto una investigación sobre denuncias de abuso sexual de al menos 12 menores del centro.

169. S. M. y H. U., dos inmigrantes argelinos, el primero de ellos de 17 años, habrían sido golpeados por la policía local de Ceuta en el momento de su detención el 14 de octubre de 2000 y en la comisaría de policía donde habrían sido conducidos, según la información recibida, tras haber sido introducidos a golpes en un vehículo. S. M. y H. U. habrían sido detenidos tras huir de una disputa con otros dos norteafricanos en la zona de Calamocarro. En la comisaría S. M. habría perdido el conocimiento y lo habrían reanimado arrojándole agua con una manguera, con la que también lo habrían golpeado. Habrían sido nuevamente obligados a entrar en un vehículo policial, los habrían golpeado otra vez y los habrían llevado a la misma zona donde los habrían

detenido. Allí habrían sido encontrados por unos guardias civiles, a los que habrían pedido ayuda y quienes los habrían conducido al hospital del Insalud en Ceuta. El informe médico habría constatado diversas lesiones y cortes y el 19 de octubre de 2000 un periódico habría publicado una fotografía de las lesiones presuntamente causadas a uno de ellos.

170. Shihab R. (seudónimo), menor de edad, habría sido detenido por efectivos de la policía de Ceuta a finales de octubre de 2001 cuando se encontraba en el puerto, dispuesto a intentar cruzar a la península española. Habría sido metido en un coche, conducido a una comisaría y más tarde trasladado al cuartel de la Guardia Civil. Durante el trayecto, habría sido golpeado en los brazos, las piernas y la cabeza. También habría recibido golpes de porra y patadas. De acuerdo con la información recibida, en las instalaciones de la Guardia Civil habría sido nuevamente golpeado y encerrado en una habitación durante tres horas antes de ser llevado al Centro San Antonio. Un informe médico emitido por el Instituto Nacional de Salud (Insalud) el 2 de noviembre de 2001 habría señalado que el menor presentaba una fractura estable del segundo metacarpo de la mano izquierda. Según fueron informados los Relatores Especiales, no habría recibido tratamiento médico hasta que las Hermanas Carmelitas de la Caridad de Vedruna lo habrían llevado al Hospital de la Cruz Roja.

171. Omar H. (seudónimo), 16 años, habría llegado a Ceuta desde Tánger en septiembre de 2001. A los pocos días de estar en España, habría sido detenido por efectivos de la policía. Omar H. habría notificado a la policía que era menor de edad, pero a pesar de ello habría sido conducido a una comisaría donde habría pasado todo un día. De acuerdo con la información recibida, durante su detención habría recibido golpes de porra en la espalda y en los muslos. A continuación habría sido conducido al Centro San Antonio.

172. Salah S. (seudónimo), un menor alojado en el Centro Fuerte de la Purísima Concepción, habría sido sometido a una paliza por dos funcionarios del centro en octubre de 2001 después de una pelea con otro interno. De acuerdo con la información recibida, los miembros del personal le habrían propinado patadas y golpes en las pantorrillas y lo habrían abofeteado.

173. Ayman M. (seudónimo), de 16 años, habría sido repatriado a Marruecos el 28 de julio de 2001, tras haber vivido ocho años en Melilla. De acuerdo con la información recibida, el director del centro donde se alojaba le habría informado de que sería conducido a un juzgado junto con otro menor del centro y otros jóvenes alojados en otros centros de acogida. Sin embargo los menores habrían sido conducidos directamente a la frontera con Marruecos y entregados a las autoridades policiales marroquíes de la ciudad de Nador. Los menores habrían sido llevados a una comisaría donde unos policías calzados con botas les habrían pisado sus pies casi desnudos. Habrían sido interrogados sobre su origen y sobre cómo habían entrado en Melilla y encerrados en un almacén. Antes de ser puestos en libertad, habrían sido golpeados con un palo largo de alto voltaje por aproximadamente diez agentes de la policía. A Ayman este trato le habría causado magulladuras en la muñeca izquierda. De acuerdo con la información recibida entre el 27 de julio y el 18 de septiembre de 2001, las autoridades de Melilla habrían expulsado a al menos 32 menores no acompañados con edades comprendidas entre los 11 y los 17 años y este tipo de expulsiones se habría elevado a al menos 70 en febrero de 2002. La Relatora Especial sobre los derechos humanos de los migrantes transmitió una comunicación en relación con estas alegaciones de expulsiones el 15 de noviembre de 2001.

174. Un total de 40 menores extranjeros, con edades comprendidas entre 13 y 17 años, residentes en el centro Fuerte de la Purísima de Melilla, habrían iniciado una huelga de hambre el 4 de marzo de 2002 para protestar contra la política de reagrupación familiar, que, según denunciaban, no funcionaba ya que no había familiares esperándolos al otro lado de la frontera. Además, habrían denunciado que no les estaban concediendo el permiso de residencia una vez vencido el plazo de nueve meses que establecía la ley, y que algunos educadores del centro los maltrataban.

175. El 12 de septiembre de 2002, la Relatora Especial transmitió una comunicación conjunta con la Relatora Especial sobre la violencia contra la mujer, sus causas y consecuencias, en la que comunicó al Gobierno que recibió información sobre los casos individuales siguientes:

176. Rita Margarete Rogelio, ciudadana brasileña, habría sido detenida el 29 de agosto de 1995, a las doce y media de la noche en la zona de Barakaldo (Bilbao) por agentes de la Brigada Provincial de Extranjería de la Policía Nacional que estaban efectuando redadas en los clubes nocturnos Trastevere y Hollywood en busca de trabajadoras sexuales extranjeras en situación ilegal. Habría sido conducida a la Jefatura Superior de Policía de Bilbao y a las cuatro de la madrugada habría ingresado al Hospital de Basurto tras, según la información recibida, recibir una presunta paliza y, al parecer, haberse desmayado. Posteriormente habría sido nuevamente conducida a la comisaría, donde habría sido violada por un agente uniformado que la habría llevado a los calabozos. Habría sido nuevamente trasladada al hospital, y el 30 de agosto de 1995, habría sido puesta en libertad. Ese mismo día habría acudido al hospital por tercera vez para ser sometida a reconocimientos médicos. Se habría constatado la presencia de múltiples hematomas en los brazos, las piernas y la espalda, compatibles con golpes asestados con una mano, un cinturón o una correa de cuero, así como marcas de arañazos en las ingles compatibles con un intento de obligarla a separar las piernas. Dos informes de peritos psiquiátricos habrían coincidido en que padecía también estrés postraumático como consecuencia de una violación. Sin embargo el fiscal no habría admitido que hubiera fundamentos para emprender acciones contra el agente de policía, ni que la violación hubiera ocurrido realmente. El 4 de junio de 1998, la Sala Segunda de la Audiencia Provincial de Vizcaya habría considerado que Rita Rogelio había sido ciertamente golpeada y violada cuando se encontraba bajo custodia policial y que, como consecuencia, había sufrido estrés postraumático. Sin embargo, los tres agentes —el presunto violador y otros dos que estaban de servicio— habrían sido absueltos. En una sentencia del 21 de abril de 1999, el Tribunal Supremo habría expresado su consternación por el fallo de la Audiencia Provincial de Vizcaya, y habría pedido la apertura de una investigación policial de alto nivel para decidir las medidas disciplinarias que deberían adoptarse contra los agentes implicados. El 27 de mayo de 1999 dos de los agentes habrían sido suspendidos de servicio. El Ministro del Interior habría expresado su repugnancia ante el caso, sobre el cual habría afirmado que no había sido informado. Las Relatoras Especiales fueron informadas de que el 12 de enero de 2000 se abrió un nuevo juicio contra dos policías nacionales (pero no contra el presunto violador) por torturar a Rita Rogelio. El 22 de marzo de 2000 habrían sido absueltos por falta de pruebas que señalaran a los culpables. No se habría interpuesto recurso ante el Tribunal de Casación. Según el gobierno español, la Unidad de Asuntos Internos de la Dirección General de la Policía, siguiendo la recomendación vertida en el Tribunal Supremo, «tras un minucioso expediente, concluyó que no había existido agresión sexual ni infracción administrativa alguna».

177. Miriam Rosa Verástegui Templo, ciudadana peruana y técnica agrícola, habría sido abordada por agentes de la Policía Nacional el 20 de junio de 1998 en la Gran Vía de Madrid y, con el argumento de que no llevaba la documentación adecuada, habría sido conducida al Registro Central de Detenidos de Moratalaz, donde habría permanecido recluida toda la noche. De acuerdo con la información recibida, tenía permiso de trabajo válido pero estaba en espera de recibir el permiso de residencia. En el Registro Central de Detenidos habría sido agredida sexualmente por un agente de policía en la madrugada del 21 de junio. El agente de guardia habría entrado en su celda y, tras ofrecerle un cigarrillo, habría empezado a agredirla sexualmente. Ella se habría refugiado en el cuarto de baño pero el agente la habría seguido y habría reanudado su agresión intentando arrastrarla hasta una cama próxima, bajándole los pantalones y la ropa íntima, intentando acariciarla y besarla e intentando penetrarla mientras la empujaba contra una pared. Miriam Verástegui no habría gritado por miedo a que acudieran otros agentes y se sumaran a la agresión. Al final habría conseguido apartar al agente y se habría vuelto a su celda. Antes de cerrar su puerta con llave y apagar la luz el agente le habría dicho que volvería, aunque no lo habría hecho. A las 8 de la mañana del 21 de junio habría sido trasladada a la Comisaría de Extranjeros, donde una agente adscrita a la Brigada Provincial de Extranjería y Documentación habría observado que la mujer tenía un comportamiento extraño y la habría animado a que contara lo sucedido en el Registro Central de Detenidos. Tras presentar una denuncia, Miriam Verástegui habría sido conducida al Hospital General de la Paz para recibir tratamiento y someterse a diversas pruebas. Éstas habrían revelado la existencia de restos de semen en su ropa interior. El 29 de junio de 1998 se habría realizado un careo entre Miriam Verástegui y el agente en presencia de un juez instructor y un fiscal. En esta confrontación ambos habrían negado las declaraciones del contrario. El fiscal habría hecho constar que el agente mostraba un «trato de superioridad» hacia la víctima y que el juez se habría visto obligado a recordarle en repetidas ocasiones que la tratara con respeto. Las Relatoras Especiales fueron informadas de que el 13 de marzo de 2001, el agente de policía habría sido acusado formalmente por el fiscal por agresión sexual contra personas especialmente vulnerables, pero no por tortura, como habría solicitado la acusación particular. Tras un aplazamiento inicial, el juicio se habría fijado para noviembre de 2001 ante la Sección Quinta de la Audiencia Provincial de Madrid, pero habría vuelto a ser aplazado. De acuerdo con la información recibida, no sería la primera vez que este agente habría sido acusado de delitos sexuales. El 18 de octubre de 1996, una mujer detenida en el Registro Central, Adela López Hernández, le habría acusado de exhibirse ante ella cuando acababa de salir del cuarto de baño y regresaba por el pasillo a su celda. El agente le habría ofrecido apartarla de los demás detenidos y llevarla a un sitio más cómodo. Este suceso habría sido denunciado por otro agente a su inspector. La causa habría seguido pendiente.

178. El 12 de septiembre de 2002, la Relatora Especial transmitió una comunicación conjunta con la Relatora Especial sobre ejecuciones extrajudiciales, sumarias o arbitrarias y el Relator Especial sobre la tortura en la que comunicó al Gobierno que recibió información sobre los casos individuales siguientes:

179. Youssef R., un marroquí de 20 años, habría fallecido el 8 de agosto de 2001 en el hospital de Ceuta, una hora y media después de que unos agentes de la Policía Nacional emplearon presuntamente la fuerza contra él para reducirlo por presunto robo en la zona fronteriza de El Tarajal. En el momento de su detención, Youssef R. habría amenazado a los agentes con unas tijeras y habría intentado cruzar de nuevo la frontera para huir a Marruecos. Finalmente, habría sido esposado y conducido a la comisaría de policía, donde le habrían prestado los primeros

auxilios antes de llevarlo al hospital. Una autopsia, realizada el 10 de agosto, determinaría que la muerte se había producido por asfixia y que el cadáver presentaba contusiones en la cara y una costilla rota.

180. Essa Marong, ciudadano gambiano de 40 años, casado y con cuatro hijos, habría fallecido bajo custodia el 2 de diciembre de 2001. Según la información recibida, habría muerto a las 24 horas de haber sido detenido y sometido a medidas de inmovilización —entre ellas la colocación de una mordaza— por agentes de los *Mossos d'Esquadra* (policía autonómica de Cataluña) que lo creían sospechoso de un delito de tráfico de drogas. Las Relatoras Especiales fueron informadas de que de acuerdo con una explicación oficial de la muerte, Essa Marong había ingerido una bolsa de cocaína, y que ésta se le había reventado en el estómago. Sin embargo, familiares y amigos habrían manifestado que su muerte podía tener relación con malos tratos y la Asociación de Gambia habría constatado la presencia de fracturas múltiples. El informe de la autopsia mencionaría una hemorragia interna masiva. Un juzgado de Lleida habría abierto una investigación sobre la muerte bajo custodia.

Comunicaciones recibidas del Gobierno

181. En relación con el llamamiento urgente transmitido por la Relatora Especial el 1 de noviembre de 2001 sobre la expulsión de dos ciudadanas nigerianas (ver E/CN.4/2002/94, parr. 59), el Gobierno comunicó la siguiente información por carta con fecha de 18 de enero de 2002.

182. Las dos ciudadanas nigerianas habrían sido expulsadas el 24 de octubre de 2001 tras la apertura de los expedientes de expulsión por parte de la Jefatura Superior de Policía de Murcia al encontrarse éstas de forma irregular en el país. El 13 de octubre de 2002, el Juzgado de Instrucción N.º 3 de Murcia habría autorizado su ingreso en el Centro de Internamiento para Extranjeros de Sangonera (Murcia) y el 18 del mismo mes el Delegado del Gobierno en la Región de Murcia habría dictado las resoluciones de expulsión. Durante el procedimiento de expulsión, las mujeres no habrían señalado que eran madres de dos bebés que se encontraban en territorio español. La Administración habría tenido conocimiento de la existencia de los menores dos días después de su expulsión, a través de una organización de derechos humanos. A continuación, el Servicio de Menores dependiente de la Comunidad Autónoma de Murcia habría asumido la tutela de los bebés y se habrían abierto investigaciones para la identificación fidedigna de éstos y de sus madres o familiares. Los abogados de las mujeres expulsadas habrían interpuesto un recurso y el Defensor del Pueblo habría abierto una investigación de oficio.

183. En relación con una comunicación transmitida por la Relatora Especial el 15 de noviembre de 2001 en relación con el caso de dos menores marroquíes expulsados de la Ciudad Autónoma de Melilla (E/CN.4/2002/94, parr. 72), el gobierno proporcionó la siguiente información por cartas con fechas de 24 de enero de 2002 y de 21 de febrero de 2002.

184. Los menores A.M., 15 años, y F.E.C, 17 años, habrían sido reintegrados a Marruecos el 31 de octubre de 2001, de acuerdo con las respectivas resoluciones de reintegración familiar dictadas tras la autorización del Juzgado de Menores. Posteriormente, los dos menores habrían regresado de nuevo a la ciudad de Melilla de manera irregular. A.M. habría sido acogido en el centro Lucas Lorenzo, un centro dependiente de las autoridades municipales. Por lo que se

refiere a F.E.C., la Consejería de Bienestar Social y Sanidad habría acordado su acogimiento residencial y situación legal de desamparo.

185. El gobierno también proporcionó información más general sobre la situación general de los menores de edad de origen marroquí que se trasladan a la ciudad de Melilla de manera irregular. Según explica, debido a las deficientes condiciones socio económicas de Marruecos, serían muchos los menores de edad que llegan a Melilla con el objetivo de obtener una autorización de residencia. En muchas ocasiones, sus progenitores considerarían que la obtención de la tarjeta de residencia podría propiciar la reintegración familiar en España. Los Centros de Acogida de Melilla conocerían una situación de saturación, por lo que se procedería a la reintegración familiar de los menores que disponen de familiares conocidos en Marruecos. El Gobierno subraya que dicha reintegración familiar es diferente del supuesto de expulsión del país.

186. El 14 de noviembre de 2002, el Gobierno contestó a la comunicación enviada por la Relatora Especial el 4 de septiembre de 2002, proporcionándole la siguiente información.

187. Con respecto a las alegaciones relativas a la detención de migrantes en las comisarías de policía en las Islas Canarias, el Gobierno afirmó que en todo momento se observarían de manera escrupulosa las garantías legales constitucionalmente establecidas, que los extranjeros serían detenidos el tiempo mínimo indispensable hasta su puesta a disposición judicial y que recibirían la asistencia letrada a la que tienen derecho en todos los procedimientos administrativos o judiciales que puedan llevar a la denegación de su entrada, a su devolución o a su expulsión del territorio español, y en todos los procedimientos en materia de asilo. Esta asistencia jurídica sería gratuita para los extranjeros que carecen de recursos económicos suficientes. En Fuerteventura y en Lanzarote existiría un servicio permanente de abogados que garantizarían dicha asistencia. Tanto éstos como las organizaciones no gubernamentales tendrían acceso a los detenidos. Asimismo, aquellos que no entienden o no hablan la lengua oficial utilizada tendrían derecho a la asistencia de intérprete. Los detenidos gozarían del régimen de vistas, correo y llamadas reglamentarias atendiendo a los medios y personal de custodia disponibles. Los familiares serían informados y las comunicaciones consulares se cumplirían, siempre y cuando es posible, puesto que muchos de los extranjeros ocultan identidad y su nacionalidad. Finalmente, el Gobierno señaló que no se habría interpuesto ninguna denuncia sobre los hechos alegados en la comunicación de la Relatora Especial.

188. En relación con las condiciones de detención en los centros de Fuerteventura y Lanzarote, el Gobierno proporcionó detalles sobre los Centros de Internamiento de Extranjeros (CIE) y su base legal, así como sobre el Programa Global de Regulación y Coordinación de la Extranjería y la Inmigración en España (GRECO). El Gobierno informó de que se prevén inversiones para mejorar estos centros y de que se estaría trabajando en la apertura de nuevos centros así como en la mejora de los existentes. En Fuerteventura se habrían terminado las obras de acondicionamiento en las antiguas instalaciones militares de la zona de El Matorral y se habrían remodelado las instalaciones de la antigua terminal del aeropuerto. Los servicios médicos y sociales de Fuerteventura se habrían incrementado en un médico, un enfermero y un trabajador social, en colaboración con la Cruz Roja.

189. En relación a los solicitantes de asilo en Canarias, el Gobierno informó de que éstos serían informados del procedimiento para solicitar asilo mediante la distribución de un folleto disponible en nueve idiomas. También serían informados de las organizaciones que les pueden prestar ayuda y asistencia jurídica. En Las Palmas de Gran Canaria existe un centro de acogida de refugiados gestionado por la Comisión Española de Ayuda al Refugiado (CEAR). Aquellos solicitantes de asilo que no pueden ingresar al centro por falta de plazas vacantes recibirían ayuda económica a través de Cruz Roja Española y Las Palmas Acoge. La CEAR así como colegios de abogados les prestarían asistencia jurídica gratuita. En el aeropuerto de Gran Canaria existirían instalaciones para que los solicitantes de asilo permanezcan durante el trámite de su solicitud. En los otros puestos fronterizos en los que no existen estas instalaciones, se habilitarían otros tipos de locales, en ocasiones en colaboración con ONG. El gobierno no tiene constancia de ninguna denuncia efectuada por el ACNUR sobre casos concretos de solicitantes de asilo en Canarias.

190. En relación con la comunicación de la Relatora Especial del 4 de septiembre de 2002, enviada conjuntamente con el Relator Especial sobre la tortura y el Relator Especial sobre el racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia, el 13 de noviembre de 2002, el Gobierno transmitió la siguiente información.

191. Boaventura Simao Vaz, habría sido detenido cuando, en compañía de otro ciudadano de Guinea-Bissau, habrían intentado vender pastillas a dos funcionarios del Cuerpo Nacional de Policía vestidos de paisano que se encontraban en servicio. Cuando los funcionarios de policía mostraron sus respectivas placas, emblemas y carnés profesionales, Boaventura Siamio Vaz habría intentado fugarse, lo que habría originado un forcejeo con los agentes, causando lesiones a uno de los policías al que el referido agarrándole por el pelo habría golpeado contra la calzada, produciéndose lesiones en la región occipital derecha, motivo por el que habría debido ser asistido de urgencia. Como los dos individuos habrían ofrecido importante resistencia, comenzando a proferir insultos y gritos, se habría tenido que emplear la fuerza mínima imprescindible para proceder a su detención. Durante la detención del reseñado se le habría ocupado un cuchillo de grandes dimensiones. De los hechos acaecidos se habrían tramitado las correspondientes diligencias informando a los detenidos de los motivos de su detención así como de sus derechos constitucionales, en acta escrita. Boaventura Simao Vaz habría sido asistido en el Hospital Clínico San Carlos y tras ser emitido el parte médico correspondiente habría regresado nuevamente a los calabozos.

192. Marta Elena Arce Salazar habría sido detenida en las siguientes circunstancias. Una patrulla del Cuerpo Nacional de Policía de servicio en Las Ramblas de Barcelona habría sido requerida por unos jóvenes, manifestando a los agentes que habrían sido asaltados por un grupo de personas – de origen magrebí, según los jóvenes- que se habrían apoderado del teléfono móvil que portaba uno de ellos. Instantes más tardes la dotación policial habría procedido a la identificación de un grupo de jóvenes de similares características a las descritas sobre el grupo autor del hecho directivo, comprobando si alguno de ellos portaba el teléfono móvil sustraído. Momentos más tarde las víctimas del robo se habrían presentado sin identificar a ninguno de los jóvenes interceptados como autor del asalto. Cuando la dotación policial devolvía las documentaciones, se habría acercado Marta Elena Arce Salazar, increpando a los agentes en actitud ofensiva y negándose a identificarse. La mujer se habría situado en medio de la calzada, soltándose violentamente de la sujeción policial y sacando del bolso un aerosol de defensa

personal con la intención de utilizarlo contra el agente, hecho que no logró, si bien inició una serie de agresiones a los integrantes de la dotación policial, hasta que finalmente fue detenida e identificada. Habría sido informada de sus derechos y trasladada al Hospital Percamps de Barcelona, donde fue atendida al igual que un agente de policía, extendiéndose los correspondientes partes facultativos. Posteriormente habría sido trasladada a la Comisaría de distrito de Ciutat Vella y se le habría designado un letrado. Cuando el Colegio de Abogados comunicó a la Comisaría que el letrado designado se encontraba de baja por enfermedad, se habría designado a otro colegiado. El trato recibido por Marta Elena Arce Salazar habría sido el mismo acordado a cualquier detenido.

193. Ibrahim Saad Ellah, supuestamente palestino nacido en Libia, habría sido detenido por policías del Grupo Operativo de Fronteras de la Unidad de Extranjería y Documentación de la Comisaría de Policía de Ceuta conforme a ley y quedando anotado en el libro de detenidos. Los actuantes habrían procedido a practicarle un cacheo al objeto de comprobar si entre sus ropas portaba algún documento que pudiera identificarlo y confirmar su origen. Sin embargo, Ibrahim Saad Ellah se habría negado a ser cacheado y habría adoptado una actitud de impedimento activo a la actuación, por lo que tuvo que ser compelido contundentemente para ello. El detenido no habría sido sometido a trato denigrante ni vejatorio alguno. Al mismo tiempo se habría establecido contacto telefónico con la Representación Palestina en Madrid, la cual, tras mantener conversación directa con el detenido, habría afirmado que por su forma de hablar tal persona no era palestino, sino más bien marroquí. El 8 mayo de 2001 se habría procedido a su deportación. Al insistir ante la Policía Marroquí que era palestino, dichos policías no lo habrían admitido al país, dejándolo en libertad. La denuncia interpuesta por Ibrahim Saad Ellah habría sido sobreseída por el titular del Juzgado de Instrucción número 4 de Ceuta el 18 de Agosto 2001. Posteriormente una demanda de asilo en España formulada por la persona habría sido denegada por la autoridad competente y en la actualidad se encontraría en paradero desconocido.

194. Abdelhak Archani se encontraba ante la Subdelegación del Gobierno de Barcelona vendiendo turnos para la cola de extranjeros que esperaban hacer trámites administrativos y dicho comportamiento habría ocasionado numerosas discusiones entre los extranjeros que esperaban su turno, siendo necesaria la intervención policial. Como el denunciante habría presentado evidentes síntomas de embriaguez, los policías le habrían advertido que abandonara el lugar y se habrían ofrecido a trasladarlo a su domicilio. Abdelhak Archani habría sido trasladado de forma voluntaria y no forzosamente. Durante el trayecto, éste habría manifestado una dirección incorrecta y luego habría mostrado su deseo de abandonar el vehículo. Las investigaciones realizadas y el informe del médico forense habrían demostrado que en ningún momento fue objeto de malos tratos por parte de la policía. El caso habría sido sobreseído provisionalmente, al no quedar debidamente justificada la perpetración del delito.

195. Nourdeine Hathout estaría imputado por el delito de atentado y su caso estaría pendiente de resolución, aunque figurara señalado el juicio para el 29 de octubre 2002. En las diligencias policiales constaba que la persona había sido debidamente informado de los derechos que le asistían, siendo asistido durante su declaración por un letrado del Colegio de Abogados de Málaga y puesto en libertad al término de 21 horas y 50 minutos de detención. También constaba que fue trasladado al Servicio de Urgencias del Hospital Carlos Haya donde fue asistido, al igual que uno de los funcionarios actuantes. En ambos casos se extendieron los oportunos partes de asistencia que se adjuntaron a las diligencias.

196. Durante los días 21 y 22 de enero de 2002 se habrían producido concentraciones de extranjeros dirigidas por el Sindicato de Obreros del Campo (SOC), iniciándose frente a las dependencias de la Subdelegación del Gobierno en la Plaza López Falcón, de Almería. El Cuerpo Nacional de Policía habría intervenido para evitar que las personas acamparan en el lugar, permitiendo el paso a los extranjeros que pretendían acceder a la Oficina de Extranjeros para realizar trámites administrativos. Llegada la hora de cierre de dicha oficina, habrían permanecido concentradas unas 500 personas, procediéndose a su identificación por parte de la policía. Se habrían producido nueve detenciones, ocho en aplicación de la Ley Orgánica sobre derechos y libertades de los extranjeros y su integración social, y una por resistencia a la autoridad. En la madrugada del 22 de enero, en el Cerro San Cristóbal se habrían sido concentrando un número aproximado de 200 extranjeros con la intención de acampar en el lugar. La Subdelegación de Gobierno habría dado instrucciones a los miembros de la Policía para disolver a los concentrados. Tras los preceptivos avisos verbales se habría iniciado la actuación policial según los dispositivos establecidos, sufriendo los policías actuantes continuas agresiones y lanzamiento de piedras por parte de los concentrados. Se practicó un total de 31 detenciones. Algunos de los detenidos se habrían lesionado, principalmente por las carreras emprendidas y caídas, debido a la escasez de luz y lo accidentado del terreno. También resultaron heridos tres detenidos. Algunos de los lesionados atendidos *in situ* y otros habrían sido trasladados a un centro asistencial, atendidos por contusiones leves y cefaleas, permaneciendo uno de ellos en observación hasta las 11.59 de la noche bajo una crisis de ansiedad. Según informó el Gobierno, la actuación policial habría sido ajustada a ley y velando por la protección de los derechos de las personas.

197. En cuanto a la situación de menores no acompañados, el Gobierno informó de que tanto los principios constitucionales sobre el niño y la familia, como las disposiciones de la Ley de Protección Jurídica del Menor parten de las Convenciones Internacionales al respecto y en particular la Convención sobre los Derechos del Niño, ratificada por España el 30 de noviembre de 1990. Por otra parte, la vigente Ley Orgánica sobre derechos y libertades de los extranjeros en España y su integración social, así como su reglamento, regula de forma precisa la actuación pública en los casos de menores extranjeros no acompañados. Cuando las Fuerzas y Cuerpos de Seguridad del Estado localizan a un extranjero indocumentado cuya minoría de edad no puede ser establecida con seguridad, el Ministerio Fiscal dispone la determinación de la edad con la colaboración de las instituciones sanitarias. Si se trata de un menor, el Ministerio Fiscal le pondrá durante el período de determinación, a disposición de los Servicios competentes de Protección a Menores, competencia que corresponde a las Comunidades y Ciudades Autónomas. La Administración General del Estado resuelve la reintegración al país de origen o de residencia de la familia del menor o bien su permanencia en España, después de haberlo oído y previo informe de los Servicios de Protección de Menores. Transcurridos nueve meses de que el menor haya sido puesto a disposición de los Servicios de Protección de Menores y si el retorno no ha sido posible, se procede a documentarle con el fin de asegurar su integración.

198. Sobre el supuesto maltrato a menores en el Centro de San Antonio, actualmente llamado Centro "La Esperanza", dependiente de los Servicios de Protección Social de la ciudad de Ceuta, el Gobierno de España transmitió las siguientes puntualizaciones.

199. El centro se instaló en 1999, en una antigua residencia militar. En él se recogieron a unos 70 menores no acompañados a los que se proporcionó comida, vestuario, alojamiento y formación, aunque al principio las condiciones de alojamiento no fueron ideales. En marzo de 2001 se iniciaron obras de ampliación que permitieron el alojamiento en torno a 110 menores. No es cierto que en el centro estuvieran alojadas niñas y que los menores carecieran de espacio de ocio. El centro es de menores varones y cuenta con amplias zonas verdes. Los menores acogidos cuentan con una total libertad ambulatoria para entrar y salir en los horarios establecidos. No es cierto que los menores hayan sido encerrados en un “cuarto pequeño, oscuro y sucio”. El trato a los menores es profesional y totalmente alejado de cualquier visión autoritaria de la atención social. Todos los menores acogidos se encuentran escolarizados, sin perjuicio de que alguno de ellos cuya edad supere los 17 años, no asista a las correspondientes clases dada la libertad ambulatoria de que gozan. El Adjunto al Defensor del Pueblo, alto comisionado ante el Parlamento español para el control de la Administración realizó una visita al centro el 10 de mayo de 2001, descartó la existencia de malos tratos y no tiene ninguna investigación abierta en esta materia.

200. En Ceuta no se habría producido ningún caso de menores que, no pudiendo retornar a sus países o quedar a disposición de los servicios de protección de menores de Marruecos, hubiese sido retornados sumariamente. El procedimiento seguido para la reintegración familiar de un menor se inicia a propuesta de la Consejería de Bienestar Social de la Ciudad Autónoma de Ceuta, que ejerce su tutela. Recibida la solicitud se nombra al instructor del expediente, el cual tras la audiencia con el menor, asistido por un representante legal, e incorporado el informe de los Servicios de Protección de Menores y las pruebas, formula una propuesta de resolución sobre la que decide el Delegado del Gobierno, bien en el sentido de retornarlo a la familia o en su defecto para que permanezca en España. Las autoridades proceden a realizar las diligencias respectivas ante las embajadas y consulados pertinentes. En Ceuta, la Comisaría General de Extranjería y Documentación gestionó ante la embajada de Marruecos en Madrid la repatriación de menores a su país, en respuesta a la petición de la representación diplomática que se realicen las gestiones directamente con las autoridades de la provincia de Tetuán, las cuales se encargarían de llevar a cabo la reintegración familiar. En virtud de ello, la Comisaría del Cuerpo Nacional de Policía en Ceuta se pone en contacto con las citadas autoridades y transcurrido un plazo no inferior a 15 días desde la comunicación del acuerdo de reagrupamiento familiar, presenta a los menores para cumplir con tal principio.

201. El Gobierno informó de que por ley, la Ciudad Autónoma de Ceuta ejerce estas competencias y responsabilidades a través de la Consejería de Bienestar Social. Según informó el gobierno, no existe ninguna delegación de competencias ni de responsabilidades de los funcionarios de Gobierno de la Nación en autoridades locales, cada uno ejerce las que tiene asignadas según el ordenamiento jurídico y de producirse algún abuso del que tuviera conocimiento no sólo las autoridades y los funcionarios sino cualquier ciudadano español, vienen obligados pro ministerio de ley a poner en conocimiento del juez o funcionario fiscal más próximo. La coordinación entre las administraciones (Central y Autonómica) es permanente y fluida y se lleva a cabo entre la Consejería de Bienestar Social, Instituto de Migraciones y Servicios Sociales y la Delegación del Gobierno.

202. El 20 de junio 2002 se remitieron diligencias policiales al Juzgado de Instrucción Número 2 de Ceuta, imputando a dos cuidadores del Centro de Menores San Antonio como

presuntos autores de unas lesiones causadas a M. G. Consultado dicho juzgado, informó que tal procedimiento ha sido archivado. La última constancia de la presencia del menor en Ceuta fue el 22 de febrero de 2002, fecha en que fue detenido por orden del Juzgado de Menores de la ciudad.

203. El 14 de octubre de 2000, fuerzas de la Guardia Civil instruyeron un atestado por supuesta agresión con resultado de lesiones en el que constan como denunciantes, los dos ciudadanos argelinos, S. M. y H. U. y que según declaran se produjo a las 22 horas del día anterior. Consultado el Juzgado de Primera Instancia e Instrucción Número Tres informó verbalmente que el 13 Abril el procedimiento había sido archivado. Tanto en este caso como el anterior el archivo es una declaración de voluntad judicial que pone fin al proceso por falta de presupuestos necesarios par decretar la apertura a juicio oral y, en su caso, dictar auto de procesamiento.

204. No se tiene noticia alguna de que en el Centro de Menores San Antonio se haya producido ningún tipo de abusos sexuales. No obstante, el 14 de abril de 2000, la Directora del Centro puso en conocimiento de la Comisaría del Cuerpo Nacional de la Policía que un individuo conduciendo un auto solía merodear por los alrededores de la zona buscando menores para abusar sexualmente de ellos. Miembros del Grupo de Menores del Cuerpo Nacional de la Policía iniciaron investigaciones que resultaron en la detención de tres individuos a los que se instruyeron diligencias policiales, que fueron entregadas en el Juzgado de Instrucción Número 4. Todos ellos fueron puestos en libertad. Sobre este asunto se interesó el Defensor del Pueblo, que promovió investigación sumaria e informal, y al que se facilitó, en síntesis, la información que precede y en escrito de 2 de octubre 2000 dio por conclusa la investigación.

205. En los casos de Shihab R. y Omar. R no se tiene constancia de los hechos relatados y resulta imposible comprobar la veracidad de la denuncia que posibilite poner en marcha la correspondiente investigación sobre los hechos denunciados.

206. En el caso de Salh S., las lesiones sufridas fueron ocasionadas por otro menor interno, y los trabajadores del Centro de Menores Purísima Concepción de Melilla se limitaron a separar a ambos menores y recabar asistencia médica.

207. No se ha podido constatar el expediente de Ayman M. No obstante, se niega que una repatriación se haya producido en las circunstancias descritas en las alegaciones. En 2002 se han realizado 72 repatriaciones de menores en Melilla y en ninguna de ellas se habrían utilizado esposas, ni mucho menos los menores habrían sufrido malos tratos por parte de autoridades.

208. Respecto a la huelga de hambre de menores en el Centro de Menores de la Purísima, en Melilla, el 4 de marzo 2002, se informa de que algunas organizaciones no gubernamentales anunciaron que se iba a producir. Sin embargo, esta no se produjo nunca.

209. En relación con la comunicación enviada por la Relatora Especial el 12 de septiembre de 2002 conjuntamente con la Relatora Especial sobre la violencia contra la mujer, sus causas y consecuencias, el 13 de noviembre de 2002, el Gobierno confirmó que en el caso de Rita Margarete Rogelio, el Juzgado de Instrucción N.º2 de Bilbao entendió la denuncia formulada en fase instructora, y fueron imputados tres agentes de policía. Los autos habrían sido remitidos a la Audiencia Provincial de Vizcaya, la cual dictó sentencia absolutoria el 10 de junio de 1998. A su

vez, la Unidad de Asuntos Internos de la Dirección General de la Policía, siguiendo la recomendación vertida en la Sentencia del alto Tribunal, concluyó que no existió agresión sexual ni infracción administrativa alguna.

210. A través de la misma comunicación, el Gobierno informó de que en seguimiento a la denuncia interpuesta por Miriam Verástegui Templo, tras la instrucción penal, el 10 de abril de 2002, la Sección Quinta de la Audiencia Provincial de Madrid condenó al agente de policía implicado en el caso a cuatro años de prisión e inhabilitación, por un delito de agresión sexual en grado de tentativa. Esta sentencia no sería firme por encontrarse recurrida.

211. En relación con la comunicación de la Relatora Especial del 12 de septiembre de 2002 transmitida conjuntamente con la Relatora Especial sobre ejecuciones extrajudiciales, sumarias y arbitrarias y el Relator Especial sobre la cuestión de la tortura, el Gobierno transmitió la siguiente información.

212. Youssef R. habría sido alcanzado por un agente de policía cuando intentaba escapar de unos agentes que querían identificarle en relación con un robo que habría ocurrido poco antes. Youssef R. habría estado en un estado de excitación anormal y habría ofrecido resistencia al agente de policía. Ante esta resistencia y el hecho que el interceptado llevaba unas tijeras en la mano, el agente lo habría reducido por la fuerza. Durante el forcejeo, Youssef R. se habría golpeado con el bordillo de una acera. El personal de una ambulancia cuya presencia había sido requerida le habría prestado las primeras atenciones médicas pero habría fallecido durante su traslado al hospital, supuestamente por una parada cardiorespiratoria. Este caso sería actualmente objeto de una investigación judicial, pero nadie habría sido imputado o procesado.

213. Essa Marong habría ingerido, antes de su detención, una bolsa de cocaína. Ésta habría reventado en el estómago del detenido, provocándole la muerte.

Observaciones

214. La Relatora Especial es consciente de la cantidad de alegaciones que fueron transmitidas en un corto período de tiempo. Por ello quisiera agradecer muy especialmente al Gobierno de España por haberle remitido una respuesta detallada con suficiente antelación para poder incluirla en el presente informe. La Relatora Especial quisiera también agradecer el Gobierno de España por su carta con fecha de 7 de noviembre, en la que el Gobierno reitera su disponibilidad a acoger una visita de la Relatora Especial en la primera mitad de 2003 y a cooperar con ella para permitirle examinar *in situ* cuestiones relacionadas con el mandato.

Switzerland

Communication adressée au Gouvernement

215. Le 29 janvier 2002, la Rapporteuse Spéciale envoya un appel urgent aux autorités suisses concernant Sonia Pizzogalli De Los Santos Montano, une ressortissante de la République Dominicaine, qui résiderait légalement en Suisse depuis 1994. Le 26 mai 2000 elle aurait présenté une demande de réunification familiale mais celle-ci aurait été rejetée par le Conseil d'Etat tessinois. Celui-ci aurait considéré que le fait que la mère soit partie de son pays en

laissant derrière elle ses enfants et ait attendu six ans pour solliciter la réunification familiale démontre le faible lien qu'elle maintiendrait avec ses enfants. Le Conseil d'Etat aurait également précisé qu'il avait été tenu compte dans le rejet de la requête le fait que deux de ses enfants allaient bientôt atteindre l'âge légal pour pouvoir travailler. En réponse aux arguments de Sonia Pizzogalli selon lesquels la tante des enfants ne serait plus en état de les prendre en charge pour cause de maladie, le Conseil d'Etat aurait déclaré que d'autres membres de la famille résidant en République dominicaine pourraient s'en occuper.

Communication reçue du Gouvernement

216. Le Gouvernement Suisse répondit à cet appel le 12 mars 2002 en indiquant qu'après avoir examiné son cas, les autorités compétentes auraient considéré que Mme Pizzogalli n'était pas victime d'une pratique contraire à son droit au respect de sa vie familiale. Selon la réponse du Gouvernement, la résidence séparée des enfants et de la mère est le résultat d'une décision délibérée de cette dernière. En outre, les enfants qui furent pris en charge par leur tante depuis 1994 ont des liens solides avec l'environnement linguistique et culturel de leur pays, où ils posséderaient une famille nombreuse. Quand aux raisons présentées par Mme Pizzogalli en référence à la maladie de sa sœur, les autorités suisses affirment n'avoir reçu qu'un certificat médical attestant la nécessité « d'une thérapie de repos ». Finalement, le Gouvernement aurait indiqué que Mme Pizzogalli n'aurait pas utilisé toutes les voies de recours prévues par le droit cantonal et fédéral en vue d'une réunification familiale.

Observations

217. La Rapporteuse Spéciale remercie le Gouvernement Suisse pour sa réponse prompte et détaillée.

Thailand

Communications sent to the Government

218. By letter dated 7 November 2002 sent jointly with the Special Rapporteur on violence against women, its causes and consequences, the Special Rapporteur transmitted to the Government information on the following individual case:

219. Ma Su, an 18-year-old Burmese domestic worker, was reportedly beaten and burnt alive by three men on 10 July 2002 after she was allegedly accused by her employer of stealing a gold chain. It was reported that, after being attacked, she was abandoned on a roadside in Uthai Thani District. She was reportedly later taken to Uthai Thani Provincial Hospital where she remained in intensive care until she died six days later, on 16 July 2002. According to the information received, doctors diagnosed that 59 per cent of her body, including breast, back and arms was burnt to the third degree. The Special Rapporteur expressed her interest in receiving the assurance that an inquiry had been opened on these allegations and that those found responsible for these acts would be prosecuted.

220. By letter dated 11 November, the Special Rapporteur notified the Government that she had received the following information.

221. Thirteen Myanmar migrants, including three children, were reportedly found dead in a desert dump site in Prachin Buri Province on 5 March 2002. According to police investigations, the migrants had suffocated after hiding underneath a load of vegetables in a truck that allegedly took them from Mae Sot to Nakhom Pathom province. It was reported that two members of a smuggling gang were arrested in connection with this case on 6 March 2002, after they allegedly confessed that they had rented a truck to smuggle 30 Myanmar migrants to a factory. Reportedly, when the truck driver opened the storage area, he found that 13 of the migrants had died. The Special Rapporteur expressed her interest in receiving information on the progress of any investigation launched into this incident.

222. A registration process for undocumented migrants was reportedly established by the Government between 24 September and 18 October 2001. It was reported that this registration was only valid for six months and a second one took place from 25 February to 24 March 2002 for those who had already registered in 2001. In order to be able to apply for the second registration, migrants allegedly needed to pass a medical screening at a fee of 1,200 baht. According to the information received, the Government announced that 737 among 40,000 migrant workers from Myanmar who allegedly tested positive for HIV/AIDS, tuberculosis and other communicable diseases would be deported.

223. By letter dated 11 November 2002 sent jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur notified the Government that she had received allegations according to which, on 5 February 2002, the police announced that 20 bodies of members of the Karen ethnic minority were found in Tak province, near the Thai-Myanmar border. It was reported that the bodies were found blindfolded with their wrists tied and their throats cut and with marks of beatings and stab wounds. The bodies were allegedly located in what was believed to be a drug and human trafficking route between the two countries. Local villagers had reportedly found dead bodies of Karen migrants in this area in other occasions, but the large number of corpses and the brutal manner of their killing was allegedly unusual. It was reported that an investigation was launched by the police. However, according to the information received, no progress had been made in finding those responsible for the murders.

224. By letter dated 11 November 2002 sent jointly with the Special Rapporteur on the question of torture, the Special Rapporteur notified the Government that she had received allegations on the conditions in which Burmese migrants were reportedly detained in Mahachai Police Station. According to the information received, the cells were so overcrowded that detainees did not have space to lie down. It was reported that men and women were kept in the same overcrowded rooms and, as a result, there had been reports of sexual assault and harassment against female detainees by male detainees. New arrivals were also said to be often harassed by longer-term detainees. Reportedly, due to the lack of running water and the overcrowding, detainees lived in extremely poor hygienic conditions. Moreover, it was alleged that there was one toilet for all the detainees, and both men and women had no choice but to use it in sight of all detainees. Many detainees were said to have contracted skin diseases after only three days in custody. The health conditions were allegedly aggravated by the fact that many detainees were suffering from HIV/AIDS. Fears had been expressed that venereal diseases could become more contagious when people were kept in such unhygienic circumstances. It was

further reported that detainees were not given proper food or enough water. The Special Rapporteur had been informed that according to Thai law, irregular migrants had to pay a 2,500 baht fine as well as 17 Bath per day of detention. It was also reported that detainees who paid bribes could be transferred to Bangkok's Immigration Detention Centre (IDC), where conditions were believed to be better than in Mahachai.

225. The Special Rapporteur on the question of torture and the Special Rapporteur had also received information on the following individual cases.

226. Aung Win Tin, a Burmese member of the Burma Labor Solidarity Organization (BLSO), and Saw Tin Tun Aung, another Burmese migrant working at the same factory, were reportedly assaulted on 29 June 2002 by some friends of their employer's father and headman of the Mae Tao neighborhood, where the factory was located. The two men were reportedly asked to show their documents. According to the information received, after they showed their work permits, they were ordered to take off their shirts and searched. Aung Win Tin was reportedly slapped on his face and beaten for approximately 20 minutes. The Special Rapporteurs had been informed that several men, who were believed to be police intelligence officers, arrived on the spot with two white pick-up trucks and one motorcycle. Aung Win Tin and Saw Tin Tun Aung were reportedly taken to Mae Sot police station. The next morning, Aung Win Tin was taken to the BLSO offices, which were allegedly searched by the police. Ko Than Doke and her eight-month-old baby, Than Chun, Ma Shwe Zin, Ma Yee as well as Zaw Htoo, who were in the office, were reportedly taken to the police station and interrogated. Aung Win Tin was reportedly held in an overcrowded cell with charged criminals for three nights. The rest of the above-mentioned people were reportedly detained in a different cell for two nights. It was alleged that they were taken to Mae Sot Immigration Centre next to the Thai-Burma Friendship Bridge and they were reportedly released on 2 July 2002. The Special Rapporteurs had been informed that four workers of the factory with whom Aung Win Tin met just before being arrested had been arbitrarily dismissed on 30 June 2002.

227. Kayinle, aged 25, Ko Hlah Kyi, aged 30, A. K. S., aged 18, and U Kyaw, aged 47, were reportedly dismissed from their jobs, in a Mae Sot textile factory, without prior notice and without any justified reason on 1 July 2002. According to the information received, they had repeatedly complained to the authorities about alleged abuses of their labour rights. It was reported that the above-mentioned factory workers were not paid their full salary, had to work long extra hours and did not have leisure time. Reportedly, as a result of the last complaint they had lodged, they were beaten by their employer's assistant. It was alleged that in May 2002, 46 workers of the same factory, whose name is known to the Special Rapporteurs, were also dismissed without any explanation. The Special Rapporteurs expressed their interest in receiving information on the measures taken in response to the above-mentioned complaint.

228. Aung Win, a Burmese migrant working at Moe Goke Gate, one of the Cargo Terminals of Myawaddy, was reportedly arrested by police officers on 19 June 1999 in Maesod. According to the information received, upon arrest, he was so severely beaten that he fainted and injured his right eye. He was allegedly accused of being involved in a drug offence, which he repeatedly denied, and subsequently transferred to Bangkok. It was reported that he was taken to a police hospital, where he was allegedly diagnosed two broken ribs. In a verdict issued on 29 December 1999, he was reportedly sentenced to death. The Special Rapporteurs had been informed that,

when his case was reviewed by another court on 9 May 2001, the verdict was upheld. The case was reported to be pending the decision of a third court since the appeal was requested on 28 July 2001.

Communications received from the Government

229. By letter dated 20 December 2002, the Government reported that an investigation on the death of Ma Su was conducted by Lopburi and Uthaitani Provincial Police. The results of the investigation pointed to the fact that she had been victim of homicide. The Government also informed that domestic remedies had no been exhausted and that the case could not be construed as a systematic human rights violation targeting particularly migrants or women.

230. By letter dated 26 December 2002 the Government of Thailand provided the following information on the cases brought to its attention by the Special Rapporteur.

231. On the case of the 13 bodies found on 5 March 2002 in a dumping site in Muang District, Prachinburi Province, it was reported that according to the autopsy report the cause of death of the five males and eight females was asphyxiation. The Royal Thai Police of Muang District, Prachinburi Province, identified six suspects. One of them was arrested and two others turned themselves in to the police. Taking into account the evidence, the Royal Thai Police proceeded to prosecute the six suspects. At the time of the response, the three suspects were in police custody and were undergoing a process of witness hearings in the court of law. The Royal Thai Police had also issued arrest warrants for other suspects who were still at large and had attentively been pursuing the case. The Government also stressed in its response that measures had been undertaken at the community, national, bilateral, regional and international levels, with the aim of addressing the problem of trafficking comprehensively and effectively, including by amending and enacting related legislation in order to bring domestic legislation and practices up to the international standard. The Government had also initiated a regularization programme for undocumented migrant workers from neighboring countries.

232. The Government initiated a registration process for undocumented migrant workers from neighboring countries between 24 September to 18 October 2001, during which 568,249 migrant workers turned up for registration. From 25 February to 24 March 2002, the Royal Thai Government initiated a re-registration process for those who had already registered in the first half of 2001: 430, 074 migrants showed up for re-registration. In order to be able to re-register and extend their work permits, the migrant workers had to undergo a medical check-up at a cost of 300 baht (around US\$ 7) per person. The procedures for medical check-ups were the same in all the public hospitals and included blood and urine testing in order to diagnose communicable diseases or drug consumption. The Government reported that there was no incidence of infected migrant workers allegedly being deported as a result of the medical check-ups. Furthermore, HIV/AIDS testing had never been required for any migrant.

233. In the case of the bodies found on 5 February 2002 in Tak province, near the Thai-Myanmar border, the Government reported that nine bodies were actually discovered in the Moei River. The conditions of the bodies were so poor that this caused confusion about the actual number of bodies found, since dismembered limbs could be mistakenly counted as bodies. Autopsy reports showed that the victims were of Karen ethnicity. However, there was no

evidence indicating whether the bodies had come from the Thai or Myanmar side of the Moei River. The victims were given a cremation after no one had come forward to claim the bodies. The Government had been tirelessly pursuing the case in order to bring the perpetrators to justice. The National Human Rights Commission dispatched a fact-finding team into the field. A preliminary observation concluded that the cause of death was unlikely to be neither an execution of illegal migrant workers nor a work of the drug trafficking ring. Nor was it likely to be a result of fighting between ethnic minorities along the border. The Ministry of Justice had also dispatched a team from the Special Investigation Bureau to look into the case and coordinate with other agencies concerned.

234. On the conditions of detention in Mahachai Police Station, the Royal Thai Police had approved a plan to expand the Police Station in order to alleviate the overcrowding condition of the cells. The Government reported that the expansion would be carried out in every police station nationwide within the available resources. The Royal Thai Police strongly denied the allegations that men and women were kept in the same rooms and informed that detainees were provided with three regular meals and water every day at the expenses of the police station. Also, it was reported that each police station maintained a close cooperation with local health agencies in the area and constantly coordinated with them regarding the conditions of detainees. The cells were visited by medical teams and ill detainees sent to district or provincial hospitals. The Royal Thai Police initiated an inquiry on the allegations of bribes and concluded that bribery did not take place. The Government reported that the allegation could arise from the fact that, according to the normal procedure, upon payment of fines, irregular migrant workers are transferred from police stations to the Immigration Detention Centre (IDC) in Bangkok to await deportation.

235. On the case of Aung Win Tin and Saw Tin Tun Aung, the Government reported that the Royal Thai Police had examined the allegations and had found no record of the alleged arrest. However, the Royal Thai Police was coordinating with the Immigration Bureau of the Tak Province to further examine the case. The Government requested the Special Rapporteur to provide further information on the allegations in order to facilitate its task.

236. On the case of the four migrant workers from Myanmar allegedly unjustly dismissed from their jobs in a Mae Sot textile factory, the Government reported that the Ministry of Labour had carefully looked into 30 textile factories in the Mae Sot District. However, the Ministry found no information on the dismissal of the 4 migrant workers on 1 July 2002.

237. Regarding the dismissal of 46 workers in May 2002, the Ministry of Labour found that on 9 May 2002 approximately 1,000 Myanmar migrant workers demonstrated against their employer over their dissatisfaction with wages and management. On 10 May 2002, a labour inspector called a meeting to mediate the dispute, which was attended by the employer and 12 representatives of the employees. Both sides reached an agreement and most employees returned to work. However, 45 employees remained absent from work for three consecutive days and threatened other employees who had returned to work. As a result, they were dismissed in accordance with the labour law of Thailand.

238. The Government further stressed the need to address the problem of irregular migrants and that the registration programme referred to above was an effort to guarantee a better management and protection of migrant workers in Thailand.

239. On the case of Aung Win, the Royal Thai Police had investigated the allegations and found no record of the case in the Mae Sot District. The Office of the Attorney-General reported that the Mae Sot District was also examining the allegation. However, the Office noted that if the case was awaiting the appeal of the High Court as indicated in the allegation, there should be a record of the case.

Observations

240. The Special Rapporteur thanks the Government of Thailand for the information provided and for the extensive inquiry carried out as a result of the information she transmitted. The Special Rapporteur would like to welcome the measures undertaken by the Government of Thailand in an effort to address the issue of irregular migrations and to ensure better protection of the human rights of migrants and to express her interest in being kept informed on future developments in this regard.

United Arab Emirates

Communication sent to the Government

241. On 1 May 2002 the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the question of torture and the Special Rapporteur on violence against women, its causes and consequences, regarding Sabrina Imtiaz Syed, aged 25, who was reportedly facing imminent and forcible repatriation to Pakistan, where she was at risk of torture or honour killing. According to the information received, Sabrina Imtiaz Syed was living with her family in Dubai, where she was born and raised. In September 2000 she reportedly flew to Pakistan with Ashfaq Muhammad, a Pakistani national, whom she secretly married without her family's consent. They were reported to have gone back to Dubai afterwards. In February 2002, the couple allegedly told Sabrina Imtiaz Syed's parents that they were already married, and moved into an apartment together. Her parents reportedly came to the apartment with two other people and severely beat the couple. Ashfaq Muhammad allegedly reported what happened to the local police, but the latter did not take any action. The couple then flew to Pakistan again, but while they were there Sabrina's relatives reportedly threatened to kill her. The couple decided to seek asylum in Germany and arrived there on 20 March 2002. It was alleged that Sabrina's parents asked her to return to Dubai, saying that they were ready to accept her marriage. She returned on 18 April, but was reportedly arrested on arrival at the airport and taken to an "immigration jail". Her father met her there and allegedly told her that he had asked the authorities to revoke her visa and send her back to Pakistan, where his relatives would kill her for "dishonouring" the family by marrying against his wishes.

Communication received from the Government

242. By letter dated 2 August 2002, the Government informed the Special Rapporteur that the legal guardian of Sabrina Imtiaz Syed had filed a report against her after she arrived in the

country in April 2002, claiming that she had eloped. She was referred to the Dubai Nationality and Immigration Service for an investigation on these allegations but was not detained by this service. The Government further reported that she left for Pakistan with her family on 12 May 2002.

Observations

243. The Special Rapporteur thanks the Government of the United Arab Emirates for its response.

United Kingdom of Great Britain and Northern Ireland

Communication sent to the Government

244. By letter dated 2 October 2002 sent jointly with the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur notified the Government that she had received information according to which certain procedural safeguards to guarantee human rights in the criminal judicial system were being circumvented under the Anti-terrorism Crime and Security Act (ATCSA). It had been reported to the Special Rapporteurs, that under clauses 21 and 23 of ATCSA 2001, any non-British national could be detained without charge or trial for an unspecified period of time when the Secretary of State certified that he/she had grounds to believe that this person was a suspected terrorist or constituted a risk to the national security. Those detained under this act could reportedly be released only if the Secretary of State revoked his certificate or if it was cancelled by the Special Immigration Appeals Commission (SIAC). Since secret evidence could be entirely withheld from those against whom it had been adduced, fears had been expressed that SIAC proceedings would violate the right to a fair hearing. The Special Rapporteurs also noted that ATCSA did not contain provisions guaranteeing the right to immediate access to a solicitor if a person was detained under this act. The Special Rapporteurs had also been informed that under ATCSA there were no explicit provisions according to which those arrested under it had the right to bring proceedings before a court for a prompt determination of the lawfulness of their detention.

245. The Special Rapporteurs had also received information regarding the conditions of detention under which those detained under ATCSA were reportedly held in Woodhill prison, Buckinghamshire, and Belmarsh prison, London. Reportedly, those detained under ATCSA were held under a restrictive regime, which allegedly included 22-hour lock-up with no adequate access to association time, denial of adequate health care and impediments to contact with the outside world for months. It was alleged that time and facilities to communicate with lawyers were restricted and that when legal and social visits were granted, visitors were subjected to strip searches. Fears had been expressed that such detention conditions, in combination with the fact that detainees had no knowledge of the length of their detention, amounted to ill-treatment.

246. According to the information received, on 30 July 2002 the SIAC found that the targeting of non-British nationals was discriminatory and disproportionate and determined that the above-described detention measures were not compatible with the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Special Rapporteurs had been informed that the Government has appealed the judgment.

Communication received from the Government

247. By letter dated 18 November 2002, the Government of the United Kingdom informed the Special Rapporteur that, on 25 October 2002, the Court of Appeal unanimously found that Part IV of the Anti-terrorism, Crime and Security Act was not discriminatory. The Government also explained that this act struck a balance between the interests of the individual suspected terrorist and the general community.

248. In particular, the Government provided the Special Rapporteur with the following information: "[T]he detainees have the right to an independent and impartial tribunal. Any certificate issued is subject to an appeal to the SIAC [...], which has the power to cancel it, if it considers that the certificate should not have been issued. In addition, any persons detained had the right to challenge the derogation to SIAC and the higher courts, which they had tried, unsuccessfully, to do. Further, it was open to a detainee to end his detention at any time by agreeing to leave the United Kingdom.

249. There were further safeguards in the long term. Sections 21 to 23 of the Act were temporary provisions which would automatically expire after 15 months, subject to renewal for periods not exceeding one year at a time if both Houses of Parliament were in agreement (sect. 29(1)). This ensured periodic review by the legislature, in addition to continuing review by the executive. Further, the detention provisions would end with the final expiry of sections 21-23 of Part IV of the Act on 10 November 2006 (sect. 29(7)). If, in the Government's assessment, the public emergency no longer existed or the extended power was no longer strictly required by the exigencies of the situation, the Secretary of State would, by Order under section 29(2), discontinue the provision.

250. In connection with conditions of detention in both Belmarsh and Woodhill prisons, the Government clarified that prisoners were not being held under a restrictive regime, that they were able to associate with other prisoners and that they were allowed out of their cell for an average of seven hours each day. Upon arrival, detainees received medical assessments from which individual care plans were devised. Further, any prisoner was able to see a doctor upon request and to be referred to a local hospital should the need arise. The Government also informed that detainees did not suffer impediments to contact with the outside world. However, due to the security category of detainees, proposed visitors underwent appropriate checks and visits could only be permitted under closed conditions. Visitors would be searched upon entry to the prison but this procedure did not imply that the visitor had to strip. In addition, detainees had access to complaints system. All complaints made by detainees had reportedly been investigated and a response had been given.

Observations

251. The Special Rapporteur thanks the Government of the United Kingdom for its prompt and detailed response. In this connection, the Special Rapporteur would like to refer to the conclusions and recommendations contained in her main report to the Commission (E/CN.4/2003/85).

United States of America

Communications sent to the Government

252. By letter dated 11 April 2002, the Special Rapporteur thanked the Government for the support provided in the context of her visit to the border between Mexico and the United States in March 2002. The Special Rapporteur also requested further information on the following individual cases, which were brought to her attention during the visit: Serafin Olvera, Benjamin Prado, Ramiro Ramirez, José Orea Gómez and Mohamed Nasir Kalair.

253. On 26 July 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions on behalf of Javier Suarez Medina, a Mexican citizen scheduled to be executed in Texas on 14 August 2002 for the murder of an undercover Dallas police officer. It was alleged that after his arrest, Javier Suarez Medina, aged 19 at the time, was not informed about his right to contact and obtain assistance from his country's consular officials even though the police was aware of his nationality from the outset. Furthermore, it was alleged that Texas police provided false information to Mexican consular officials about Mr. Suarez Medina's nationality, preventing them from assisting him during his capital murder trial. According to information received, Mr. Suarez Medina was sentenced to death in 1989. His trial was allegedly flawed in that, in order to invoke a death sentence in Texas, the jury must unanimously agree that the offender poses a future danger to society. However, according to information received, the jury based its sentence on Suarez Medina's propensity to "future dangerousness" in an alleged crime that had reportedly not been proved in a court and for which there was allegedly no hard evidence tying Suarez Medina to the crime. According to the information received, there was also evidence that Suarez Medina suffered from brain damage and post-traumatic stress disorder at the time of the shooting incident. According to information received, this was the 14th execution date set for Suarez-Medina since 1995.

254. By letter dated 18 September 2002, sent jointly with the Special Rapporteur on the question torture and the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur notified the Government that she had received the following information regarding the detention of many individuals, particularly non-United States nationals, since 11 September 2001.

255. Despite being held in custody by the Immigration and Naturalization Service (INS), many detainees were reportedly investigated by the Federal Bureau of Investigation (FBI) for the commission of criminal offences. However, it was alleged that INS detainees had fewer guarantees in their proceedings than people detained in the context of criminal procedures.

256. While, according to the Patriot Act, the Attorney-General was allowed to hold certified terrorist suspects for up to seven days without charge, the INS had reportedly been granted the authority to detain people without charge for up to 48 hours or for further undefined period in case of "emergency" or "other extraordinary circumstances". The Special Rapporteurs had been informed that many were detained longer than the 48-hour period and that several INS detainees were held in detention for more than 50 days before being charged with a violation. It was also

reported that a new regulation allowed the INS to override immigration judges' decisions to grant bail in certain cases.

257. The Special Rapporteurs noted with concern the level of secrecy surrounding these detentions. After 11 September, the Department of Justice, through a Memorandum from Chief Immigration Judge Michael J. Creppy, reportedly implemented security procedures according to which hearings in immigration courts would be closed to the public in "special cases". The Special Rapporteurs had been informed that many cases were held before these closed immigration courts, including for minor immigration violations.

258. It was reported that until 27 November 2001 the Attorney-General did not release any official information on post-11 September detainees. The Government provided further information on them on 11 January 2002 pursuant to a request submitted by human rights organizations under the Freedom of Information Act. However, the Justice Department allegedly stated that it was unable to provide information on a number of cases, namely on persons detained under material witness warrants, since the United States District Courts before which these detainees had appeared, issued sealing orders prohibiting release of any information about the proceedings. It was reported that, in August 2002, a United States District Judge ordered the Government to disclose the names of people detained in relation with the 11 September attacks. According to the information received, the court order allegedly did not apply to individuals detained as material witnesses and did not request the disclosure of the dates and locations of arrests and detentions.

259. According to the information received, many detainees were not informed in a language that they understood about their rights, particularly their right to have the assistance of a lawyer and in some circumstances were denied that assistance. Concerns had been expressed that detainees being investigated for criminal offences were not informed of their right to have a lawyer appointed when they lacked sufficient means to pay for it. In circumstances where individuals had legal representation, it was reported that families and lawyers had great difficulty in locating the whereabouts of the INS detainees and therefore in taking steps to provide them with the necessary assistance. It was further reported that lawyers and families were not notified of the transfer of detainees and in some circumstances were not informed of their whereabouts. It was also alleged that lawyers had difficulties in obtaining information necessary for the performance of their professional duties, for example, information about the date of detention, the basis of detention, whether and when the detainee was charged with an offence and whether or not the detainee was subject to interrogation for the commission of criminal offences. Further, they reportedly had difficulties in gathering information about the continuing status of their case.

260. Detainees were also believed to have had serious difficulties in contacting individuals or organizations external to their place of detention. In particular, access to telephones was allegedly restricted. Requests from NGOs to visit detention facilities and to assist those detained were reportedly refused in many cases. The Special Rapporteurs had also received information according to which some foreign nationals detained after 11 September were not given the opportunity to seek the assistance of their consulate, as provided by international law and the INS Detention Standards.

261. Regarding the deportation procedures, the Special Rapporteurs had received information according to which it had become harder for asylum-seekers from a number of countries to have their claims taken into consideration after 11 September. The Special Rapporteurs had also been informed that some detainees were at risk of human rights violations if they were returned to their country in connection with the post-11 September investigations. It was reported that at least two detainees were deported without their families being informed by the authorities about their immediate expulsion and that two others were deported without any of their belongings. Finally, it was reported that a number of migrants detained after 11 September who had final orders of deportation issued by an Immigration Court were kept detained, pending checks by the Justice Department regarding their involvement in the terrorist attacks.

262. The Special Rapporteurs had also received information according to which many post-11 September detainees were kept in prolonged detention for minor immigration infractions, which would not previously have resulted in deprivation of liberty. A number of them were reportedly held in punitive conditions in jails, alongside charged or convicted criminals. Reportedly, some INS detainees were held in prolonged solitary confinement and were heavily shackled and tightly handcuffed, mainly during visits or court appearances.

263. Further, the Special Rapporteurs had received allegations of physical and verbal abuse of detainees during their initial period in police custody or in jails. These allegations of abuse include insults, intimidation, excessive use of restraints and being handcuffed to a chair for several hours. Concerns were also expressed that non-United States citizens detained in relation to the post-11 September investigations were threatened or attacked by other inmates. Finally, the Special Rapporteurs had been informed that a number of detainees in INS custody were subjected to verbal abuse in relation to their faith and experienced difficulties in practising their religious faith. In some facilities, Muslim detainees were served pork, although this is strictly contrary to their religious practice, were not served halal meals during Ramadan or were not provided with adequate food at the end of their daily fasting period.

264. In connection with the above-summarized allegations, the Special Rapporteurs had received information on the following individual cases.

265. Hasnain Javed, a Pakistani student who was allegedly held for three days in September 2001 for overstaying his visa, was reportedly beaten by inmates who allegedly called him a "terrorist", while he was detained in jail in Wiggins, Mississippi. It was alleged that he tried to call for assistance through an intercom but that guards failed to respond. According to the information received, later on that night, he was stripped naked and beaten again by inmates. He allegedly tried to call for help but the guards reportedly failed to respond to his cries.

266. Rabid Haddad, a Lebanese Muslim pastor and community leader who had been living in Ann Arbor, Michigan, was allegedly charged with overstaying his tourist visa. He was reportedly arrested on 14 December 2001 and denied bail, although an application for permanent residency had been pending since April 2001. According to the information received, he was reportedly held in solitary confinement for at least two and a half months in the Metropolitan Correctional Centre, Chicago. It was alleged that his cell windows were whitened out so he had no view and that he was handcuffed each time he was taken to secure showers. It was also alleged that he was

allowed only one 15-minute call to his family every 30 days and that all proceedings, including bail hearings, were closed to the public.

267. Dr. Mazen Al-Najjar, a Muslim cleric and academic, was reportedly arrested in November 2001 after being issued with a final order of deportation. According to the information received, despite having no violent or criminal record, he was held in solitary confinement in a high-security federal prison in Florida where he was allegedly locked in a cell 23 hours a day. It was reported that he was denied any visits of his family for the first 30 days of his confinement. As a stateless Palestinian with no country to return to, fears were expressed that he could remain indefinitely in such conditions. The Special Rapporteurs expressed their interest in receiving information regarding his immigration proceedings.

268. Tiffany Hughes and Ali Al-Maqtari were reportedly arrested on 15 September 2001, at Fort Campbell, Kentucky, army base. It was reported that Ms. Hughes and Mr. Al-Maqtari were placed in locked, separate rooms on the base for periods of five and a half hours and nine hours, respectively. It was also reported that, subsequent to this, they were interrogated for several hours without being informed of their right to legal counsel. It was alleged that Mr. Al-Maqtari was held in custody for 52 days, mostly in solitary confinement, charged with an immigration violation. It was also reported that Mr. Al-Maqtari testified about his interrogation before the Senate Judiciary Committee on 29 November 2001.

269. Qaiser Rafiq, a national of Pakistan, was reportedly arrested on 16 October 2001, in Colchester, Connecticut. It was reported that he was pulled over by state police and undercover officers in nine vehicles, who searched his car. It was alleged that he was not informed of the reason for his arrest and that officers assaulted him and called him a "son of a bitch" and he was asked where his "terrorist friends" were. It was also reported that, subsequent to this, he was taken to a state police station in Hartford, Connecticut, where he was interrogated by two FBI agents for a period of three and a half hours. It was alleged that Mr. Raqif asked for access to a lawyer during the interrogation but was refused. Further, it was alleged that Mr. Raqif was interrogated by state police officers for an approximate period of four or five hours. It was alleged that during this interrogation, one detective grabbed him by the hair and slapped him repeatedly. It was reported that he was taken before the court the following day where the judge set a US\$1 million bond. It was reported that he was subsequently detained in Corrigan-Radgowski Correctional Center, Uncasville, Connecticut.

270. Osama Awadallah, a citizen of Jordan and permanent resident of the United States of America, was reportedly taken for questioning by FBI agents on 20 September 2001 from his home in San Diego. It was reported that he was questioned for approximately six hours and informed by the FBI agents that they believed that he had information concerning the terrorist attacks of 11 September 2001. Further, it was alleged that at one stage he asked whether he would be permitted to leave to attend a class, and was informed by the agents that he would have to stay until the interview was completed. It was alleged that on 20 September 2001, after taking a lie-detector test, he requested permission to call his lawyer and was refused by the FBI agents. Further, it was alleged that after continued questioning he requested again the assistance of a lawyer and was informed by an agent that he did not have such right.

271. The Special Rapporteurs had also received information on the conditions of detention in the Security Housing Unit (SHU) of the federal Metropolitan Detention Centre (MDC) in New York City, where it was reported that detainees charged with minor visa violations and with no record of violence were held in conditions designed for dangerous and disruptive captives. Most of them were alleged to be confined in solitary and sealed cells for the majority of the day and to receive food through a slot in the door. According to the information received, in the MDC SHU unit, the lights remained on constantly in the cells, preventing the inmates from sleeping, and the cells were not kept at an adequate temperature. Detainees were reported to be only allowed a maximum of one hour outdoor exercise a day. It was alleged that some of the inmates were denied any exercise. It was also reported that inmates found difficulties in receiving medical treatment. The Special Rapporteurs had also received reports indicating that, at the MDC, detainees were restricted to one phone call per week.

272. Shakir Baloch, a Canadian citizen of Pakistani origin, was reportedly arrested on 22 September 2001 in New York, where he was taking courses to improve his professional degree from Pakistan. He allegedly waited over 100 days for a deportation order to be processed. According to the information received, he admitted having illegally entered the United States after being denied entry on a previous occasion. He was allegedly ordered to be deported, refused bail and placed in isolation in the High Security Unit of MDC. His lawyer reportedly filed a petition for habeas corpus, after the 90-day period had passed, to which the Government responded by filing a criminal charge against him: entering the United States after being excluded.

273. Ayub Ali Khan, an Indian citizen, was reportedly arrested on 12 September 2001 in possession of box-cutters, hair dye and \$5,500 in cash. Reportedly, law enforcement agents informed the press at the time of his arrest that he was a suspect in the investigation into the terrorist attacks that occurred on 11 September 2001. It was alleged that despite this, Mr. Khan was held in the MDC SHU for overstaying his visa, and was not brought before an immigration judge until 8 November 2001. It was further alleged that during his detention he was subjected to interrogation without the presence of an attorney, and a public defender was only assigned to him after he had been held in detention for 57 days. Reportedly he was indicted on credit card fraud charges in December 2001.

Communication received from the Government

274. By letter dated 17 June 2002 the Permanent Mission of the United States to international organizations in Geneva transmitted to the Special Rapporteur clarifications regarding the cases of Serafin Olvera, Benjamin Prado, Ramiro Ramirez, José Orea Gómez and Mohamed Nasir Kalair. Both the information transmitted by the Special Rapporteur and the United States response on the cases of Serafin Olvera, Benjamin Prado and Ramiro Ramirez are reflected in the Special Rapporteur's report on her visit (E/CN.4/2003/85/Add.3). Concerning the case of José Orea Gómez, the Government reported that he did not articulate a complaint of physical abuse when he was interviewed by a Detention Enforcement Officer and that the Office of Internal Audit of the INS was not aware of a separate complaint from him related to his detention at the INS facility. Regarding the case of Mohamed Nasir Kalair, a Pakistani national interviewed by the Special Rapporteur in Laredo CCA Detention Facilities, the Government

indicated that neither the Office of Internal Audit nor the Immigration and Naturalization Services' Office of Field Operations had records related to him.

275. By letter dated 28 January 2003, the Government transmitted its comments to the report of the Special Rapporteur on her visit to the border between Mexico and the United States (E/CN.4/2003/85/Add.3). The Government emphasized that there are more than 1 million legal crossings of the border a day, as well as vast numbers of undocumented crossings. The Government further stressed that the border environment is an exceedingly difficult one – for border patrol and law enforcement officials as well as undocumented migrants. Beyond the physical challenge of travel through the arid, often barren regions of the American South-West are the dangers posed by criminals who seek to profit from smuggling and trafficking in undocumented migrants.

276. The Government reported that cooperation between the US Border Patrol and law enforcement agencies with their Mexican counterparts to disrupt and, if possible, dismantle these transnational networks and to prevent migrants from falling victim becomes vital in such a difficult environment. The Government emphasized that such bilateral cooperation stands at an all-time high and that there exists a commitment by the two Governments to create “an orderly framework for migration” as well as to the economic and social development of the border region and a safe, secure and orderly border environment.

277. The events of 11 September made the Government acutely aware of the need to focus on border security as well as border safety. The March 2002 22-point United States-Mexico Border Partnership underscored the importance of improving border security and safety as well as efficient operations at points of entry. In addition, the United States was working with Mexico on public campaigns to alert potential migrants to the dangers of crossing the border, especially in high-risk areas; on plans for the protection, search for and rescue of migrants along the border; and on efforts to combat alien smuggling, trafficking in persons and corruption of border officials. The Border Safety Initiative reportedly resulted in the rescue of 1,768 migrants in distress in fiscal year 2002, an increase of 43 per cent over the previous year.

278. The Government noted the Special Rapporteur's concern in several cases regarding the use of excessive force against migrants, and reported that it shared her view that excessive force has no place in the treatment of undocumented migrants. The Government also assured the Special Rapporteur that established procedures exist for investigating all allegations of abusive treatment or misconduct by immigration and Border Patrol officials. All such allegations are reported to the responsible United States Attorney, as well as to the FBI and the Office of the Inspector General of the Department of Justice.

279. The Government also noted the Special Rapporteur's concern regarding the separation of family members in deportation cases, and offered the assurance that such separations do not occur as a matter of policy and that family unification is an important part of the immigration policy and practice of the United States.

280. The Government further noted the Special Rapporteur's concern regarding the inability of under-age children born in the United States to request legal residence for their undocumented parents. The Government reported that, as a matter of law, United States citizens must be 21

years of age in order to file an immediate-relative immigrant visa petition on their parents' behalf.

281. The Government reported that it shared the Special Rapporteur's profound distaste for racism, xenophobia and discrimination whenever and wherever these phenomena arise. Isolated instances of vigilantism along the border are subject to investigation and prosecution under the law. Heightened concerns regarding terrorism and security in the United States have led to an ongoing re-examination of appropriate measures to secure the border. However, the Government stressed that the Special Rapporteur's statement that there exists a "certain tendency on the part of some segments of the United States population to consider undocumented migrants as criminals and drug traffickers who pose a threat to national security" is a mischaracterization of prevailing views in the United States.

282. The Government finally reported that it appreciated the several, considered recommendations made by the Special Rapporteur to strengthen and enhance existing norms and practices governing the treatment of undocumented migrants, including protection of their fundamental human rights, and stressed that the United States is a nation of immigrants and it is also a nation of laws, which must be respected to ensure the integrity of the immigration system.

Observations

283. The Special Rapporteur thanks the Government for the responses provided. She would appreciate receiving information in relation to the cases for which she has not yet received a response. While awaiting a response, the Special Rapporteur would also like to refer to the conclusions and recommendations contained in her main report (E/CN.4/2003/85).

284. The Special Rapporteur would furthermore like to thank the Government of the United States for the comments provided to her report on the visit to the border between Mexico and the United States (E/CN.4/2003/85/Add.1) and for the cooperation extended to her mandate in connection with the visit.
