



**General Assembly**

Distr.  
GENERAL

A/HRC/7/12/Add.1

5 March 2008

ENGLISH/FRENCH/SPANISH  
ONLY

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HUMAN RIGHTS COUNCIL  
Seventh session  
Agenda item 3

**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL,  
ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO  
DEVELOPMENT**

**Report submitted by the Special Rapporteur  
on the human rights of migrants, Jorge G. Bustamante,**

**Addendum**

**Communications sent to Governments and replies received\***

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### **A. Introduction and general comments**

1. The Special Rapporteur on the human rights of migrants, Mr. Jorge Bustamante, has a mandate to request and receive communications from a variety of sources, including from migrants themselves on violations of the human rights of migrants and their families. This mandate was renewed in Human Rights Council resolution 5/1.

2. This addendum to the report of the Special Rapporteur contains, on a country-by-country basis, summaries of general and individual allegations, as well as urgent appeals transmitted to Governments between 1 January 2007 and 31 December 2007, as well as replies received until 10 February 2008. Observations made by the Special Rapporteur have also been included where applicable.

3. It is important to recall that communications sent to Governments contain only requests for information in situations that raise concern, but also very frequently address situations where information regarding certain facts and actions needs clarification. The establishment of constructive dialogue with Governments is a crucial element to this process, as Governments have the primary responsibility for the protection of all persons under their jurisdiction and for the implementation of human rights in their countries.

4. The Special Rapporteur would like to recall that in transmitting these allegations to Governments, he does not make any judgement concerning the merits of the cases, nor does he support the opinion and activities of the persons on behalf of whom he intervenes. The communications sent by the Special Rapporteur have a humanitarian and preventive purpose, and do not require the exhaustion of domestic remedies. Governments are requested to clarify the substance of the allegations, take steps to protect the person's rights, and are urged to investigate the allegations and prosecute and impose appropriate sanctions on any person guilty of violations of human rights.

5. In this report, the names of individual victims and alleged perpetrators have been replaced by initials in order to protect their privacy and to prevent further victimization as well as to avoid pre-judgement of the alleged perpetrators. Country specific communications sent and Government replies received, are presented in the language received.

### **B. Trends and observations**

6. During the period under review, the Special Rapporteur sent a total of 25 communications on violations on the rights of migrants to 22 Member States.

7. Of the communications that were sent, 14 were in the form of urgent appeals because a human rights violation was ongoing or imminent and there was a need to inform the Government authorities about the allegations received without any delay, whilst the remaining communications sent, were letters of allegations, pertaining to allegations of human rights violations that had already occurred or reflected longstanding concerns.

8. Communications were sent to the following countries: Angola, Bulgaria, China, Democratic Republic of Congo, Ethiopia, Guatemala, Guinea, Islamic Republic of Iran, Italy, Lebanon, Libyan Arab Jamahiriya, Mexico, Mozambique, New Zealand, Saudi Arabia (2), South Africa, Sweden, Switzerland, Thailand, United Kingdom of Great Britain and Northern Ireland (2), United States of America (2) and Yemen.

9. The Special Rapporteur has continued to cooperate with other mandate-holders in his work. A total of 21 communications were sent jointly by the Special Rapporteur and the following special procedures mandate-holders:

- The Special Rapporteur on extrajudicial, summary or arbitrary executions (2);
- The Special Rapporteur on the question of torture, degrading or inhumane treatment (10);
- The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (2);
- The Special Rapporteur on freedom of religion or belief (2);
- The Special Rapporteur on violence against women, its causes and consequences (8);
- The Special Rapporteur on the sale of children, child prostitution and child pornography (4);
- The Special Rapporteur on trafficking in persons, especially women and children (3);
- The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (1);
- The Special Rapporteur on the independence of judges and lawyers (4);
- The Special Representative of the Secretary-General on the situation of human rights defenders (1);
- The independent expert on minority issues (1);
- The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (1);
- The Working Group on Arbitrary Detention (6).

10. The situations in which violations of the human rights of migrants are alleged to have occurred during the period under review, giving rise to the intervention of the Special Rapporteur, include allegations of: (a) arbitrary detention, without any opportunity to challenge the legality of their detention before a court, and in some cases, migrants being physically and mentally ill-treated while in detention; (b) summary and extrajudicial executions; (c) violence committed by State agents; (d) inhumane conditions of detention; (e) ill-treatment in the context of border control; (f) deaths as a result of the excessive use of force by members of the police and security forces; (g) impunity for crimes committed against immigrants; (h) sexual abuse and sexual exploitation and other forms of violence grounded in gender-based discrimination; (i) legislation leading to discrimination and restricting the fundamental human rights of migrants; (j) serious human rights violations committed in the context of collective deportations of migrants; (k) lack of screening mechanisms to review the individual circumstances of the migrants that have been expelled, in order to ensure that their return would not expose them to risk of torture or other serious human rights violations; (l) attacks against human rights activist working on migration issues; (m) trafficking in persons,

particularly women and children; (n) political campaigns attacking foreigners; (o) violence and exploitation of women domestic workers; (p) restrictions on freedom of movement; (q) abusive working conditions imposed by employers, sometimes under conditions similar to slavery or forced labour; (r) withholding of passports; (s) non-payment of wages; (t) torture; (u) confiscation of a migrant's belongings and separation of family members during the expulsion process; (v) migrants are not provided with an opportunity to challenge their forcible removal; (w) holding children among the detainees; (x) illegal international adoptions of minors; (y) discrimination and violations of the right to adequate housing, including being subjected to forced evictions; (z) no access to legal representation or to consular assistance while in detention, and sometimes not being able to benefit from adequate translation during trials.

11. Only 12 of the 25 communications sent out, received a response from the concerned Governments. The Special Rapporteur would like to thank all Governments that have responded to his communications for their collaboration. He would also like to remind Governments that have not responded to do so, and to address all concerns raised in each communication.

12. It is interesting to note that the largest number of the total joint communications (21) was sent jointly with the Special Rapporteur on the question of torture (10), followed by the Special Rapporteur on violence against women, its causes and consequences (8), and the Working Group on Arbitrary Detention (6). In addition, the Special Rapporteur has also addressed laws, regulations, drafts and specific legal provisions which seemed to discriminate against migrants. Three letters were sent in this respect.

## **SUMMARY OF COMMUNICATIONS SENT TO GOVERNMENTS AND REPLIES RECEIVED**

### **Angola**

#### **Communication sent to the Government**

13. On 13 December 2007 the Special Rapporteur sent an urgent appeal to the Government, jointly with the Special Rapporteur on violence against women, its causes and consequences, and the Special Rapporteur on the question of torture, regarding information received about the ongoing detention and deportation of a large number of Congolese nationals from Angola to the Democratic Republic of the Congo since at least 2005.

14. According to the reports received, serious human rights violations had been committed against Congolese deportees, allegedly by the Angolan security forces at the border between the Democratic Republic of the Congo and Angola. These abuses reportedly targeted groups of migrant workers mainly composed of Congolese citizens who were involved in informal diamond-mining activities in Angola.

15. The violations reported include the systematic use of physical and sexual violence, confiscation of the migrant's belongings and separation of family members during the expulsion process. Allegedly, women were systematically raped by Angolan security forces, on many occasions in front of their children or in public. According to the information received, rapes took place during women's expulsion from their homes, in provisional detention facilities, at the checkpoints and during their transport to the border.

16. Reports indicate that the health situation of the expelled migrants is a major concern. As most of them have been involved in informal diamond mining, they and their families, including children, have allegedly been forced to submit to invasive body searches (including the anal and vaginal cavities) to uncover hidden diamonds. According to the information received, the searches are being conducted in such a manner that they might cause psychological and physical trauma to the deportees.

17. It is further alleged that the mental and physical health of women victims of sexual violence is of particular concern. It has been reported that they suffer from various pains in their vagina and lower stomach, and have been deeply traumatized by the abuse they suffered. Most of them have not received any health care upon their arrival to the Democratic Republic of the Congo.

18. In addition, according to the information received, migrants would have been kept in incommunicado detention in harsh conditions before their deportations, subjected to beatings and other forms of ill-treatment, having been denied food and water provisions, both while in detention and during their deportation to the Congolese border. Moreover, there are reports of deaths due to exhaustion or maltreatment.

#### **Observations**

19. The Special Rapporteur regrets that the Government of Angola did not reply to his communication. He would like to reiterate his interest in receiving the reply of the Government of Angola to these allegations, and would be particularly interested to know whether these cases have resulted in any prosecutions of alleged perpetrators.

## **Bulgaria**

### **Communication sent to the Government**

20. On 22 February 2007, the Special Rapporteur sent an urgent appeal jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, regarding **Mr. A.K.**, journalist by profession, and a dual Turkmen and Russian national.

21. According to the information received, A.K. was arrested on 19 February 2007 in the port city of Varna, Bulgaria, by police agents reportedly following a formal request for extradition from Turkmen authorities. A.K. has been living in Bulgaria since 2001 and obtained refugee status in March 2004.

22. It is alleged that the Government of Turkmenistan requested his extradition on charges of embezzlement and allegations of theft of 40 million of United States dollars in connection with A.K.'s activities as a bank director in Turkmenistan.

23. It is further alleged that a previous request for extradition in 2002 was declined by a Bulgarian court in May 2003 for the reason that A.K.'s political activities had been the actual grounds for this request. A.K.'s was a senior member of Turkmenistan's exiled opposition *Watan* party.

24. According to the information received, Bulgarian authorities interrogated him regarding members of the Turkmen opposition in exile.

25. Reports indicate that the decision to extend A.K.'s detention and to extradite him was scheduled to be scrutinised by a Varna court on 23 February 2007.

### **Communication received from the Government**

26. By letter dated 3 April 2007, the Government transmitted the following information regarding A.K.

27. It is reported that, A.K. was born on 3 March 1957, and has dual Turkmen and Russian nationality. He has been living in Bulgaria since 2001.

28. On 7 April 2004, the Police Department of the Ministry of Interior issued a humanitarian-status ID card for him. He also possesses a humanitarian-status certificate to travel abroad.

29. A.K. was arrested in Varna on 20 February 2007, and detained for 72 hours, on the basis of ordinance of the Supreme Prosecutor's Office of Cassation about the crime he was accused of, and about the intention of the Turkmen authorities to request his extradition.

30. On 21 February 2007, the Prosecutor General of Bulgaria received a letter from the Prosecutor General of Turkmenistan with a request for extradition of A.K. on charges of embezzlement and allegations of theft of some US\$ 40 million under articles 229 and 187 of the Criminal Code of Turkmenistan.

31. It is also reported that, on 22 May 2003, the District Court of Varna declined a previous request for extradition of A.K on the grounds that the prosecution was based on political motives.
32. According to the information received, when A.K was arrested on 20 February 2007. He requested that the Consulate General of the Russian Federation be informed. It is alleged that the Ministry of Foreign Affairs reported this, as requested, to the Consulate General. Furthermore, the Supreme Prosecutor's Office of Cassation informed the Embassy of the Russian Federation in Sofia.
33. On 22 February, the District Court of Varna, following the request of the Varna District Prosecutor prescribed the detention of A.K for 40 days (until 30 of March 2007).
34. Information received indicated that Mr. A.K lodged a complaint against the arrest which was confirmed by the Varna Court of Appeal on 27 February 2007.
35. It is further alleged that the decision of the Court of Appeal regarding the detention of A.K. is final and there is no further possibility of appeal.
36. The Court of Appeal also specified that the Regional Court of Varna would consider the case in substance as a first instance.
37. The Government reported that the rights of A.K. or more precisely, his rights under article 9 (rights to freedom and security) and article 14 (right to equal treatment) of the International Covenant on Civil and Political Rights, were integrally safeguarded by the Bulgarian authorities.
38. The Government informed that the request of the Special Rapporteur to take all necessary measures to guarantee that the rights and freedoms of the aforementioned person be respected and that the accountability of any person guilty of the alleged violations be ensured, will be duly noted.

## **Observations**

39. The Special Rapporteur would like to thank the Government of Bulgaria for its detail response.

## **China**

### **Communication sent to the Government**

40. On 30 November, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal to the Government concerning the attacks against the **Dagongzhe Centre for Migrant Workers (DGZ)** and Mr **H.Q.**
41. According to the information received, the DGZ Centre is a non-governmental organization that provides migrant workers in Shenzhen with free legal advice. H.Q. is the licence-holder for the organization.
42. It is alleged that the centre has suffered several attacks during the last months.

43. On 11 October 2007 at approximately 7 p.m., an attack occurred when the Dagongzhe Centre's glass doors were broken by several men armed with steel water pipes while staff members were inside the offices. After they broke the doors, the men reportedly left on motorcycles parked outside.

44. On 14 November 2007, at approximately 4.30 p.m., a similar attack occurred when four men armed with steel water pipes broke the doors of the Dagongzhe Centre and proceeded to destroy equipment inside the offices, including the furniture and the water machine. The men escaped in a white mini-van with the registration plates obscured.

45. According to the information received, there were three policemen on patrol outside the offices at the time of the attack, who reportedly looked on without taking any action against the attackers. Staff members then reported the attack to the local police station. When they inquired about the CCTV on the street outside the offices, they were informed by the police that it did not have a "recording function".

46. Information received also indicated that, on 20 November 2007, at about 3.30 p.m., H.Q. was walking in Longhu New Village when he was reportedly attacked from behind by two men armed with knives. He was repeatedly stabbed, particularly in the back and legs. The men escaped on a motorbike.

47. It is reported that H.Q. was taken to hospital and remains in a serious condition.

48. It is further alleged that the attacks against H.Q. and the offices of the Dagongzhe Centre for Migrant Workers may be directly related to the human rights activities of the centre, in particular its work to defend workers' rights and its recent promotion of labour law reform in China.

### **Observations**

49. The Special Rapporteur would like to reiterate his interest in receiving the reply of the Government of China to these allegations. He would like to be kept informed of the developments of the case.

## **Democratic Republic of the Congo**

### **Communication envoyée au Gouvernement**

50. Par lettre datée du 14 Décembre 2007, envoyée conjointement avec la Rapporteuse spéciale chargée de la question de la violence contre les femmes, y compris ses causes et ses conséquences et de Rapporteur spécial sur la torture, concernant des renseignements selon lesquels, il y aurait eu des violations graves des droits de l'homme à l'égard des déportés congolais, qui apparemment auraient été commis par les forces de sécurité angolaises à la frontière entre la République démocratique du Congo et l'Angola.

51. Selon les rapports reçus, ces violations ont été sciemment dirigées vers des groupes de travailleurs migrants principalement composés de citoyens congolais qui travaillent dans des activités informelles d'extraction de diamants.

52. Ces violations reportées incluraient l'emploi systématique de violences physiques et sexuelles, la confiscation des effets personnels des migrants, la séparation des membres de la

famille pendant le processus d'expulsion, et le viol systématique des femmes par les forces de sécurité angolaises, souvent devant leurs enfants ou en public.

53. D'après les informations reçues, les viols auraient eu lieu à tous les stades du processus de refoulement, lors de l'expulsion des femmes de leurs maisons, dans les lieux de détention provisoires, aux checkpoints et pendant leur transport vers la frontière.

54. De plus, l'état de santé des migrants expulsés est très préoccupant. Beaucoup d'entre eux ayant menés des activités informelles d'extraction de diamants, auraient été forcés, avec les membres de leurs familles incluant leurs enfants, de se soumettre à des fouilles corporelles inappropriées et envahissantes (incluant les cavités anales et vaginales) afin de découvrir des diamants cachés.

55. Selon des rapports, les fouilles auraient été effectuées de façon à causer des traumatismes, aussi bien physiques que psychologiques, aux déportés. La santé mentale et physique des femmes victimes de violences sexuelles est une grande préoccupation : il a été rapporté que quelques-unes d'entre elles souffrent de différentes douleurs dans leurs vagins et au bas-ventre, et ont été profondément traumatisées par les abus dont elles ont souffert.

56. Des informations indiqueraient que la plupart d'entre elles n'auraient reçu aucun soin médical depuis leur arrivée en République démocratique du Congo.

57. En outre, selon des rapports, les migrants auraient été détenus secrètement et dans des conditions difficiles avant leur déportation, qu'ils auraient été battus et soumis à d'autres formes de mauvais traitements, et qu'ils auraient été privés d'eau et de nourriture, aussi bien durant la période de détention que pendant la déportation à la frontière congolaise. De plus, il y aurait eu des morts dues à l'épuisement et aux mauvais traitements.

## **Observations**

58. Le Rapporteur Spécial regrette que le Gouvernement n'ait pas répondu à sa communication envoyée en 2007 et réitère son intérêt à recevoir des réponses concernant les allégations soumises.

## **Ethiopia**

### **Communication sent to the Government**

59. On 2 May 2007 the Special Rapporteur sent an urgent appeal jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the question of torture, regarding the case of Mr. **B.A.M.**, a citizen of Canada, Ms. **H.B.H.**, a citizen of the Comoros, and her children (names and age unknown), Mr. **A.A.**, a resident of France, Mr. **T.K.T.**, a citizen of Eritrea and television cameraman, Mr. **S.I.S.**, a citizen of Eritrea and television journalist, Mr. **O.A.Y.**, a citizen of Sweden, and Ms. **S.A.N.**, also a citizen of Sweden, and her children (names and age unknown), Ms. **I.C.**, a citizen of Tunisia, Mr. **A.M.A.**, a citizen of Kenya, and more than 70 others whose names have not been reported.

60. According to the information received on December 2006, the conflict between the militias of the Council of Somali Islamic Courts and the Transitional Federal Government of

Somalia, caused a large flow of refugees seeking to cross the border from Somalia into Kenya.

61. Reports indicate that on 2 January 2007, Kenyan authorities announced the closure of the border for security reasons. Since then, it is reported that the Kenyan security forces have been patrolling the border and have arrested a number of those seeking to cross it.

62. It is also reported that Kenya has deported at least 84 of those arrested to Somalia, from where they were taken to Ethiopia.

63. In late March the Government released five persons who were arrested and detained under these circumstances.

64. On 10 April 2007, the Government announced that 29 more of the transferred detainees would be released. However, according to the information received, none of the 29 has been freed.

65. The persons named above were allegedly arrested between 30 December 2006 and February 2007 as they tried to cross the border from Somalia into Kenya. They were detained in various locations in Nairobi before being transferred to Somalia on three charter flights between 20 January and 10 February 2007. Once in Somalia, they were reportedly transferred to Ethiopia.

66. It is further alleged that they were not provided with an opportunity to challenge their forcible removal at any stage.

67. B.A.M., T.K.T. and S.I.S. are reportedly held at the facilities of the Central Investigation Bureau in Addis Ababa (also known as Maikelawi). Others are most likely held at the military bases of Debre Zeit, southeast of Addis Ababa, and Jijiga, about 60 kilometres from the border with Somalia.

68. According to reports received, they are all held incommunicado and are not known to have been given any opportunity to challenge the legality of their detention before a court. It would appear that they are detained on the suspicion that they might have links with the Council of Somali Islamic Courts or with al-Qa'ida, although no such charges are reported to have been formally filed against them.

69. In the light of their incommunicado detention, we are concerned that they might be at risk of torture or other forms of ill-treatment. We are also concerned about the reported presence of children among the detainees. H.B.H. and S.A.N. are both reportedly detained with their children. I.C. was pregnant at the time of her arrest and had suffered a bullet wound to her back.

70. The Ethiopian authorities have acknowledged detaining 41 of more than 80 people who were arrested trying to cross from Somalia into Kenya, and have said 29 will be released. The whereabouts of the remaining detainees remain unknown.

71. Three groups of people who had been detained in Kenya and transferred to Ethiopia via Somalia without legal recourse have recently been released by the Ethiopian authorities.

72. H.B.H, her three children and seven other individuals were recently released by the Government of Ethiopia. H.B.H is the wife of F.A., who is wanted by the United States of America in connection with the 1998 American embassy bombings in Nairobi, and Dar-es-Salaam. On 7 January 2007, H.B.H. was arrested with her three children, aged 15, 11 and 4. H.B.H is apparently not suspected of involvement in the bombings. She was released on 4 May with her children, and has been returned to the Comoros.

73. This follows the release of I.C. on 10 May, along with her husband A.N. Both are Tunisian nationals, and have fled to Egypt where they are attempting to claim asylum, fearing arrest and mistreatment if they return to Tunisia. I.C., who was pregnant when she was arrested on 21 January 2007, has since given birth to a baby boy.

74. Three more Swedish men held by Ethiopia were reportedly released and returned to Sweden. The Foreign Minister of Sweden made a statement thanking Swedish officials who had worked to ensure their release. This follows a 17-year-old Swedish girl being released by Ethiopia in late March.

75. There are still up to 55 people being detained in Ethiopia after being transferred from Kenya via Somalia, transferred in secret without legal recourse. The Government of Ethiopia has only acknowledged 41 detainees, including the 22 people whom it has released. Four British citizens who were also detained by the Kenyan authorities were sent back to the United Kingdom from Somalia on 14 February 2007.

76. There is no further news on Canadian national B.A.M., who is still thought to be detained incommunicado at the police Central Investigation Bureau (known as Maikelawi) in Addis Ababa.

### **Communication received from the Government**

77. On 22 May 2007, the Government transmitted the following information related to the case of the incommunicado detention of individuals of various nationalities in Ethiopia.

78. According to the Government, the Transitional Federal Government of Somalia handed over to Ethiopia 41 individuals captured in the course of the conflict in Somalia. Most of these detainees have been released.

79. The Government reported that only 8 of the detainees still remain in custody by the order of the Court. According to the Government, these individuals were international terrorists who answered the call for jihad by Al Shabab group of extremists against the Transitional Federal Government of Somalia and Ethiopia. The Government of Somalia, due to the lack of adequate and secure facilities or functional prisons, requested the Government of Ethiopia to hold these individuals and to undertake investigations into their activities.

80. Additionally, the Government denied the allegation that there were more than 70 other detainees in addition to those mentioned in the communication. The Government also denied the allegations that the detainees were held incommunicado and were at risk of torture.

81. With the exception of three individuals, who refused to exercise their rights, embassy or consular officials from their respective countries have visited the detainees. Their embassies or consular officials have been cooperating with the competent Government of Ethiopia agencies in arranging the return of their nationals.

82. According to the Government, they were afforded the opportunity to challenge the legality of their detention. All detainees have appeared before the competent court in accordance with the relevant national legal procedure consistent with international obligations of the country.

83. With a view to ensure that no detainee was subjected to torture, inhumane or degrading treatment, and that the physical and mental integrity of all detainees were fully respected, Ethiopian personnel was present during the interrogations of the detainees by security experts from their respective countries of origin.

84. According to the Government, the 11 women and 14 children detained have been released, and eight of the women, along with seven children, have already left the country. The three remaining women with seven children are released but they are still in Ethiopia, owing to the fact that their countries of origin have yet to finalize their travel documents and arrangements.

85. Finally, the Government assured the Special Rapporteur that the remaining eight detained suspected international terrorists will continue to have access to embassy or consular officials of their respective countries and that their rights to a due process are being fully respected and they have not been in any manner ill-treated.

### **Observations**

86. The Special Rapporteur would like to thank the Government of Ethiopia for the detailed information provided. He would appreciate being kept informed on new developments in this case.

## **Guatemala**

### **Comunicación enviada al Gobierno**

87. El 30 de noviembre de 2007, el Relator Especial transmitió al Gobierno una carta de alegación junto con el Relator Especial sobre la venta de niños, la prostitución infantil y la utilización de niños en la pornografía, y la Relatora Especial sobre la violencia contra la mujer, sus causas y consecuencias, sobre información relativa a adopciones de menores en Guatemala.

88. Según los informes recibidos en Guatemala se estaría llevando a cabo adopciones internacionales de menores de edad ilegales, y en gran parte de los casos, con el engaño a sus familias.

89. De acuerdo con las informaciones recibidas, en Guatemala entre 5.000 y 6.000 niños serían dados en adopción cada año, convirtiendo a Guatemala en el segundo país del mundo con mayor número de adopciones internacionales, después de China.

90. La demanda internacional provendría principalmente de familias estadounidenses, las cuales pagarían entre 13.000 y 40.000 dólares para “adquirir” un bebé guatemalteco. Según la información recibida, bebés nacidos tras casos de violación sexual estarían siendo dados en adopción, siendo las madres coaccionadas o engañadas para dar al recién nacido en adopción.

La crítica situación económica y social en que se encuentran estas mujeres sería otro factor que las hacen aún más vulnerables a ser víctimas de las redes de adopciones de niños.

91. La mayor parte de las adopciones, el 99,7%, se haría por vía notarial, con base en la Ley Reguladora de Tramitación Notarial de Asuntos de Jurisdicción Voluntaria, sin la observancia de los debidos requisitos para asegurarse cual es la procedencia del niño/niña. La adopción por esta vía no necesitaría resolución de juez/a competente, el juzgado de familia actuaría únicamente para solicitar a la trabajadora social que, bajo juramento, efectuara el estudio socioeconómico respectivo. Las adopciones internacionales por vía judicial no llegarían al 0,3% del total de las adopciones realizadas.

92. Asimismo se habría descubierto que algunos Jueces de Familia habrían autorizado adopciones sin contar con la opinión favorable de la Procuraduría General de la Nación, en violación a la legislación existente en la materia. La participación de autoridades judiciales en dichas irregularidades, y el hecho de que los procedimientos para el trámite de las adopciones establecidos en las leyes generales están en desacuerdo con las leyes especiales de protección a la infancia, demostraría la existencia de un cuadro de prácticas violatorias de los derechos humanos de la niñez.

93. Según se informa, habrían organizaciones asentadas en Guatemala que se dedicarían a la venta ilegal de menores de edad por medio de adopciones internacionales, como sería el caso de la organización Casa Quivira. Esta organización tendría como dirigentes ciudadanos provenientes de los Estados Unidos de América y se dedicaría a la venta de menores de edad a este país cobrando a las futuras familias un precio muy alto por cada uno de ellos. Supuestamente esta organización habría estado involucrada en la práctica de adopciones irregulares, donde 46 niños habrían sido rescatados y repartidos entre instituciones evangélicas y cristianas en el mes de agosto de este año. Supuestamente habrían ocurrido irregularidades en el juicio realizado contra Casa Quivira, por los hechos mencionados, con el objetivo de que dicha organización saliera impune en relación a los posibles delitos realizados.

94. Entre las prácticas irregulares de adopción se incluiría la realizada por medio de Alcaldes Municipales, consistente en la entrega de los niños/as por parte de su madre biológica a una pareja adoptiva. Los padres biológicos y los padres adoptivos comparecerían ante el Alcalde de la localidad, normalmente en zonas aisladas en las cuales no hay acceso a los juzgados o a las oficinas de un abogado, para que éste levantara un acta en la que constaría que los primeros entregan en adopción a su hijo.

95. Posteriormente se asentaría la Partida de Nacimiento en el Registro Civil y el acto de la adopción quedaría consumado. Otra de las maneras sería por suposición de parto, en donde la madre biológica entregaría al niño a los padres adoptivos inmediatamente después del nacimiento. Ambas se internarían en el mismo sanatorio (privado), la madre biológica se registraría con el nombre de la madre adoptiva y el niño saldría de la clínica como hijo de la segunda.

96. En este contexto, la Comisión Interamericana de Derechos Humanos (CIDH) habría otorgado medidas cautelares a favor de 26 niños y niñas, solicitando al Estado de Guatemala informar el lugar y condiciones donde se encuentran actualmente los niños, su situación jurídica y familiar y las medidas que estarían adoptando para su protección. Según la

información recibida, la CIDH habría fijado un plazo de 10 días contados a partir del 21 de noviembre para que el Gobierno de Guatemala informara acerca de las medidas adoptadas, así como también habría solicitado que se actualizara dicha información cada mes.

## Guinea

### Communication envoyé au Gouvernement

97. Le 5 Novembre 2007, le Rapporteur Spécial a envoyé une lettre d'allégations conjointement avec le Rapporteur spécial sur la vente d'enfants, la prostitution des enfants et la pornographie impliquant des enfants et la Rapporteuse spéciale sur la violence contre les femmes, concernant l'exploitation d'enfants pour le travail domestique en Guinée.

98. D'après les informations reçues, en Guinée, des dizaines de milliers de filles travailleraient comme domestiques. Tandis que d'autres enfants de la famille seraient scolarisés, ces filles passeraient leur enfance et leur adolescence à faire des travaux ménagers féminins: elles nettoieraient, laveraient le linge et s'occuperaient des jeunes enfants.

99. Beaucoup d'entre elles travailleraient jusqu'à 18 heures par jour. La grande majorité d'entre elles ne seraient pas payées; d'autres recevraient des paiements, souvent irréguliers, en général inférieurs à 5 \$US par mois. De nombreuses filles employées comme domestiques ne recevraient aucune aide quand elles seraient malades, et elles auraient souvent faim car elles seraient exclues des repas familiaux. Elles seraient souvent tenues à l'écart, insultées et moquées. Beaucoup d'entre elles seraient aussi victimes de coups et de violence et de harcèlement sexuels. Malgré ces conditions, quitter la famille de l'employeur serait difficile pour beaucoup d'enfants employées domestiques qui ne pourraient pas rejoindre leurs parents et n'auraient pas d'autre endroit où aller. Ces filles vivraient dans des conditions analogues à l'esclavage.

100. Selon les informations reçues, certaines filles viendraient d'aussi loin que le Mali. Ces adolescentes maliennes en particulier viendraient en Guinée travailler comme domestiques pour gagner de l'argent pour leurs trousseaux.

101. De plus, un nombre important de ces mineurs seraient isolés dans la maison de leur employeur et seraient incapables d'accéder à toute information ou assistance de l'extérieur. Ils resteraient coincés pendant des années dans des situations traumatisantes et de maltraitance.

102. Des informations plus récentes indiqueraient, qu'il n'y aurait pas d'organisme pour la protection de l'enfance pour contrôler de façon systématique le bien-être des enfants et faciliter leur retrait d'une maison où ils sont maltraités, si nécessaire.

103. D'après les informations reçues, le Ministère des Affaires sociales a la responsabilité de cette question, mais ne serait pas opérationnel. Il n'existerait pas non plus de système de placement en famille d'accueil qui puisse offrir aux enfants un environnement familial alternatif protecteur et contrôlé. Bien qu'il existerait un service d'inspection du travail, il manquerait de personnel et ne s'occuperait pas de la situation des enfants travaillant comme domestiques.

104. L'exploitation et la maltraitance des enfants employés comme domestiques constituent une violation du droit national et international. La Guinée est partie à la Convention relative aux droits de l'enfant et à tous les principaux traités régionaux et internationaux sur le travail

des enfants, la discrimination selon le sexe et la traite. Selon le droit guinéen, les enfants ont droit à l'éducation, et la scolarisation dans l'enseignement primaire est obligatoire. L'âge minimum pour travailler est de 16 ans, mais il y aurait une disposition qui prévoit que les enfants de moins de 16 ans peuvent travailler avec le consentement de leurs parents ou de leurs tuteurs légaux. Les enfants de plus de 16 ans sont autorisés à travailler dans certaines limites, mais doivent bénéficier de tous leurs droits du travail. De plus, le droit guinéen protègerait les enfants contre les châtiments corporels et autres violences physiques, les sévices sexuels, et la traite.

105. Le droit international comporte aussi des interdictions claires contre certains comportements nocifs, pour protéger les enfants contre la discrimination, toute forme de violence, d'atteinte ou de brutalité physiques, de mauvais traitements ou d'exploitation, y compris la violence sexuelle, la traite et les conséquences nocives du travail des enfants. Il octroie aussi aux enfants le droit à l'éducation et établit la façon dont les devoirs envers les enfants devraient être remplis, que ce soit par l'Etat, les parents, les tuteurs légaux ou d'autres personnes ayant la garde d'un enfant.

### **Observations**

106. Le Rapporteur Spécial réitère son intérêt à recevoir une réponse du Gouvernement sur ces allégations.

## **Islamic Republic of Iran**

### **Communication sent to the Government**

107. On 6 March 2007, the Special Rapporteur sent an urgent appeal jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the question of torture, regarding the case of Mr. **A.R.M.**

108. According to the information received, A.R.M is an Ahwazi from the south-western region of the Islamic Republic of Iran and was accepted by the Office of the United Nations High Commissioner for Refugees (UNHCR) Damascus office as a refugee. He was arrested by Syrian security forces on 11 May 2006 and handed over to Iranian authorities in Tehran on 15 May 2006.

109. It is alleged that, since his arrest, he has not had access to a lawyer and has been detained in solitary confinement.

110. Information received also indicates that A.R.M was expected to go on trial in March, however, it remained unclear what charges were put against him.

111. It is further alleged that he was physically and mentally ill-treated while in detention. As a result, he reportedly carries blood in his urine, his liver and kidneys were not functioning and he lost all of his teeth. Furthermore, he is paralysed because his spine has been damaged.

112. Fears have been expressed with respect to the physical and mental integrity and health of A.R.M, particularly in view of his reportedly continued incommunicado detention in solitary confinement.

### **Communication received from the Government**

113. On 23 August 2007, the Government transmitted information relative to the case of **A.R.M.**

114. According to the information that the Government has received from the judiciary of the Islamic Republic of Iran, A.R.M, is the head of the military wing of a terrorist group, and following participation in several terrorist operations, he had illegally fled Iran to the Syrian Arab Republic, where subsequent to his identification by the local pertinent authorities, as well as the issuance of writ of arrest by Interpol, he was arrested and extradited to the Islamic Republic of Iran.

115. The Government denied all the allegations reflected in the communication letter sent by the Special Rapporteur, including allegations of torture, his illness in prison, lack of access to lawyer, as well as to his family. According to the Government A.R.M.'s health is good. He has been in contact with his family. It is also reported that he was allowed to leave the prison under police control in December 2006 and March 2007.

116. This case is presently going through investigation and legal proceeding in the competent court with the information and presence of A.R.M's defence lawyers at different stages. No final verdict has been reached.

### **Observations**

117. The Special Rapporteur would like to thank the Government of the Islamic Republic of Iran for its prompt and detailed reply. He would appreciate being kept informed of new developments in this case.

## **Italy**

### **Communications sent to the Government**

118. On 18 October 2007, the Special Rapporteur sent an allegation letter jointly with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, the independent expert on minority issues and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, concerning incidents of evictions of Roma communities in Rome and Pisa which allegedly would form part of a pattern of discrimination against Roma communities.

119. According to the information received, Roma communities in Italy face discrimination and violations of their right to adequate housing, including being subjected to forced evictions.

120. Reportedly, on 19 July 2007, the Italian police, in cooperation with the Romanian police, forcibly evicted approximately 1000 Roma from a settlement in Via dell'Imbarco, Magliana suburb, Rome. Earlier in July 2007, the police and the municipal wardens forcibly evicted approximately 100 Roma from Romania from a settlement in Bagno di Tivoli, near Rome. During both operations personal belongings and dwellings were allegedly destroyed.

121. Following an official visit to Romania by Rome's mayor, Walter Veltroni, an agreement was signed between the Governments of Italy and Romania whereby the police of

these countries would collaborate concerning the eviction, identification and repatriation of Roma of Romanian origin living in settlements in the city of Rome. Despite the declaration that this would be a plan for “voluntary return”, there are allegations that the intention is to repatriate Roma settlers forcibly.

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

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

#### **Communications received from the Government**

124. On 21 December 2007, the Government of Italy replied to the joint allegation letter sent on 18 October 2007 by the Special Rapporteur on adequate housing, the Special Rapporteur on the human rights of migrants, the independent expert on minority issues and the Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance.

125. The Government first noted that the question of the living conditions of the Roma populations, as laid down in its Consolidated Text 286/1998 as amended and integrated by Act 189/2002, was the responsibility of local bodies and that local institutions were still proceeding with all pertinent interventions. Within this framework, several initiatives aiming at setting up small camps and/or focusing on integration measures are in the process of being implemented in different parts of the country as in Naples, Milan, Rovereto and Rome.

126. More specifically, in the case of the municipality of Rome, it was noted that actions aimed at the reception and integration of Roma communities have been increased and strengthened. The Government reported that the “Pronta Accoglienza” (reception centres) received thousands of Roma people while ad hoc structures have been opened specifically for mother and child groups.

127. Concerning the removal of a Roma settlement located in the Magliana area, Via dell’Imbarco, Rome on July 19, 2007, the Government reported that the Roman police, in agreement with the municipality, the Nucleo Assistenza Emarginati (outcasts assistance cluster) and the municipal police carried out the removal of a Roma illegal settlement located under an overpass, in an area subjected to overflow and that was found in appalling hygienic and sanitary conditions.

128. A decision to intervene had been previously agreed within the Provincial Committee for Public Order and Security and had been repeatedly requested by the Municipal Agency for

Electricity and Water in order to allow urgent maintenance works close to the settlement. Evacuation of the area was carried out with medical units, charity institutions and sanitation experts.

129. The Government reported that the removal affected about 500 (not 1,300) people belonging to a Romanian ethnic group and who, after being informed about the impossibility of remaining in an unsafe area, voluntarily moved away. A few of them, who did not intend to leave their premises, immediately received assistance from the Roman social services. Following the event, the police and social workers intervened in order to assist the more disadvantaged categories, like the mothers and children.

130. Concerning the removal of a Roma settlement in Bagni di Tivoli, in the former Stacchini powder warehouse on July 26, 2007, the Government reported that, according to a decision taken by the “Illegal Roma settlement issues working group” of the local Prefettura (prefecture), the police, the Carabinieri, Civil Protection and other competent offices of the Tivoli Municipality carried out the removal of an illegal settlement within the private area of the former powder warehouse. This action had been made necessary as a consequence of requests by the owner of the site and other private citizens. During the intervention, 80 Romanian citizens were requested to pick up their belongings and leave the place.

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

132. Furthermore, in 2002, the city of Pisa started a specific programme called Le Città Sottili, mainly aimed at the final closure of the Roma settlement. Four out of five Roma camps have been definitely closed.

133. At the time the Government sent this communication, there were still two areas where some family groups had been temporarily accommodated and various housing possibilities had been already foreseen for them. In the area of Coltano, they have started to build up a village in order to accommodate about 15 family groups by the spring 2008.

134. The Government specified that, out of 572 Roma citizens coming from various regions of the Balkans, half benefited from the programme Le Città Sottili and were offered adequate housing and that another substantial number was well-placed in temporary housing solutions.

135. The Government also reported that each single family group was backed by a specific project in order to cope with the integration process autonomously and that all persons still staying within the settlement and in the transition areas were supported with targeted interventions.

136. The Government also indicated that all the children in the age of compulsory education had entered a school and had a sufficient level of attendance and that all of these projects have been approved by the social cooperative societies and local associations. As to

the Roma from Rumania, during the summer 2004, after the removal of illegal settlement in Pisa, the authorities detected hazardous situations for the health of some minors and consequently five Romanian Roma family groups were resettled along the line drawn with “La Città Sottile”. Two of these family groups then decided to move autonomously.

137. In April 2005, after the fire of a warehouse, 11 families were accommodated in temporary facilities within the Municipality of San Giuliano Terme. In spring and summer 2006, the Municipality joined the programme and paid for those families who benefited from the above-mentioned projects.

138. In its reply the Government noted that, after the arrivals of a number of Roma from Romania, especially at the beginning of 2007, several situations of marginalization and poverty arose in the territory of Pisa. By the end of 2006, the IRRMA (“regional action against marginality”) project started. This project was developed by the Tuscany Regional Administration in cooperation with the CNCA (Reception Communities National Coordination Board), managed within the Pisa territory by the social cooperative Il Cerchio and aiming to taking care of the Romanian Roma. It was added that two family groups had been supported for housing projects along with a number of people looking for employment, and this with good results.

139. The Government indicated that the Municipality of Pisa was committed to further interventions aimed at family groups with sufficient income to guarantee their integration, and/or who had a particular health situation. It was also reported that actions would be developed with the objective of closing the illegal settlement and preventing the creation of new ones.

140. Concerning the events of Livorno on August 11, 2007, the Government reported that around midnight, the Fire Brigade was requested to extinguish a fire in the outskirts of the town, where three huts made of wood and plastic were on fire. The charred corpses of four children were found and identified According to their parent’s statements, they were Romanians of 4, 7, 8 and 11 years of age. Late in the night, the police arrested the parents of the victims, who were questioned by the judge. They were considered to be guilty of child abandonment and consequently for their deaths.

141. Following investigation, and despite the parents’ allegations, there would be no responsibility attributed to a third person and the possibility of a racist or a xenophobic attack was excluded. The authorities also specified that the victims weren’t living temporarily in Livorno because of their forced eviction from Pisa.

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

143. The Government also explained that the National Office against Racial Discrimination (UNAR), was offering free legal consulting to victims of discrimination who report to competent jurisdictional authorities. Periodical meetings with the Rome associations have permitted to this Office to play an intermediation role and to determine the main sectors of

potential intervention by the State or by the local authorities, including housing, health and legal status.

144. Finally, the Government mentioned the very recent agreement signed in Bucharest, on December 20, 2007, by the Italian Minister for Social Solidarity and the Romanian Minister of Labour. It was explained that this agreement would aim to establish a partnership in order to reduce, in both countries, the level of poverty of Romanian citizens, in particular Roma people. It was finally noted that this agreement is providing the utilization of national and European funds for the implementation of joint projects in the fields of labour, education and housing.

### **Observations**

145. The Special Rapporteur thanks the Government of Italy for its detailed and informative reply to his communication of 18 October 2007. The Special Rapporteur continues to follow the situation closely, in particular the implementation of the agreements that have been signed.

## **Lebanon**

### **Communication envoyé au Gouvernement**

146. Le 27 Novembre 2007, le Rapporteur Spécial a envoyé un appel urgent concernant la situation de M. **S.D.H.S.** ressortissant soudanais, qui serait détenu dans une prison de Rachaya au Liban.

147. D'après les informations reçues, S.D.H.S. aurait été arrêté au motif qu'il serait entré illégalement sur le sol libanais. Il aurait été condamné à 3 mois de prison et à une amende de 500.000 livres libanaises. Il souffrirait de leucémie et son état de santé serait en train de s'aggraver.

148. Des informations indiqueraient qu'il aurait d'ailleurs déjà été hospitalisé pendant 10 jours. Son état ne lui permettant pas de poursuivre sa peine de prison, il devrait donc être transféré vers une institution spécialisée pour recevoir un traitement adapté.

149. Selon les informations reçues, des craintes auraient été exprimées que si S.D.H.S. n'était pas hospitalisé le plus rapidement possible, son état de santé se détériorerait de manière irrévocable.

### **Observations**

150. Le Rapporteur spécial regrette de ne pas avoir reçu de réponse à sa communication du 27 Novembre 2007.

## **Libyan Arab Jamahiriya**

### **Communication sent to the Government**

151. On 13 February 2007, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture and the Special Rapporteur on freedom of religion or belief, sent an urgent appeal to the Government regarding 430 Eritrean nationals, including over 50 women and children who would be facing imminent deportation to Eritrea.

152. Reports indicate that there were 130 detainees, including several women and children, at the detention centre in al-Marj, 1,000 km from Tripoli, while the remaining 300 are detained in Misratah, about 200 km from Tripoli.

153. It is alleged that the majority of the detainees are conscripts who fled Eritrea to avoid military service.

154. It is further alleged that the right to conscientious objection is not recognized in Eritrea. Military service in Eritrea is compulsory for men aged 18 to 40 and for women aged 18 to 27. Military offenders are punished without due process.

155. According to the information received, the 430 individuals would be facing imminent deportation to Eritrea.

156. During their detention, Libyan authorities have reportedly beaten and raped or sexually abused some detainees.

157. Fears have been expressed that should they be forcibly returned to Eritrea, they may be at risk of torture or ill-treatment, as well as for potential persecution with regard to their freedom of thought, conscience and religion.

158. Further concern is expressed for their physical and mental integrity while in detention.

#### **Communication received from the Government**

159. On 10 May 2007, the Government replied to this communication sent on 13 February 2007.

160. The Government denied the veracity of the facts alleged in the summary of the case sent by the Special Rapporteurs.

161. The Government also reported that there are 164 Eritreans who are currently being held in centres for illegal migrants after being caught attempting to migrate illegally to Europe. They are being well-treated and are provided with humanitarian and health assistance, as witnessed by many foreign media representatives and delegations from States and non-governmental organizations which have visited these camps.

162. Additionally the Government reported that the Eritrean nationals come to the Libyan Arab Jamahiriya either because they are fleeing compulsory military service or for other reasons. Most of them enter Libya as a transit zone and are bound for the northern shores of the Mediterranean Sea. According to the Government, the repatriation of these Eritrean nationals is an appropriate step to take.

163. Act No. 6 of 1987 regulates aliens entry, residence and departure from the Libyan Arab Jamahiriya. Anyone who breaches this act will be arrested and detained in designated places of detention and the competent authorities shall take legal proceedings against them.

164. According to the Great Green Document on Human Rights, the Promotion of Freedom Act and the relevant laws, and pursuant to the International Covenant on Civil and Political Rights and the Convention against Torture, to which the Libyan Arab Jamahiriya is a party,

the competent Libyan authorities have no right to extradite or repatriate an individual where there is evidence to show that the individual will be subjected to torture or an unfair trial.

165. The Great Green Document and the Freedom Act guarantee freedom of conscience, expression and opinion and freedom of worship. Everyone is entitled to security of person and not to be subjected to cruel, degrading or inhuman treatment. Article 431 of the Criminal Code prescribes a sentence of imprisonment for public officials who use violence against individuals. Article 435 of the Code prescribes a term of imprisonment for any official who commits or orders torture.

166. According to the Government, some members of the police may use force during arrests in order to deal with individuals who resist arrest. It is also reported that, one police officer has been convicted for abuse of authority.

167. Finally the Government reported that such cases are isolated cases and those responsible face the most severe criminal and disciplinary penalties when evidence of their guilt is presented.

### **Observations**

168. The Special Rapporteur would like to thank the Government of Libyan Arab Jamahiriya for its detailed response.

### **Malaysia**

#### **Communication received from the Government in response to the communication sent by the Special Rapporteur on 18 May 2006**

169. On 18 May 2006, the Special Rapporteur sent an allegation letter to the Government of Malaysia, regarding the Memorandum of Understanding (MOU) concerning Indonesian domestic workers in Malaysia.

170. The Special Rapporteur requested the Government to send detailed information concerning the draft MOU and, more specifically, on how it would address the recommendations the Special Rapporteur had made on his letter dated 18 May 2006.

171. By letter dated 14 March 2007, the Government of Malaysia provided information regarding the Memorandum of Understanding (MOU) concerning Indonesian domestic workers in Malaysia.

172. The Government reported that the Memorandum of Understanding (MOU), was signed between the Government of Malaysia and the Government of Indonesia on 13 May 2006, entering into force on 13 June 2006. The MOU seeks to establish a framework to facilitate the selection and recruitment of domestic workers from the Republic of Indonesia to work in Malaysia.

173. According to the Government, the MOU provides for certain responsibilities of employers with respect to their workers, inter alia:

- To recruit Indonesian workers only through licensed recruitment agencies and with the necessary approval from the relevant authorities in Malaysia;
- To ensure that the terms and conditions of the contract are explained in detail;
- To state the wages clearly in the contract;
- To provide appropriate accommodation;
- To respect the freedom of belief of the workers;
- To ensure that domestic workers are only required for household duties and not be engaged in other additional duty;
- To ensure that domestic workers undergo a medical examination in accordance with the requirements of the relevant authorities in Malaysia and Indonesia;
- To ensure that domestic workers receives a foreign worker card, which the worker keeps for identification purposes;
- To pay the cost of the repatriation of the worker where the contract of employment is terminated by the employer.

174. The Government also reported that The MOU is an additional document that was elaborated taking into account existing provisions in the legislations of the two Governments with the purpose of protecting the rights and interests of domestic workers and employers.

175. The MOU also regulates also the activities of the recruitment agencies.

176. According to the Government, the employer is held responsible for the safekeeping of a worker's passport. The passport is kept by the employers according to Section 12 (1) (g) of the Passport Act 1966 (Act 150), which provides that a person is able to keep lawfully another person's passport. It is also reported that article 8 (A) (xiii) of the MOU does not intend to deprive the right of domestic workers to hold their passports but only ensure that the passports are kept in safe custody and protected from any unfortunate event such as being stolen.

177. The Government also reported that for purposes of identification of domestic workers, the Immigration Department of Malaysia issues foreign worker card which shall be kept at all times by the domestic worker. This card is an identity card, which contains relevant information of the worker. This card enables domestic workers to move freely in the country. According to the MOU, the worker has the responsibility to obtain the card from the Immigration Department.

178. Although the MOU does not set a minimum wage, it contains a provision that states that the domestic worker will not be compelled to accept the work offered if she/he does not agree with the monthly wage. Any modification of the contract has to be made upon the consent of the domestic worker.

179. According to article 8 (A) of the MOU, the contract of employment has to include the description of the job, the wage, allowances, working hours, overtime rate, rest days, days of annual leave, days of sick leave, public holidays and provisions for housing.

180. The MOU provides that the contract of employment shall state clearly the address of the workplace. According to the MOU, the employer has the obligation to provide the worker with insurance coverage.

181. The Government informed that the MOU does not contain provisions regarding mechanisms and remedies for workers in case of abuses, and sanctions for employers and

recruitment agencies. It is reported that workers can submit their complaints to the Government to the Labour Department under the Ministry of Human Resources in Malaysia. In case of abuse, the workers can report to the police. Under the MOU, in the event of non-compliance by the employers or licensed recruitment agencies of the provisions of the MOU, an action can be taken against the employer or the agency.

### **Observations**

182. The Special Rapporteur thanks the Government of Malaysia for its detailed response.

## **México**

### **Comunicación enviada al Gobierno**

183. El 16 de enero de 2007, el Relator Especial transmitió al Gobierno una carta de alegación en relación con las supuestas violaciones de derechos humanos originadas por el Ejército mexicano en el Albergue Belén de la ciudad de Tapachula (Chiapas).

184. De acuerdo con la información recibida, 20 migrantes indocumentados fueron detenidos mientras intentaban cruzar el río Suchiate. Dichos migrantes indocumentados fueron arrestados por un periodo de 30 minutos.

185. Se alega que durante su arresto, habrían sido despojados de sus ropas. A continuación, el ejército mexicano habría procedido a registrarles, incluyendo supuestamente el tocamiento de órganos sexuales, con el fin de buscar dinero.

186. Según las informaciones recibidas, los detenidos no habrían denunciado estos hechos a las autoridades nacionales por miedo a una posible deportación.

187. Las informaciones recibidas hacen referencia a que éste no sería un caso aislado, sino que existirían otros casos semejantes que se habrían dado en la frontera entre Guatemala y Chiapas (México).

### **Observaciones**

188. El Relator Especial reitera su interés en recibir la respuesta del Gobierno de México en relación con la alegación enviada.

## **Mozambique**

### **Communication sent to the Government**

189. On 15 March 2007, the Special Rapporteur jointly with the Special Rapporteur on trafficking in persons, especially women and children, the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Rapporteur on violence against women, its causes and consequences, sent an allegation letter to the Government regarding cases of trafficking in women and children for purposes of sexual exploitation and forced labour to Mozambique, and from Mozambique to South Africa.

190. According to the information received from Maputo, women and children are reportedly trafficked via Ressano Garcia or the Lebombo border to Gauteng, South Africa.

191. Reports indicate that another route used for trafficking of persons to South Africa, specifically to Gauteng and KwaZulu-Natal, is the border at Ponta do Ouro. The trafficking of these persons continues further either to the south of Swaziland and directly to Johannesburg and Pretoria, or south to Durban and Pietermaritzburg. It is estimated that approximately 1,000 Mozambican women per year are trafficked along these routes.

192. Reportedly, children are also trafficked daily in trucks through the Kruger National Park or the Swaziland border. Mozambicans from the north are purportedly being trafficked into South Africa via Zimbabwe.

193. It is further alleged that people being trafficked from the Great Lakes Region and East Africa enter the north of Mozambique via Malawi or Tanzania. Mozambican ports are also said to be a stopping point for traffickers travelling by sea, who then continue the journey overland to South Africa.

194. It is moreover reported that small-scale trafficking networks, based at transit houses in the border region between Mozambique, Swaziland and South Africa, use minivan taxis to smuggle both migrants and trafficking victims across the border.

195. It is also alleged that accomplices in Johannesburg, Maputo and in the Lebombo region in South Africa reportedly assist this process through recruiting, accommodating and transferring migrants and trafficked persons to the final destinations. Organized groups of Mozambican refugees living legally in South Africa are also reported to be involved in such activities.

196. In this context, young women attempting to find work in South Africa are allegedly led to believe that they will be offered employment as waitresses or domestic workers. However, upon arrival at the said transit centres, the women are separated from others, and forced into prostitution or forced labour in agriculture, manufacturing or service industries. When subjected to forced labour, reports indicate that they are often subject to sexual abuse by their employers.

197. Reports also indicate that young women and girls are sold, at the transit centres in Tonga and Johannesburg in South Africa, as “wives” for South African men. There are reports of “stocks” of women being displayed and of the possibility of “wives” ordered on demand.

198. Trafficked children are reportedly sold for US\$ 30 to 50 per child. According to the information received, orphans are particularly vulnerable to trafficking, particularly because of a reported practice of informal adoption of children and because of adoption laws alleged to facilitate their trafficking. There are an estimated 1.6 million orphans in Mozambique, of whom 380,000 have lost their parents due to HIV/AIDS.

199. Moreover, AIDS is reported to play a major role in increasing the demand for the trafficking of younger and presumably uninfected sex workers. Extreme poverty may also render women and children more vulnerable to being trafficked.

200. According to information received, so far, no suspected trafficker has ever been tried for trafficking in persons, but instead under laws related to kidnapping, corruption of minors and hijacking. Furthermore, it is reported that trafficking through several unguarded borders is facilitated by the complicity or the tolerance of some border authorities.

### **Observations**

201. The Special Rapporteur would like to reiterate his interest in receiving the reply of the Government of Mozambique to these allegations.

## **New Zealand**

### **Communications sent to the Government**

202. On 28 June 2007, the Special Rapporteur, jointly with the Special Rapporteur on trafficking in persons, especially women and children, and the Special Rapporteur on violence against women, its causes and consequences, sent an allegation letter to the Government regarding the case of Ms. **T.A.T.**, reportedly a trafficking victim.

203. According to the information received, T.A.T was reportedly trafficked to Auckland, New Zealand, in 2003. T.A.T is married to a citizen of New Zealand.

204. According to reports, in 2003, T.A.T was deceived by unknown persons into believing that papers had been arranged for her to work lawfully as a waitress in New Zealand. Upon her departure to New Zealand, she was told by her traffickers that she would be travelling with a false passport. When she protested against this, she was warned that she already owed her traffickers the sum of US\$ 5,000 for her ticket to New Zealand and for arrangements undertaken to provide her with a visa and temporary residence permit for New Zealand. She was also threatened that if she refused to comply with instructions, her family in her country of origin would suffer.

205. Information received also indicated that, upon arrival in New Zealand, she had her passport taken away and the traffickers took her to an apartment in a nightclub where she was sold to a group of men who forced her to work as a prostitute. There were two other women of the same nationality in that apartment who had also found themselves in her situation and who had also been brought to New Zealand under similar circumstances of false promises.

206. It is also reported that, T.A.T and the women she lived and worked with were never allowed to leave the apartment, except for once a week to buy their weekly groceries; on such occasions, they were always accompanied. The women were given very little food and, when T.A.T fell ill during her captivity, the traffickers were reluctant to let her see a doctor.

207. Six months after T.A.T arrived in New Zealand, the nightclub was suddenly closed down and the traffickers who had forced her to work as a prostitute left the premises. It is alleged that she was still forced to continue working as a prostitute to pay her debt. T.A.T and the two other women, however, managed to escape from the flat and went into hiding. It is then that T.A.T met the man who later became her husband.

208. It is further alleged that, at that stage, T.A.T sent an application to the immigration authorities to obtain a residence permit. Her husband also wrote to the Immigration Office to support his wife's application, stressing that T.A.T had not voluntarily used false documents

to enter New Zealand, but had been forced by her traffickers to do so. The immigration authorities nevertheless issued T.A.T with a Removal Order, arguing that they found no substantial evidence of T.A.T's actual identity.

209. Reports indicated that the authorities argued that she had committed a serious offence in using false documentation to enter the country and was therefore advised to make arrangements to leave the country voluntarily; otherwise she would be arrested and deported.

210. On 29 March 2007, T.A.T launched an appeal against the Removal Order, in accordance with section 130 of the Immigration Act of 1987.

211. It is reported that a number of the traffickers had been convicted but that some of the trafficked women had already been sent away from New Zealand. Other traffickers, including the man who met T.A.T. at the airport, allegedly remained at large. T.A.T fears that she would face a risk to her life, if she were returned to her country.

212. On 20 July 2007, the Special Rapporteur on violence against women, its causes and consequences, and Special Rapporteur on the human rights of migrants wrote again to the Government asking for information of any developments on this case.

#### **Communication received from the Government**

213. By letter dated 5 July, the Government acknowledge receipt of the letter sent by the Special Rapporteurs on 28 June 2007, and informed that T.A.T.'s file would be assigned to an investigator.

214. On 27 August 2007, the Government of New Zealand replied to the letter concerning the case of T. A. T.

215. In its response, the Government states that it has reviewed T.A.T.'s case, and that further enquiries by the relevant authorities are still being conducted. New Zealand notes that all enquiries conducted thus far show no evidence to support the claim that T.A.T. is a victim of trafficking, and accordingly, the Government disputes the veracity of the allegations contained in the above-mentioned letter of 28 June 2007.

216. The Government also reported that any new information related to this case would be transmitted without delay to the Special Rapporteurs.

217. Finally, the Government assured the Special Rapporteurs that any further steps will be taken to return T.A.T. to her country until the enquiries of her case have been concluded.

#### **Observations**

218. The Special Rapporteur would like to thank the Government of New Zealand for its detailed response and for the authorization to let T. A. T. stay in New Zealand until all enquires have been concluded. He would appreciate receiving information on the outcome of the investigations launched in the case.

### **Saudi Arabia**

#### **Communication sent to the Government**

219. On 20 April 2007, the Special Rapporteur, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the question of torture, sent an urgent appeal to the Government concerning the case of Mr. **S.O.**, a citizen of Nigeria, who was reportedly at imminent risk of execution.

220. The case of S.O. was previously brought to the attention of the Government (together with the cases of 12 other Nigerian migrant workers) by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the human rights of migrants, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the question of torture in a communication dated 30 November 2004. Regrettably, their communication has remained without reply.

221. According to the communication of 30 November 2004, S.O. and 12 other Nigerian migrant workers resident in Jeddah, “were among hundreds detained in Jeddah on 29 September 2002 after a policeman was killed in a fight between local men and African nationals”. All the other men arrested on that occasion have been deported, including 21 who served prison sentences ranging from six months to two years and flogging.

222. Subsequent to their arrest, the 13 Nigerian nationals were tortured and ill-treated, including being hung upside down and beaten and subjected to electric shocks to the genitals. According to the information received, since their arrest over two years ago, the men have not had access to a lawyer or consular assistance. Moreover, translators were present on only two of the four previous court appearances, and all proceedings and court documents are in Arabic.

223. Reports indicated that, on 22 November 2004, a hearing in the case of the 13 men took place before three judges in a closed session, without the assistance of a lawyer, a consular representative or adequate translation facilities. They could not fully understand the proceedings, which were conducted in Arabic, and were not able to fully understand whether the hearing concerned the prolongation of their detention or constituted their trial.

224. It is further alleged that S.O. was sentenced to death at a closed trial in May 2005. The 12 other Nigerian men were sentenced to prison terms and corporal punishment. During the trial, S.O. and his co-defendants neither had access to legal representation nor to consular assistance, nor did they benefit from adequate translation. During interrogation they had been told to put their fingerprints, which can act as a signature, on statements written in Arabic, which they could not read. It is possible that these statements were used as evidence against them during the trial proceedings. Staff from the Nigerian consulate in Jeddah attempted to visit the men in prison on 19 May 2005, but were not allowed to see them. The death sentence imposed on S.O. was upheld by the Court of Cassation and ratified by the Supreme Judicial Council.

### **Communication sent to the Government**

225. On 5 April 2007, the Special Rapporteur, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the independence of judges and lawyers, sent an allegation letter regarding the execution on 19 February 2007 of four Sri Lankan citizens, **Ranjith de Silva, Victor Corea, Sanath Pushpakumara** and **Sharmila Sangeeth Kumara**.

226. The Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the human rights of migrants had previously raised their concerns about this case in a communication to the Government of 13 April 2005, which unfortunately has remained without reply.

227. In the previous communication, they explained that, according to the information received, three Sri Lankan migrant workers –Victor Corea, Ranjith de Silva and Sanath Pushpakumara – had been involved in a series of armed robberies and had been arrested by the Riyadh police on 10 March 2004.

228. According to the information received, in October 2004 they were sentenced to death on charges of possession of illegal firearms and attempted robbery by the Saudi Arabian High Court. Their sentences were reportedly upheld in March 2005 and an appeal for mercy was at the time pending before the King of Saudi Arabia.

229. On the basis of the information received, they expressed the concern that “the three men were sentenced to death after trials that appear[ed] to have fallen short of international fair trial standards. It is reported that they did not have any legal representation during their trials, although a translator was provided. The translation of proceedings is no substitute for adequate legal representation as required by international standards. In addition, it is alleged that after their trial, the three men were asked to sign a document in Arabic, stating their acceptance of the death sentence which only Mr. Silva reportedly refused to sign”.

230. More detailed reports received have added the name of a fourth defendant in the same case, Sharmila Sangeeth Kumara, and state that the execution took place on 19 February 2007. This confirmed the concerns raised two years ago with regard to the lack of due process. It is reported that: “Around nine months after their arrest in March 2004, an official in al-Ha’ir prison where the four men were held informed them that they had a court hearing. The hearing lasted around three hours. The judge interrogated the four men, who were allowed only to speak in reply to his questions. The judge also asked whether they had suffered beatings during interrogation, to which they replied that they had. Minutes were taken and proceedings were interpreted, but no prosecutor was present and the defendants did not have legal or consular assistance. At no time were the defendants told that they might face the death penalty, nor were they ever informed that they had a right to a lawyer or a right not to incriminate themselves.”

231. According to reports received, several months after the first hearing, prison officials brought the four defendants to court a second time, again without prior notice. At this second hearing, two judges conferred for 20 minutes, then sentenced all four to death.

232. In response to a query from the court, all four defendants refused to accept the verdict, and the court sent the case for review to the Court of Cassation. The four men were unaware how to conduct an appeal and were not invited to make any submissions to the Court of Cassation or informed whether there would be any hearing. Three months later, the men were advised by a judge in a third trial session that the cassation court had upheld the verdict. No copy of the judgment was given to the four defendants.

233. The four defendants managed to contact the Sri Lankan embassy from prison after the trial. The Sri Lankan diplomats informed them that it was too late to appoint a lawyer and that instead they would issue an appeal for clemency.

234. On 19 February 2007, however, a royal order affirmed the death sentence. Ranjith de Silva, Victor Corea, Sanath Pushpakumara and Sharmila Sangeeth Kumara were executed on the same day.

### **Communication received from the Government**

235. By letter dated 16 July 2007, the Government transmitted the following information to the Special Rapporteur regarding the cases of Ranjith de Silva, Victor Corea, Sanath Pushpakumara and Sharmila Sangeeth Kumara.

236. The Government reported that the charges brought against the persons, mentioned on the communication letter, were substantiated by conclusive evidence of their commission of the crime, including their confessions, the medical reports, the report on the crime, the identification of the weapons used, the report on the examination of the accused and the reports on the inspection of the scene of the crime.

237. The Government further reported that, according to articles 155 and 182 of the Code of Criminal Procedure, the judicial proceedings were open to observers.

238. Finally, the Government informed that death sentences are handed down by the general courts in cases entailing the fixed penalties prescribed in the Islamic sharia and in cases of lex talionis and crimes involving repeated offences of drug smuggling and trafficking.

### **Observations**

239. The Special Rapporteur would like to thank the Government for its reply. He would like to reiterate his interest in receiving the reply of the Government of Saudi Arabia to the communications that have remained without reply.

## **South Africa**

### **Communication sent to the Government**

240. On 23 April 2007, the Special Rapporteur, jointly with the Special Rapporteur on trafficking in persons, especially women and children, the Special Rapporteur on the sale of children, child prostitution and child pornography, and the Special Rapporteur on violence against women, its causes and consequences, sent an allegation letter to the Government concerning cases of trafficking in women and children for purposes of sexual exploitation and forced labour, through and from Mozambique to South Africa.

241. It was reported that South Africa is the main destination country for Mozambican victims of trafficking. Mozambique is particularly exposed to trafficking in persons due mainly to porous borders and the absence of protective legislation against trafficking. From Maputo in Mozambique, women and children are reportedly trafficked via Ressano Garcia or the Lebombo border in Mozambique to Gauteng. It is further alleged that another route used for trafficking of persons to South Africa, specifically to Gauteng and KwaZulu-Natal, is the border at Ponta do Ouro. The trafficking continues further either to the south of Swaziland and directly to Johannesburg and Pretoria, or south to Durban and Pietermaritzburg. It is estimated that approximately 1,000 Mozambican women per year are trafficked along these

routes. Reportedly, children are also trafficked daily in trucks through the Kruger National Park or the Swaziland border. Mozambicans from the north of Mozambique are trafficked into South Africa via Zimbabwe. It is reported that people being trafficked from the Great Lakes Region and East Africa enter the north of Mozambique via Malawi or Tanzania. Mozambican ports are also said to be a stopping point for traffickers travelling by sea, who then continue the journey overland to South Africa.

242. It is further reported that small-scale trafficking networks, based at transit houses in the border region between Mozambique, Swaziland and South Africa, use minivan taxis to smuggle both migrants and trafficking victims across the border. Accomplices in Johannesburg, Maputo and in the Lebombo region reportedly assist them through recruiting, accommodating and transferring migrants and trafficked persons. Organized Mozambican refugees living legally in South Africa are also reported to be involved in such activities.

243. Reports indicate that, in this context, young women attempting to find work in South Africa are allegedly led to believe that they will be offered employment as waitresses or domestic workers. However, upon arrival at the transit centres the women are separated from others, and forced into prostitution or forced labour in agriculture, manufacturing or service industries. When subjected to forced labour, reports indicate that they are also often subject to sexual abuse by their employers. Reports also indicate that young women and girls are sold at the transit houses in Tonga and Johannesburg as “wives” to South African men. There are reports of “stocks” of women being displayed and of the possibility to order “wives” on demand.

244. Trafficked children are reportedly sold for US\$ 30 to 50 per child. Orphans are particularly vulnerable to trafficking, particularly because of an alleged practice of informal adoption of children and because of adoption laws in Mozambique that are reported to facilitate their trafficking. There is an estimated 1.6 million orphans in Mozambique, of whom 380,000 have lost their parents due to HIV/AIDS.

245. In addition, the high prevalence of HIV/AIDS in South Africa is reported to play a major role in increasing the demand for the trafficking of younger and presumably uninfected sex workers. Furthermore, it is reported that trafficking through several unguarded borders with Mozambique is facilitated by the complicity or the tolerance of border authorities.

246. The Government has been undertaking considerable efforts to combat trafficking, including the ratification, on 20 February 2004, of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Furthermore, in June 2006, the President signed into law the Children's Act of 2005, which prohibits the trafficking of children, namely "the recruitment, sale, supply, transportation, transfer, harbouring or receipt of children, within or across the borders of the Republic".

247. However, according to the information received, national legislation explicitly prohibiting trafficking in adults is still to be adopted. The protection of trafficking victims remains also remains inadequate.

248. It is alleged that in December 2005, for example, 940 Mozambican illegal immigrants were deported without first being screened to identify if any amongst them were trafficked persons.

## **Observations**

249. The Special Rapporteur would like to reiterate his interest in receiving the reply of the Government of South Africa to these allegations.

## **Sweden**

### **Communication sent to the Government**

250. On 11 January 2007, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture and the Special Rapporteur on violence against women, its causes and consequences, sent an urgent appeal to the Government regarding the case of Ms. **L.K.**, a Turkish woman of Kurdish origin.

251. According to information received in 1988, while still living in Turkey, L.K, then 16, was forced by her parents to enter a marriage with a 31-year-old man. Her husband abused physically and mentally both her and their two sons, almost every day throughout their marriage. Sometimes he would lock her and their two children out of the house and they would be forced to sleep outside.

252. It is also reported that he repeatedly threatened L.K. that he would hang her and make it look like suicide if she did not obey him. L.K. sought support from her family several times, but was told to return to her husband. Moreover, her mother threatened to marry her again to an even older man if she did not obey.

253. In 2004, following a relationship with one of her husband's friends, which was discovered by her family and discussed in a village meeting, L.K. went into hiding.

254. According to reports, her brothers announced that they would kill her if they found her. Subsequently, she received help in leaving her village and fleeing the country.

255. Reports indicate that L.K. arrived in Sweden on 31 March 2005, where she applied for asylum on 1 April 2005, referring to the risk of violence committed in the name of honour. Her asylum application was rejected by the Swedish Migration Board (Migrationsverket) on 26 August 2006.

256. Following that decision L.K. appealed to the Swedish Aliens Board (Utlänningsnämnden), which rejected her application on 29 October 2005. This decision could not be appealed, and the authorities prepared for her deportation.

257. Information received also indicates that, on 15 November 2005, temporary legislation came into force, which allowed for a review of rejected asylum applications. L.K.'s application was reviewed in accordance with the new legislation, but once again rejected. The latter decision could not be appealed.

258. In March 2006 a new Aliens' Act came into force, according to which asylum applications are tried in first instance by the Swedish Migration Board. This decision of the first instance can be appealed to the Migration Court. If there are exceptional reasons or if there is a need for a legal precedent, this decision can be appealed a second time to the

Appellate Migration Court. However, the procedure in the new Aliens Act does not apply to those asylum-seekers who, like L.K., already had their case tried in full.

259. It is further alleged that L.K., after having exhausted all the remedies in Sweden, is facing the risk of being deported to Turkey.

260. Fears have been expressed that she may face a serious risk of being killed in the name of “honour” if deported back to Turkey.

### **Communication received from the Government**

261. By letters dated 17 January and 1 February 2007, the Government transmitted the following information regarding the L.K. case.

262. By letter dated 12 June 2007, the Government reported that the Swedish Migration Board, as well as the former Swedish Appeal Board, had found strong reasons to question the credibility of L.K.’s story. The strong lack of credibility is the main reason for the rejection of L.K.’s application for asylum.

263. The Government further reported that the Swedish Migration Board, in its decision of 26 August 2007, and the former Swedish Appeal Board, in its decision of 29 October 2005, considered that L.K. would not be subjected to violence or honour killings were she returned to Turkey.

264. Additionally, the Government provided information regarding the Swedish Aliens Act. According to the Aliens Act’s chapter 12, paragraphs 18 and 19, when the decision to refuse an alien entry into Sweden has entered into force, the alien can apply for impediment of enforcement of the deportation. As the decision to refuse L.K. entry into Sweden has, by the decision of 29 October 2005 of the former Swedish Appeal Board, entered into force, the rules of impediment to enforcement are the rules applicable to the case of L.K.

265. The Government further reported that the deportation of L.K. had been temporarily suspended for the purpose of investigation.

266. However, the Swedish Migration Board decided to reject L.K.’s application of impediment of enforcement.

267. The Board came to the conclusion that it was not likely that L.K. would be subject to honour-related violence once deported to Turkey.

268. The Swedish Migration Board is still of the opinion that there are strong reasons to question the credibility of the story of L.K. and has found no other reasons for granting her asylum or a residence permit in Sweden.

269. The Government also reported that L.K. has the possibility to appeal the decision of the Board to the Migration Court in Sweden.

### **Observations**

270. The Special Rapporteur would like to thank to the Government of Sweden for its detailed response.

271. The Special Rapporteur wishes to refer to the report to the Human Rights Council on the mission of the Special Rapporteur on violence against women, its causes and consequences, to Turkey (A/HRC/4/34/Add.2). The report focuses on the continued severe problems of “honour”-related violence, including murder and forced suicides, in South-Eastern and Eastern Anatolia and highlights serious protection gaps for women at risk of such violence.

## **Switzerland**

### **Communication envoyé au Gouvernement**

272. Le 27 juillet 2007, le Rapporteur spécial, conjointement avec le Rapporteur spécial sur les formes contemporaines de racisme, de discrimination raciale, de xénophobie et de l'intolérance, a adressé une lettre d'allégation au Gouvernement suisse concernant une nouvelle campagne du parti politique Union Démocratique du Centre (UDC).

273. Selon les informations reçues, le parti politique Union Démocratique du Centre aurait lancé une nouvelle campagne pour promouvoir une proposition d'initiative populaire concernant le renvoi des citoyens étrangers qui auraient commis un crime grave en Suisse. Dans le cadre de cette campagne, une publicité visuelle ayant pour titre «Pour plus de sécurité» aurait été publiée dans plusieurs journaux suisses, montrant trois moutons blancs sur un drapeau suisse basculant un mouton noir hors du drapeau. Ces images s'accompagneraient du texte suivant: «Grâce à l'initiative sur le renvoi, nous pouvons enfin systématiquement renvoyer les étrangers qui commettent un crime grave en Suisse. Nous augmentons ainsi la sécurité pour les enfants, les femmes et les hommes».

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

### **Réponse du Gouvernement**

275. Le 13 septembre 2007, le Gouvernement a répondu à la communication du Rapporteur spécial du 27 juillet 2007.

276. Le Gouvernement a tout d'abord noté que toutes les sociétés modernes doivent aujourd'hui faire face à une accélération de la diversité dans tous les domaines et que, en Suisse, comme partout ailleurs en Europe, les dynamiques liées à la globalisation peuvent conduire à un climat de tension identitaire, susceptible d'être exploité politiquement. Le Gouvernement a cependant indiqué que ces confrontations sont le signe d'une démocratie

vivante à laquelle participent tous les groupes de la population. En Suisse, la démocratie directe permet, par le biais de referendums lancés contre des lois votées par le Parlement et d'initiatives émanant du peuple qui proposent des modifications constitutionnelles, de discuter de thèmes controversés sur la scène publique.

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

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

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

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

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

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

283. Finalement, la réponse indique que le Conseil fédéral a réitéré à plusieurs reprises son engagement contre le racisme et qu'il continuera à prendre clairement position contre toute forme de discrimination et de xénophobie. Le Conseil fédéral porte une attention particulière aux questions migratoires et à la politique d'intégration; c'est pour cela qu'il a décidé, le 22 août 2007, d'adopter un train de mesures visant à favoriser l'intégration et à combattre la discrimination. Ce projet a été élaboré en étroite collaboration par tous les organes fédéraux

concernés. La contribution fédérale s'élève à plus de 50 millions de francs par an. Le Conseil fédéral est convaincu qu'un travail constructif de ce genre est la meilleure réponse aux manifestations xénophobes.

### **Observations**

284. Le Rapporteur spéciale remercie le Gouvernement pour sa réponse détaillée et approfondie.

## **Thailand**

### **Communication sent to the Government**

285. On 26 September 2007, the Special Rapporteur sent an allegation letter to the Government concerning the recent implementation of provincial labour legislation in Thailand's upper South provinces, including Phuket, Ranong, Rayong, Surat and Thani. This new legislation covers a specific group of migrant workers from Laos, Cambodia and Myanmar and reportedly restricts their fundamental human rights, making them more vulnerable to abuse, exploitation and human trafficking.

286. According to the information received, since December 2006, new regulations have been implemented restricting, inter alia, the freedom of movement of these migrant workers reportedly due to national security concerns. The new legislation provides for various restrictive measures, such as a ban on public gatherings of more than five persons without prior permission, a ban on the use of motorcycles and cars, and a curfew obliging migrant workers to be in their residences from 8 p.m. to 6 a.m. unless they are under the supervision of their employer or in cases of health emergencies.

287. Employers are allegedly required to submit to the provincial authorities a list of the names of migrant workers who own mobile phones, together with phone registration numbers and SIM cards numbers, in order to monitor their phone calls. These regulations therefore restrict migrants' rights inter alia to a family life, to practise their religion, to access to social services, including health services. The same restrictions ultimately prevent these workers from being able to bring complaints against their employers in situations of violations of labour laws, including abuse and exploitation.

288. Fears have been expressed that these restrictions to freedom of movement and privacy are discriminatory, since they are applicable only to this specific group of migrant workers, from Laos, Cambodia and Myanmar.

289. Moreover, reports also indicate that there are an increasing number of migrant workers in these provinces who are subject to harsh and unsafe working conditions, including excessive working hours and non payment of wages.

### **Observations**

290. The Special Rapporteur would like to reiterate his interest in receiving the reply of the Government of Thailand to these allegations.

## **United Kingdom of Great Britain and Northern Ireland**

### **Communication sent to the Government**

291. On 28 June 2007, the Special Rapporteur sent an allegation letter to the Government regarding changes made to the Highly Skilled Migration Programme.

292. According to information received, the Highly Skilled Migrant Programme (HSMP) was launched on 28 January 2002, and designed to allow individuals who are highly skilled and have skills and experience to seek entry to work in the United Kingdom without having prior offer of employment, or to take up self-employment opportunities.

293. It was further reported that the initial criteria for the selection of HSMP applicants had changed a number of times, namely on 31 October 2003, 12 April 2005, 3 April and 7 November 2006.

294. On 7 November 2006, the Home Office revised the Highly Skilled Migrant Programme (HSMP) rules for Further Leave to Remain (FLR) extension and Indefinite Leave to Remain (ILR) which was allegedly published in the Explanatory Memorandum HC 1702.

295. Reports indicate that the latest revisions to HSMP include: an increase of scoring points to qualify as a HSMP applicant, from 65 to 75 points, the need to provide evidence of English-language ability at the extension stage, and an increase from four to five years to apply for FLR extension and ILR.

296. Concern is expressed for the applicants who are already living in the United Kingdom under previous HSMP rules of which they fully respected the requirements and now need to reapply and requalify under the new criteria, of which they may not fulfil the latest requirements.

### **Communications received from the Government**

297. By letter dated 21 September 2007, the Government provided information regarding the most recent changes to the Highly Skilled Migrant Programme (HSMP).

298. The Immigration Rules change made on 3 April 2006 was not a change to the HSMP selection criteria, but a change to the qualifying period for settlement from four to five years for all employment categories in the Immigration Rules.

299. In its February Paper "Controlling our borders: the five-year strategy for asylum and immigration", the Government set out its view that permanent migration must also be a journey towards being as socially integrated as possible. Increasing the qualifying period for settlement to five years brings the Government in line with the European norm for these purposes and also helps to ensure that settlement is a final stage in an on-going process of building up an attachment to the United Kingdom.

300. According to the Government, the changes were made following research into the way that the HSMP was working in practice, and which selection criteria were the best predictors of labour-market success. This research showed that the majority of those on the scheme were in highly skilled employment and were making an important economic contribution to the United Kingdom. But a minority were failing to find highly skilled jobs, and were therefore not fulfilling the purpose of the scheme.

301. The Government reported that it had made changes to the selection criteria for initial applications. This was to ensure that the programme continues to attract those migrants who are of the greatest benefit to the British economy and to make it clearer and more objective, in line with their aims for the forth-coming Points-Based System for managed migration. Points are awarded for qualifications, previous earnings, age and experience in the United Kingdom. In addition, under both the old and the new HSMP, participants have to show that they intend to make the United Kingdom their main home, and are able to maintain and accommodate themselves without recourse to public funds.

302. They have also amended the requirements for applicants who have previously had a grant of leave in this category and are applying for an extension. Under the old HSMP, in operation up to November 2006, participants had to show that they had taken all reasonable steps to become lawfully economically active in the United Kingdom in order to extend their leave. Following the November 2006 changes, applicants now have to show that they can pass a points test similar to that required of applicants who are applying for initial leave. They have made the extension test more rigorous to ensure that those extending their leave under the HSMP are actually doing highly skilled work. Their analysis of the way the scheme was operating prior to the changes showed that some of those with HSMP visas were not in highly skilled employment.

303. The Government also informed that a mandatory English-language requirement has also been imposed for applicants seeking initial leave or extension of their leave under HSMP. This is to ensure that HSMP helps them to select those migrants who will make the greatest economic contribution to the United Kingdom.

304. There are robust new document-verification powers to help the Government to deal with forged and fake documents submitted in support of applications.

305. Existing grants of leave continue unaffected by the changes. Only those making new applications for either initial leave, or an extension of leave, after the new rules came into effect, will be affected by the changes.

306. Regarding complaints made about the programme, the Government informed that they have received a judicial review challenge relating to the fact that those who gained initial leave under the old HSMP will have to make new extension applications under the new HSMP. This application for judicial review was refused permission. The judicial review application has now been resubmitted and is currently awaiting permission to be heard.

307. The Government expects that most of those people who would have succeeded under the old criteria will also succeed under the new. For those who are not able to pass the new points test for extension applications, but who have been making an economic contribution to the United Kingdom, the Government has put significant transitional arrangements in place.

308. According to the Government, HSMP participants who have been in employment for specified periods of time will be able to switch into work permit employment without their employer needing to undertake a Resident Labour Market Test (a test to ensure that there are no willing and suitably qualified domestic workers available for the post). Transitional arrangements have also been put in place for HSMP participants who are self-employed.

## **Observations**

309. The Special Rapporteur thanks the Government of United Kingdom of Great Britain and Northern Ireland for its detailed response.

#### **Communication sent to the Government**

310. On 8 March 2007, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture, sent an urgent appeal to the Government regarding the case of Mr. **A.M.K.**, a Cameroonian national, formerly a police officer in Loum and held at Oakington detention centre in Cambridge.

311. It is alleged that A.M.K. was detained in his home country Cameroon between 20 November 2004 and 11 February 2005 based on allegations that he supported the political opposition. He was at first held in solitary confinement in a detention centre in Douala in a very dark cell measuring 1.5 metres by 2 metres. During that time he was frequently forced into uncomfortable positions and severely beaten with rubber whips on his buttocks and soles.

312. According to the information received, after three weeks he was transferred to a disciplinary prison in Edear, where he shared a cell with other inmates. The cell was extremely dirty, light was scarce, he frequently had no access to water and the little water that he received was of poor quality, as was the food. He was not given food for prolonged periods and not allowed to exercise. During his custody, he had no access to a lawyer.

313. It is further alleged that, as a result of the treatment and the detention conditions, he sustained eye problems, a stomach condition and scars, mainly on his buttocks and the soles of his feet. He also suffers from depression.

314. In February 2005 A.M.K. fled to the United Kingdom, where he asked for asylum on 14 April 2005. His claim, after having been considered by several instances, was finally rejected on 22 February 2007 based on the argument that the medical evidence was not “completely conclusive” and did not constitute “independent corroborative evidence”. It was alleged that he was due to be deported on 9 March 2007 at 9 p.m.

315. Concern is expressed for A.M.K.'s physical and mental integrity, should he be forcibly returned to Cameroon.

#### **Communications received from the Government**

316. By letter dated 28 March 2007, the Government provided information regarding the case of A.M.K.

317. The Government reported that, A.M.K. claimed to have entered the United Kingdom at Gatwick airport on 3 April 2005 using a French passport to which he was not entitled. According to the Government, he sought asylum on 14 April 2005, on which date he was informed of his liability to removal from the United Kingdom as an illegal entrant.

318. The Government also reported that his case was accepted into the fast-track procedure and, as an integral part of that procedure, he was detained at Harmondsworth. He was interviewed on 22 April 2005 about the basis of his claim.

319. On 25 April 2005 his asylum claim was rejected. The Immigration and Nationality Directorate (IND) accepted that A.M.K. had been a policeman in Cameroon at some point but

did not accept as true any other aspect of his claim. IND took the view that A.M.K.'s motives for coming to the United Kingdom were primarily for economic reasons.

320. A.M.K.'s appeal against this decision was heard by an immigration judge and dismissed on 4 May 2005.

321. According to the Government, the immigration judge held that there was no evidence to support the appellant's assertion that he would be at risk of his life if he were to return.

322. A.M.K. applied to the Asylum and Immigration Tribunal for a reconsideration of that decision. His application was rejected.

323. A.M.K. refused to cooperate with procedures to obtain travel documents for him and because his return to Cameroon was therefore no longer imminent he was released from detention on 14 July 2005.

324. On 12 December 2006, A.M.K.'s solicitors made a purported fresh application on his behalf citing an asserted interference with his human rights under articles 2, 3, 5, 6, 7, 8 and 13 of the European Convention on Human Rights. Those representations were rejected on 22 February 2007.

325. On 23 February 2007 A.M.K. was detained under Immigration Service powers and directions were set for his removal to Cameroon on 2 March 2007. There were deferred for administrative reasons on 1 March and were reset for 9 March 2007.

326. On 5 March 2007 his legal representatives lodged an application for judicial review with the Administrative Division of the High Court.

327. Mr. Koimon was released from detention on 9 March 2007 pending the outcome of his application to the Court.

328. The Government reported that the account set out in the letter sent to the Government was the basis of A.M.K.'s application for asylum in the United Kingdom. Neither the Immigration and Nationality Directorate nor the independent immigration appellate authorities, specifically set up to adjudicate on these matters, accepted any part of his account as being true, other than he had at some point been a policeman in Cameroon.

329. The Government also provided information regarding the standard of proof required in an asylum claim, which is referred to as "reasonable likelihood". The asylum case worker is guided in this by the published Asylum Policy Instructions (API).

330. The API on Assessing the Claim states that the decision maker will seldom be able to say with certainty whether or not an applicant will be persecuted if returned to his or her country of origin. The appropriate test for a decision maker to apply is to consider whether, at the date when they are making their decision, there is a reasonable degree of likelihood of the applicant being persecuted in their country of origin. The courts have said that a "reasonable degree of likelihood" has the same meaning as the term "real risk", which is the test used by decision makers when assessing whether an applicant will be subject on return to treatment which violates article 3 of the European Convention on the Human Rights.

331. This does not require the decision maker to be satisfied on the balance of probabilities that the applicant is more likely than not to suffer persecution for a Convention reason in their country of origin. Where the objective country evidence, applied to the applicant's case, suggests that there is a continuing reasonable likelihood that the applicant would face persecution in their country of origin, the applicant should normally be granted refugee status.

332. Decision makers should bear in mind that, however well-founded an applicant's original/historic reasons for fleeing their country of origin, they are only entitled to a grant of asylum where at the date of decision they continue to have a well-founded fear of persecution for a Convention reason.

333. According to the Government, if an applicant has already been subjected to, or threatened with, persecution or serious harm, this could be a serious indication that persecution or harm might happen again.

334. The API on the European Convention on Human Rights contains guidance on the consideration to be given to human rights issues which are raised alongside an asylum claim or are inherent in that claim.

335. This API states under "Standard of Proof" that a person must show there are substantial grounds for believing that, if returned to their country of origin or other country of return, there is a real risk of their being subjected to serious harm.

336. The Government also reported that, in order to maintain the integrity of its asylum system and to deter unfounded applications, it is important that they be able to enforce the return of those who are found not to be genuinely in need of international protection and who have no right to remain in the United Kingdom. According to the Government, they would not seek to enforce the return of A.M.K. to Cameroon unless they are satisfied it was safe to do so. The rationality of this decision has been confirmed by the independent Asylum and Immigration Tribunal.

337. As with returns to all countries, the Home Office does not actively monitor the treatment of individual Cameroonian nationals once they have been removed from the United Kingdom. Had it been considered that an individual was likely to suffer persecution on his return then he would not have been removed. It would generally be inappropriate and impractical for the United Kingdom to actively monitor individual citizens of another country once they returned there. It is necessary to take a pragmatic approach, but one that certainly should not be interpreted as disinterest.

338. The Foreign and Commonwealth Office follows the human rights situation through its network of posts around the world, including in Cameroon. It will pass to the Home Office any allegations that returnees have been mistreated, and where appropriate may be asked to make discreet enquiries, often through NGOs or other third parties. Such information will always be taken fully into account as a factor in the formulation of asylum policies and hence the decision whether it is safe to return an individual.

## **Observations**

339. The Special Rapporteur thanks the Government of the United Kingdom of Great Britain and Northern Ireland for its detailed response.

## **United States of America**

### **Communication sent to the Government**

340. On 31 May 2007, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on freedom of religion or belief, sent an urgent appeal to the Government regarding the case of Mr. N.V., a 43-year-old US citizen, Indian by birth, detained at Metropolitan Detention Center in Brooklyn, New York.

341. According to the information received, N.V. emigrated from India to the United States in 1988 and later became the Director of the Medical Examiner's Management Information Systems Department of the New York City Office of Chief Medical Examiner, a position he held for 15 years.

342. It is alleged that in 2005 he was charged with embezzling more than US\$ 10 million in Federal Emergency Management Agency cash allocated for a computer system that analyses DNA and was used to identify the bodies after the attacks of 11 September 2001 on the World Trade Center in New York.

343. Reports indicate that on 7 December 2005 he was arrested. However, no arrest warrant was shown to him.

344. It is further alleged that since then, he has been detained at the high-security Metropolitan Detention Center. His first bail application was reportedly denied for the reason that he was not a United States citizen. Information received also indicated that, after he had proven that he held American citizenship, his application for bail was rejected reportedly because of his original Indian nationality.

345. According to reports, N.V., who is a practising Hindu, is provided with meals containing meat, which runs counter to the principles of his religion. Furthermore, he has not had the opportunity to practise his religion in prison. N.V. has been purportedly subjected to regular strip searches and humiliations and has been forced to work under severe conditions. He has been refused access to proper medical care, although he informed the prison authorities about his suffering from pain.

346. Reports also indicate that N.V. is being held together with sentenced criminals in prison, some of whom are believed to be dangerous.

347. Fears have been expressed that the conditions at the detention centre might prevent N.V. from preparing his defence adequately.

### **Observations**

348. The Special Rapporteur would like to reiterate his interest in receiving the reply of the Government of the United States of America to these allegations.

### **Communication sent to the Government**

349. On 1 June 2007, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the question of torture, sent an urgent appeal to the Government, regarding the case of Mr. S.S.K., aged 37, an Egyptian national, detained at York County Prison in Pennsylvania.

350. According to the allegations received he was at imminent risk of forcible return to Egypt. S.S.K. arrived from Egypt to the United States of America (John F. Kennedy Airport) on 11 February 1998, where he applied for asylum.

351. Reports indicate that, since he had been charged with murder in Egypt, he was taken into custody upon his arrival to the United States. On 24 February 2004, a review of the decision of removal by the Board of Immigration Appeals by the 2nd Circuit Court of Appeals granted him relief from removal under the Convention against Torture. The Court found that there was a substantial likelihood that he would be tortured if returned to Egypt.

352. Information received also indicates that, on 6 February 2006, the United States District Court for the District of New Jersey granted a petition for habeas corpus, and ordered his release from detention, subject to monthly reporting to the Department of Homeland Security.

353. On 29 May 2007, he was detained when he appeared for his monthly appointment. He was informed that diplomatic assurances had been received from the Government of Egypt on 24 January 2007. The assurances were reportedly sufficient to ensure that he could be removed without any danger of torture upon his return. The Secretary of the Department of Homeland Security was thereby revoking the deferral of his removal.

### **Communications received from the Government**

354. By letter dated 3 July 2007, the Government provided the Special Rapporteur with information regarding the case of S.S.K.

355. The Government reported that S.S.K. was denied admission to the United States due to the fact that the Department of State had cancelled his non-immigrant visa while he was en route to New York after the Government of Egypt notified the United States Embassy in Cairo that S.S.K. was suspected of committing the brutal murder of Ms. H.Z.M.Y. just hours before leaving Egypt.

356. The Government also reported that United States immigration laws allow inadmissible aliens to pursue certain forms of relief and protection from removal. According to the Government, S.S.K. has been afforded a full and fair opportunity to do so. Among these safeguards is protection based on regulations that implemented American obligations under article 3 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, under which it is more likely than not, that the person would be tortured.

357. The United States Court of Appeals for the Second Circuit (Court of Appeals) in a published decision on 24 February 2004, upheld a Board of Migration Appeals (BIA) decision, finding S.S.K. removable from the United States, but granting him a deferral of removal to Egypt on the basis that it was more likely than not that he would be tortured there. In that same opinion, the court of appeals also upheld a BIA finding that there were serious

reasons to believe that S.S.K. murdered H.Z.M.Y. The evidence against him included, among other things, both his fingerprints at the scene of the crime and his shirt, stained with blood that matched H.Z.M.Y.'s blood type.

358. Pursuant to regulatory procedures that implement United States obligations under the Convention against Torture in the immigration context, the Department of State engaged in discussions and other communications with the Government of Egypt concerning the treatment that S.S.K. would receive if he were removed to that country. The Government reported that, in the course of these classified diplomatic communications, the Government of Egypt provided formal written assurances to the Government of the United States that S.S.K. would not be tortured if he were removed to Egypt.

359. The Government recalled that the United States did not agree with the non-binding opinion of the Human Rights Committee that article 7 of the International Covenant on Civil and Political Rights creates a non-refoulement obligation on States Parties, nor did it share the view expressed in the letter that diplomatic assurances were never reliable or effective in protecting against torture.

360. The Government also reported that the United States did not believe that diplomatic assurances were appropriate in every case or that they could serve as a substitute for a case-by-case analysis of whether United States obligations under article 3 of the Convention against Torture would be met. The Government reported that the United States employs properly tailored diplomatic assurances from foreign Governments related to torture in appropriate cases.

361. After a careful review, the Department of State determined and formally conveyed its view to the Department of Homeland Security that the assurances received from the Government of Egypt regarding the treatment of S.S.K. were of sufficient reliability to enable the Secretary of Homeland security to conclude that, if S.S.K. were removed to Egypt with these assurances, it would not be likely that he would be tortured.

362. According to the Government, in evaluating the credibility of assurances of this nature, the United States considers, among other relevant information, information concerning the judicial and penal conditions and practices of the country providing assurances; the identity and position of the official relaying the assurances and the ability of that person to speak on behalf of that Government; and United States diplomatic relations with the country providing the assurances.

363. In this case, the Department of Homeland Security agreed with the Department of State's assessment and concluded that the assurances were sufficiently reliable to permit S.S.K.'s removal to Egypt. The Secretary of Homeland Security thereby terminated his deferral of removal. S.S.K., who had been released but monitored, was retaken into custody by the Department of Homeland Security on 9 May 2007, for the purpose of effecting his removal to Egypt. S.S.K. challenged the Government's actions by means of a federal court litigation in both the United States Court of Appeals for the Second Circuit and the United States District Court for the Middle District of Pennsylvania.

## **Observations**

364. The Special Rapporteur thanks the Government of the United States for its detailed response. He would appreciate being kept informed on new developments in this case.

## **Yemen**

### **Communication sent to the Government**

365. On 3 October 2007, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the question of torture, sent an urgent appeal to the Government concerning the case of Mr **A.F.**, aged 34, an Iraqi national and teacher, resident in Sanaa, Yemen, since 2002.

366. According to the information received, A.F was reportedly arrested by agents of the intelligence services (Al Amn Assiyassi) in Sanaa on 16 January 2007. He was secretly detained on their premises for more than two months before being transferred in late March to an administrative detention centre for persons to be expelled.

367. It is alleged that on 18 April 2007 he was returned to the headquarters of the intelligence service in Sanaa, where he is still reportedly being held in incommunicado detention.

368. It is further alleged that no charges have been brought against A.F.

369. Reports indicate that a request for release dated 15 August 2007, filed with the Prosecutor General of Sanaa, has not been answered.

## **Observations**

370. The Special Rapporteur would like to reiterate his interest in receiving the reply of the Government of Yemen to these allegations.

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