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LE RACISME, LA DISCRIMINATION RACIALE, LA XÉNOPHOBIE
ET TOUTES LES FORMES DE DISCRIMINATION

Rapport de M. Doudou Diène,
Rapporteur spécial sur les formes contemporaines de racisme,
de discrimination raciale, de xénophobie et de l'intolérance
qui y est associée, conformément à la résolution 2002/68
de la Commission des droits de l'homme*

* Le présent rapport est distribué dans toutes les langues officielles. L'annexe est distribuée en anglais seulement.

Résumé

Le présent rapport contient des informations sur les activités menées par le Rapporteur spécial depuis sa prise de fonctions le 26 juillet 2002. Au cours de cette période, le Rapporteur a établi des contacts avec des gouvernements, plusieurs groupes politiques régionaux (Groupe des États africains, Groupe des États arabes, Groupe des 77), des organisations intergouvernementales (Union européenne, Organisation des États américains, Organisation de la Conférence islamique) et non gouvernementales afin de susciter une dynamique consensuelle dans la lutte contre le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée.

Le rapport fait état d'allégations graves de discrimination raciale et de xénophobie, notamment en Côte d'Ivoire et au Guyana. Il met également l'accent sur la discrimination raciale qui affecte les Roms/Sintis/gens du voyage et les mesures prises au niveau européen pour y remédier ainsi que sur les manifestations d'antisémitisme.

En 2002, le Rapporteur spécial a examiné des allégations de discrimination raciale et de xénophobie en Allemagne, en Espagne, dans la Fédération de Russie, en Grèce, au Guyana et au Royaume-Uni. Ces allégations ainsi que les réponses des autorités des pays concernés et les commentaires du Rapporteur sont annexées au présent rapport.

En conclusion, le Rapporteur spécial souligne que ses premiers contacts avec des représentants de gouvernements et d'organisations intergouvernementales et non gouvernementales ont témoigné de l'urgence de mettre en œuvre la Déclaration et le Programme d'action de Durban pour surmonter la recrudescence alarmante des manifestations de racisme ordinaire et l'apparition de nouvelles formes insidieuses de discrimination et de racisme. Le Rapporteur souligne également la récurrence, particulièrement inquiétante, de situations qui, par le mélange conscient ou l'amalgame entre race, religion et culture, requièrent des réponses urgentes et des actions en profondeur. Le Rapporteur propose, en conséquence, à la lumière du document final de la Conférence de Durban (A/CONF.189/12), une double stratégie: juridique et politique (par la ratification et la mise en œuvre de tous les instruments et accords internationaux pertinents), intellectuelle et éthique (par une meilleure connaissance et compréhension des racines profondes, processus et mécanismes de la culture et de la mentalité de la discrimination). Il s'agit, par la réflexion et l'action, d'allier intimement la lutte contre le racisme, la discrimination raciale et la xénophobie et l'intolérance et la promotion urgente du dialogue entre cultures, civilisations et religions. Les recommandations suivantes sont proposées, à cet effet, à la Commission des droits de l'homme:

- Promouvoir la complémentarité et la coopération entre tous les mécanismes de lutte contre le racisme, la discrimination, la xénophobie et l'intolérance, notamment ceux relatifs à la mise en œuvre du document final de la Conférence de Durban, ainsi qu'entre le Comité pour l'élimination de la discrimination raciale et le Rapporteur spécial et entre rapporteurs spéciaux;
- Accorder une plus grande attention aux situations et pratiques de discrimination à l'égard des non-ressortissants, des migrants et des réfugiés;

- Accorder, dans les délibérations de la Commission, une plus grande place aux racines profondes, intellectuelles et éthiques de la culture et de la mentalité du racisme et de la discrimination;
- Accorder une place prépondérante au dialogue des civilisations, des cultures et des religions, comme maïeutique de dépassement de toutes les formes de discrimination, de rejet et d'intolérance;
- Privilégier l'éducation dans toutes ses dimensions (enseignement, notamment de l'histoire, de l'éthique, des droits de l'homme comme éthique universelle, des cultures, des valeurs communes de toutes les religions et traditions spirituelles) et l'information et la communication interculturelles;
- Promouvoir la valeur féconde du pluralisme, compris comme la reconnaissance, l'acceptation, le respect et la promotion de la diversité. Promouvoir, dans ce contexte, le concept d'identité, concept ambivalent, qui peut être affirmation légitime d'une spécificité mais également négation de l'autre.

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Introduction

1. Le Rapporteur spécial sur les formes contemporaines de racisme, de discrimination raciale, de xénophobie et de l'intolérance qui y est associée, a été confirmé dans ses fonctions, par le Conseil économique et social, le 26 juillet 2002.
2. Le présent rapport est soumis conformément à la résolution 2002/68(IV) adoptée le 25 avril 2002 par la Commission des droits de l'homme à sa cinquante-huitième session.
3. Dans ce rapport, le Rapporteur spécial rend compte de ses activités depuis sa nomination (chap. I); il présente les principales manifestations de racisme et de discrimination raciale dont il a eu connaissance (chap. II) ainsi que les allégations de discrimination raciale communiquées aux gouvernements (chap. III). Le Rapporteur présente ses conclusions et recommandations au chapitre IV. Les allégations examinées par le Rapporteur et les réponses reçues des gouvernements figurent dans l'annexe au présent rapport.

I. ACTIVITÉS DU RAPPORTEUR SPÉCIAL

A. Consultations avec le Haut-Commissariat des Nations Unies aux droits de l'homme

4. Du 7 au 9 août 2002, le Rapporteur spécial s'est rendu à Genève auprès du Haut-Commissariat en vue de se familiariser avec les activités des différents programmes et mécanismes de protection des droits de l'homme. Il a mis à profit ses rencontres avec le Rapporteur spécial sur le droit au logement convenable ainsi qu'avec les fonctionnaires chargés de l'appui aux procédures spéciales sur les migrants, sur les défenseurs des droits de l'homme, sur la liberté d'opinion et d'expression pour identifier les domaines d'intervention pouvant faire l'objet d'une coordination avec son mandat. Dans la même optique, il a eu des entretiens avec les responsables de l'appui au Comité sur l'élimination de la discrimination raciale et des programmes se rapportant aux populations autochtones.
5. De ces consultations, le Rapporteur spécial a tiré la conviction que la problématique de la lutte contre le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée est sous-jacente à la majorité sinon à l'ensemble des programmes et mécanismes dont le Haut-Commissariat a la charge. Des actions y sont d'ailleurs menées pour que la Déclaration et le Programme d'action de Durban se traduisent concrètement dans les diverses démarches, que ce soit dans les stratégies régionales, dans le fonctionnement des organes de suivi des traités – tel le Comité pour l'élimination de la discrimination raciale, qui a déjà adopté des recommandations générales à cet égard – ou dans les procédures énumérées ci-dessus. Le Rapporteur se propose donc d'inscrire son action dans cette dynamique consensuelle par le renforcement de la coordination et de la coopération avec le Comité, le travail en équipe et la complémentarité avec les autres rapporteurs spéciaux, la concertation avec le Haut-Commissariat, notamment le Groupe antidiscrimination, et les différents mécanismes engagés dans le suivi de la Conférence mondiale contre le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée (Conférence de Durban).

B. Participation au Séminaire régional d'experts pour l'Afrique sur la mise en application du Programme d'action de Durban

6. Du 16 au 18 septembre 2002, à l'invitation du Haut-Commissariat, le Rapporteur spécial a participé à Nairobi au Séminaire régional d'experts pour l'Afrique sur le thème «La mise en application du Programme d'action de Durban: Un échange d'idées sur les moyens pour aller de l'avant». Le Rapporteur y a fait une contribution sur les mesures à envisager pour lutter contre la discrimination à l'égard des non-ressortissants, y compris les migrants et les réfugiés. Il a notamment proposé, pour éliminer le rejet dont le non-national est souvent victime de la part de la population du pays hôte, que les autorités compétentes de chaque pays favorisent la connaissance réciproque entre nationaux et non-nationaux et qu'elles encouragent des interactions entre les cultures, les civilisations et les traditions spirituelles. Cela peut se faire, notamment, par l'éducation et l'information, la reconnaissance du pluralisme et la promotion du dialogue interculturel. Il s'agit, en dernière analyse, de traduire dans le contexte national la valeur de l'unité dans la diversité, donc à la fois la reconnaissance des spécificités et la promotion de valeurs partagées qui transcendent ces spécificités.

7. Il est par ailleurs ressorti du Séminaire que les États africains accordent une importance primordiale à la mise en œuvre des paragraphes 157 et 158 du Programme d'action de Durban (A/CONF.189/12), qui apparaissent comme des clefs susceptibles de rompre le cycle séculaire de l'oppression, l'exploitation, l'injustice et la pauvreté et de favoriser la gouvernance. La Commission devrait accorder une attention urgente à ce point essentiel des recommandations issues du Séminaire de Nairobi afin d'assurer l'effectivité du suivi de la Conférence de Durban.

C. Participation aux travaux de la cinquante-septième session de l'Assemblée générale

8. Du 21 au 25 octobre 2002, le Rapporteur spécial a participé aux travaux de la cinquante-septième session de l'Assemblée générale et exposé devant la Troisième Commission son approche du mandat qui lui a été confié. Il a souligné que la lutte contre le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée exige, selon l'esprit et la lettre de la Déclaration et du Programme d'action de Durban, non seulement de poursuivre et confronter les réponses juridiques et politiques, mais également les fondements, processus et mécanismes idéologiques, culturels et mentaux par lesquels se perpétuent et se renouvellent le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée, et ce, afin de proposer des solutions qui touchent aux fondements de ces fléaux.

9. En effet, il semble que la mondialisation s'articule autour des manifestations suivantes: une uniformisation culturelle découlant de la logique d'un marché global qui ignore les identités culturelles et les spécificités nationales, suscitant, en réaction, une tendance à un repli identitaire, la prédominance de valeurs matérialistes de consommation et de compétition, l'érosion des valeurs culturelles et spirituelles. La discrimination se nourrit, se développe, se renouvelle et même se banalise sur ce terrain. C'est dans le domaine de la culture, que la méconnaissance et l'image négative de l'autre se construisent, se justifient et s'expriment en profondeur. Le mépris culturel, conséquence de l'ethnocentrisme – dans son essence une construction idéologique de justification de la discrimination et de la domination – constitue le fondement le plus solide, explicite ou implicite, de la mentalité et des pratiques de discrimination, de racisme, de xénophobie et d'intolérance. La crispation identitaire, réflexe de défense contre l'uniformisation,

exacerbe l'enfermement sur la nation, la communauté, le groupe, l'ethnie, la religion et la manière de vivre, «nos valeurs» contre celles d'autrui. Les nouveaux grands conflits actuels, les plus radicaux, les plus violents et les plus irréductibles constituent, fondamentalement, des antagonismes culturels, dont la caractéristique commune est l'émergence de la figure de l'autre, souvent le voisin d'hier, comme menace, ennemi, radicalement et irréductiblement différent, «étrange étranger».

10. Cette tendance lourde de la mondialisation fait même l'objet d'une théorisation, c'est-à-dire d'une construction intellectuelle de justification et d'explicitation conceptuelle et historique. L'ouvrage *Le choc des civilisations*, de Samuel Huntington*, en est une illustration récente. Dans ce contexte, réalité, imaginaire, fantasmes, stratégies et manipulations de contrôle et de domination se mêlent et faussent la perception objective des problèmes ainsi que l'élaboration de réponses durables à la discrimination.

11. Dans l'esprit de la Déclaration et du Programme d'action de Durban, qui placent désormais la question du racisme et de la discrimination dans un contexte plus global, il est donc nécessaire de concevoir une nouvelle approche dans laquelle l'action doit être éclairée par la réflexion sur les racines profondes, mécanismes, processus, expressions et modalités du racisme et de la discrimination raciale. En d'autres termes, l'élaboration d'instruments et de mécanismes juridiques doit, dans la lutte pour la démocratie politique, sociale et économique, s'appuyer sur une stratégie intellectuelle contre les racines culturelles de la discrimination qui, en profondeur, déterminent les mentalités et les comportements. Aussi, le Rapporteur spécial considère-t-il qu'au cœur de la culture et du comportement discriminatoires, se trouvent deux concepts particulièrement sensibles qui nourrissent et structurent la plupart des conflits culturels actuels: l'instrumentalisation de la diversité et l'exacerbation de l'identité.

12. Le concept de diversité semble de plus en plus être, dans la pensée dominante, la réponse aux risques de l'uniformisation culturelle de la mondialisation et de l'exacerbation identitaire, culturelle, religieuse, ethnique et communautaire. Or, ce concept est idéologiquement et historiquement connoté, et surdéterminé, par son contexte et son terrain politique, philosophique et idéologique. La diversité ne constitue pas en soi une valeur, dans le sens éthique du terme. Ainsi, la notion de diversité est, sur le plan philosophique, lourdement connotée dans les discours philosophiques et scientifiques des XVIII^e et XIX^e siècles. Les travaux scientifiques et philosophiques sur la diversité des espèces et des races ont produit des théories de hiérarchisation. Elles ont servi de socle idéologique et philosophique non seulement à l'élaboration de théories de discriminations raciale, ethnique, sociale et religieuse, mais également de cadre intellectuel de justification à des entreprises d'exploitation et de domination, comme la traite négrière ou la colonisation, auxquelles le document final de la Conférence de Durban se réfère explicitement. C'est précisément cette instrumentalisation de la diversité qui est au cœur de l'ethnocentrisme. Tous les ethnocentrismes se sont construits, historiquement, idéologiquement et culturellement, sur une lecture de la diversité comme différence radicale, inégalité et discrimination de l'autre. Il convient donc, dans le cadre d'une nouvelle stratégie intellectuelle et éthique contre le racisme et la discrimination, de revisiter le concept d'identité.

* Paris, Odile Jacob, 1997.

13. Le Rapporteur spécial a relevé que toute l'histoire des relations entre peuples révèle le caractère décisif du malentendu identitaire. Concept ambivalent, l'identité peut être à la fois affirmation de soi et négation de l'autre. À la lumière de la longue mémoire de l'histoire, et notamment de la dialectique mouvement/rencontre/interactions entre peuples qui a structuré toutes les civilisations et cultures, il a proposé, pour que l'identité ne soit pas un obstacle mais un facteur favorable au dialogue, de promouvoir une nouvelle compréhension de l'identité (ethnique, culturelle ou spirituelle), non plus conçue comme un ghetto ou un enfermement, mais comprise, assumée et pratiquée comme un processus, une rencontre, une synthèse dynamique. Il s'agit, dans un contexte de repliement identitaire où, comme la plupart des conflits actuels le montrent, l'ennemi d'aujourd'hui est le voisin d'hier et de résurgence de vieilles et de nouvelles formes de racisme, discrimination et xénophobie, de donner à voir et à comprendre que l'identité est texture, maillage, mouvement. L'identité exprimerait donc cette alchimie mystérieuse par laquelle, dans la dialectique du donner et du recevoir, un peuple avec son génie propre, à travers des processus complexes, souvent aléatoires, reçoit, transforme et fait siennes des influences venues d'ailleurs.

14. Il s'agit, en dernière analyse, de promouvoir l'idée que l'identité peut être fondatrice d'une éthique, d'une redécouverte de la proximité de l'autre et donc du dialogue.

15. Dans cet esprit, une stratégie durable de déracinement de la culture et de l'idéologie de la discrimination pourrait s'inspirer de la leçon fondamentale de la biodiversité, selon laquelle l'existence et l'interaction d'espèces différentes est source et condition de vie et où la disparition de toute espèce est mortelle pour l'ensemble de l'écosystème. Transposer sur le plan du «vivre ensemble», cette leçon de la biodiversité doit se traduire par une nouvelle vision sociale fondée sur la dialectique de l'unité et de la diversité ainsi que sur la compréhension et la promotion de la valeur de l'interfécondation des cultures, peuples, ethnies et religions comme condition essentielle de la vitalité, voire de la survie de toute société. Le dialogue des cultures et des civilisations serait ainsi l'expression d'une sorte de «bioculture».

16. L'élimination de la discrimination implique, en conséquence, la transformation de la diversité, un concept historiquement et idéologiquement connoté, en une valeur qui, tout en préservant son essence plurielle, lie dialectiquement unité et diversité. Cette valeur, c'est le pluralisme.

17. Le pluralisme ethnique, culturel, social et spirituel constitue une valeur fondamentale pour le combat contre toutes les formes de discrimination, notamment dans le contexte de la mondialisation. Le pluralisme pourrait être défini comme la reconnaissance, la protection, la promotion et le respect de la diversité. Le pluralisme exprime, dans son sens le plus profond, la reconnaissance et la protection des spécificités ethniques, culturelles et spirituelles en même temps que l'acceptation de valeurs qui, dans une société déterminée, transcendent ces spécificités. C'est dans ce sens que le pluralisme constitue la valeur opératoire de la dialectique unité/diversité, qui est le socle le plus solide pour l'équilibre et l'harmonie de toute société multiculturelle. La promotion du pluralisme pourrait ainsi constituer la valeur centrale autour de laquelle une stratégie d'éradication de la discrimination, sous toutes ses formes, devrait se construire. Une stratégie globale implique que le pluralisme, que le Rapporteur spécial se propose de définir comme reconnaissance, promotion, protection et respect de la diversité, fasse l'objet de mesures concrètes, démocratiquement élaborées sur les plans du droit, de l'éducation,

de l'information et de la communication, et se traduise sur le terrain social où s'exprime la discrimination (emploi, logement, santé).

18. Dans cette nouvelle stratégie, les instruments intellectuels de lutte contre le racisme, la xénophobie et la discrimination pourraient se structurer autour de l'histoire, de l'éducation et des échanges économiques:

- L'histoire est le théâtre ou le champ clos où les cultures, les civilisations et les peuples ont construit leur identité et leurs rapports à l'autre. C'est sur ce terrain, fondateur de tous les malentendus et antagonismes, des amitiés comme des inimitiés, qu'il faut d'abord porter l'attention dans la perspective du dialogue des cultures et des civilisations. Le terrain de la mémoire et de la longue mémoire de l'histoire permet de remonter aux sources profondes des processus, mécanismes et expressions du dialogue ou du conflit. Il s'agit donc de la révision d'urgence, par chaque peuple et par tous les peuples ensemble, de l'écriture, du contenu et de l'enseignement de l'histoire comme facteur fondamental du dialogue.
- L'éducation et l'enseignement, dans le long terme, constituent les voies royales de la transformation des esprits: c'est là que le savoir, les connaissances et les valeurs se construisent. C'est là aussi que l'image et la perception de l'autre se transmettent et s'enracinent. C'est donc là qu'il faut inscrire en profondeur l'éthique du pluralisme et du dialogue. L'éducation interculturelle constitue en effet une catharsis qui oblige chaque peuple et chaque culture à un regard critique sur soi, une remise en question des certitudes et un éclatement des clôtures et enfermements. Quant à la communication, par laquelle l'image de soi et de l'autre se construit et se transmet, elle doit être également interculturelle afin d'exprimer concrètement la nécessité de l'échange et du dialogue dans le sens de la belle formule de Sean Mac Bride: «Voix multiples, un seul monde».
- Les échanges économiques constituent également un instrument privilégié du dialogue: le commerce a été de tous temps et dans tous les continents un vecteur de rencontre, de diffusion et d'interactions culturelles, artistiques et spirituelles. Il s'agit donc d'aller au-delà des théories séduisantes mais fausses d'antagonisme entre culture et commerce et d'inscrire la valeur du dialogue dans les replis profonds de l'échange qui est au cœur du commerce. C'est dans ce contexte qu'il est urgent de souligner l'émergence insidieuse d'un nouveau discours de discrimination avec des théories, explicites ou implicites, expliquant le sous-développement par l'existence et le poids, dans les sociétés concernées, de valeurs et de mentalités archaïques et arriérées, contraires à la «modernité».

Développement et croissance ne devraient donc plus répondre à une quelconque logique ou modèle de marché, mais permettre de traduire la polyphonie des manières d'être et de vivre. En dernière analyse, l'enjeu du dialogue des cultures et des civilisations devrait constituer un facteur incontournable de négociation sur le commerce et l'économie mondiale. L'éthique culturelle serait ainsi de nature à atténuer les dimensions négatives de la loi du marché.

Dans le cadre de cette stratégie, une attention particulière sera portée aux terrains riches de rencontres et d'interactions susceptibles de nourrir ou d'entraver le racisme, la discrimination et la xénophobie et de favoriser le dialogue des cultures, tels le tourisme, l'immigration et le sport.

19. Le Rapporteur spécial se propose, en conséquence, les priorités suivantes:

- L'application vigilante et complète du document final de la Conférence de Durban: Déclaration et Programme d'action. Il lui servira de référence et de guide pour le choix des régions et pays devant faire l'objet d'enquêtes et d'études pour son rapport annuel à la Commission et à l'Assemblée générale.
- Le lien entre lutte contre le racisme, la discrimination et la xénophobie et la promotion du dialogue entre civilisations, cultures et religions.
- Une enquête approfondie sur la question récurrente et inquiétante du racisme dans le sport, en étroite coopération avec les instances compétentes, tels le Comité international olympique (CIO) et la Fédération internationale de football association (FIFA).
- Des missions en priorité dans les pays et régions où la gravité de la situation et les pratiques de discrimination requièrent des actions d'urgence.
- Le rapport sur la situation des populations musulmanes et arabes dans diverses régions du monde à la suite des événements du 11 septembre 2001 soumis conformément à la résolution 2002/9 de la Commission (E/CN.4/2003/23).

20. En marge de la session de l'Assemblée générale, le Rapporteur spécial a eu des consultations avec des représentants d'États, d'organisations intergouvernementales et d'organisations non gouvernementales (ONG). À Washington, il a eu des entretiens avec des membres de l'Organisation des États américains afin de mieux coopérer avec cette organisation pour le suivi de la Conférence de Durban, notamment au projet, particulièrement significatif dans une région où se déroulent des processus complexes et profonds de multiculturalisme, d'élaboration d'une convention interaméricaine contre la discrimination raciale. S'agissant des contacts avec des organisations de défense des droits de l'homme, le Rapporteur, avec l'appui particulièrement efficace de l'International Human Rights Law Group, a eu un large échange de vues, d'informations et de suggestions, pour la mise en œuvre de son mandat et le suivi de la Conférence de Durban.

D. Participation à la Conférence mondiale des Africains et descendants d'Africains contre le racisme

21. Le 2 septembre 2002, le Rapporteur spécial a été invité par le Comité central d'organisation du secrétariat de la Conférence mondiale des Africains et descendants d'Africains contre le racisme à participer à une conférence de suivi de la Conférence mondiale contre le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée, du 2 au 6 octobre 2002 à Bridgetown. Selon les organisateurs, la Conférence mondiale des Africains et descendants d'Africains contre le racisme avait pour objet de définir des stratégies concernant

la mise en œuvre du Programme d'action de Durban, d'échanger des informations sur les programmes et projets efficaces, et de créer une organisation non gouvernementale panafricaine mondiale qui permettrait aux membres de la diaspora africaine de travailler ensemble.

22. À l'ouverture de la Conférence, le Rapporteur spécial s'est déclaré consterné par le fait qu'un groupe d'ONG ait présenté une motion demandant, sur la base de critères raciaux explicites, l'exclusion de participants dûment invités et enregistrés. En séance plénière, le Rapporteur spécial a été le premier à exprimer sa forte opposition à cette motion qui, selon lui, était contraire au principe fondamental proclamé par les Nations Unies, à savoir la protection contre la discrimination fondée sur la race, la nationalité ou l'origine ethnique, et allait donc à l'encontre de l'esprit et de l'objectif même de la Conférence mondiale contre le racisme, dont cette manifestation se proposait d'assurer le suivi. Le Rapporteur spécial a officiellement fait savoir qu'il quitterait la Conférence si la motion était approuvée. Les participants ont été invités à se prononcer sur la motion, qui a été acceptée. Certains participants, y compris des interprètes, des journalistes et des représentants d'ONG, ont donc été exclus de la plénière et les délégations multiraciales de pays ont été divisées selon des critères raciaux.

23. En conséquence, le 3 octobre 2002, le Gouvernement de la Barbade, qui avait joué un rôle très actif lors de la Conférence de Durban, en mettant notamment des locaux à la disposition de la Conférence, et qui mène une politique d'instauration d'une société multiraciale, a publié un communiqué de presse dans lequel il a fermement condamné la décision adoptée à la Conférence. Dans une note officielle communiquée au Président du Comité central d'organisation de la Conférence, le 4 octobre 2002, le coordonnateur résident des Nations Unies à la Barbade et le Rapporteur spécial ont fait savoir qu'ils ne participeraient plus à la Conférence et qu'ils retireraient leur soutien.

E. Participation à la Semaine brésilienne de la conscience noire

24. Le 21 novembre 2002, à l'invitation du Gouvernement brésilien, le Rapporteur spécial a participé, à Brasilia, à l'inauguration du Centre national d'information et de référence sur la culture afro-brésilienne avec le Président Fernando Enrique Cardoso et le Président de la Banque mondiale, M. John Wolfensohn, en visite au Brésil. Le Rapporteur estime que cette invitation constitue un message symbolique remarquable de la part d'un pays déterminé à faire face et trouver des solutions profondes et durables à un héritage historique profondément marqué par la discrimination raciale, pilier du système esclavagiste. Les représentants de la communauté afro-brésilienne, notamment de la Fondation Palmares, que le Rapporteur spécial a également rencontrés, ont confirmé cette évaluation. Le Brésil a en effet lancé un vaste programme d'action positive ou de mesures correctives en faveur de ses populations d'ascendance africaine, notamment dans le domaine de l'éducation, de l'accès aux emplois publics, en particulier les carrières diplomatiques. Plusieurs lois et arrêtés adoptés récemment au niveau fédéral (dont la loi n° 10558 du 13 novembre 2002, et l'arrêté n° 484 du 22 août 2002 du Ministère de la culture) prévoient des quotas de 20 % de places pour l'accès des Afro-Brésiliens aux universités et aux emplois publics. Le Gouvernement entend également influencer sur les entreprises du secteur public en octroyant à titre préférentiel des contrats aux entreprises qui s'emploient à mettre en œuvre cette politique de mesures correctives. Beaucoup reste à faire, et le Rapporteur spécial se propose de suivre avec attention et d'encourager la poursuite de ces efforts.

F. Participation à la première session du Groupe de travail d'experts sur les personnes d'ascendance africaine

25. Du 25 au 29 novembre 2002, le Rapporteur spécial a été invité à participer à la première session du Groupe de travail d'experts sur les personnes d'ascendance africaine. Il a notamment éclairé le Groupe de travail sur la question importante et complexe des réparations pour les populations d'ascendance africaine. Il a fait valoir que le principe des réparations ne devrait pas être exclu en raison de nombreux précédents, notamment la réparation accordée par les esclavagistes à la suite de l'abolition de l'esclavage, les sanctions financières imposées par la France à Haïti pendant de nombreuses années et les réparations consenties au peuple juif après la Seconde Guerre mondiale. Toutefois, il a estimé que la priorité devrait être donnée à la réparation morale. En cela, la Conférence de Durban a franchi une première étape en reconnaissant que l'esclavage et la traite des esclaves constituent des crimes contre l'humanité. La seconde réparation est de nature historique et vise l'ouverture et l'accès aux archives, pour prendre la mesure, faire connaître et enseigner, de manière universelle, l'histoire complète des causes profondes et des conditions matérielles et humaines de ce que l'historien français Jean-Michel Deveau a appelé «la plus grande tragédie de l'histoire humaine par sa durée et son ampleur». Il sera alors possible de démontrer le lien direct entre l'esclavage et le sous-développement de l'Afrique, des Caraïbes et de l'Amérique du Sud (par son impact démographique sur plusieurs millions de personnes et la totale et profonde déstabilisation, pendant quatre siècles, du système productif du continent africain) et de lier cette donnée majeure avec les négociations sur le développement et notamment la question de la dette. Enfin, la troisième réparation devra être la réparation de mémoire par l'identification, la restauration et la promotion de tous les lieux de mémoire de la traite et de l'esclavage (forts, châteaux, bateaux, cimetières, marchés d'esclaves) et les héritages intangibles (tous les systèmes culturels élaborés par les personnes réduites en esclavage pour résister et survivre).

26. Cette triple approche devrait permettre de déterminer les responsabilités de tous ceux qui ont conçu, animé et profité du système esclavagiste, en Europe et dans les Amériques et les Caraïbes, ainsi que des systèmes féodaux qui leur ont servi de complices et de relais en Afrique.

27. Le Rapporteur spécial s'est également prononcé sur la définition de la notion de personnes d'ascendance africaine et a estimé qu'elle devrait inclure tous les membres de la diaspora africaine présente aussi bien aux Amériques qu'en Europe et en Asie.

II. MANIFESTATIONS CONTEMPORAINES DU RACISME, DE LA DISCRIMINATION RACIALE, DE LA XÉNOPHOBIE ET DE L'INTOLÉRANCE QUI Y EST ASSOCIÉE

A. Racisme, discrimination raciale, xénophobie en politique

I. Situation en Côte d'Ivoire

28. Depuis le 19 octobre 2002, la Côte d'Ivoire est confrontée à un conflit complexe qui, selon les allégations reçues par le Rapporteur spécial, serait amplifié par l'exacerbation de tensions interethniques et des manifestations de xénophobie.

29. Certains secteurs de la population ivoirienne se seraient livrés à des incitations à la haine ethnique, à des exactions contre des populations du nord et à la xénophobie à l'égard des étrangers. Le 24 octobre 2002, le Rapporteur spécial, conjointement avec le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, a publié un communiqué sur la situation en Côte d'Ivoire et a appelé les autorités ivoiriennes à redoubler de vigilance contre les risques de conflits ethniques et à prendre d'urgence les mesures nécessaires pour mettre un terme aux agissements qui s'inspirent d'idées ou de théories fondées sur la supériorité d'un groupe de personnes, d'une certaine couleur ou d'une certaine origine ethnique. Depuis lors, des organisations de défense des droits de l'homme, en Afrique [par exemple Rencontre africaine pour la défense des droits de l'homme (Raddho)] et en dehors (par exemple Human Rights Watch), ont attesté, après enquête, de massacres et d'assassinats qui, par leur nombre et l'origine ethnique ou communautaire de leurs victimes, nécessitent une intervention urgente de la communauté internationale.

30. Le 2 décembre 2002, le Rapporteur spécial a écrit aux autorités ivoiriennes pour solliciter une visite *in situ* en vue de déterminer, dans le cadre de son mandat, la réalité de la situation en ce qui concerne la discrimination, la xénophobie et l'intolérance qui y est associée et d'en rendre compte à la communauté internationale.

2. Situation au Guyana

31. Le Rapporteur spécial a reçu des informations de diverses sources concernant la détérioration de la situation politique au Guyana à la suite des élections présidentielles et parlementaires tenues en mars 2001. Le Parti progressiste populaire/civique (PPP/C) a remporté les élections et son chef, M. Bharrat Jagdeo, a été élu Président du Guyana pour un troisième quinquennat. La période postélectorale a été marquée par des tensions sociales et des flambées de violence, le principal parti d'opposition, le Congrès national populaire/Réforme (PNC/R), dirigé par M. Desmond Hoyte, affirmant que la procédure électorale était inconstitutionnelle. En fait, depuis l'indépendance du Guyana, le climat politique se caractérise par des tensions, héritées de l'esclavage et de la colonisation, entre les deux principaux groupes ethniques, à savoir les Indo-Guyaniens (environ 49 % des 700 000 habitants du pays) et les Afro-Guyaniens (environ 35 %). Les clivages politiques sont fortement influencés par les différences ethniques, le PPP/C étant principalement soutenu par les Indo-Guyaniens et le PNC/R par les Afro-Guyaniens.

32. La situation actuelle du Guyana a ses origines dans le passé colonial du pays. En effet, il semble que les différentes communautés ayant peuplé le Guyana à la suite du transfert forcé de main-d'œuvre africaine et indienne opéré sous l'Empire britannique, ne sont pas encore parvenues à surmonter de manière pacifique leurs rivalités pour le contrôle du pouvoir et la gestion équitable des ressources du pays. Le Rapporteur spécial est sérieusement préoccupé par les risques d'aggravation du conflit interethnique au Guyana et a fait part de ses craintes aux autorités guyaniennes ainsi que de son souhait d'entreprendre une visite sur place. Il a par ailleurs envoyé une communication au Gouvernement guyanien faisant état des allégations qu'il a reçues.

B. Discrimination raciale à l'égard des Roms/Sintis/ Tsiganes/gens du voyage

33. Les Roms sont victimes de discrimination raciale dans presque tous les secteurs de la vie publique, l'éducation, l'emploi, le logement, l'accès aux espaces publics et la citoyenneté. Dans un certain nombre de pays, ils sont victimes de la brutalité policière et de discrimination dans le cadre des procédures judiciaires. La stigmatisation des Roms dans certains pays les empêche d'exercer leurs droits fondamentaux au même titre que les autres citoyens. L'intolérance à l'égard de leur culture et de leurs coutumes fait qu'ils sont marginalisés au sein de la société.

34. En Europe, les Roms seraient systématiquement refoulés à l'entrée des restaurants, discothèques, stades et autres lieux publics. Le Centre européen pour les droits des Roms a indiqué que les Roms sont victimes de discrimination dans le système judiciaire, et en particulier que les actes de violence commis à leur encontre ne sont pas correctement sanctionnés dans plusieurs pays. En outre, nombre de rapports sur la situation des Roms montrent que, comparés au reste de la population, ils risquent davantage d'être condamnés à de lourdes peines pour les crimes qu'ils ont commis, de rester plus longtemps en détention provisoire et d'avoir des difficultés à se faire représenter par un conseil. Les groupes de défense des droits de l'homme ont aussi constaté que les Roms sont généralement victimes de discrimination à l'école et font souvent l'objet d'expulsions forcées et de ségrégation dans le domaine du logement.

35. Le 1^{er} octobre 2002, le Conseil de l'Europe a publié son rapport final sur le Forum européen des Roms, y compris les recommandations du Groupe exploratoire informel chargé d'étudier la création d'un conseil consultatif paneuropéen des Roms. Cette initiative a pour but d'étudier les moyens de faire participer les Roms aux décisions qui les concernent, en instituant une sorte d'assemblée consultative pour les représenter au niveau paneuropéen. Le rapport susmentionné traite des dimensions et de la composition du Forum européen des Roms et des procédures de sélection de ses membres, des liens institutionnels entre le Forum et le Conseil de l'Europe, ainsi que des domaines de coopération avec des organisations internationales comme l'Organisation pour la sécurité et la coopération en Europe et l'Organisation des Nations Unies.

36. Au niveau international, le Comité pour l'élimination de la discrimination raciale, le Comité des droits de l'homme et d'autres organes conventionnels ont traité de la question de la discrimination à l'égard des Roms dans un certain nombre d'observations finales sur les rapports présentés par les États parties². En outre, à sa cinquante-septième session, le 16 août 2000, le Comité pour l'élimination de la discrimination raciale a adopté la recommandation générale n° XXVI qui porte précisément sur la question de la discrimination à l'égard des Roms. Le Comité y énumère un certain nombre de mesures que les États peuvent adopter pour combattre la discrimination à l'égard des Roms et leur offrir une protection. Il suggère en particulier de prendre des mesures pour lutter contre la violence raciale, pour améliorer les conditions de vie, dans le domaine des médias et concernant la participation à la vie

² Voir par exemple les observations finales du Comité des droits de l'homme concernant la République tchèque en 2001 (CCPR/CO/72/CZE) et la Hongrie en 2002 (CCPR/CO/74/HUN), ainsi que celles du Comité des droits économiques, sociaux et culturels concernant la Croatie en 2001 (E/C.12/1/Add.73).

publique, et demande aux États parties d'inclure, dans leurs rapports périodiques, des données relatives aux communautés roms relevant de leur juridiction.

37. Le Rapporteur spécial se félicite du grand intérêt actuellement accordé à la situation des populations roms dans de nombreux pays européens, situation qu'il a contribué à mettre en lumière dans le cadre de son mandat. Les mesures importantes prises au niveau régional pour améliorer la participation des Roms à la prise de décisions et les recommandations formulées au niveau international concernant la protection de leurs droits sont des tendances encourageantes que le Rapporteur spécial entend appuyer. Il continuera donc à suivre la situation des Roms et à faire rapport à la Commission des droits de l'homme.

C. Antisémitisme

38. Le Rapporteur spécial a reçu du Gouvernement d'Israël ainsi que de plusieurs ONG juives des allégations faisant état de la diffusion à grande échelle au Moyen-Orient et en Europe des *Protocoles des Sages de Sion*. Ce livre notoirement antisémite est un faux qui aurait été forgé au début du XX^e siècle pour rendre compte d'un complot, ourdi par des juifs au cours d'un congrès sioniste, pour subvertir la chrétienté par le sabotage et dominer le monde. Ce document serait apparu pour la première fois en 1905 en Russie et aurait été largement distribué hors de ce pays au cours du XX^e siècle, nourrissant l'antisémitisme. Dans un pays du Moyen-Orient, une chaîne de télévision privée aurait produit et diffusé les *Protocoles des Sages de Sion* en une série de 41 épisodes. Le Rapporteur spécial a saisi les autorités des pays concernés par cette propagande antisémite.

III. ALLÉGATIONS TRAITÉES PAR LE RAPPORTEUR SPÉCIAL

39. Au cours de l'année 2002, le Rapporteur spécial a examiné des allégations relatives à son mandat concernant les pays suivants: Allemagne, Espagne, Fédération de Russie, Grèce, Guyana et Royaume-Uni de Grande-Bretagne et d'Irlande du Nord. Les résumés de ces allégations et des réponses reçues des gouvernements des pays concernés figurent dans l'annexe au présent rapport, dans la langue dans laquelle ils ont été soumis.

IV. CONCLUSIONS ET RECOMMANDATIONS

40. En conclusion, le Rapporteur spécial souligne que ses premiers contacts avec des représentants de gouvernements et d'organisations intergouvernementales et non gouvernementales ont témoigné de l'urgence de mettre en œuvre la Déclaration et le Programme d'action de Durban pour surmonter la recrudescence alarmante des manifestations de racisme ordinaire et l'apparition de nouvelles formes insidieuses de discrimination et de racisme. Le Rapporteur spécial souligne également, dans ce contexte, la récurrence particulièrement inquiétante de situations qui, par le mélange conscient ou l'amalgame entre race, religion et culture, requièrent des réponses urgentes et en profondeur. Le Rapporteur spécial propose, en conséquence, à la lumière de la Déclaration et du Programme d'action de Durban, une double stratégie: juridique et politique (par la ratification et la mise en œuvre de tous les instruments et accords internationaux pertinents), intellectuelle et éthique (par une meilleure connaissance et compréhension des racines profondes, des processus et mécanismes de la culture et de la mentalité de la discrimination). Il s'agit, par la réflexion et l'action, de lier intimement, d'une part, la lutte

contre le racisme, la discrimination, la xénophobie et l'intolérance et, d'autre part, la promotion urgente du dialogue entre cultures, civilisations et religions.

Les recommandations suivantes sont proposées, à cet effet, à la Commission des droits de l'homme:

- **Promouvoir la complémentarité et la coopération entre tous les mécanismes de lutte contre le racisme, la discrimination, la xénophobie et l'intolérance, notamment ceux relatifs à la mise en œuvre de la Déclaration et du Programme d'action de Durban, ainsi qu'entre le Comité pour l'élimination de la discrimination raciale et le Rapporteur spécial et entre rapporteurs spéciaux;**
- **Accorder une plus grande attention aux situations et pratiques de discrimination à l'égard des non-nationaux, des migrants et des réfugiés;**
- **Accorder, dans les délibérations de la Commission, une plus grande place aux racines profondes, intellectuelles et éthiques de la culture et de la mentalité du racisme et de la discrimination;**
- **Accorder une place prépondérante au dialogue des civilisations, des cultures et des religions, comme maïeutique de dépassement de toutes les formes de discrimination, de rejet et d'intolérance;**
- **Privilégier l'éducation dans toutes ses dimensions (enseignement, notamment de l'histoire, de l'éthique, des droits de l'homme comme éthique universelle, des cultures, des valeurs communes de toutes les religions et traditions spirituelles, et l'information et la communication interculturelles;**
- **Promouvoir la valeur féconde du pluralisme, compris comme la reconnaissance, l'acceptation, le respect et la promotion de la diversité. Promouvoir, dans ce contexte, le concept d'identité, concept ambivalent, qui peut être affirmation légitime d'une spécificité mais également négation de l'autre.**

Annex

**REPLIES TO ALLEGATIONS TRANSMITTED TO GOVERNMENTS
BY THE SPECIAL RAPPORTEUR**

A. Germany

**1. Joint communication of 12 September 2002, sent by the
Special Rapporteur on the question of torture and the
Special Rapporteur on the human rights of migrants**

1. **Denis Mwakapi**, a 33-year-old man originally from Kenya, and his white German wife, Ursula Mwakapi, were reportedly on their way to a bar in Nuremberg's city centre during a pre-Christmas celebration on 23 December 2000 at around 2 a.m., when they were approached by two American men and their two female companions, who believed that the black African was in some way harassing a white German woman. Denis Mwakapi had reportedly been talking loudly in an animated fashion but not in a manner which could have been construed as being aggressive. The two American men are said to have begun punching and hitting Denis Mwakapi before his wife could explain to them that he was her husband. After Ursula Mwakapi was able to separate the men from her husband and explain their relationship to them, the American men were said to have apologized. Denis Mwakapi reportedly accepted their apologies, even though he is said to have sustained a swollen upper lip during the assault. Three police vehicles reportedly arrived at the scene on *Luitpold Straße* very shortly after the two groups of people had begun to disperse. Two police officers are said to have approached the American men and allowed them to leave after checking their identity. They then reportedly approached Denis Mwakapi and his wife, paying little attention to Denis Mwakapi's complaint that the fight had ensued after he had been assaulted by the two American men, reportedly causing him great indignation. His wife also reportedly attempted to inform the police officers of the background to the incident. The police officers are said to have arrested Denis Mwakapi after he became agitated and refused to calm down. One of the police officers (whose name is known to the Special Rapporteurs) is alleged to have taken hold of Denis Mwakapi's right arm and forcefully twisted it behind his back in order to effect the arrest, fracturing Denis Mwakapi's lower right arm in the process. The police officers are alleged to have subsequently handcuffed Denis Mwakapi and placed him in a police vehicle in spite of the detainee's repeated requests for a doctor and cries of pain. Denis Mwakapi was then reportedly driven to *Nürnberg Mitte* police station, where Denis and Ursula Mwakapi's renewed requests that Denis Mwakapi be medically examined were allegedly refused. Police officers placed him in an overnight holding cell where he was held until his release at around 10.30 a.m. on 23 December 2000. A medical examination conducted on 23 December 2000 at Nuremberg is said to have revealed that he suffered a fractured arm which required immediate medical attention. (...) As a result of his treatment by the police, Denis Mwakapi reportedly lodged with the Public Prosecutor's office criminal complaints of physical assault and denial of assistance against the police officers. The office of the Public Prosecutor is said to have informed Denis Mwakapi's former lawyer on 4 July 2001 that it had terminated proceedings against the two police officers. A subsequent attempt by Denis Mwakapi's lawyer to have the investigation reopened also reportedly failed. The injury to Denis Mwakapi's arm has reportedly produced long-term effects on his ability to resume work. A report of a medical examination conducted by a Nuremberg doctor in February 2002

reportedly stated that the healing of the arm had been a very drawn-out process and that Denis Mwakapi continued to experience pain when exerting pressure or applying weight to it. (...) The injury has reportedly greatly affected Denis Mwakapi's ability to undertake certain types of employment.

2. **Doviodo Adekou**, a 59-year-old Togolese asylum-seeker, was allegedly ill-treated in the town of Mettmann, North Rhine-Westphalia on 1 October 2001. During the incident, he reportedly sustained a serious injury to his right eye, which resulted in his hospitalization. He was reportedly ill-treated on the morning of 1 October 2001 as police officers attempted to detain him for the purposes of placing him in pre-deportation detention. Doviodo Adekou, who had applied for refugee status in Germany, had an appointment at the Office for Foreigners in Mettmann with one of its employees in order to discuss whether his temporary right to remain in the country would be extended. In the course of the meeting, the employee reportedly informed him that he would be deported on 12 October 2001. Doviodo Adekou reportedly requested that he receive the formal decision in writing, be allowed to consult his legal adviser (*Rechtsbeistand*) and prepare for his departure. A second male police officer reportedly then entered the room and placed a handcuff around Doviodo Adekou's left hand and informed him that he was being taken into custody. The police officer reportedly attempted to handcuff Doviodo Adekou's other hand but had to call two more police officers into the room when his attempts failed. The three police officers allegedly grabbed hold of Doviodo Adekou's arms and pulled him face down onto the floor of the office. While he lay on the floor, one of the police officers is said to have deliberately punched him in the region of his right eye, causing it to bleed heavily. The police officers reportedly subsequently gave up their attempts to handcuff Doviodo Adekou. A senior official at the Office for Foreigners reportedly entered the office and instructed a colleague to call an ambulance, which took Doviodo Adekou to Wuppertal clinic where he was said to have been treated as an inpatient at the clinic for nine days until 9 October 2001. According to a report outlining the medical treatment which Doviodo Adekou underwent at the clinic, written by the eye specialist of the clinic, dated 11 October 2001, Doviodo Adekou was treated for a rupture to the covering of the eye which had caused bleeding in the vitreous humour of the eye. The doctor reportedly stated in the report: "[w]ith such an extremely complicated injury an end to the treatment is at the present time not yet foreseeable". Approximately one week before the incident, Doviodo Adekou underwent an operation on his right eye. However, since suffering the blow to his eye on 1 October 2001, he has reportedly lost all sight in his right eye. Concerns have been expressed that whilst Doviodo Adekou was taken into custody for the purposes of his subsequent deportation, one of the police officers involved in the incident may have ill-treated him, by punching him in the region of his right eye. A complaint of serious criminal assault was said to have been lodged with Mettmann's District Police Authority.

3. **Svetlana Lauer**, who is originally from the former Soviet Union, was reportedly ill-treated by several police officers at her home in Hallstadt, located outside the city of Bamberg, in the afternoon of 20 February 2002. Four police officers were said to have arrived at her apartment at around 3.30 p.m. with a verbal warrant issued by the State Prosecutor's Office to search the apartment for the purpose of securing evidence against her then 17-year-old daughter, Anastasia Lauer. Anastasia Lauer was alleged to have stolen a number of small porcelain figurines from the *REWE-Markt* department store in Hallstadt earlier in the afternoon and was arrested by the police on suspicion of shoplifting. The four police officers reportedly forced their way into her home after she had refused them entry on account of their failure to

produce a written search warrant. She is said to have actively resisted their entry by obstructing their path with her body and arms because she felt that they had no right to enter her home without written permission. While forcing their way into her apartment, the only female police officer among the four officials reportedly grabbed hold of her by the back of the neck and hit her head against an adjacent wall. A second male police officer allegedly grabbed hold of her arm and twisted it behind her back. With his other arm he was alleged to have grabbed hold of her hair and repeatedly hit her head against various doors and walls while leading her through the hallway of the apartment. The two remaining police officers were then said to have aided their colleagues in restraining her and handcuffing her arms behind her back. After Svetlana Lauer spit at the female police officer several times, a second police officer allegedly came to the female police officer's assistance and began hitting Svetlana Lauer. The two police officers were also alleged to have twisted Svetlana Lauer's head back and forth and violently pulled on her handcuffed hands. The upper part of her housecoat was reportedly torn away from her in the process, leaving her in a semi-naked state with her upper body covered only by her bra. The police officers were then reported to have searched Anastasia Lauer's room for the purpose of finding stolen items but were unable to find any evidence. When the police officers decided to leave, they are said to have led her out of the apartment block with her arms restrained behind her back, although by this time the handcuffs had been removed. On the way out of the apartment, Svetlana Lauer reportedly scratched the female police officer in the face after one of her arms became free. The female police officer and a bearded police officer allegedly grabbed hold of her and hit her head against a wall of the apartment. In retaliation, Svetlana Lauer reportedly scratched a male police officer in the face. All four police officers are said to have restrained Svetlana Lauer and to have handcuffed her arms behind her back. One of the male police officers allegedly grabbed hold of her handcuffed hands and dragged her through the hallway of the apartment into a room. He is then alleged to have kicked her and to have hit her head against the floor. The same police officer was then alleged to have placed his foot on her back and continued to hit her as she lay on the floor. After her alleged ill-treatment, the police officers were said to have taken her to the police vehicle parked outside her home in full view of her two children and neighbours in a semi-naked state and without any footwear. The female police officer and her bearded colleague are said to have driven the detainee to Hallstadt police station, where she was later charged with resisting arrest and physically assaulting the police officers. According to a medical report issued on 26 February 2002, Svetlana Lauer's injuries included multiple bruising and grazing to the head, both shoulders, right thorax, back, bottom, arms and legs.

2. Response from the Government of Germany

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

5. **Denis Mwakapi** was taken to Nuremberg Central Police station for clarification of the above-mentioned incident because he was reportedly unwilling to clear up the facts on the spot. Physical coercion was needed during his transfer since he put up resistance to it and behaved aggressively. He was placed in preventive detention after his wife expressed fears that she could not cope with him, in particular due to his drunkenness. When he later complained of pain in his arm some hours later, the concerned police officers did not believe him, based upon the fact that there were no visible signs of injury and that Denis Mwakapi repeatedly expressed his desire to

continue celebrating in the city centre. The investigations carried out by the Public Prosecution Office against the two police officers accused of causing bodily harm, failure to lend assistance and prosecution of innocent persons did not result in facts sufficient to constitute an offence. The behaviour of the accused police officers was considered under these circumstances correct, necessary and proportionate. It is not clear whether the spiral fracture of his right forearm that he sustained is the result of the police officers' coercion or of the fight he previously sustained with the Americans. The Nuremberg-Fürth Public Prosecution Office terminated the investigation proceedings. The appeal against the termination order brought by Denis Mwakapi was not granted by the administrative decision of the Regional Prosecution Office attached to Nuremberg Higher Regional Court. After further investigations were conducted upon application of Denis Mwakapi, the Nuremberg-Fürth Public Prosecution Office terminated again the investigation proceedings and the Regional Prosecution Office attached to Nuremberg Higher Regional Court rejected the appeal against the most recent termination. Finally, his application for a judicial decision in the proceedings to force the Public Prosecution Office to bring criminal charges was rejected as unfounded in a Ruling by the Criminal Division of Nuremberg Higher Regional Court dated 27 May 2002.

6. With regard to the case of **Doviодо Adekou**, the Government informed that in the light of the upcoming deportation date and because of the suspicion, based on his having abandoned his living quarters, that he would seek to avoid his deportation, the Mettmann District Enforcement Officers decided to place him in custody and bring him before a magistrate to examine an arrest warrant for ensuring his deportation. A struggle started between him and officers of the District Administration at the moment of his arrest on 1 October 2002. As a result, the enforcement officers sustained injuries and Doviодо Adekou was seriously wounded on his right eye, which could not be saved. The deportation scheduled for 12 October 2001 was cancelled. An investigation was initiated following Doviодо Adekou's complaint filed on 24 January 2002 at the District of Mettmann Police Authority and based on coercion and serious bodily harm during the performance of official duties. A date for the completion of the investigation could not be foreseen at the time the Government submitted its response. The Government has also informed that after this incident, it has been decided by the District Administration that arrests would only be carried out in consultation with police officers and that the enforcement officers would also be trained more thoroughly in the area of arrest techniques.

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

3. Observations of the Special Rapporteur

8. The Special Rapporteur appreciates the prompt and detailed response that the Government of Germany provided in regard to the three allegations presented. In the case of Doviado Adekou, the Special Rapporteur welcomes the information stating that after the incident the District Administration adopted measures to improve the conditions under which arrests are carried out, including appropriate training in arrest techniques. The Special Rapporteur takes the opportunity to recommend that such efforts be accompanied by additional measures aimed at ensuring that “police and immigration authorities treat migrants in a dignified and non-discriminatory manner, in accordance with international standards, through, inter alia, organizing specialized training courses for administrators, police officers, immigration officials and other interested groups”, in accordance with the Programme of Action of the World Conference Against Racism (art. 30 (e)). The Special Rapporteur would appreciate receiving the final conclusions of the investigations currently under way both in the cases of both Doviado Adekou and Svetlana Lauer.

B. Spain

1. Joint communications submitted on 4 September 2002 by the Special Rapporteur on the question of torture and the Special Rapporteur on the human rights of migrants

9. The Special Rapporteurs have received information on the following cases.

10. **Boaventura Simão Vaz**, a national of Guinea-Bissau and a mechanic by trade, alleged that he was arrested on 1 March 2001 while sitting in the company of two other persons in a Madrid bar. According to the information received, a plain clothes National Police officer asked him for his papers. He was then pushed outside, handcuffed and taken to a police station, where he was informed that he was suspected of drug trafficking. He denied the accusation. He claims to have witnessed, on the premises of the police station, the beating of another person in police custody, whom he had tried to defend. Three officers then punched and kicked him, threw him to the ground and threatened him with a weapon. They also subjected him to racial slurs, calling him a “dirty Black”. Boaventura Simão Vaz states that he did not receive any medical assistance at the police station. He subsequently went to the emergency room of San Carlos hospital, where he complained of a sharp pain in the left side of his chest. On 7 March 2001, the hospital drew up a report stating that he had five broken ribs and internal haemorrhaging; he was hospitalized for several days. On 13 March, the victim lodged a complaint with a Madrid court.

11. **Marta Elena Arce**, a Costa Rican anthropologist living in Catalonia since 1999, claims that she was arrested for having assaulted a police officer on 2 April 2001, in the Plaza de Cataluña in Barcelona, where she met other immigrants every day. Before her arrest, she claims to have taken part in the occupation of the Church of Santa María del Pi in Barcelona; the occupation was organized by immigrants to protest the Government’s immigration policy. On the day of her arrest, four or five police officers who had been informed of the theft of a mobile phone approached the group of immigrants and asked them to show their mobile phones. Marta Elena Arce asked why she and her friends had been asked to produce their mobile phones, and an argument ensued. She claims that the police officers insulted her, calling her a “dirty

Latino”, “whore” and “retard”, and struck her. She was taken to the Rambla Nova police station in the Ciutat Vella district before she was transferred, at her request, to hospital del Mar, in the Drassanes area, where she was issued a medical certificate. The four police officers who had taken her to the police station accused her of having assaulted one officer with a gas bomb. Marta Elena Arce claims that the bomb was in her pocket and went off when she was thrown to the ground. Marta Elena Arce states that she was detained at the police station until 11 p.m. the next day. She was then transferred to the La Verneda detention centre for foreigners, where she spent the night before being brought before a judge. She was released in the afternoon of the same day. According to the source, during her stay in the police station, Marta Arce had had to sleep on a mattress on the floor; she claims that, the first night, she had not been given a blanket and had not been allowed to telephone a lawyer or close friends or relatives. The Special Rapporteurs have been informed that she was not able to see a lawyer until 4 April.

12. **Ibrahim Saad Llah**, a Palestinian born in the Libyan Arab Jamahiriya, claims that he was assaulted by a National Police officer on 9 May 2001 on the premises of the police station where he had gone to apply for permission to travel from Ceuta to the Spanish mainland. He claims that two police officers beat him with truncheons while two others punched him. He was beaten on the side, the legs, the head and the chest and held at the police station for two days. According to the source, there was an attempt to expel him to Morocco but the Moroccan authorities refused to accept him. After this attempt, he was abandoned in the immediate vicinity of Sidi Embarek, in Los Rosales area. Passers-by took him to the Red Cross hospital, which drew up a medical report that was later submitted to the court. Ibrahim Saad Llah has lodged a complaint with the Ceuta court against four Spanish police officers.

13. **Abdelhak Archani**, a Moroccan national residing in the commune of Badalona in Barcelona, claims that, in July 2001, he was apprehended and beaten by three plainclothes police officers. According to the information received, the incident took place when the police officers sought to interrogate Abdelhak Archani about a stolen passport. They made him get into a vehicle that they stopped on the side of a motorway. They beat him with a truncheon and made racist insults. Abdelhak Archani was admitted to Holy Spirit hospital in Santa Coloma de Gramanet. The police officers later claimed that they had found him drunk on a public thoroughfare and that they had merely taken him home. The Special Rapporteurs have learned that a judicial inquiry into the incident has been opened, and they would like to be kept informed of the progress and the outcome of that procedure.

14. **Nouredine Hathout**, a Moroccan national managing an export company based in Granada, claims that he was insulted and assaulted by three police officers in Málaga on 24 November 2001. According to the information received by the Special Rapporteurs, Nouredine Hathout was waiting at the Málaga bus station when he saw an elderly Moroccan being manhandled by a young man. He claims that he and some others intervened but that the young man then identified himself as a police officer. Nouredine Hathout explained to his compatriot, in Arabic, that he was dealing with a police officer and should not put up any resistance. The man was taken to a local police station, from which he emerged a short while later claiming that he had been insulted and that another Moroccan, who did not speak Spanish, was still inside. Nouredine Hathout knocked at the door in order to offer his services as an interpreter but a police officer advised him not to interfere, pushed him and asked for his papers. When Nouredine Hathout protested, the officer grabbed him by the chest and pushed him

against the wall, then immediately dragged him inside. There, three officers subjected him to racist insults, searched him, accused him of drug trafficking and threatened to halt the procedure for obtaining Spanish nationality that he had begun. Nouredine Hathout was then taken to a police station where, for over an hour, he was denied the right to contact a lawyer and to be taken to a hospital. Later, other officers arrived and he was taken to Carlos Haya clinic, where he underwent a medical examination that revealed contusions and grazing on both sides of the neck. He was then taken back to the police station where he was beaten again. (...) On 26 November 2001, a complaint was lodged with the duty judge of Granada against the officers involved.

15. According to the information received by the Special Rapporteurs, on 22 January 2002 the police launched an attack against immigrants without papers who were demonstrating peacefully in the Alcazaba, the fortress of Almería, in order to obtain residence and work permits. The confrontation resulted in 11 arrests and 20 wounded. The police used tear gas and shot rubber bullets in order to disperse the 300-odd demonstrators. The persons who were arrested were taken to a police station where they were beaten again; they were not allowed access to toilets and received no food or blankets for 48 hours. According to the Government, only two persons were slightly wounded; however, the Red Cross stated that up to 20 persons had suffered from the effects of tear gas, or had been beaten by the police or trampled by other demonstrators fleeing the police charge. Deportation orders had been issued against the illegal immigrants in question, and eight Moroccan nationals were transferred to the detention centre for foreigners in Valencia, where they remained for four days, without medical care, in spite of their pitiable state.

16. The Special Rapporteurs have also received information about the living conditions in a number of holding centres for young immigrants, which are managed by the regional departments of social welfare (*consejerías de bienestar social*) in Ceuta and Melilla, particularly at the Fort Purísima Concepción centre in Melilla and the San Antonio centre in Ceuta, where overcrowding is said to be extreme.* The Special Rapporteurs have received information concerning the following individual cases.

17. **Mohamed Garbagui**, age 13, was arrested in the street by a Ceuta police patrol, which took him to the San Antonio centre. There, two supervision officers took him to a punishment cell where they undressed him, struck him with their bare hands and a stick, and slapped him. They did not give him enough to eat, confiscated his pillow and forced him to sleep on the ground. The boy escaped from the centre and, accompanied by a representative of a non-governmental organization, went to a clinic, where he received medical treatment for his wounds. On 29 July 2001, he lodged a complaint with the second examining court of Ceuta. He lodged another complaint with the Ceuta Directorate-General of Police. The Special Rapporteurs would like information on the progress of these proceedings. It would not be the first time that minors in holding centres were subjected to ill-treatment. According to the information received, in 2000 the Ceuta public prosecutor for minors began an inquiry into accusations of sexual violence against at least 12 children in the centre. The Special Rapporteurs would also like to receive additional information concerning this inquiry.

* Details concerning allegations relating to the treatment of unaccompanied minor immigrants in Ceuta and Melilla may be consulted in the Secretariat.

18. **Said M. and Hassan U.**, two Algerian immigrants, the first of whom is 17 years old, were beaten by the Ceuta local police at the time of their arrest on 14 October 2000, and in the police station where they were later taken after having been brutally shoved into a vehicle. (...) At the police station, Said M. lost consciousness; he revived when he was sprayed with water from the hose that had been used to beat him. Forced into a police vehicle, the two men were beaten again and taken to the place where they had been arrested. They were found there by members of the Civil Guard, whom they asked for help and who took them to the hospital of the National Institute of Health (Insalud) in Ceuta. The medical report on their case mentions a number of lesions and cuts. On 19 October 2000, a newspaper published a photograph of the wounds that had been sustained by one of them.

19. **Shihab R.** (pseudonym), a minor, was arrested by members of the Ceuta police force at the end of October 2001 at the port, where he was preparing to attempt a crossing to the Spanish mainland. He was forced to board a vehicle and was taken to a police station, after which he was transferred to the barracks of the Civil Guard. During the journey, he was struck on the arms, legs and head. He was also beaten with a truncheon and kicked. According to the information received, he was again beaten on Civil Guard premises, where he was locked in a room for three hours before being taken to the San Antonio centre. The medical report prepared by the National Institute of Health (Insalud) on 2 November 2001 notes a stable fracture of the second metacarpus of the left hand. Shihab R. did not receive any care until the Carmelites of La Caridad de Vedruna took him to the Red Cross hospital.

20. **Omar H.** (pseudonym), age 16, arrived in Ceuta from Tangiers in September 2001. A few days after his arrival in Spain, he was arrested by the police. Omar H. told the police that he was a minor but was nevertheless taken to a police station where he remained for a whole day. According to the information received, during his stay he was beaten on the back and thighs with a truncheon. He was subsequently taken to the San Antonio centre.

21. **Salah S.** (pseudonym), a minor held at the Fort Purísima Concepción centre, was beaten by two members of the staff of that establishment in October 2001, after an altercation with another inmate. According to the information received, he was slapped and kicked in the back of his legs.

22. **Ayman M.** (pseudonym), age 16, was sent back to Morocco on 28 July 2001 after having spent eight years in Melilla. According to the information received, the director of the centre where he was being held had informed him that he would be brought before a judge with another minor from the same centre and young people from other holding centres. However, all of the minors concerned were taken directly to the border with Morocco and handed over to the Moroccan police authorities of the town of Nador. They were then taken to a police station where officers wearing boots trod on their feet; the minors were wearing light footwear. They were asked where they came from and how they had arrived in Melilla. They were then locked in a warehouse. Before they were released, they were beaten with a high-tension electric club by some 10 officers. Ayman later had contusions on his left wrist. According to the information received between 27 July and 18 September 2001, the Melilla authorities expelled at least 32 unaccompanied minors between the ages of 11 and 17, and there have been at least 70 expulsions of this type as of February 2002. (...)

23. Forty foreign minors between the ages of 13 and 17 living at the Fort Purísima Concepción centre in Melilla began a hunger strike on 4 March 2002 to protest the existing family reunion policy which, according to them, was ineffective since they did not have any family members waiting for them on the other side of the border. They were also protesting because they had not been granted residence permits upon the expiry of the nine-month period required by law, and against the ill-treatment that they had received from some of the centre's supervision officers.

2. Replies from the Government of Spain

24. In a communication dated 14 November 2002, the Government of Spain transmitted the following information.

25. **Mr. Boaventura Simão Vaz** was detained when he, in the company of another Guinea-Bissau national, approached two plain clothes National Police officers, who were on duty. Boaventura Simão Vaz offered the officers tablets, which he showed them, for 500 pesetas. At that moment, the police officers showed him their badges and professional identity cards. As Mr. Simão attempted to run away, the officers intervened rapidly. A scuffle with the officers ensued, and one officer was injured when Mr. Simão grabbed him by the hair and threw him onto the road, causing lesions in the right occipital region, which necessitated emergency assistance. Mr. Simão and his compatriot were finally apprehended; this called for the use of minimum necessary force, since they put up strong resistance and began to shout and insult the officers. During Mr. Simão's detention, a large knife was taken from him. The incident was dealt with in the appropriate manner, and the detainees were informed in writing of the reasons for their detention and of their constitutional rights. Mr. Simão had to be treated at San Carlos clinical hospital; after the medical report was issued, he was returned to prison.

26. In the case of **Marta Elena Arce Salazar**, the Government of Spain states that, on 2 April 2001, a National Police patrol on duty in Las Ramblas in Barcelona was approached by some young people who told the officers that they had been assaulted by a group of Maghrebis, who had taken a mobile phone belonging to one of the young people. A few moments later, the officers proceeded to identify a group of young people that met the description of the group that had committed the theft. The officers sought to determine whether any person in that group was carrying the stolen mobile phone. A few moments later, the victims of the theft arrived but were unable to identify any of the detained youths as the perpetrator of the attack. When the officers returned the documents to the youths, a woman approached them, shouting at them in an offensive manner and refusing to identify herself. The woman stood in the middle of the road, violently resisting the police's attempts to subdue her and taking from her bag a personal defence spray with the intention of using it against the officer, which she did not succeed in doing. She began attacking the members of the patrol, until she was finally apprehended and identified as Marta Elena Arce Salazar. She was informed of her rights and transferred to Percamps hospital in Barcelona, where she was treated, along with one of the police officers, and the relevant medical reports were drawn up. She was then transferred to the Ciutat Vella police station. She was assigned a lawyer, Mr. José Luis Villar. The Bar Association later informed the police that the lawyer who had been assigned was ill, and that a lawyer - member of the Bar No. 19,632 - had been assigned ex officio. The treatment received by Marta Elena Arce Salazar was the same as that accorded to any other detainee.

27. **Ibrahim Saad Ellah**, who claims to be a Libyan-born Palestinian, was detained by police officers attached to the Border Task Force of the Unit for Aliens and Documentation of the Ceuta Police Commissariat. The arrest was made in accordance with the law, and Ibrahim Saad Ellah's name was recorded in the register of detainees. Although Ibrahim Saad Ellah claimed to be Palestinian, the officers proceeded to conduct a search to find out whether he was carrying any identity documents in his clothing. Ibrahim Saad Ellah refused to be searched and actively tried to prevent the procedure, as a result of which he had to be searched by force; no identity document was found. He was not subjected to any degrading or humiliating treatment. At the same time, a telephone call was made to members of the Palestinian representation in Madrid who, after having a direct telephone conversation with the detainee, confirmed that, judging from his manner of speaking, he was not a Palestinian but a Moroccan. At 8 p.m. on 8 May 2001, Ibrahim Saad Ellah was deported. Insisting that he was a Palestinian, the Moroccan police refused to admit him into the country and released him. The complaint lodged by Ibrahim Saad Ellah was dismissed by the judge of Ceuta Examining Court No. 4 on 18 August 2001. Ibrahim Saad Ellah's subsequent request for asylum in Spain was denied by the competent authority, and his whereabouts are currently unknown.

28. The judicial records of the case of **Abdelhak Archani** indicate that he was transported in a police vehicle, not by force but voluntarily. He was found in front of the subdelegation of the Government of Barcelona selling places in line to foreigners waiting to transact official business. Such behaviour gave rise to many arguments among the foreigners awaiting their turn, and police intervention was necessary. Since Abdelhak Archani showed clear signs of inebriation, the police warned him to leave the place, and offered to take him home. During the journey, he gave an incorrect address and expressed his desire to get out of the vehicle. The investigations conducted and the forensic medical report show that at no time was he subjected to ill-treatment by the police. The case was provisionally dismissed, since there was no cogent evidence that an offence had been committed.

29. The case of **Nourdeine Hathout**, accused of the crime of assault, is pending; the trial is scheduled for 29 October 2002. Police records indicate that the person in question was duly informed of his rights, and a lawyer from the Málaga Bar Association was present when he made his statement and was released after 21 hours and 50 minutes of detention. They also indicate that he was transferred to the emergency service of Carlos Haya hospital, where he was treated, along with one of the officers involved; in both cases, the medical reports were appended to the records of the case.

30. On 21 and 22 January 2002, large groups of foreigners led by the *Sindicato de Obreros del Campo* (Farm Workers' Union) gathered in front of the offices of the subdelegation of the Government in López Falcón square in Almería. The National Police intervened in order to prevent people from camping at the site and to enable foreigners who had official business to have access to the Aliens Office. When the Aliens Office closed, some 500 persons remained, and the police began to check their identity. Nine persons were detained, eight pursuant to the Organic Law on the Rights and Freedoms of Foreign Nationals Living in Spain and Their Social Integration, and one for resisting authority. In the early morning of 22 January, approximately 200 foreigners had gathered on the Cerro San Cristóbal (San Cristóbal Hill) with the intention of camping there. The subdelegation of the Government issued instructions to members of the police to disperse the crowd. After giving the mandatory verbal warnings, the

police began to take action in accordance with established procedure. The police were continually attacked and pelted with stones by members of the crowd. Thirty-one people were detained; some of them were injured, mainly as a result of running and falling owing to the dim light and the rugged terrain. In all, 3 police officers and 13 foreigners were wounded, 6 of whom were treated on the spot. The rest were transferred to a treatment centre, where they were treated for light contusions and migraines; one foreigner who had an anxiety attack remained under observation until 11.59 p.m. The police action was carried out in accordance with the law, and care was taken to respect the rights of the persons in question.

31. With regard to the situation of **unaccompanied minors**, in Spain both the constitutional principles concerning children and the family, and the provisions of the Legal Protection of Minors Act are based on the relevant international conventions, particularly the Convention on the Rights of the Child, which was ratified by Spain on 30 November 1990. On the other hand, the Organic Law on the Rights and Freedoms of Foreign Nationals Living in Spain and Their Social Integration, which is currently in force, as well as its regulations, provide clear guidelines for government action with respect to unaccompanied foreign minors. If State security forces or agencies locate an undocumented foreign national whose status as a minor cannot be determined with certainty, the public prosecutor attempts to determine the person's age with the assistance of health-care institutions. If the person is found to be a minor, and during the period when efforts are being made to determine that person's age, the public prosecutor places the person in the care of the competent services for the protection of minors; the autonomous communities and cities have competence in this area. The General State Administration decides either to return the minor to his or her country of origin or to the country where the minor's family resides, or to allow the minor to remain in Spain, after having heard him or her and after having received a report prepared by the services for the protection of minors. When the minor has been in the care of the services for the protection of minors for a period of nine months, and if it has not been possible to return the minor to his country of origin, the minor is issued documents with a view to ensuring his integration.

32. With regard to the alleged ill-treatment of minors in the San Antonio Centre, now called the "La Esperanza" Centre, which is operated by the Ceuta social protection services, the following points should be made.

33. The centre, a former military residence, was opened in 1999. It held some 70 unaccompanied minors, who were given food, clothing, accommodation and training. In the beginning, housing conditions were not ideal. In March 2001, work was begun to expand the centre in order to accommodate some 110 minors. It is not true that girls were held at the centre or that minors lacked a recreation area. The centre is for male minors and has sufficient green areas. The minors held at the centre have complete freedom to come and go as they please within the established times. It is not true that minors have been locked in a "small, dark and dirty room". The treatment of minors is professional and in no way reflects any authoritarian approach to social care. All minors are provided with schooling, although some who are over the age of 17 do not attend classes, since they have the freedom to come and go as they please. The Assistant Ombudsman, a high commissioner for the Spanish Parliament [and who is responsible for] the supervision of the administration, visited the centre on 10 May 2001. He ruled out the existence of ill-treatment and stated that there were no current investigations into that practice.

34. In Ceuta, there have been no cases in which minors unable to return to their countries or to remain in the care of the Moroccan services for the protection of minors have been summarily returned. (...) In Ceuta, the General Commissariat for Aliens and Documentation contacted the Moroccan embassy in Madrid with a view to repatriating minors to their country; the embassy replied that negotiations should be held directly with the authorities of Tetuan province, which would see to it that the minors were reunited with their families. Consequently, the National Police Corps Commissariat in Ceuta contacts the aforementioned authorities and, within a period of not less than 15 days from the communication of the agreement on family reunion, hands over the minors in compliance with that principle.

35. The claim that there is no official body responsible for guaranteeing that unaccompanied children in Ceuta receive the care and protection to which they are entitled by law is completely groundless. Under the law, the autonomous city of Ceuta exercises its competence and responsibility through the Department of Social Welfare. There is no delegation of competence or responsibilities of officials of the national Government to local authorities; each one exercises those assigned to it by the legal system and, if any abuse of the legal system comes to the attention not only of the authorities and officials but also any Spanish citizen, such persons are obliged by law to report such abuse to the nearest judge or prosecutor. Coordination between the central and autonomous administrations is ongoing and smooth and is carried out between the Department of Social Welfare, the Migration and Social Services Institute and the regional office of the Government.

36. On 20 June 2002, police records were transmitted to Examining Court No. 2 in Ceuta, accusing two care-givers of the San Antonio Centre for Minors of causing lesions to **Mohamed Garbagui**. When the examining court was contacted, it stated that the proceedings had been terminated. The last record of the minor's presence in Ceuta was on 22 February 2002, the date on which he was detained on the order of the city's juvenile court.

37. On 14 October 200[?], forces of the Civil Guard took a sworn statement concerning alleged aggression resulting in injuries. The complainants were two Algerian citizens, **Said Mohamed** and **Hassan Uaharami**, who claimed that the incident had occurred at 10 p.m. on the previous day. When Examining Court of First Instance No. 3 was contacted, it made a verbal statement that the proceedings had been terminated on 13 April. Both in this and the preceding case, termination of proceedings is a declaration by the court that the case has been closed owing to a lack of the necessary prerequisites for instituting oral proceedings or issuing an indictment.

38. There is no information that any kind of sexual abuse has taken place at the San Antonio Centre for Minors. However, on 14 April 2000, the director of the Centre informed the National Police Corps Commissariat that an individual driving a car used to prowl the area looking for minors that he could sexually abuse. Members of the Minors' Unit of the National Police Corps began investigations that resulted in the detention of three individuals on whom case documents were prepared and who were handed over to Examining Court No. 4. All three individuals were released. The Ombudsman expressed interest in the case and began informal pre-trial proceedings. He received a summary of the relevant information and, in a document dated 2 October 2000, terminated the proceedings.

39. In the cases of **Shihab R.** and **Omar R.**, there is no record of the alleged acts and it is impossible to verify the truth of the claim, which would make it possible to set in motion the relevant investigation of the alleged acts. In the case of **Salh S.**, the acts referred to in the allegations of the Special Rapporteurs do not correspond to reality. The injuries suffered by Salh S. were caused by another minor, an inmate of the Purísima Concepción Centre for Minors in Melilla. The only action taken by the staff of the centre was to separate the two minors and obtain medical assistance. It has not been possible to verify the case of **Ayman M.** Nevertheless, it is not true that the person in question was repatriated in the circumstances described in the allegations. In 2002, 72 minors in Melilla were repatriated; handcuffs were never used, nor were the minors ever subjected to any ill-treatment by the authorities.

3. Observations by the Special Rapporteur

40. The Special Rapporteur thanks the Government of Spain for its very detailed reply. Since Spain has become a crossing point for continuous immigration to Europe, he recommends that the Spanish authorities should take measures to ensure that the dignity of migrants, whether they are illegal or not, is respected in accordance with the international human rights instruments to which Spain is a party. The Special Rapporteur suggests that the border police and the Civil Guard should be made aware of those texts through training seminars in which the Commission on Human Rights could be involved.

C. Russian Federation

1. Communication dated 28 August 2002

General manifestations of racism, racial discrimination and xenophobia

41. It has been reported that there is a growing trend of violence against ethnic minorities and foreigners in the Russian Federation. Generally, the victims of racist attacks include persons from Africa, Asia, Central Asia, the Caucasus, including ethnic Chechens, and refugees and asylum-seekers. It is alleged that law enforcement officers are reluctant to register attacks as racist when there is evidence that the attacks are racially motivated and that officers fail to understand the serious implications of racially motivated violence. Police and other law enforcement officials themselves are routinely accused of subjecting racial and ethnic minorities to harassment and intimidation.

42. Specific examples illustrating the above-mentioned treatment include the following incidents:

- It is reported that when **Adefers Dessu**, an Ethiopian refugee, and his wife Sarah were beaten by a 20 year-old boy armed with chains in Moscow in February 2001, the medical report stated that their injuries were the result of a “fall” and the police registered the attacker as a minor.

- In October 2001, when a crowd of 300 youths brandishing iron bars attacked a Moscow market staffed by ethnic minorities and left an Armenian, an Indian and a Tajik dead, initial police statements referred to the perpetrators as football “hooligans”. In the Siberian city of Tyumen, a series of seven attacks on a synagogue last year were characterized as “young people’s hooliganism”.

Incitement to racism, racial harassment, race-related torture and ill-treatment by State agents

43. In addition, it is alleged that the authorities have failed to respond to racist statements by public figures in Russia’s regions and that federal authorities allow city and regional authorities to ignore federal laws governing freedom of movement that discriminate against ethnic and racial minorities. It is reported that members of racial and ethnic minorities are disproportionately targeted for document checks on the street, which commonly leads to extortion and can result in detention, torture and ill-treatment.

44. The following are reported incidents:

- On 19 April 2002, reportedly members of the Moscow City and Moscow District Organized Crime Force (RUBOP) were implicated in the torture, ill-treatment, extortion and fabrication of evidence against Tajik migrant workers. It is alleged that their actions were accompanied by racist insults and stereotyping of Tajiks as Islamic fundamentalist fighters and drug dealers. Authorities are accused of blocking attempts by the victims to formally complain.
- It is alleged that Krasnodar authorities refuse to grant residence permits to approximately 13,000 Meskhetian Turk residents in Krasnodar Territory, rendering them “stateless” and unable to work legally or to own land. On 1 April 2002, Krasnodar authorities announced the establishment of deportation centres, staffed by paramilitary units, to deport those accused of being “illegal migrants”.

2. Reply dated 20 August 2002 from the Government of the Russian Federation

45. With regard to the disturbances and disorderly conduct that caused the death of three persons near the Tsaritsyno metro station in Moscow on 30 October 2001, criminal proceedings have been brought under articles 105 (murder), 111 (serious deliberate attacks on physical integrity), 212 (disturbances) and 213 (disorderly conduct) of the Penal Code of the Russian Federation. Ten individuals have been indicted. The investigation has been completed and the Moscow city court began to hear the case on 16 July 2002.

46. On 28 October 2001, criminal proceedings were brought, pursuant to the offence described in article 213, paragraph 2 (a), of the Penal Code, against unidentified individuals for breaking the windows of a building currently under construction and belonging to the Jewish Aviv cultural association in Tyumen. On 10 February 2002, the proceedings were terminated

because it was impossible to identify the persons responsible for the offence. On 19 September 2002, the decision of the investigating body to close the case was overturned by the office of the procurator of Tyumen region, which requested additional information.

47. In June 2001, similar acts were committed against a building belonging to the Aviv association. On 2 July 2001, the investigating body of the Tyumen municipal office of internal affairs decided not to institute criminal proceedings because the acts were not sufficiently serious. On 23 September 2002, the procurator overturned the decision not to institute proceedings pursuant to the offence described in article 213 (disorderly conduct) of the Penal Code of the Russian Federation.

48. There is not enough evidence to conclude that these offences were motivated by national or racial hatred.

49. The office of the Moscow city procurator decided to investigate reports that officials of the Moscow city and regional office for combating organized crime participated in acts of torture, extortion and falsification of evidence against Tajik immigrants. To date, the investigation has not been completed owing to the absence, in the communication, of specific information concerning the place where the militia officers allegedly committed these reprehensible acts or concerning any appeal that the victims may have lodged with the law enforcement agencies. The office of the procurator of Moscow region has found that no measure was taken on 19 April 2002 against Tajik citizens by officials of the Main Department of Internal Affairs of Moscow region.

50. Efforts to verify reports that two Ethiopian refugees, Mr. Adefers Dessu and his wife Sarah, were assaulted by a group of youths armed with chains have yielded the following results:

According to information received from the Ethiopian embassy, the attack took place in Podolsk district of Moscow region. Records for 2001 and the beginning of 2002 have been verified and do not indicate that the persons in question lodged a complaint of an attack by unknown persons. All the hospitals in Moscow region that Mr. and Mrs. Dessu could have visited to obtain treatment are currently being contacted. The results of the operational investigation will be verified.

Over the past seven years, the Office of the Procurator-General of the Russian Federation has repeatedly conducted investigations into the observation of the fundamental rights of the Meskhetian Turks in Krasnodar territory.

The problems relating to the settlement of Meskhetian Turks in this region of the Russian Federation began after the outbreak of ethnic disturbances in Uzbekistan in 1989.

In accordance with Decree No. 503 of 26 June 1989 of the Council of Ministers of the Union of Soviet Socialist Republics (USSR), on the provisions governing conditions of sojourn in the regions of the Russian Soviet Federative Socialist Republic (RSFSR) for Turks who were forced to leave their places of permanent residence in the Uzbek Soviet Socialist Republic, and bearing in mind the existing possibilities for providing housing and ensuring normal living conditions for the persons in question, a place of permanent

residence was assigned for this category of Soviet citizens in the regions of the non-chernozem zone of RSFSR (including Moscow region), as well as in Belgorod, Voronezh and Kursk regions.

While Krasnodar territory is not one of the regions designated for such resettlement and does not have the necessary infrastructure, in 1989 and 1990, after the massacres in Fergana and Tashkent regions of the Uzbek SSR, some 15,000 Meskhetian Turks moved, on their own initiative, to Krasnodar territory (including 10,000 in the districts of Abinsk and Krymsk), with a view to settling definitively in the Akhaltsikhe region in Georgia, where they are originally from.

In accordance with article 23, paragraph 3, of the Act of the Russian Federation on the right of citizens of the Russian Federation to move freely and choose freely their place of sojourn or residence within the national borders, "place of residence" means the house, apartment or any other dwelling where a person resides permanently or most of the time as the owner, by virtue of a contract or lease, or for any other reason provided for in Russian legislation.

The majority of Meskhetian Turks do not register their deed to the lodging that they have acquired. Moreover, in most cases, such acquisition has not been the subject of a written contract.

Since they do not have proof, as required under article 6 of the aforementioned Act, of the legal acquisition of their dwelling, the owners cannot register in the place of residence that they have chosen.

Since they often do not hold a legal document of permanent residence (residence permit), most Meskhetian Turks do not have the right to be recognized as citizens of the Russian Federation, under the Federal Act on Russian citizenship. Of the 15,500 Meskhetian Turks currently in Krasnodar territory, some 12,000 are stateless persons.

The acquisition of Russian nationality by the Meskhetian Turks living in large numbers in Krasnodar territory must be considered on a case-by-case basis, in strict application of the aforementioned Act. Thus, according to the information received from Krasnodar territory court, the district courts of Abinsk, Anapa, Belorechensk and Krymsk examined 42 requests made by Meskhetian Turks with a view to legalizing their residence in Russian territory before the entry into force of the Federal Act on Russian citizenship. Thirty-seven of those requests were approved. The Krymsk district court and the Primorsk district court in Novorossiisk have responded favourably to two complaints lodged by Meskhetian Turks concerning the refusal of officials of the Passport and Visa Service to register them.

Currently, 4,000 Meskhetian Turks are officially registered in their place of residence. Some 3,000 of them have been able to establish their Russian citizenship.

Between the beginning of 2000 and June 2001, register offices recorded the births of 548 Meskhetian Turk children.

According to information received by employment agencies of districts with high concentrations of Meskhetian Turks, as of the beginning of this year no member of that community had registered as unemployed with a view to obtaining employment.

The questions of respect for human rights and fundamental freedoms, as well as the defence of State interests and of the legitimate rights of the inhabitants of Krasnodar territory are constantly at the centre of attention of the bodies attached to the Office of the Procurator. The working group, composed of representatives of the Directorate of the Federal Security Service, the General Directorate of Internal Affairs and the General Directorate of Justice of Krasnodarsk territory, which was established under the Procurator of the territory, seeks to ensure compliance with acts of all government bodies responsible for preventing and suppressing manifestations of political extremism by social and religious organizations and associations.

The question of defining the legal status of the Meskhetian Turks has been repeatedly considered at the federal level. In particular, in its Decree No. 1280-r of 14 August 2000, issued pursuant to Presidential Order No. K-285 of 24 March 2000, the Government of the Russian Federation extended the mandate of the Interministerial Commission on the Settlement of the Question of Meskhetian Turks Residing in Russian Territory.

At its first meeting, on 28 September 2000, the Commission adopted a plan of action to stabilize the ethnic and political situation in areas with high concentrations of Meskhetian Turks in southern Russia.

The main provisions of the plan deal with the question of repatriating the Meskhetian Turks in their region of origin in Georgian territory and facilitating the return of those who wish to live in Georgia, and with the establishment of the legal status of Meskhetian Turks who wish to acquire Russian citizenship and the means of issuing identity documents to the persons concerned.

On 14 March 2001, the ad hoc interministerial working group concluded that the question had to be settled between States. The survey involving 1,989 Meskhetian Turkish families (or 10,644 persons), carried out pursuant to the Ministry's recommendations, made it possible to establish that 568 families wished to remain in Krasnodar territory, 125 families wished to go to another State, and 1,044 families wished to return to their country of origin.

It should be noted that no Meskhetian Turk has been expelled from Krasnodar territory. The obligations that Georgia undertook when it joined the Council of Europe regarding the repatriation of the Meskhetian Turks in its territory have not been fulfilled. In addition, no measure has been taken since the publication in 1996 of the Georgian president's decree on the repatriation of the persons concerned.

51. In the light of the foregoing, the information contained in the Special Rapporteur's communication concerning the refusal of the Krasnodar authorities to issue residence permits to 13,000 Meskhetian Turks, and concerning the creation of "deportation centres", the staff of which is allegedly made up of members of paramilitary groups, does not correspond with reality.

3. Observations of the Special Rapporteur

52. The Special Rapporteur thanks the Government of the Russian Federation for its reply. With regard to the general manifestations of racism and incitement to ethnic hatred, the Special Rapporteur recommends that the Russian authorities organize a national campaign against racial discrimination and in favour of social harmony. With regard to the disorderly conduct that caused the death of three persons in the vicinity of the Tsaritsyno metro station in Moscow on 30 October 2001, the Special Rapporteur would like to be informed of the conclusions of the Moscow city court. With regard to the behaviour of the police towards ethnic and racial minorities and foreigners, the Special Rapporteur encourages the authorities of the Russian Federation to take measures to improve the behaviour of the police so that their actions are more in conformity with respect for human rights. Such measures could include training police officers in human rights, in particular in non-discrimination in the performance of their duties. Finally, the Special Rapporteur takes note of the detailed information on efforts to find solutions to the problems of the place of residence and nationality of the Meskhetian Turks. He remains very interested in the resolution of this extremely worrying situation.

D. Greece

1. Joint communication of 13 September 2002, sent together with the Special Rapporteur on the question of torture

Summary of allegations

53. The Special Rapporteurs have received information on the following individual cases.

54. **Lazaros Bekos** and **Eleftherios Kotropoulos**, two Roma youths aged 17 and 18 respectively, were reportedly beaten during their detention in Mesolongi police station on 8 May 1998. A forensic report allegedly stated that both of them received “medium bodily injuries, inflicted with a broken instrument” during their detention. It is also reported that a sworn administrative inquiry conducted by the police recommended that the two officers be placed on “temporary suspension” because “during the early hours of 8 May 1998 they behaved with exceptional brutality towards the two youths”. According to the information received, three police officers were indicted for “jointly-induced bodily harm caused by a person, whose duties are the investigation of possible criminal acts, with the intent to extort deposition or information” after the two youths pressed charges. It is alleged that, following another sworn administrative inquiry launched by the police, sanctions were imposed on two police officers. These sanctions were reportedly made in the form of an around US\$ 100 fine. A third officer, the Director of the Security Service at the police station concerned, is reported to have been tried for these alleged beatings. He is believed to have been accused of “not preventing the ill-treatment of the two arrested individuals” but to have been eventually acquitted for lack of evidence on 8 October 2001.

55. **Andreas Kalamiotis**, a 21-year-old Roma, was reportedly arrested and beaten by police officers on 15 June 2001 in Pefkakia, Agia Pefkakia region. According to the information received, he was listening to music with some friends at his house when at around 2 a.m. a police officer requested them to turn the music off. One of the officers allegedly pointed his gun at him

and threatened to shoot him. He is reported to have been subsequently handcuffed and arrested. It is reported that as he was barefoot his wife tried to fetch him a pair of shoes but was not allowed to do so. He was allegedly dragged to a police car and beaten with the hands and with truncheons. It is alleged that he was kicked after falling on the ground. He is believed to have been beaten in the car as well and to have been taken out of it and beaten again. He was allegedly interrogated about who had allegedly fired with a carbine. He was reportedly taken to a police station where he was allegedly insulted and threatened by a police officer. According to the information received, when he asked for some water to drink he was told to take some from the toilet and was given proper water only half an hour later. On the following day he was reportedly taken to the police headquarters in Athens in order to take some pictures of him. It is alleged that when he asked to have his handcuffs removed in order to be able to sit down properly he was insulted and threatened again. He is reported to have been subsequently brought before a public prosecutor and accused of resisting arrest and of insulting and threatening the police authorities. The Special Rapporteurs have been informed that he went to the forensic service in Aghias Anapafseos Street, where he was allegedly told that in order to be examined by a forensic expert he had first to press charges or submit a complaint to the police station of Agia Paraskevi. Andreas Kalamiotis is believed to have avoided filing a complaint for fear of retaliation.

56. **Theodore Stefanou**, a 16-year-old Roma boy from Patras, was reportedly beaten by a police officer in Argostoli on 4 August 2001. According to the information received, two or three police officers went and looked for him in a truck in which he was sleeping during his stay in Argostoli but did not find him since he was outside. It is reported that when Theodore Stefanou learnt that the truck had been searched, he went to the police station. There he was reportedly questioned about the theft of an important sum of money from a kiosk. The boy is believed to have been punched and slapped in the face for 15 minutes by a policeman (whose name is known to the Special Rapporteurs) and in the presence of two other officers, one of whom is thought to be the Commander of the Argostoli police station. It is alleged that he was then taken handcuffed to his truck and subsequently brought back to the police station where he was reportedly interrogated and beaten again. He is reported to have been released after the owner of the kiosk stated that he did not see him around his kiosk at the time of the theft. The Special Rapporteurs have been informed that he subsequently went to a hospital and that according to a medical report, he was found to be suffering from a head injury caused by beating received 12 hours earlier, a slight weakness in focusing, swelling and sensitivity on the ridge of his nose and a small frontal left bruise. It is reported that on 7 August 2001 he went to the Prosecutor's Office in order to press charges against the Commander of the Argostoli police station. According to the information received, four other Roma relatives, **Nikos Theodoropoulos**, aged 18, **Nikos Theodoropoulos**, **George Theodoropoulos** and **Vasilis Theodoropoulos** were arrested and taken to the same police station in connection with relation to the same alleged theft. Nikos Theodoropoulos was reportedly taken to a room where the police commander and another officer allegedly interrogated, beat, punched and slapped him and stepped with their boots on his almost naked feet. Nikos Theodoropoulos is reported to have been kept in custody and to have been woken up at 4 a.m. to record an official deposition. He was reportedly beaten again when he allegedly said that he would not sign anything in the absence of a lawyer. It is believed that he eventually signed an allegedly false deposition in which he confessed to the theft. Nikos Theodoropoulos was reportedly beaten as well.

According to the information received, Nikos Theodoropoulos was acquitted on 6 August 2001 after the judge took into consideration his version of the facts and the allegations of ill-treatment.

2. Response of the Government of Greece dated 28 November 2002

57. **Lazaros Bekos and Eleftherios Koutropoulous**, both minor Romanians were arrested on 8 May 1998 at 12.45 a.m. by a police patrol in Mesolongi, while they were trying to burgle a kiosk. They were taken to Mesolongi police station and the day after, were brought before the competent prosecutor, who released them after fixing a date for their hearing. While the minors did not file a complaint during their detention or at the prosecutor's office, after their release, they complained to the Helsinki Watch Greek Branch that they had been abused by police officers. The representative of this NGO accompanied both minors to the State Hospital of Mesolongi. A medical report of the examination of both minors stated that they were bruised. A second medical report, produced after a private doctor was consulted, indicated that the first minor had two ecchymoses and the second one had multiple ecchymoses inflicted by a battering object. Following a written denunciation by the NGO in question, an administrative inquiry was conducted. No definite conclusions could be drawn as to when, how and by whom the minors' moderate injuries had been inflicted. Nonetheless, a disciplinary sanction was imposed on the Commander of the Security Department of Mesolongi for insufficient supervision and control of his subordinates, since their injuries had been probably inflicted during their detention, although the possibility that they had been caused during their arrest, in which citizens participated, cannot be ruled out. The sanction applied to the Deputy Commander was revoked after the minors testified under oath that he had not participated in their questioning. Criminal proceedings were instituted against three police officers. The case was brought to the Judicial Council, which discharged two police officers and committed to trial the Commander of the Police Station. He was later acquitted by a three-judge court of appeal in Patras, because it was ascertained that the injuries documented by the coroner were most probably caused during their arrest, as they both engaged in a violent fight with the owner of the kiosk.

58. **Andreas Kalamiotis** was arrested after police arrived at his home following a complaint by neighbours that he was disturbing their peace by playing loud music. The police officers advised him and three other persons who were with him to switch off the music because it was disturbing the neighbours. However, he refused and moved threateningly towards the officers, who withdrew to ask for help. Six patrol cars rushed to help them. When Mr. Kalamiotis saw them, he withdrew into his dwelling, while his three friends did not resist and were brought to the police station of Agia Paraskevi for identification and were subsequently released.

59. Mr. Kalamiotis finally exited his dwelling after being invited to do so by the police officers, but he turned against them and swore at them. When they tried to arrest him they met stiff resistance, which led to a fight. He was handcuffed and brought to the police station, where he was unfettered, only to be handcuffed again because he unsuccessfully tried to assault a policeman. The general impression was of a behaviour suggesting alcohol abuse.

60. A criminal case file was opened against him for resisting, insulting and threatening police officers and he was brought before the competent public prosecutor, who instituted criminal proceedings against him and committed him to trial.

61. The administrative inquiry revealed that the two police officers who had participated in the arrest, detention and committal of Mr. Kalamiotis had acted legally, as Mr. Kalamiotis had used violence against them and refused to comply with their orders and follow them to the police station, unlike his friends, who followed the policemen and no violence was used against them. According to the inquiry, the scratches he suffered had been caused by the resistance he offered to avoid being handcuffed by the policemen and his fight with them. They were minor scratches and grazes, absolutely compatible with the degree of violence used against him. The allegation that his wife was not allowed to give him shoes proved false, as a police officer gave him his shoes at the police station, but he threw them away. His allegation that 20 patrol cars of the Hellenic Police had gone to his house was also false.

62. According to the data kept in our Service and on the basis of the information mentioned above, Mr. Kalamiotis did not file a complaint against police officers, while it is not clear whether or not he requested to be examined by a coroner. It should be noted that during his detention and when he was brought before the public prosecutor he did not ask to file a complaint against the police officers or to be examined by a doctor.

63. The sworn administrative inquiry that was conducted to investigate allegations made revealed that they were groundless, as the persons who were allegedly abused testified under oath that no one had mistreated them, except for minor **Theodoros Stefanou**, who claimed that a policeman had used violence against him, in the presence of the Commander, an allegation that was not corroborated by any of the statements by other witnesses, although at least five other Romanies were present in the Department during his stay there.

64. The claim that **Romani Nikos Theodoropoulos** was tortured and forced to sign a statement confessing a robbery he had not committed is not true, because the criminal case file that was opened against him and three other Romanies for the said robbery does not contain any such confession.

65. According to a certificate issued by the Argostoli Hospital, where **Stefanos Theodorou** went on 5 August 2001 at 7.30 a.m. after leaving the Security Department of Argostoli, his examination showed that he was suffering from “a reported head injury, caused by beating 12 hours before. He complains about dizziness and bad headache”. According to testimonies by other witnesses and to his statement, when he went to the Security Department his arm was tied and he was in pain, which (in conjunction with the possible time of infliction of the injuries according to the hospital’s certificate) leads to the conclusion that they had been caused under unspecified circumstances before he voluntarily went to the Security Department at 12.40 a.m. that day.

66. According to the correspondence kept in our Service, none of the said Romanies filed a complaint against police officers.

3. Observations of the Special Rapporteur

67. The Special Rapporteur thanks the Greek authorities for their replies. He recommends that the police forces continue to avoid resorting to the undue use of force when making arrests. He also suggests that, whenever possible, mediation should be used to solve the problems arising

from the proximity of the Roma and other Greek populations. The Government could initiate a dialogue with the representative of the Roma community on ways in which the Roma can establish social harmony with their compatriots

E. Guyana

1. Communication dated 31 October 2002

68. It has been reported that the social and political life in Guyana is marked by constant ethnic tensions between the Indo-Guyanese and the Afro-Guyanese populations.

69. There is a perception in the Afro-Guyanese community that the Indo-Guyanese community has benefited financially and politically in the country at their expense. Furthermore, the lack of confidence between the two communities is allegedly attributed to the constant fear and palpable threat of violent crimes and racially motivated police brutality. Violent crime, including harassment, beating and robbery of Indo-Guyanese, are perpetrated predominantly by members of the Afro-Guyanese population and in many cases also originate from persistent opposition and street protests. The Afro-Guyanese population alleges widespread discrimination against them in politics, education, employment and housing and extrajudicial killings by the police.

70. The racialization of national politics is allegedly translated into the political sphere and the division of the electorate along racial lines, with Afro-Guyanese giving their allegiance mostly to the Congress/Reform (PNC/R) and Indo-Guyanese supporting mainly the People's Progressive party/Civic and the People's National (PPP/C).

71. In April 2001, after his election, President Bharrat Jagdeo, who is the leader of PNC/R, met Mr. Desmond Hoyte the leader of the People's National Congress/Reform (PNC/R) and they committed themselves to working to reduce ethnic tension and social unrest. However, these commitments failed to bear any fruit, as the outbreak of violent crime continued, killing several people, including eight policemen.

72. The most recent manifestation of this racial cleavage occurred on 3 July 2002, when several demonstrators, including supporters of PNC/R, broke through the gates of the Presidential complex, overturned and burned several cars, and torched and looted nearby stores. Police shot and wounded about 8 of the protesters and arrested 17, including 2 of the alleged leaders. The President's Office blamed the attack on the opposition party, describing it as an attempt to assassinate the President and topple the Government.

2. Response of the Government of Guyana

73. In a letter dated 3 December 2002, the Permanent Representative of Guyana to the United Nations indicated that the letter of the Special Rapporteur was only received on 25 November 2002 and that his Government will be responding as soon as possible.

3. Observation by the Special Rapporteur

74. The Special Rapporteur is looking forward to the response of the Government of Guyana, which will be reflected in his next report to the Commission.

F. United Kingdom of Great Britain and Northern Ireland

1. Joint communication of 13 September 2002, sent together with the Special Rapporteur on the question of torture

75. **Zahid Mubarek** was reportedly beaten to death with a table leg by his cellmate, Robert Stewart, in Feltham Young Offenders Institution and Remand Centre, Middlesex, in March 2000. Robert Stewart was said to have been convicted of murder later in the year. An internal prison service investigation into this murder is believed to have identified a number of management failures and other major problems affecting Feltham. It is also reported that this investigation concluded that the establishment was institutionally racist. The management was reportedly aware of racist abuse against both staff and inmates belonging to ethnic minorities and of the measures which it should take to address the problem, but failed to take action. According to the information received, Zahid Mubarek was indeed placed in the same cell as Robert Stewart, even though prison officers were, or should have been, aware of Robert Stewart's racial prejudices and violent behaviour. Robert Stewart was on remand charged under the Harassment Act with sending racially motivated malicious communications, including a letter in which he stated that he would consider killing his cellmate in order to get "shipped out" if he did not get bail when he appeared in court on 7 February. On 5 October 2001, the High Court is said to have ruled that the Home Office should initiate a public and independent investigation into the failures which led to the death of Zahid Mubarek. The judge is reported to have stated that, as there would not be an inquest into the death of Zahid Mubarek, the obligation to hold an effective and thorough investigation could only be met by holding a public and independent investigation with the family legally represented, with disclosure to the family's representatives of relevant documents and with the right to cross-examine the principal witnesses. The Home Office reportedly decided to appeal against the ruling, maintaining that there were sufficient investigations into the killing in connection with the trial of Robert Stewart and through the internal prison service investigation mentioned above. In March 2002, the Court of Appeal ruled that a public inquiry was not necessary. The Court of Appeal judges said that it had already been established that the prison service was at fault, an inquiry into this had been held and the family invited to be involved; that the cause of death had been established by Robert Stewart's conviction for murder; and that there was no basis for prosecuting any member of the prison service. They also added that there were no "factual unknowns" which would impede the family from bringing a claim in the civil courts for damages. The family of Zahid Mubarek were reportedly planning to appeal to the House of Lords.

2. Response of the Government of the United Kingdom

76. On 18 November 2002, the Home Office of the Government of the United Kingdom responded to the joint allegation stating that “this was a wicked crime which occurred while Zahid was in the care of the Prison Service. He and his family had a right to expect he would be looked after safely, but the Prison Service failed to do so”.

77. Since the tragic death of Zahid, a number of measures have been introduced to ensure that such a tragedy does not reoccur. These include the introduction at Feltham of procedures for risk assessments for cell-sharing. These were initially trialled at Feltham and introduced nationally in June 2002. In addition, an improved health-care screening process is being introduced to better identify prisoners with serious physical and mental health problems. Procedures are also being developed to ensure a better exchange of information between Prison Service and external agencies when a prisoner comes into custody.

78. The Director-General of the Prison Service has admitted that the Prison Service is institutionally racist and is determined to rid the Service of all forms of racism. He is also determined to eradicate discrimination in the treatment of prisoners. Much progress has been made since Zahid’s death. Meanwhile an investigation into race relations within the Prison Service, which has been under way for almost two years, is now nearing completion.

Zahid Mubarek

79. While the summary of the allegations as set out in the annex to the letter of the Special Rapporteurs are broadly accurate, the facts of the tragic incident are as follows:

- On 21 March 2000, at approximately 3.35 a.m., a call alarm was activated in the Swallow Unit at HM Young Offenders Institute and Remand Centre Feltham. On attending, the officer on duty saw that one of the occupants, Zahid Mubarek, was lying in bed badly injured. The other occupant, Robert Stewart, had a stick in his hand that looked like a table leg. The scene confronting staff suggested that Zahid had been badly beaten around the head with this table leg;
- Staff arrived on the scene, including health-care staff who administered first aid to Zahid. Although his injuries were extensive, he was still breathing and not bleeding heavily. Staff continued to administer first aid until the paramedics arrived. Zahid was then taken to Ashford General Hospital at 4.36 a.m. and was later transferred to Charing Cross Hospital. Tragically, he died on 28 March 2000 as a result of the injuries sustained.

80. The following circumstances should be taken into account when assessing the implications of this allegation:

- The assertion that staff knew that Robert Stewart was racist is not totally correct. Neither the warrants of the court nor the list of Mr. Stewart’s pre-convictions provide any evidence to suggest that he was a racist. Although it has since been suggested that the harassment offence for which he was remanded in custody was racially

motivated the only indication that this might be the case is a production order served at HM Prison Altcourse in November 1999 where it recorded that Robert Stewart was a suspect in an allegation of racially motivated malicious communication and harassment. There was no mention of any racial motivation on the subsequent court warrants;

- No other evidence that Robert Stewart exhibited racist behaviour towards prisoners or staff during his time at Feltham was found. He shared a double cell with Zahid Mubarek from 8 February onwards with no apparent problems until the tragic event of 21 March. During this time, Zahid made no complaints against his cellmate nor did he request to move cells.

Present status of any uncompleted investigation

81. The Director-General of the Prison Service, Martin Narey, also asked the Commission for Racial Equality in November 2000 to consider the circumstances leading to this death as part of its wider-ranging investigation into racism in the Prison Service. This investigation is now nearing completion.

Compensation

82. Compensation of £20,000 was offered to the family of Zahid Mubarek in September 2001. They have not yet responded formally to this offer.

Any other information/observations

83. The investigation highlighted a number of areas at the prison where improvements were necessary. In all, it made 26 recommendations addressing areas such as screening on reception, and the availability and scrutiny of medical records; protection from harassment procedures; policy and procedures for reading and stopping mail; the availability of security information files from previous establishments; security, reception and Duty Governor training; and the searching strategy. Of these 26 recommendations, all but one have been implemented in full. The outstanding recommendation concerned the provision of a single "stopped letter" register to each wing. This was felt to be unworkable and a single register had been provided for the entire establishment.

84. The part of the investigation on racist behaviour led to the conclusion that Feltham was institutionally racist. This conclusion was based on the fact that there was clear evidence of a lack of understanding of racism and race relations amongst staff as well as including the suggestion that a minority of staff did behave in a racist manner to their colleagues and to prisoners.

85. It should be noted that, following her inspection of Feltham in January 2002, the outcome of which was published on 15 October 2002, Her Majesty's Chief Inspector of Prisons was very positive about improvements at Feltham in general, and about race relations in particular. She

noted that “the Governor and his staff has shown major commitments to good race relations” and commended “the very considerable efforts that were demonstrated in a wide range of initiatives across the whole of the establishment”.

3. Observations of the Special Rapporteur

86. The Special Rapporteur would like to thank the Government of the United Kingdom for the detailed response to his communication. The Special Rapporteur welcomes the numerous measures put in place, both at Feltham and at the national level, since the tragic murder of Zahid Mubarek, to ensure that such atrocities do not reoccur in the future. Furthermore, the Special Rapporteur considers that the grave recognition that the Prison Service is institutionally racist leaves the authorities with a critical responsibility to combat, as a matter of urgency, all aspects of racism in this environment. In this connection, the Special Rapporteur would greatly appreciate receiving the findings of the investigation into racism in the Prison Service upon its completion by the Commission for Racial Equality. The response of the Government of the United Kingdom refers to the fact that the Director General is “determined to rid the Service of all forms of racism” and that considerable efforts have already been made to improve race relations in Feltham. The Special Rapporteur would welcome receiving more information on these efforts and the concrete measures which have been put into practice to address the problem of racism.
