



**ЭКОНОМИЧЕСКИЙ  
И СОЦИАЛЬНЫЙ СОВЕТ**

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КОМИССИЯ ПО ПРАВАМ ЧЕЛОВЕКА

Пятьдесят девятая сессия

Пункт 6 предварительной повестки дня

**РАСИЗМ, РАСОВАЯ ДИСКРИМИНАЦИЯ, КСЕНОФОБИЯ  
И ВСЕ ФОРМЫ ДИСКРИМИНАЦИИ**

**Доклад Специального докладчика по вопросу о современных формах  
расизма, расовой дискриминации, ксенофобии и связанной с ними  
нетерпимости г-на Дуду Дьене, представленный в соответствии с  
резолюцией 2002/68 Комиссии по правам человека\***

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\* Настоящий доклад распространяется на всех официальных языках. Приложение распространяется только на английском языке.

## Резюме

Настоящий доклад содержит сведения о деятельности Специального докладчика с момента назначения его на эту должность 26 июля 2002 года. На протяжении этого периода Докладчик установил контакты с правительствами, рядом региональных политических групп (Группой африканских государств, Группой арабских государств, Группой 77), межправительственными организациями (Европейским союзом, Организацией американских государств, Организацией Исламская конференция) и неправительственными организациями в целях способствовать динамичному консенсусному процессу борьбы против расизма, расовой дискриминации, ксенофобии и связанной с ними нетерпимости.

В докладе сообщается об утверждениях, касающихся серьезных проявлений расовой дискриминации и ксенофобии, в частности в Кот-д'Ивуаре и Гайане. В нем также обращается внимание на расовую дискриминацию в отношении рома/синти/трэвеллеров и освещаются меры, принимаемые на европейском уровне для улучшения их положения в этой связи и для противодействия проявлениям антисемитизма.

В 2002 году Специальный докладчик рассмотрел утверждения, касающиеся расовой дискриминации и ксенофобии в Германии, Испании, Российской Федерации, Греции, Гайане и Соединенном Королевстве. Эти утверждения, а также ответы властей соответствующих стран и замечания Докладчика содержатся в приложении к настоящему докладу.

В заключение Специальный докладчик подчеркивает, что его первые контакты с представителями правительств и межправительственных и неправительственных организаций продемонстрировали необходимость безотлагательного осуществления Дурбанской декларации и Программы действий в целях противодействия тревожному возрождению проявлений "обычного" расизма и появлению новых скрытых форм дискриминации и расизма. Кроме того, Докладчик подчеркивает необходимость срочного реагирования и принятия серьезных мер в связи с особенно тревожащим его ростом числа ситуаций, для которых характерно сознательное смешение или объединение признаков расы, религии и культуры. В этом контексте Докладчик, руководствуясь положениями заключительного документа Дурбанской конференции (A/CONF.189/12), предлагает применять двуединую стратегию: политико-правовую (путем ратификации и осуществления всех соответствующих международных договоров и соглашений) и интеллектуально-этическую (путем достижения более полного осознания и понимания глубоких корней, процессов и механизмов идеологии и психологии дискриминации). Речь идет о том, чтобы на основе теоретической работы и практических мероприятий

установить органичную взаимосвязь между борьбой против расизма, расовой дискриминации, ксенофобии и нетерпимости и крайне необходимым поощрением диалога между культурами, цивилизациями и религиями. В этой связи Комиссии по правам человека предлагаются следующие рекомендации:

- поощрять взаимодополняемость и сотрудничество между всеми механизмами борьбы против расизма, дискриминации, ксенофобии и нетерпимости, в частности механизмами осуществления заключительного документа Дурбанской конференции, а также между Комитетом по ликвидации расовой дискриминации и Специальным докладчиком и между специальными докладчиками;
- уделять более пристальное внимание ситуациям и практике дискриминации в отношении выходцев из других стран, мигрантов и беженцев;
- в ходе обсуждений на заседаниях Комиссии более внимательно рассматривать глубокие мировоззренческие и этические корни идеологии и психологии расизма и дискриминации;
- придавать приоритетное значение диалогу цивилизаций, культур и религий как вспомогательному средству преодоления всех форм дискриминации, отчуждения и нетерпимости;
- уделять повышенное внимание образованию во всех его аспектах (в частности преподаванию истории, этики, прав человека в качестве универсальных нравственных норм, различных культур, общих ценностей для всех религий, а также духовных традиций), информации и межкультурному общению;
- поощрять в качестве благотворной ценности плюрализм, понимаемый как признание, принятие, уважение и поощрение многообразия. В этой связи развивать концепцию самобытности - амбивалентного понятия, которое может означать как законное утверждение специфичности, так и отрицание права быть другим.

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## **Введение**

1. Специальный докладчик по вопросу о современных формах расизма, расовой дискриминации, ксенофобии и связанной с ними нетерпимости был утвержден в своей должности Социальным и Экономическим Советом 26 июля 2002 года.
2. Настоящий доклад представляется во исполнение резолюции 2002/68 от 25 апреля 2002 года, принятой Комиссией по правам человека на ее пятьдесят восьмой сессии.
3. В этом докладе Специальный докладчик представляет отчет о своей деятельности с момента своего назначения (глава I); сообщает о доведенных до его сведения основных проявлениях расизма и расовой дискриминации (глава II), а также об утверждениях в отношении расовой дискриминации, препровожденных правительствам (глава III). Докладчик представляет свои выводы и рекомендации в главе IV. Утверждения, рассмотренные Докладчиком, и ответы, полученные от правительств, содержатся в приложении к настоящему докладу.

### **I. ДЕЯТЕЛЬНОСТЬ СПЕЦИАЛЬНОГО ДОКЛАДЧИКА**

#### **A. Консультации в Управлении Верховного комиссара Организации Объединенных Наций по правам человека**

4. В период с 7 по 9 августа 2002 года Специальный докладчик совершил поездку в Женеву в Управление Верховного комиссара, с тем чтобы ознакомиться с различной деятельностью различных программ и механизмов защиты прав человека. У него состоялись полезные встречи со Специальным докладчиком по вопросу о достаточном жилище, а также с сотрудниками, ответственными за специальные процедуры в отношении мигрантов, правозащитников, свободы убеждений и их свободного выражения, цель которых состояла в определении сфер участия, в которых возможна координация деятельности по его мандату. В таком же ключе состоялись его беседы с лицами, ответственными за оказание поддержки Комитету по ликвидации расовой дискриминации и программы, касающейся коренных народов.
5. По итогам этих консультаций Специальный докладчик сделал вывод о том, что проблематика борьбы против расизма, расовой дискриминации, ксенофобии и связанной с ними нетерпимости лежит в основе большинства, если не всех программ и механизмов, находящихся в ведении Управления Верховного комиссара. Кроме того, меры, намеченные в Дурбанской декларации и Программе действий, находят свое конкретное выражение в различных видах деятельности, будь то осуществление региональных

стратегий, функционирование органов по наблюдению за осуществлением договоров, таких, как Комитет по ликвидации расовой дискриминации, который уже принял общие рекомендации в этом отношении, или деятельность по упомянутым выше процедурам. Поэтому Докладчик намеревается проводить свою деятельность в рамках этого динамичного согласованного процесса путем укрепления координации и сотрудничества с Комитетом, совместной работы и дополнения деятельности других специальных докладчиков, согласованных действий с Управлением Верховного комиссара, в частности с Группой по борьбе с дискриминацией и различными механизмами, вовлеченными в реализацию решений Всемирной конференции по борьбе против расизма, расовой дискриминации, ксенофобии и связанной с ними нетерпимости (Дурбанской конференции).

#### **В. Участие в работе Регионального семинара экспертов стран Африки по вопросу о выполнении Дурбанской программы действий**

6. С 16 по 18 сентября 2002 года Специальный докладчик по приглашению Управления Верховного комиссара принимал участие в работе Регионального семинара экспертов стран Африки, состоявшегося в Найроби. Вклад Докладчика состоял в изложении мер, намечаемых для борьбы с дискриминацией в отношении выходцев из других стран, включая мигрантов и беженцев. Он, в частности, предложил компетентным властям каждой страны в целях борьбы с социальным отчуждением, которому часто подвергаются неграждане со стороны населения принимающей страны, способствовать углублению взаимопонимания между гражданами и негражданами и поощрять взаимодействие между культурами, цивилизациями и духовными традициями. Этого можно достичь, в частности, путем просвещения и информирования, признания плюрализма и поощрения межкультурного диалога. В конечном счете речь идет о практическом воплощении на национальном уровне принципа единства в условиях многообразия, из которого вытекает признание характерных различий и вместе с тем поощрение общих ценностей, преобладающих над этими различиями. Семинар проходил на тему "Выполнение Программы действий, принятой в Дурбане: обмен мнениями по поводу будущих действий".

7. Помимо этого, как следовало из работы семинара, африканские государства придают первостепенную важность осуществлению пунктов 157 и 158 принятой в Дурбане Программы действий (A/CONF.189/12), которые, как представляется, имеют ключевое значение для разрыва порочного круга угнетения, эксплуатации, несправедливости и нищеты и содействия надлежащему государственному управлению. Комиссии следует уделить пристальное внимание этому существенно важному пункту рекомендаций,

принятых на семинаре в Найроби, с тем чтобы обеспечить эффективную реализацию решений Дурбанской конференции.

### **С. Участие в работе пятьдесят седьмой сессии Генеральной Ассамблеи**

8. В период с 21 по 25 октября 2002 года Специальный докладчик участвовал в работе пятьдесят седьмой сессии Генеральной Ассамблеи, где он изложил на заседании Третьего комитета свой подход к вверенному ему мандату. Он подчеркнул, что для борьбы против расизма, расовой дискриминации, ксенофобии и связанной с ними нетерпимости необходимо, согласно духу и букве Дурбанской декларации и Программы действий, не только реагировать на эти явления в юридической и политической плоскости, но и учитывать идеологические, культурные и психологические корни, процессы и механизмы, способствующие увековечиванию и возобновлению проявлений расизма, расовой дискриминации, ксенофобии и связанной с ними нетерпимости и подобных явлений, с тем чтобы предложить решения, позволяющие искоренить основы этих пагубных явлений.

9. По сути, глобализация, как представляется, находит свое выражение в следующих явлениях: культурная унификация, вытекающая из логики глобального рынка, игнорирующей культурную самобытность и национальные отличия, в качестве реакции порождает тенденцию к замыканию в своей самобытности, преобладанию материалистических ценностей потребления и конкуренции, эрозии культурных и духовных ценностей. На этой почве происходит подпитывание, развитие, возобновление дискриминации и даже превращение ее в обычное явление. Именно в области культуры происходят глубинные процессы формирования, обоснования и выражения недооценки и негативного образа "чужака". Пренебрежение к чужой культуре как следствие этноцентризма, – который по своей сути представляет собой идеологическую модель оправдания дискриминации и господства, является наиболее прочным эксплицитным или имплицитным фундаментом психологии и практики дискриминации, расизма, ксенофобии и нетерпимости. Закостенелость в самобытности – произвольная защитная реакция на унификацию – усугубляет "закрытость" нации, общины, группы, этноса, религии, образа жизни, "наших ценностей" в противоположность ценностям других. Все новые крупные конфликты нашего времени, отличающиеся наибольшей остротой, масштабами насилия и непримиримости, в своей основе являются культурными антагонизмами, общая характерная черта которых состоит в создании применительно к другим людям, зачастую вчерашним соседям, образа опасного, радикально и неисправимо непримиримого врага – "чуждого инородца".

10. Эта вызревающая в глобальном масштабе тенденция находит свое отражение даже на теоретическом уровне, иными словами, в умозрительных построениях, направленных



на оправдание и концептуальное и историческое объяснение. Одним из последних примеров этого является труд Сэмюэля Хантингтона "Столкновение цивилизаций"<sup>1</sup>. Подобные концепции представляют собой смесь реального, воображаемого и фантастического со стратегиями и манипуляциями, направленными на обеспечение контроля и господства, и искажают объективное восприятие проблем, мешая выработке устойчивых решений, способствующих ликвидации дискриминации.

11. Поэтому в соответствии с духом Дурбанской декларации и Программы действий, которые ставят вопрос расизма и дискриминации в более глобальную плоскость, необходимо разработать новый подход, состоящий в определении требуемых мер на основе выяснения глубоких корней, механизмов, процессов, проявлений и аспектов расизма и расовой дискриминации. Другими словами, разработка договорно-правовых документов и механизмов в рамках борьбы за демократию в политической, социальной и экономической сферах должна опираться на фундаментальные теоретические построения, способные вскрыть культурные корни дискриминации, лежащие в основе психологических и поведенческих реакций. В этой связи Специальный докладчик полагает, что сердцевину дискриминирующих мировоззренческих и поведенческих установок составляют две требующие пристального внимания концепции, которые подпитывают и формируют большую часть современных конфликтов между культурами: концепция инструментализации многообразия и концепция гипертрофии самобытности.

12. Согласно преобладающему мнению, концепция многообразия, как представляется, все больше становится ответом на сопряженные с глобализацией опасности культурной унификации и усиление культурной, религиозной, этнической и общинной самобытности. Однако эта концепция имеет идеологические и исторические коннотации и обусловлена своим политическим, философским и идеологическим контекстом и средой. Само по себе многообразие не является какой-то ценностью в этическом смысле этого слова. Так, в философском плане понятие многообразия имеет тесные коннотации с философскими и естественно-научными представлениями XVIII и XIX веков. Естественно, научные и философские труды о разнообразии видов и рас стали основой для теорий превосходства одних над другими. Они также послужили идеологическим и философским фундаментом не только для разработки теорий расовой, этнической, социальной и религиозной дискриминации, но также и для теоретического обоснования эксплуатации и господства, в частности работорговли и колониализма, которые конкретно упоминаются в заключительном документе Дурбанской конференции. Именно такая инструментализация понятия многообразия и лежит в основе этноцентризма. Все виды этноцентризма исторически, идеологически и в культурном плане строятся на понимании многообразия как радикального отличия одних от других, что тем самым приводит к неравенству и

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<sup>1</sup> Paris, Odile Jacob, 1997.

дискриминации. Поэтому в рамках новой интеллектуально-этической стратегии борьбы с расизмом и дискриминацией следует пересмотреть содержание понятия "самобытность".

13. Специальный докладчик выяснил, что вся история отношений между народами свидетельствует о решающем значении неверного толкования самобытности. Будучи понятием неоднозначным, самобытность может предполагать одновременно утверждение себя и отрицание другого. В свете долгой истории человечества, и в частности диалектики переселения/сближения/взаимодействия народов, которая формировала все цивилизации и культуры, он предлагает, с тем чтобы самобытность была не препятствием, а благоприятным фактором для диалога, развивать новое понимание самобытности (этнической, культурной или духовной), не воспринимать больше самобытность как своего рода "гетто" или замкнутость, но понимать, воспринимать и на практике учитывать ее как процесс сближения и динамичного синтеза. В условиях стремления к замкнутости в своей самобытности, при котором, как об этом свидетельствует большинство современных конфликтов, вчерашний сосед сегодня становится врагом, возрождаются старые и появляются новые формы расизма, дискриминации и ксенофобии, необходимо показать и осознать, что самобытность является своеобразной материей со свойственными ей текстурой, структурой и движением. Поэтому самобытность, как представляется, есть своего рода алхимическое таинство, когда, по диалектике взаимообмена, тот или иной народ, имеющий свои собственные культурно-исторические традиции, путем сложных и зачастую спонтанных процессов принимает, трансформирует и усваивает ценности, привносимые извне.

14. В конечном счете речь идет об утверждении представления о том, что самобытность может быть основой этики, нового осознания своей близости к другому человеку, а следовательно, и основой для диалога.

15. В этом смысле при разработке устойчивой стратегии искоренения традиций и идеологии дискриминации можно было бы вдохновляться ярким примером из сферы биологического разнообразия, демонстрирующим, что существование и взаимодействие различных видов является источником и условием жизни и когда исчезновение любого из видов несет с собой гибель всей экологической системы. Проекция этого примера биологического разнообразия на плоскость "сосуществования" должна выражаться в новом социальном мировоззрении, основанном на диалектике единства и разнообразия, а также на понимании и поощрении ценности взаимного обогащения культур, народов, этносов и религий как важнейшего условия жизнеспособности, да, пожалуй, и выживания любого общества. Так, диалог культур и цивилизаций стал бы отражением своего рода "биокультуры".

16. Как следствие ликвидация дискриминации предполагает трансформацию имеющей исторические и идеологические коннотации концепции многообразия в определенную ценность, которая, сохраняя свою множественную сущность, диалектически связывает между собой единство и многообразие. Эта ценность носит название плюрализма.

17. Этнический, культурный, социальный и духовный плюрализм представляет собой фундаментальную ценность для борьбы со всеми формами дискриминации, в частности в контексте глобализации. Можно было бы определить плюрализм как признание, защиту, поощрение и уважение многообразия. В своем самом глубоком смысле плюрализм отражает признание и защиту этнической, культурной и духовной специфичности с одновременным признанием ценностей, которые, существуя в том или ином определенном обществе, преобладают над этими особенностями. Именно в этом смысле плюрализм представляет собой ту ценность, которая обуславливает действие диалектики единства и многообразия, являющейся краеугольным камнем равновесия и гармонии любого многокультурного общества. Таким образом, поощрение плюрализма может стать наиболее ценным инструментом для создания стратегии искоренения дискриминации во всех ее формах. Глобальная стратегия предполагает, чтобы в отношении плюрализма, который Специальный докладчик предлагает определять как признание, поощрение, защиту и уважение многообразия, принимались конкретные и демократическим образом разработанные меры в области права, образования, информации и общения и чтобы они находили свое практическое воплощение в тех социальных сферах, где существуют проявления дискриминации (в сферах труда, обеспечения жильем, здравоохранения).

18. Теоретический инструментарий этой новой стратегии борьбы против расизма, ксенофобии и дискриминации мог бы распределяться по направлениям истории, образования и экономических обменов:

- история является той ареной или тем замкнутым пространством, в пределах которого разные культуры, цивилизации и народы формировали свою самобытность и свои взаимоотношения с другими общностями. Именно на эту сферу, где коренятся все недоразумения и антагонизмы, как дружественные, так и враждебные отношения, необходимо прежде всего обратить внимание в целях налаживания диалога между культурами и цивилизациями. Память об истории, включая ее древнейшие времена, позволяет подняться к глубоким истокам процессов, механизмов и проявлений как диалога, так и конфликта. Поэтому следует в безотлагательном порядке провести пересмотр изложения, содержания и преподавания истории каждого народа всего человечества в качестве основополагающего фактора для диалога;

- просвещение и образование в долгосрочной перспективе являются магистральными путями трансформации сознания: именно таким образом формируются знания, отношения и ценности. Кроме того, именно таким образом передаются и укореняются в сознании образ и восприятие других людей. Поэтому именно в этой сфере необходимо глубоко внедрять этику плюрализма и диалога. По сути, межкультурное образование представляет собой своего рода катарсис, который обязывает каждый народ и представителей каждой культуры критически взглянуть на самих себя, позволяет поколебать прежние установки и способствует устранению барьеров и отчуждения. Что касается общения, путем которого формируется и передается образ самих себя и других, то оно также должно быть межкультурным, чтобы конкретно выражать необходимость изменений и диалога по смыслу прекрасной формулировки Шона Макбрайда: "Многоголосье в едином мире";
- экономические обмены также являются весьма важным инструментом диалога: торговля во все времена и на всех континентах была вектором сближения, распространения и взаимодействия культур, художественных творений и взлетов духовности. Поэтому следует выйти за рамки привлекательных, но ложных теорий антагонизма между культурой и торговлей и глубоко внедрять в процессы обмена, который является сердцевиной торговли, ценность диалога. Именно в этом контексте крайне необходимо обратить внимание на появление новой трактовки дискриминации в откровенных или завуалированных теоретических схемах, которые объясняют слаборазвитость наличием в соответствующих обществах балласта архаичных и устаревших ценностей и менталитета в противоположность "современности". В этой связи процессы развития и роста не должны больше соответствовать какой бы то ни было логике или модели рынка, а должны воплощать на практике многогранную палитру форм бытия и образов жизни. В конечном счете имеющий огромное значение диалог культур и цивилизаций неизбежно должен являться фактором переговоров по вопросам торговли и мировой экономики. Тем самым культурная этика может по своему характеру способствовать смягчению негативных аспектов закона рынка. В рамках этой стратегии особое внимание будет уделяться многогранным сферам обменов и взаимодействия, которые могут как подпитывать, так и сдерживать расизм, дискриминацию и ксенофобию, равно как и способствовать диалогу культур, в частности в области туризма, иммиграции и спорта.

19. Исходя из вышеизложенного, Специальный докладчик предлагает определить следующие приоритеты:

- строгое и всеобъемлющее осуществление заключительного документа Дурбанской конференции. Декларация и Программа действий будут для него отправным пунктом и руководством в выборе регионов и стран, которые должны подвергнуться рассмотрению и изучению в процессе подготовки его ежегодного доклада Комиссии и Генеральной Ассамблее;
- связь между борьбой против расизма, дискриминации и ксенофобии и поощрением диалога между цивилизациями, культурами и религиями;
- углубленное исследование вопроса о тревожном возрождении расизма в спорте в тесном сотрудничестве с компетентными органами, такими, как Международный олимпийский комитет (МОК) и Международная федерация футбольных ассоциаций (ФИФА);
- поездки на приоритетной основе в страны и регионы, где возникает необходимость незамедлительных действий в связи с тяжелым положением и практикой дискриминации;
- доклад о положении мусульманского и арабского населения в различных регионах мира после событий 11 сентября 2001 года, представленный во исполнение резолюции 2002/9 Комиссии (см. E/CN.4/2003/23).

20. В период сессии Генеральной Ассамблеи Специальный докладчик провел консультации с представителями государств, межправительственных и неправительственных организаций (НПО). В Вашингтоне были проведены беседы с членами Организации американских государств, цель которых состояла в укреплении сотрудничества с этой организацией в деле реализации решений Дурбанской конференции, в частности по вопросу разработки проекта межамериканской конвенции о борьбе с расовой дискриминацией, который имеет особую значимость для этого региона, где протекают сложные и глубинные процессы формирования многообразия культур. Что касается контактов Докладчика с правозащитными организациями, установленных при весьма эффективной поддержке Международной юридической группы по правам человека, то здесь следует отметить проведение широкого обмена мнениями, информацией и предложениями относительно осуществления его мандата и реализации решений Дурбанской конференции.

**D. Участие в работе Всемирной конференции африканцев и лиц африканского происхождения по борьбе с расизмом**

21. 2 сентября 2002 года Специальный докладчик получил от Центрального организационного комитета секретариата Всемирной конференции африканцев и лиц африканского происхождения по борьбе против расизма приглашение принять участие в работе этой конференции, созываемой по итогам Всемирной конференции по борьбе против расизма, расовой дискриминации, ксенофобии и связанной с ними нетерпимости, которая должна была состояться 2-6 октября 2002 года в Бриджтауне. По заявлению организаторов, цель Всемирной конференции африканцев и лиц африканского происхождения по борьбе против расизма состояла в разработке стратегий осуществления принятого в Дурбане Плана действий, обмене информацией относительно эффективных программ и проектов и в формировании глобальной неправительственной panaфриканской организации, в рамках которой представители африканской диаспоры могли бы продолжать совместную работу.

22. На открытии Конференции Специальный докладчик был возмущен предложением, внесенным одной группой НПО, которая требовала, исходя из явно расовых критериев, не допускать к участию в работе Конференции надлежащим образом приглашенных и зарегистрированных делегатов. На пленарном заседании Специальный докладчик был первым оратором, выразившим свое категорическое несогласие с этим предложением, которое, по его мнению, противоречило основополагающему принципу Организации Объединенных Наций о недопущении дискриминации по признаку расы, национальности или этнического происхождения и тем самым подрывало саму цель и дух Всемирной конференции по борьбе против расизма, выполнению решений которой предполагалось посвятить это мероприятие. Специальный докладчик официально объявил о своем решении покинуть Конференцию в случае утверждения этого предложения. Участникам Конференции было предложено голосовать по этому предложению, в результате чего предложение было одобрено, и ряду участников, включая устных переводчиков, журналистов и делегатов от НПО, было предложено удалиться с пленарного заседания. Тем самым национальные делегации смешанного расового состава были разделены по расовым признакам.

23. Впоследствии, 3 октября 2002 года, правительство Барбадоса, которое сыграло весьма активную роль на Дурбанской конференции, что подтверждается предоставлением объектов для организации Конференции и его политикой строительства многорасового общества, выпустило заявление для печати, в котором оно решительно осудило принятое на Конференции решение. Координатор-резидент Организации Объединенных Наций в Барбадосе и Специальный докладчик оба отказались от участия в работе Конференции и

отозвали свое предыдущее заявление о поддержке ее проведения официальной нотой, направленной Председателю Центрального организационного комитета Конференции 4 октября 2002 года.

#### **Е. Участие в Неделе афро-бразильской культуры**

24. 21 ноября 2002 года Специальный докладчик по приглашению правительства Бразилии принял участие в церемонии открытия в столице этой страны Национального информационно-справочного центра по вопросам афро-бразильской культуры, которое проходило с участием президента Фернандо Энрике Кардосо и Президента Всемирного банка г-на Дж. Вульфенсона, находившегося с визитом в Бразилии. Докладчик полагает, что это приглашение является примечательным символическим признаком приверженности конкретной страны к разработке и поиску радикальных и устойчивых решений в связи с бременем исторического наследия, отмеченного печатью расовой дискриминации - одной из основ рабовладельческой системы. Эта оценка была подтверждена представителями афро-бразильской общины, в частности Фонда Пальмареса, с которыми встретился Специальный докладчик. Фактически Бразилия приступила к осуществлению обширной программы позитивных действий, или мер по улучшению положения населения африканского происхождения, в частности в сфере образования и доступа к государственным должностям, и особенно к дипломатической карьере. Ряд законов и постановлений, недавно принятых на федеральном уровне (в том числе закон № 10.558 от 13 ноября 2002 года и постановление министерства культуры № 484 от 22 августа 2002 года) предусматривают 20-процентные квоты для приема афро-бразильцев в университеты и на государственные должности. Кроме того, правительство намеревается оказать воздействие на предприятия государственного сектора путем заключения льготных контрактов с теми предприятиями, которые занимаются осуществлением этой политики позитивных мер. В этом направлении предстоит еще большая работа, и Специальный докладчик намеревается внимательно отслеживать и поощрять эти усилия.

#### **Ф. Участие в первой сессии Рабочей группы экспертов по проблеме лиц африканского происхождения**

25. В период 25-29 ноября 2002 года Специальный докладчик в соответствии с полученным приглашением принял участие в первой сессии Рабочей группы экспертов по проблеме лиц африканского происхождения. Он, в частности, представил Рабочей группе разъяснения по важному и сложному вопросу возмещения для групп населения африканского происхождения. Он объяснил, что не следует исключать действие принципа возмещения в силу наличия многочисленных прецедентов, включая,

в частности выплату компенсаций рабовладельцами после отмены рабства, финансовые санкции, введенные Францией против Гаити и действовавшие в течение целого ряда лет, и компенсации еврейскому народу после второй мировой войны. Вместе с тем, по его мнению, следует отдавать приоритет моральному возмещению. И в этом смысле Дурбанская конференция сделала первый шаг, признав, что рабство и работорговля являются преступлениями против человечества. Второй тип возмещения имеет исторический характер и предусматривает открытие архивов и доступ к ним, что позволяет осознать и досконально изучить всю историю глубоких корней и материальных и гуманитарных условий явления, которое французский историк Жан-Мишель Дево назвал "величайшей по своей продолжительности и своему размаху трагедией в истории человечества". Таким образом, будет возможно продемонстрировать непосредственную связь между рабством и слаборазвитостью стран Африки, Карибского бассейна и Южной Америки (в силу демографического воздействия на многие миллионы людей и всеобщей и глубокой дестабилизации производственной системы африканского континента на целые четыре столетия) и связать эти важные данные с переговорами по вопросам развития и, в частности, с вопросом задолженности. Наконец, третий тип возмещения должен состоять в восстановлении памяти путем определения, реставрации и демонстрации всех памятников работорговли и рабства (портов, замков, кораблей, кладбищ, рабовладельческих рынков) и нематериального наследия (всех культурных систем, выработанных обращенными в рабство людьми для сопротивления и своего выживания).

26. Этот триединый подход должен позволить выявить тех, кто несет ответственность за разработку, поощрение и получение прибылей от рабовладельческой системы в Европе, Северной и Южной Америке и в Карибском бассейне, а также осудить феодальные системы в Африке, представители которых были соучастниками этих преступлений и обеспечивали пересылку невольников.

27. Кроме того, Специальный докладчик выразил свое мнение в отношении определения понятия "лица африканского происхождения" в том смысле, что оно должно включать всех членов африканской диаспоры как в Северной и Южной Америке, так и в Европе и Азии.



## **II. СОВРЕМЕННЫЕ ПРОЯВЛЕНИЯ РАСИЗМА, РАСОВОЙ ДИСКРИМИНАЦИИ, КСЕНОФОБИИ И СВЯЗАННОЙ С НИМИ НЕТЕРПИМОСТИ**

### **A. Расизм, расовая дискриминация и ксенофобия в сфере политики**

#### **1. Положение в Кот-д'Ивуаре**

28. Начиная с 19 октября 2002 года в Кот-д'Ивуаре протекает сложный конфликт, который, согласно утверждениям, полученным Специальным докладчиком, приобретает широкий размах из-за усиления межэтнической напряженности и проявлений ксенофобии.

29. Многие слои населения Кот-д'Ивуара поддались на подстрекательство, разжигающее этническую ненависть и вылившееся в бесчинства по отношению к населению северных районов и проявления ксенофобии в отношении иностранцев. 24 октября 2002 года Специальный докладчик совместно со Специальным докладчиком по вопросу о поощрении и защите права на свободу мнений и их свободное выражение выпустил коммюнике о положении в Кот-д'Ивуаре и призвал власти этой страны удвоить бдительность в связи с угрозами межэтнических конфликтов и в безотлагательном порядке принять меры, необходимые для пресечения действий, которые инспирированы идеями или теориями, основанными на превосходстве определенных групп, лиц с определенным цветом кожи или определенного этнического происхождения. Впоследствии организации по защите прав человека, действующие в Африке (например, Африканский форум в интересах защиты прав человека [Раддо]) и за пределами континента (например, Организация по наблюдению за осуществлением прав человека), после проведения расследований подтвердили факты массового истребления населения и отдельных убийств, которые по их числу и этническому или общинному происхождению жертв обуславливают необходимость незамедлительного вмешательства международного сообщества.

30. 2 декабря 2002 года Специальный докладчик направил властям Кот-д'Ивуара послание с просьбой о посещении этой страны для определения в рамках своего мандата действительного положения в области дискриминации, ксенофобии и связанной с ними нетерпимости и представления отчета международному сообществу.

## 2. Положение в Гайане

31. Специальный докладчик получил из разных источников информацию относительно ухудшения политической ситуации в Гайане после президентских и парламентских выборов, проведенных в марте 2001 года. На этих выборах одержала победу Народная прогрессивно-гражданская партия (НППГ), а ее лидер г-н Бхаррат Джагдео был избран президентом Гайаны на третий пятилетний срок. Период после выборов был омрачен беспорядками и отдельными актами насилия, при этом представители главной оппозиционной партии - Народного национального конгресса/Партии реформ (ННК/ПР) под руководством г-на Десмонда Хойте - выступили с утверждениями о том, что выборы проводились с нарушениями положений Конституции. Фактически после обретения Гайаной независимости политический климат этой страны характеризовался напряженностью между двумя основными этническими группами - индо-гайанцами и афро-гайанцами, доли которых в 700-тысячном населении страны составляют, соответственно, около 40% и 35%. Обе политические партии четко делятся по этническому признаку, при этом НППГ поддерживают в основном индо-гайанцы, а ННК/ПР - афро-гайанцы.

32. Причины нынешнего положения в Гайане коренятся в колониальном прошлом этой страны. Как представляется, разные общины, возникшие в результате заселения Гайаны путем принудительных перемещений рабочей силы из Африки и Индии, осуществлявшихся в эпоху Британской империи, еще не сумели прийти к преодолению мирным путем их соперничества за власть и к равноправному управлению ресурсами страны. Специальный докладчик серьезно озабочен угрозами обострения межэтнического конфликта в Гайане и поделился своими опасениями с гайанскими властями, а также выразил им свое желание совершить поездку в эту страну. Кроме того, он направил правительству Гайаны сообщение, содержащее полученные им утверждения.

### **В. Расовая дискриминация в отношении рома/синти/тревеллеров**

33. Лица из числа рома являются жертвами расовой дискриминации почти во всех секторах общественной жизни, в сферах образования, труда, в жилищной сфере, в доступе к местам общественного пользования и к гражданству. В ряде мест своего проживания они подвергаются жестокому обращению со стороны полиции и дискриминации в рамках судопроизводства. Стигматизация лиц из числа рома в ряде стран ограничивает их возможности пользоваться основными правами в качестве равноправных граждан. Отсутствие терпимости к их культуре и обычаям обуславливает их маргинализацию в обществе.

34. Сообщается, что в странах Европы лицам из числа рома систематически отказывают в доступе к ресторанам, дискотекам, стадионам и другим общественным местам. Европейский центр по защите прав рома сообщил о том, что рома сталкиваются с дискриминацией в судебной системе, и особо отметил, что в ряде стран против лиц, совершающих акты насилия в отношении рома, не принимаются надлежащие санкции. Кроме того, во многих сообщениях о положении рома указывается, что им чаще назначаются суровые приговоры за совершенные преступления, они заключаются под стражу до суда на более длительные сроки и им труднее реализовать свое право на доступ к адвокату. Правозащитные группы также отметили тенденцию к дискриминации в отношении лиц из числа рома в учебных заведениях и в жилищной сфере, как и то, что они часто становятся жертвами принудительных выселений из их жилищ и подвергаются сегрегации по месту проживания.

35. 1 октября 2002 года Совет Европы представил на Европейском форуме рома свой окончательный доклад, включающий рекомендации неофициальной исследовательской группы, которая рассмотрела вопрос об учреждении всеевропейской консультационной комиссии рома. Эта инициатива направлена на изучение путей обеспечения адекватного участия рома в процессе принятия затрагивающих их решений путем создания своего рода консультативного собрания, которое будет представлять их на общеевропейском уровне. В докладе рассматриваются вопросы, касающиеся размеров, состава и выборных процедур Европейского форума рома и институциональных связей между Форумом и Советом Европы, а также ряд направлений сотрудничества с международными организациями, в частности Организацией по безопасности и сотрудничеству в Европе и Организацией Объединенных Наций.

36. На международном уровне вопрос о дискриминации в отношении рома поднимался в ряде заключительных замечаний по докладам государств-участников, принятых Комитетом по ликвидации расовой дискриминации (КЛРД), Комитетом по правам человека и другими договорными органами<sup>2</sup>. Помимо этого, на своей пятьдесят седьмой сессии КЛРД принял Общую рекомендацию XXVII от 16 августа 2000 года, конкретно касающуюся вопроса о дискриминации в отношении рома. В этой рекомендации КЛРД перечисляет ряд мер, которые могут быть приняты государствами для борьбы с дискриминацией в отношении лиц из числа рома и для обеспечения их защиты. В частности, КЛРД предлагает принять меры против актов насилия на расовой почве, по улучшению условий жизни, в области средств массовой информации, а также меры,

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<sup>2</sup> См. например, заключительные замечания Комитета по правам человека по Чешской Республике, 2001 год (ССПР/СО/72/СЗЕ); по Венгрии, 2002 год (ССПР/СО/74/НУН); заключительные замечания Комитета по экономическим, социальным и культурным правам по Хорватии, 2001 год (Е/С.12/1/Add.73).

касающиеся участия в общественной жизни, и просит государства-участники включать в свои периодические доклады данные по общинам рома, находящимся под их юрисдикцией.

37. Специальный докладчик с удовлетворением отмечает, что в настоящее время повсеместно выражается озабоченность по поводу положения групп рома во многих европейских странах, чему способствовала и деятельность, проводимая в рамках его мандата. К числу позитивных тенденций, которые намеревается поддержать Специальный докладчик, относятся важные изменения, такие, как расширение участия рома в процессах принятия решений на региональном уровне и подготовка на международном уровне рекомендаций относительно защиты их прав. Поэтому он и впредь будет отслеживать положение рома и сообщать о нем Комиссии по правам человека.

### **С. Антисемитизм**

38. Специальный докладчик получил от правительства Израиля и от ряда еврейских НПО утверждения относительно широкого распространения на Ближнем Востоке и в Европе текста "Протоколов сионских мудрецов". Эта известная своим антисемитским содержанием книга является фальшивкой, которая, по-видимому, была сфабрикована в начале XX века для разоблачения якобы замышлявшегося на одном из сионистских конгрессов заговора евреев, направленного на подрыв христианства путем саботажа и установление своего господства в мире. Этот документ впервые появился в 1905 году в России и на протяжении XX века широко распространился за пределами этой страны, являясь питательной почвой для антисемитизма. В одной из стран Ближнего Востока один частный телевизионный канал подготовил и выпустил в эфир телесериал из 41 фильма, посвященный "Протоколам сионских мудрецов". Специальный докладчик направил властям соответствующих стран сообщения об этом случае пропаганды антисемитизма.

### **III. УТВЕРЖДЕНИЯ, РАССМОТРЕННЫЕ СПЕЦИАЛЬНЫМ ДОКЛАДЧИКОМ**

39. В течение 2002 года Специальный докладчик рассмотрел утверждения, касающиеся его мандата, относительно следующих стран: Германии, Испании, Российской Федерации, Греции, Гайаны и Соединенного Королевства Великобритании и Северной Ирландии. Резюме этих утверждений и ответов, полученных от правительств соответствующих стран, приводится в приложении к настоящему докладу на языке их представления.

#### IV. ВЫВОДЫ И РЕКОМЕНДАЦИИ

40. В заключение Специальный докладчик подчеркивает, что его первые контакты с представителями правительств и межправительственных и неправительственных организаций продемонстрировали необходимость безотлагательного осуществления Дурбанской декларации и Программы действий в целях противодействия тревожному возрождению проявлений "обычного" расизма и появлению новых скрытых форм дискриминации и расизма. Кроме того, Специальный докладчик подчеркивает в этой связи необходимость срочного реагирования и принятия серьезных мер в связи с особенно тревожащим его ростом числа ситуаций, для которых характерно сознательное смешение или объединение признаков расы, религии и культуры. В этом контексте Специальный докладчик, руководствуясь положениями Дурбанской декларации и Программы действий, предлагает применять двуединую стратегию: политико-правовую (путем ратификации и осуществления всех соответствующих международных договоров и соглашений) и интеллектуально-этическую (путем достижения более полного осознания и понимания глубоких корней, процессов и механизмов идеологии и психологии дискриминации). Речь идет о том, чтобы на основе теоретической работы и практических мероприятий установить органичную взаимосвязь между борьбой против расизма, дискриминации, ксенофобии и нетерпимости и крайне необходимым поощрением диалога между культурами, цивилизациями и религиями. В этой связи Комиссии по правам человека предлагаются следующие рекомендации:

- поощрять взаимодополняемость и сотрудничество между всеми механизмами борьбы против расизма, дискриминации, ксенофобии и нетерпимости, в частности механизмами осуществления Дурбанской декларации и Программы действий, а также между Комитетом по ликвидации расовой дискриминации и Специальным докладчиком и между специальными докладчиками;
- уделять более пристальное внимание ситуациям и практике дискриминации в отношении неграждан, мигрантов и беженцев;
- в ходе обсуждений на заседаниях Комиссии более внимательно рассматривать глубокие мировоззренческие и этические корни идеологии и психологии расизма и дискриминации;

- **придавать приоритетное значение диалогу цивилизаций, культур и религий как вспомогательному средству преодоления всех форм дискриминации, отчуждения и нетерпимости;**
- **уделять повышенное внимание образованию во всех его аспектах (в частности, преподаванию истории, этики, прав человека в качестве универсальных нравственных норм, различных культур, общих ценностей для всех религий, а также духовных традиций), информации и межкультурному общению;**
- **поощрять в качестве благотворной ценности плюрализм, понимаемый как признание, принятие, уважение и поощрение многообразия. В этой связи развивать концепцию самобытности - амбивалентного понятия, которое может означать как законное утверждение специфичности, так и отрицание права быть другим.**

## 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 **Doviado 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 Mettman 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 Doviado 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 Doviado Adekou's complaint filed on 24 January 2002 at the District of Mettmen 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 Maria 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.

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\* 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 **Nourddeine 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 Koutropoulos**, 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 Romanians 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 Romanians 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 Romanians 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.

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