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**RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND
ALL FORMS OF DISCRIMINATION**

**Report by the Special Rapporteur on contemporary forms
of racism, racial discrimination, xenophobia and
related intolerance, Mr. Doudou Diène**

Addendum

Summary of cases transmitted to Governments and replies received*

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

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Introduction

1. This addendum to the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance gives an account of the communications sent to Governments by the Special Rapporteur between 31 January 2005 and 31 January 2006¹. It also contains in summary form the replies received from Governments to his communications during the same period, as well as observations of the Special Rapporteur where considered appropriate. Replies to communications which were received by the Special Rapporteur after 31 January 2005 will be reflected in his next report.

SUMMARY OF CASES TRANSMITTED AND REPLIES RECEIVED

Canada

Replies from the Government

2. On 9 February 2005, the Government of Canada replied to the allegation letter sent by the Special Rapporteur on 13 December 2004 (see E/CN.4/2005/18/Add.1, page 3). The Government indicates that Canada has established legislative and policy frameworks to ensure that applicants in the immigration system are treated with dignity and respect for their human rights. Complaints are formally investigated and a variety of legal recourse mechanisms exist, ultimately to the courts, if the complainants are not satisfied with how their complaint was resolved. Furthermore, according to the *Immigration and Refugee Protection Act* (IRPA), a Canadian citizen or permanent resident can sponsor the permanent residence application of a family member as defined by the IRPA. To do so, the applicant must demonstrate that her / his marriage is valid under the laws of the jurisdiction where it took place and under Canadian law, that is genuine and that it was not entered into primarily for the purpose of acquiring any status or privilege under the IRPA.

3. **Ms. Achour's** notice of Appeal to the Immigration Appeal Division (IAD) was received by the visa office on May 6, 2004. The IAD is an administrative tribunal that provides an independent review of decisions made under the immigration program. It can hear appeals for refusals of a sponsorship application for members of the family class. IAD will allow the appeal if the decision is wrong in fact or law, or mixed law and fact, if a principle of natural justice has not been observed or if sufficient humanitarian and compassionate considerations warrant special relief. The IAD can also consider the Canadian Charter of Rights and Freedoms, which is part of the Constitution, in its decision. In the event the IAD does not allow the appeal, Mrs. Achour can apply for leave for judicial review to the Federal Court of Canada, which may grant relief. In addition to this, and as a separate process, Mrs. Achour could also fill a discrimination complaint under the *Canadian Human Rights Act*. It prohibits discrimination in the provision of services or facilities on the basis of race, national or ethnic origin and colour, among other grounds.

4. On 3 October 2005, the Government sent additional information on the allegation letter sent by the Special Rapporteur on 13 December 2004, indicating that, after further investigations, Mr. Hamid Achour's application for a permanent residence visa did not satisfy the requirements

¹ General statistical information on communications sent by Special Procedures in 2005 is available on OHCHR website : www.ohchr.org

for the granting of permanent residency status established by *The Immigration and Refugee Protection Act* and *The Immigration and Refugee Protection Regulations*. The immigration officer considered various relevant factors that, taken together, reasonably indicated that the marriage was not genuine.

5. The Government's answer is followed by a description of Canadian Law and Policy concerning this domestic appeal procedures and human rights legislation that ensure that Mrs. Therese Achour's complaints can receive full and fair consideration. Moreover, when Mr. Achour's application was refused, the Government of Canada informed Mrs. Therese Achour of her right of appeal to an independent tribunal, the Immigration and Refugee Board, and Ms Achour has availed herself of this right. The appeal for a full hearing is scheduled for 5 October 2005. The Government of Canada indicated that it takes very seriously any allegation of discrimination and is confident that the appeal will ensure the respect of Ms. Achour's equality right and that any established discriminatory practice is fully addressed and remedied. It will inform the Special Rapporteur of the outcome of the appeal.

Chile

6. El 29 de diciembre de 2005, el Relator Especial, junto con el Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión y el Representante Especial del Secretario-General para los defensores de los derechos humanos, envió un llamamiento urgente en relación con la Sra. **Juana Calfunao Paillalef** y la **comunidad indígena Mapuche "de Juan Paillalef"** del municipio de Cunco, IX región. Juana Calfunao, tercera generación en su familia de mujeres activistas en la defensa de los derechos de la comunidad Mapuche, es *lonko* (autoridad tradicional) de su comunidad, miembro fundador de la organización no-gubernamental Comisión Ética contra la Tortura y de la Red Comunitaria de Defensores de los Derechos Humanos de los Indígenas y miembro de la Red de Alternativas a la Impunidad y la Globalización del Mercado. Su situación ha sido el objeto de las comunicaciones con fechas de 23 de agosto de 2004, 22 de octubre de 2004 y 2 de septiembre de 2005, remitidas al Gobierno por titulares de distintos mecanismos especiales de la Comisión de Derechos Humanos y a las que el Gobierno ya ha respondido por cartas con fechas de 27 de diciembre de 2004 y 6 de octubre de 2005. En un encuentro de mujeres defensoras de los derechos humanos que tuvo lugar en Colombo, Sri Lanka, a principios de diciembre de 2005, la Representante Especial sobre la situación de los derechos humanos tuvo el honor de entrevistarse con la Sra. Juana Calfunao Paillalef, la cual la informó detalladamente sobre la situación en la que se encontraban ella misma y su comunidad. De acuerdo con nueva información llevada a la atención de los Relatores especiales recientemente, el miércoles 21 de diciembre por la tarde un contingente policial integrado por fuerzas especiales de Temuco y Los Laureles habría disparado bombas lacrimógenas contra un grupo de personas de la comunidad Juan Paillalef que protestaban pacíficamente contra la construcción supuestamente ilegal de una carretera privada cuyo trazado pasaría por el centro de su comunidad rural y sus tierras. Juana Calfunao habría sido fuertemente golpeada junto a otros miembros de su comunidad mientras la policía habría disparado contra el caballo que montaba.

7. Se alega que el 23 de diciembre, se habría producido en la comunidad otro allanamiento policial en el que las fuerzas de seguridad habrían hecho nuevamente uso excesivo de la fuerza. La policía no habría presentado a la autoridad Mapuche la orden de allanamiento que requiere la ley. En esta ocasión, además de atacar la población con bombas lacrimógenas y balines, los

agentes habrían destrozado viviendas, generadores eléctricos y de agua y enseres personales, y habrían esparcido alimentos. También se habrían llevado todos los materiales de trabajo agrícola y de comunicación. Un taller que se estaba reconstruyendo, después de un incendio supuestamente intencional ocurrido en julio de 2005, también habría sido arrasado. Los agentes de policía habrían confiscado todos los teléfonos móviles, dejando incomunicada a la comunidad. Juana Calfunao, que todavía estaba herida, habría sido golpeada en presencia de sus hijos y otros niños de la comunidad y detenida junto a su hermana Ana Luisa. Ambas habrían sido conducidas a la Tercera Comisaría de Padre Las Casas y no habrían sido puestas en libertad hasta el día siguiente. De acuerdo con la información recibida, habrían sido sometidas a tratos crueles, inhumanos y degradantes durante su detención.

8. La jueza del Tribunal de Garantía de Temuco, que ordenó su liberación habría tenido en cuenta las lesiones que las dos hermanas presentaban en el rostro y extremidades y habría determinado que el procedimiento en que fueron detenidas ambas mujeres fue realizado de manera ilegal e irracional por parte de la fuerza pública a cargo del desalojo. Por otra parte, según las informaciones recibidas, existiría una orden del Ministerio Público de Temuco, en el sentido de que los carabineros de Los Laureles tendrían la responsabilidad de cuidar de manera personal a la Lonko Calfunao. Las hermanas Calfunao habrían sido citadas para la audiencia de control de la detención en la cual la fiscalía intentó formalizar los cargos contra ellas por "desórdenes públicos" y "amenaza a Carabineros". Este procedimiento quedaría postergado hasta el 13 de febrero del 2006.

9. Como muestran las comunicaciones enviadas previamente por mecanismos especiales de la Comisión de Derechos Humanos al Gobierno en relación con Juana Calfunao, no es la primera vez que la líder indígena y su comunidad son objeto de ataques y hostigamientos. Se teme que estos nuevos ataques contra Juana Calfunao y su comunidad estén nuevamente relacionados con su labor a favor de los derechos de las comunidades indígenas y constituyen un intento de intimidar a los integrantes de esta comunidad para que cesen sus reivindicaciones. Teniendo en cuenta estas alegaciones así como previos ataques y hostigamientos contra Juana Calfunao y su familia, se han expresado graves inquietudes por su seguridad. Estas inquietudes se extiende a todos los defensores de los derechos de la Comunidad Mapuche en Chile, quienes frecuentemente serían objeto de amenazas de muerte, de actos de acoso y de intimidación con el fin de presionarlos para que abandonen su lucha por su comunidad.

Observaciones

10. Debido al hecho que esta comunicación se envió el 29 de diciembre de 2005 y que se dejan 2 meses a los Gobiernos para responder, se hace referencia al párrafo 1 de este informe.

Colombia

11. El 21 de noviembre de 2005, el Relator Especial, junto con el Relator Especial sobre la independencia de los magistrados y abogados, envió un llamamiento urgente en relación con **Orlando Valencia**, líder afrodescendiente de la comunidad de Curbaradó, y con la situación de **las comunidades afrodescendientes del Jiguamiandó y Curbaradó**, departamento del Chocó, Colombia. El Sr. Orlando Valencia fue objeto de un llamamiento urgente y de una carta de alegaciones enviados por el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión y la Representante Especial del Secretario-General para los defensores de

los derechos humanos respectivamente el 19 de octubre de 2005 y el 1 de noviembre de 2005. De acuerdo con la información recibida, el 15 de octubre de 2005, Orlando Valencia, líder afrodescendiente de la comunidad de Curbaradó, desplazada en la cuenca del río Jiguamiandó, fue desaparecido por grupos paramilitares en el casco urbano de Belén de Bajirá, 15 minutos después de que fuera detenido por la policía durante tres horas. El 26 de octubre de 2005, las autoridades habrían informado que se habría encontrado el cuerpo sin vida de Orlando Valencia, con un tiro en la frente y con signos de haber sido amarradas sus manos.

12. Orlando Valencia sería la última de una serie 111 víctimas que las comunidades afrodescendientes del Curbaradó y Jiguamiandó habrían tenido desde 1996 por asesinatos o desapariciones forzadas, además de los 12 desplazamientos forzados que habrían sufrido en este mismo período. Se informa que estos casos de violaciones de derechos humanos se encontrarían en total impunidad. La Fiscalía General de la Nación no habría presentado avances en las investigaciones sobre las violaciones de los derechos humanos cometidas contra los miembros de estas comunidades, ni habría sancionado a los responsables. Pocos días antes, el 9 y 10 de octubre de 2005, soldados de la Brigada XVII del Ejército nacional se habrían llevado más de 50 cabezas de ganado pertenecientes a los pobladores de las Zonas Humanitarias de Bella Flor Remacho y Nueva Esperanza, cuenca del Jiguamiandó. Los soldados habrían también amenazado a los pobladores y a sus acompañantes de organizaciones no gubernamentales de derechos humanos nacionales e internacionales con que después de ellos iban a venir los paramilitares a “mochar cabezas”.

13. A la luz de la gravedad de la situación, el 7 de noviembre de 2002, la Comisión Interamericana de Derechos Humanos solicitó al Gobierno colombiano adoptar medidas cautelares para proteger a estas comunidades. Sin embargo, el Estado no habría respondido de manera efectiva a esta solicitud, lo que habría motivado a la Corte Interamericana de Derechos Humanos a decretar medidas provisionales de protección a favor de esas comunidades el 6 de marzo de 2003. Nuevamente, en marzo de 2005, la Corte Interamericana de Derechos Humanos requirió al Estado de Colombia que adopte, entre otras medidas, las que sean necesarias para proteger la vida e integridad personal de todos los miembros de estas comunidades, investigar los hechos que motivan la adopción de estas medidas provisionales, con el fin de identificar a los responsables e imponerles las sanciones correspondientes. Frente al conjunto de estas informaciones, quisieramos expresar nuestra profunda preocupación en relación con la violencia a la cual estarían sometidas las víctimas de las comunidades afrodescendientes del Curbaradó y Jiguamiandó y las violaciones a su derecho a la tierra aparentemente perpetradas por empresas palmicultoras y grupos paramilitares, que ponen en riesgo su integridad étnica, cultural y económica, y su sobrevivencia como pueblo tribal.

14. Por tanto, los Relatores instan al Gobierno a poner fin a todos los tratos discriminatorios, perpetrados por agentes estatales o particulares, frente las comunidades especialmente vulnerables del Jiguamiandó y Curbaradó, a través de medidas concertadas con los interesados, y la Fiscalía General de la Nación a investigar las violaciones de los derechos humanos cometidas contra los miembros de estas comunidades.

Observaciones

15. Durante su visita en Colombia en octubre del 2003, el Relator Especial visitó el departamento de Chocó y pudo constatar el estado de abandono de esta región. En este contexto,

el Relator Especial quiere reiterar las recomendaciones que hizo en su informe sobre la visita a Colombia (E/CN.4/2004/18/Add.3) y solicita el Gobierno para que indique cuáles medidas ha tomado para implementar estas recomendaciones en relación con la situación de las comunidades afrodescendientes.

16. El Relator especial lamenta no haber recibido respuesta del Gobierno a su comunicación del 21 de noviembre de 2005. El Relator especial va a dar seguimiento a este caso. En el supuesto de que no se recibiera una respuesta por parte del Gobierno, el Relator dejará de tratarlo como una alegación, y lo considerará un hecho probado.

Côte d'Ivoire

17. En l'absence de réponse du Gouvernement à ses communications des 23 juin 2004 et 30 juin 2004 (voir E/CN.4/2005/18/Add.1, page 5), le Rapporteur spécial se voit dans l'obligation de considérer les cas suivants non plus comme des allégations mais comme des faits avérés :

18. Communications du 23 juin 2004 : *Une trentaine de réfugiés parmi lesquels 12 femmes, dont une enceinte, et 11 enfants, ont été attaqués le 9 juin 2004 par des membres des forces de sécurité ivoiriennes. A 2 heures du matin, alors que les réfugiés se trouvaient dans des immeubles en construction à Attoban, un quartier d'Abidjan, cinq représentants armés des forces de l'ordre vêtus d'uniformes se sont présentés, ont tiré des coups de feu en l'air et leur ont ordonné de sortir de leurs abris et de s'étendre sur le sol. Les réfugiés ont alors été battus à coups de ceinture et sommés de quitter les lieux sur-le-champ. L'un des membres des forces de l'ordre leur a dit qu'il n'y avait pas de réfugiés en Côte d'Ivoire mais seulement des rebelles. Avant de partir, les forces de l'ordre ont dépouillé les réfugiés de tous leurs biens et les ont menacés de revenir voir s'ils avaient bien évacué les lieux.*

19. Communications du 30 juin 2004 : *Le 29 octobre 2002, **Dembélé Bazoumana**, journaliste au quotidien Tassouman et résidant à Abobo, a été embarqué par une quinzaine de gendarmes et emmené dans les locaux de la gendarmerie. Il y a été sauvagement torturé, notamment frappé à coup de barres de fer, sous les insultes à caractère racial des gendarmes qui affirmaient qu'ils tueraient tous les Dioulas comme lui. Il a ensuite été conduit dans un champs où il y avait trois corps en décomposition et aurait été utilisé comme cible par les gendarmes qui ont tiré sur lui à maintes reprises. Il a été ramené à la gendarmerie et n'a été libéré que le 5 novembre après avoir subi d'autres actes de torture.*

Denmark

20. On 24 November 2005, the Special Rapporteur, jointly with the Special Rapporteur on the freedom of religion and belief, sent a letter of allegation to the Government concerning cartoons representing the prophet Mohammad, published in a Danish newspaper. According to the information received, cartoons representing the prophet Muhammad in a defamatory and derogatory manner were published in the news paper *Jyllands Posten* in the course of September 2005. It is reported that the series of cartoons were published after a writer complained that nobody dared illustrate his book about Muhammad. Following the publication, two cartoons illustrators allegedly received death threats.

21. **Without wishing to prejudge the accuracy of these allegations and believing that limitations to the right to freedom of expression have to be applied in a restrictive manner, the Special Rapporteurs expressed their concern regarding actions that seem to reveal intolerance and absence of respect for the religion of others, particularly in the aftermath of 11 September 2001. Such actions may also constitute threats to the religious harmony of a society, and the source of incitement to discrimination, hostility or violence on the basis of religion which are prohibited by article 20 of the International Covenant on Civil and Political Rights.**

Reply from the Government

22. **On 24 January 2006, the Government of Denmark replied to the letter of allegation sent by the Special Rapporteur on 24 November 2005.** The Government confirmed that the Danish newspaper Jyllandsposten had published 12 cartoons depicting the prophet Muhammad on 30 September 2005. Following publication several death threats were made against the cartoonists, some of which are still under investigation. The cartoons prompted several private associations to file a complaint under the sections 140 and 266b of the Danish Criminal Code with the police. According to section 140 of the Criminal Code, any person, who, in public, ridicules or insults the dogmas of worship of any lawfully existing religious community in Denmark shall be liable to imprisonment for any term not exceeding four months, or, in mitigating circumstances, to a fine. Section 266b of the Criminal Code criminalizes the dissemination of statements or other information by which a group of people are threatened, insulted or degraded in account of e.g. their religion.

23. The complaint was taken up by the Regional Public Prosecutor in Vilborg. The prosecutor decided that the term "other information" in section 266b includes cartoons and that section 140 also includes cartoons as that section takes as its object the insult and not the form the insult has taken. On 6 January 2006 the Prosecutor decided to discontinue the investigation for lack of a reasonable suspicion that a criminal offence indictable by the state has been committed. The Prosecutor stated that when assessing what constitutes an offence the freedom of speech must also be taken into consideration. The freedom of speech must be exercised with the necessary respect for other human rights, including the right to protection against discrimination, insult and degradation. In finding that there was no reasonable suspicion that a criminal offence indictable by the state had been committed, the Prosecutor attached importance to the fact that the article in question concerns a matter of public interest, which means that there is an extended access to make statements without these statements constituting a criminal offence. Furthermore according to Danish case law journalists have extended editorial freedom when it comes to subjects of public interest. These reasons led to the conclusion that in this case no criminal offence under section 140 or 266b of the Criminal Code had been committed. A complaint against the Prosecutor's decision can be lodged with the office of the Director of Public Prosecutions.

24. In general, the Danish Government strongly focuses on ensuring an inclusive, multicultural society characterized by mutual respect and shared democratic values. In his New Year's address of 2006, the Danish Prime Minister stated very clearly that he condemns any expression, action or indication that attempts to demonize groups of people on the basis of their religion or ethnic background. He also stressed the important and absolute nature of the freedom of speech, which is not negotiable. But it is necessary to exercise that freedom in a civilized

respectful manner so as not to incite to hatred and cause fragmentation within Danish society. Other members of cabinet have put forward similar views. Furthermore, the Danish Government is continuing its dialogue with representatives of minorities, through the Council for Ethnic Minorities and the Local Integration Council, and leaders of religious communities, in order to achieve mutual respect and understanding as well as stronger community participation, active citizenship, freedom and equality, better opportunities for the young and prevention of radicalization.

25. Also, following the World Conference against Racism in 2001, the Government issued in 2003 its Action Plan to Promote Equal Treatment and Diversity and Combat Racism, which pursues objectives such as investigations on educational barriers for ethnic minorities, the promotion of dialogue in public and private spheres, dialogue with and cooperation with ethnic minorities organizations, the promotion of events and debates on diversity, democracy and tolerance, the inclusion of ethnic minorities in political life. Also, Denmark ratified several conventions against discrimination: the European Convention on Human Rights, the International Covenant on Political and Civil Rights, the Convention on the Elimination of all Forms of Racial Discriminations and the ILO Convention 111 on discrimination in regard of employment and occupation. In May 2003 the Danish Parliament adopted the Act on Equal Ethnic Treatment. The Act aims to ensure a high level of protection against racial discrimination and to implement into Danish law the non-employment aspects of the EU Racial Equality Directive. By Act n°253 of 7 April 2004, amending the Act on Prohibition of Discrimination on the Labour Market, the authority of the Danish Institute for Human Rights was extended to embrace individual complaints concerning discrimination in the labour market. Two other specialised bodies were created to fight discrimination: the Danish Centre for International Studies and Human Rights and the Committee on Equal treatments, which was created by the principal human rights body, the Danish Institute for Human Rights.

26. **On 31 January 2006, the Government of Denmark sent a second reply to the letter of allegation sent by the Special Rapporteur on 24 November 2005.** The Government transmitted the Statement made on 31 January 2006 by the Danish Prime Minister regarding the drawings of the Prophet Muhammad. In that statement, the Prime Minister refers to the apologies made by the newspaper Jyllandsposten to the Muslim world. He emphasizes the fundamental importance of freedom of expression, while expressing his distress for the fact that the drawings have been seen by many Muslims as a defamation of their religion. He hopes the apology of the newspaper will comfort those who have been hurt. He also indicates that the Danish Government condemns any expression that attempts to demonize groups of people on the basis of their religion or ethnic background. Finally, he calls on all parties to do their utmost to get back to dialogue and build on the friendship that has always characterized the relations between Denmark and the Muslim world.

Observations

27. The Special Rapporteur has made substantial observations and recommendations in his report on defamation of religions, submitted to this session of the Commission.

Dominican Republic

Communication sent to the Government

28. On 7 September 2005 the Special Rapporteur, jointly with the Independent Expert on minority issues and the Special Rapporteur on the human rights of migrants, sent a letter of allegation to the Government concerning the detention and deportation of Haitian nationals. According to the information received, **more than 3,000 Haitians** would have been detained and over 1,000 deported without consideration of their legal status in the country. Those with the legal right to remain and Dominicans of Haitian origin would have had their papers confiscated and would have been deported along with undocumented migrants. Reports of increasing violent attacks against Haitians were also received, including three persons who were burnt alive by a gang and had since died. The reports received indicated a racial connotation in the targeting, detention and deportation of Haitians.

Observations

29. The Special Rapporteur regrets that no reply to the communication was received from the Government of the Dominican Republic at the time this report was finalized.

30. The Special Rapporteur intends to follow up on this case. In the event that no response is received from the Government, he will no longer treat this case as a mere allegation but as a proven fact. He is also considering, in consultation with the other mandate holders, further actions, in particular a visit to the Dominican Republic.

France

31. En l'absence de réponse du Gouvernement à sa communication du 23 décembre 2004 (voir E/CN.4/2005/18/Add.1, page 7), le Rapporteur spécial se voit dans l'obligation de considérer le cas suivant non plus comme une allégation mais comme un fait avéré :

32. *Le 27 novembre à Sartène, Corse-du-Sud, un groupe d'hommes armés non identifiés aurait attaqué la maison d'un imam marocain, **Imam Mohammed al-Akrach**, maison dans laquelle il y aurait eu également un lieu de prière. Ces hommes auraient tiré six fois en proférant des insultes racistes. Il semble qu'en Corse les atteintes à la sécurité et au respect des droits des immigrés et des personnes d'origine étrangère, notamment nord-africaine, soient devenues relativement fréquentes, à la lumière du nombre considérable d'attaques violentes de nature raciste s'étant produites en Corse au cours de l'année.*

India

Communication sent to the Government

33. On 16 August 2005 the Special Rapporteur, jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal to the Government concerning the case of **Dr. Lenin Raghuvanshi**, a human

rights defender with the Peoples' Vigilance Committee for Human Rights (PVCHR), an organization working for the Dalits and 'lower caste' communities in Varanasi, Uttar Pradesh, India, focusing on education for children and the right to self determination for these community members, his associate **Mr. S.N. Giri**, and **Ms. Anupam Nagvanshi**, field coordinator for PVCHR.

34. According to the information received, on 5 August 2005, at approximately 8:00, Dr. Lenin Raghuvanshi received a phone-call on his mobile phone from a man (the identity of whom is known to the experts) demanding that Mr. S.N. Giri withdraw his nomination from an election due to be held in Belwa village on 17 August 2005. Furthermore, on 7 August 2005, at approximately 20:35, Dr. Lenin Raghuvanshi allegedly received another phone-call from the same person threatening that if his associate did not withdraw his nomination, Dr. Lenin Raghuvanshi, his family and Mr. S.N. Giri would be shot dead. Dr. Lenin recorded the phone conversation and lodged a complaint with the Senior Superintendent of the Police and the District Magistrate. He reportedly also faxed a complaint to the Chief Minister of the State.

35. It was reported that on 10 August 2005, at approximately 16:00, Ms. Anupam Nagvanshi, was surrounded by a number of people connected to the village authorities (the identity of whom is known to the experts) who asked her why she was encouraging the Dalits and 'lower caste' community to cast their votes in the upcoming election. Ms. Anupam Nagvanshi was allegedly threatened with murder if she returned to Belwa village. Ms. Nagvanshi telephoned the police at approximately 18:00 on 10 August 2005 but no officer was dispatched. She then sent a written complaint by registered post to Phoolpur police station. It was reported that no action had been taken in this case by the Phoolpur police.

36. In this respect, the Special Rapporteurs expressed their concern for the harassment of individuals working with the Dalits and 'lower caste' communities. In light of the fact that the Belwa village and its surrounding areas were reportedly known for both capturing and election related fraud, and that during the February 2002 elections, people from these communities were allegedly assaulted when they turned out to vote, these threats were considered to constitute an attempt to intimidate Dr. Lenin Raghuvanshi, Mr. S. N. Giri and Ms. Anupam Nagvanshi and prevent them from carrying out their human rights work with the Dalits and 'lower castes' in Varanasi. Previously, on 26 August 2003, Dr Lenin Raghuvanshi had been arrested and detained for four hours for organising a protest before the Sub Divisional Magistrate in Varanasi.

Observations

37. The Special Rapporteur regrets that no reply to his communication had been received from the Government of India at the time this report was finalised.

38. The Special Rapporteur intends to follow up on this case. In the event that no response is received from the Government, he will no longer treat the case as an allegation but as a proven fact.

39. Moreover, in the absence of answer coming from the government of India concerning his communication of 8 June 2004 (see E/CN.4/2005/18/Add.1, page 8), the Special Rapporteur is forced to consider the following case no longer as an allegation but as a proven fact:

40. *A group of 200 people attacked a Dalit settlement in the Kalapatti village of the Coimbatore district, Tamil Nadu, on 16 May 2004. The Dalits' homes were attacked by upper-caste villagers using swords and other weapons. Close to 100 houses have been burnt, money and jewels were stolen, and cattle owned by the Dalits were killed. In total, 14 Dalits were admitted to the Coimbatore Medical College Hospital.*

Iran (Islamic Republic of)

Communication sent to the Government

41. On 12 December 2005, the Special Rapporteur sent an allegation letter to the Government concerning information he received concerning a statement on the State of Israel made by Mr. Ahmadinejad, President of Iran. According to the information received, on 26 October 2005, President Ahmadinejad has stated in a public speech that the State of Israel should be "wiped off the map". Reportedly, President Ahmadinejad also stated in the same speech that Israel is a "disgraceful blot" and that "anybody who recognizes Israel will burn in the fire of the Islamic nation's fury".

Observations

42. The deadline for a response to this communication was set to 12 February 2006. Reference is made to paragraph 1 of this report.

Israel

43. In the absence of answer from the Government of Israel concerning his communication of 24 May 2004 (see E/CN.4/2005/18/Add.1, page 9), the Special Rapporteur is forced to consider the following case no longer as an allegation but as a proven fact:

44. *Since 2001, the Government of Israel refuses to issue press cards to **Palestinian journalists** as well as to renew their press accreditation. This is done on the grounds that Palestinians pose a potential security threat by being Palestinians. The Israeli High Court of Justice found that the Government Press Office was acting illegally, in a 25 April 2004 ruling, which added that Palestinian journalists should be given press cards if they have been given security clearance to work in Israel. However, reports indicate that on 11 May, the Government petitioned the High Court, claiming that threatening statements from militant Palestinian groups have now made Palestinian journalists a danger to Israeli leaders in particular, therefore in effect continuing this practice implemented since 2001.*

Latvia

Communication sent to the Government

45. On 11 March 2005 the Special Rapporteur sent an allegation letter to the Government concerning the information received regarding a paper entitled "***The Volunteer SS Legion in Latvia***", published by Latvian historians, Mr. Inesis Feldmanis and Kârlis Kangeris, which allegedly associated the history of Latvian statehood with the history of Latvian radical nationalism and collaborationism, as well as put into question the verdicts of the Nuremberg Tribunal concerning the crimes committed by the SS and its military and police detachments.

The paper reportedly further denied the role and responsibility of the dictatorial regime of Kârlis Ulmanis, which relied on the Aizsargi paramilitary right-wing radical organization, in carrying out the Nazis' policy in Latvia, including extermination of the civilian population, the restriction of the rights of national minorities, and specifically, discrimination against all non-Latvians including Russians, Jews, Germans, Poles, etc.

46. The Special Rapporteur expressed deep concern about the message that the above-mentioned paper appeared to convey, especially in line with the Commission on Human Rights resolution 2004/16, which stresses that the practices referred to in the resolution fuel contemporary forms of racism, racial discrimination, xenophobia and related intolerance and contribute to the spread and multiplication of various extremist political parties, movements and groups, including Neo-Nazis and skinheads. Resolution 2004/16, furthermore, emphasizes the need to take the necessary measures to put an end to such practices.

Reply from the Government

47. On 14 June 2005, the Government of Latvia replied to the communication sent by the Special Rapporteur on 11 March 2005. The Government provides the full text of the article in question and indicates that the allegations communicated by the Special Rapporteur are not accurate. The article in question is an attempt by Latvian historians to respond in the most neutral manner to the extremist publications disseminated by the Ministry of Foreign Affairs of the Russian Federation directed against the Latvian state and the Latvians: the text of these articles are attached. These policies resulted in acts of discrimination and intolerance and violence against Latvians. The Government expresses its concern that this policy of the Russian Federation, supported by national media, promotes hatred and intolerance against Latvia and the Latvians and thus violates the principles endorsed in resolution 2004/38 and 2005/36 that condemns political platforms that incite racial discrimination and xenophobia. The Government also informs on the existing legal avenues for investigating and sanctioning allegations of crimes of racism and intolerance in Latvia. It refers to the adoption in its first reading of the Bill on preventing discrimination, as well as to planned amendments to several laws and codes.

Observations

48. The Special Rapporteur is still concerned regarding the situation of minorities: Russians, Jews, Germans and Poles. He invites the Government to keep him informed of the measures taken to combat any form of discrimination and xenophobia and in particular legal and judicial actions taken against the alarming rise of violent racist activities of neo-Nazi groups .

Myanmar

Communication sent to the Government

49. On 3 March 2005 the Special Rapporteur, jointly with the Special Rapporteur on the right to education and the Special Rapporteur on the situation of human rights of Myanmar, sent an allegation letter to the Government concerning reported discrimination and widespread human rights violations directed at the **Rohingyas**, a Muslim ethnic minority living in northern Rakhine state (historically known as Arakan), in Western Myanmar. According to information received, the Rohingyas would reportedly be targeted because of their ethnicity and would suffer

widespread discriminatory policies at the hands of the authorities, which policies would not be experienced to the same extent by other ethnic minorities. Moreover, despite the fact that the ancestors of the Rohingyas have resided in Myanmar for many generations, the State Peace and Development Council (SPDC) would deny the existence of the Rohingyas as a separate ethnic group, and would not consider them as one of the national races, but merely as permanent residents, as a result of which a majority of them would not be able to qualify for citizenship and remain stateless.

50. In addition, the freedom of movement of the Rohingyas would be severely restricted. They would be virtually confined to their respective villages, unable to access medical and educational services, inter alia, due to the fact that, should they wish to travel outside their respective villages, they would require official authorization and the payment of a fee to do so, a fee which in many cases they would not be in a position to afford. This restriction would not be applied to the Rakhine population in the Rakhine state. This would seriously affect the standard of living of the Rohingyas, particularly with regard to food security. When Rohingyas nevertheless would attempt to travel without authorization, if apprehended, they would reportedly be arrested and imprisoned. Moreover, according to the information received, security forces would often subject Rohingyas to forced labour. They would also be subjected to arbitrary taxations and land confiscation, without compensation, and would furthermore be required to seek and pay for an official permission to marry, which, in some cases would have been reported to amount to several years' wages. Payment would not necessarily guarantee the granting of permission. Concern was expressed that the restriction and violation of human rights of the Rohingyas would be rendered more serious by the fact that they would appear to be targeted specifically because of their ethnicity.

Observations

51. The Special regrets that no reply to this communication had been received from the Government at the time this report was finalised.

52. The Special Rapporteur intends to follow up on this case, in close consultation with the Special Rapporteur on the situation of human rights in Myanmar. In the event that no response is received from the Government, he will no longer treat the case as a mere allegation but as a proven fact.

Nepal

53. In the absence of an answer from the Government of Nepal concerning his communications of 19 October and 17 November 2004 (see E/CN.4/2005/18/Add.1, page 11), the Special Rapporteur is forced to consider the following cases no longer as allegations but as a proven facts:

54. Communication of 19 October: *On 6 September 2004, a ban on the use of public facilities was imposed on Chamar Dalits by the upper-caste villagers in the village of Bhagawatpur, because the Chamar Dalits allegedly refused to remove the carcasses that had been regarded as their traditional work in the society for a long time. Therefore, Chamar Dalits are not allowed to purchase supplies from shops and medical stores. The upper caste villagers also decided to fine Rs 1.151 any Chamar Dalit who would violate the ban, as well as any villager who would sell goods*

to them. Also, 20 Dalits were fired by their employers. The Dalits villagers filed a complaint to the Chief District Officer in Rajbiraj, but no action was taken to protect their rights. After a big protest in front of the Chief District Officer's office, the police arrested five alleged perpetrators from the upper caste Mandal, but not the alleged main perpetrator. However, no effective measure has been taken to protect the rights of the Dalits in the village.

55. Communication of 17 November: *On 17 May 2004, a 14 years old Dalit girl was raped and murdered by more than ten men who entered the house of her family. According to the postmortem report conducted at the District Hospital at Inaruwa, the girl has been raped and then killed by suffocation. The police reportedly arrested more than ten men named by the villagers and the girls' family as the perpetrators. However, the majority of the suspects were released on the same day following protests made on their behalf by their family and relatives. The suspects are reported to belong to upper castes families, and are sons of landlords in the village. It is reported that no further investigation was conducted. The main suspect, who was held in police custody for two months, was reportedly released when an alibi was found. In addition, due to fear for their security, the girls' family has been forced to leave the village.*

Nicaragua

56. El 18 de noviembre de 2005, el Relator Especial, junto con el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, envió un llamamiento urgente en relación con la difícil situación en la que se encontraría la **comunidad indígena mayangna de Awás Tingni**, de la Costa Atlántica de Nicaragua, por las violaciones sufridas a sus derechos sobre las tierras, territorio y recursos naturales. Estos fueron reconocidos en la sentencia de la Corte Interamericana de Derechos Humanos en el caso de la Comunidad Mayagna (Sumo) Awás Tingni v. Nicaragua.

57. Según las informaciones recibidas, la falta de cumplimiento de la sentencia de 31 de agosto de 2001 habría permitido la continua violación de los derechos de propiedad reconocidos en esta sentencia y a la vez habría dado lugar a nuevas amenazas a la integridad cultural y supervivencia física de la Comunidad Awás Tingni como consecuencia de las actividades de terceros en su territorio ancestral, incluyendo madereros ilegales y colonos no indígenas. Se informa que el agravamiento de la situación en el territorio de Awás Tingni llevó a la Comunidad a solicitar una nueva intervención de la Corte Interamericana, lo cual resultó en que la Corte dictara, el 6 de septiembre de 2002, una resolución de medidas provisionales las cuales, de acuerdo a las informaciones recibidas, tampoco se habrían cumplido hasta la fecha.

58. Los informes afirman que cuatro años después de que la Corte Interamericana emitiera su sentencia, y desde casi tres años de haberse expirado el plazo de 15 meses dado por este tribunal, las tierras de la Comunidad Awás Tingni no habrían sido demarcadas o tituladas a pesar del compromiso adquirido.

Observaciones

59. El Relator especial lamenta no haber recibido respuesta del Gobierno a su comunicación del 18 de noviembre de 2005. El Relator especial va a dar seguimiento a este caso, en consultación con la Comisión Interamericana de Derechos Humanos. En el supuesto de que no se recibiera una respuesta por parte del Gobierno, el Relator dejará de tratarlo como una alegación, y lo considerará un hecho probado.

Niger

Communication sent to the Government

60. Le 4 août 2005, le Rapporteur spécial, conjointement avec le Rapporteur spécial sur la vente d'enfants, la prostitution d'enfants et la pornographie impliquant des enfants, la Rapporteuse spéciale sur la traite des personnes, en particulier les femmes et les enfants, et la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, a adressé une lettre d'allégation au Gouvernement concernant l'inexistence de mesures suffisantes pour répondre aux **formes modernes et traditionnelles de la traite des personnes et du travail forcé**, y compris l'esclavage et les pratiques analogues de l'esclavage.

61. Selon les informations reçues, le Niger ne posséderait pas encore de législation spéciale prohibant toutes formes de traite des personnes et en faisant un crime. En outre, des renseignements indiqueraient que le comité des experts du Ministère de Justice responsable des politiques contre la traite des personnes n'existerait plus. D'autre part, selon les informations reçues, le Niger serait devenu un pays de transit pour le trafic de femmes et jeunes filles, certaines de seulement 15 ans, en provenance du Nigeria, Ghana, Togo, Bénin, Burkina Faso et Gabon et à destination du Maghreb et de l'Europe, où elles seraient forcées de se prostituer, ou encore du Proche Orient, où elles seraient exploitées pour du travail domestique forcé. Dans certains cas, ces femmes et jeunes filles seraient également forcées à se prostituer sur le territoire du Niger, en particulier dans les régions de Zinder et Maradi et à Niamey. Des femmes et des jeunes filles nigériennes seraient elles aussi trafiquées à des fins similaires à l'intérieur du pays, vers l'Europe, le Nigeria et le Proche Orient.

62. Les informations reçues indiqueraient que les victimes, fréquemment issues de zones rurales appauvries, se laisseraient convaincre par les promesses de meilleures opportunités que leur feraient miroiter les trafiquants. L'accès limité à l'éducation, illustré par un taux d'alphabétisation des femmes extrêmement bas (9.3 % en 2002), rendraient les femmes et les jeunes particulièrement vulnérables à ce type de promesses. Les informations indiqueraient également que, dans de nombreuses régions du Niger, les systèmes d'esclavage, historiquement répandus au Niger, se seraient transformés en des systèmes discriminatoires, de castes. Les femmes et des jeunes filles provenant des castes d'anciens esclaves se trouveraient plus exposées au trafic d'êtres humains, dans la mesure où elles seraient considérées comme issues d'une strate sociale inférieure.

63. Au delà des problèmes liés au système des castes, l'esclavage et les pratiques s'y apparentant – telles que définies dans des instruments internationaux – continueraient d'exister aujourd'hui au sein de certains groupes ethniques. Ces pratiques incluraient des formes de servage reposant sur un mélange d'obligations provenant de normes coutumières et d'une pauvreté extrême. En outre, certains riches propriétaires fonciers utiliseraient leurs moyens financiers pour générer des situations de servitude, en prêtant de l'argent à des taux usuriers aux paysans nécessiteux et demandant d'être remboursés sous la forme de travail sous rémunéré.

64. De véritables relations « maître-esclave », dans lesquelles des personnes et leurs descendants sont considérées et traitées comme la propriété personnelle d'une tierce personne, continueraient également d'exister. Dans ce type de cas, les victimes seraient forcées d'élever le bétail, d'accomplir les travaux agricoles ou domestiques du maître en échange d'un peu de

nourriture et d'un endroit où dormir. Les femmes devraient aussi se soumettre aux exigences sexuelles du maître. Les victimes ne pourraient prétendre à aucune propriété personnelle : en cas de décès le maître s'approprierait leurs biens. Les victimes désobéissantes souffriraient d'abus physiques violents qui dans certains rares cas pourraient aller jusqu'à la castration, ou la privation de nourriture. Les descendants des victimes seraient eux-mêmes considérés comme des esclaves, ce qui contribuerait à perpétuer la situation. Les maîtres sépareraient souvent les bébés de leurs mères aussitôt que ceux-ci seraient sevrés afin de détruire les liens familiaux et les empêcher de connaître leurs ancêtres. Le maître déciderait que l'enfant esclave fréquente ou non une école et à qui le marier. Certaines jeunes esclaves seraient vendues comme concubines à certains notables du Nigeria.

65. D'après les informations reçues, il semblerait que le maintien de situations d'esclavage ne nécessiterait pas d'entraves physiques à la liberté des victimes. En effet, l'endoctrinement psychologique, l'intimidation physique et l'absence d'alternative pour survivre préviendraient les victimes de chercher à s'affranchir. Malgré l'entrée en vigueur des lois prohibant et criminalisant l'esclavage et les pratiques assimilées en avril 2004, les renseignements communiqués indiqueraient que certains agents publics passeraient délibérément outre certaines pratiques constituant des crimes au regard de la loi. Personne à ce jour n'aurait encore été condamné dans le cadre de la nouvelle législation. Les déclarations publiques de certains hauts fonctionnaires du Gouvernement, niant l'existence de l'esclavage au Niger, légitimeraient le refus des agents publics d'intervenir dans les cas d'esclavage ou de pratiques traditionnelles analogues.

66. En outre, selon les informations communiquées, l'attitude de certaines autorités ferait obstruction au travail des organisations de la société civile et des défenseurs des droits de l'homme contre l'esclavage au Niger. En particulier, le 28 avril 2005, le Gouvernement aurait arrêté **Ilguilas Weila**, Président de l'ONG Timidria, et **Alassane Biga**, Secrétaire Général du bureau de Timidria à Tillabéri. Ce cas a déjà fait l'objet d'un appel urgent de la Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire, le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et le Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme daté du 18 Mai 2005. Les experts remercient le Gouvernement pour sa réponse prompt et détaillée du 20 Mai 2005 (0003742/MAE/C/SG) dans laquelle il informe que Ilguilas Weila et Alassane Biga seraient accusés de faux et tentative d'escroquerie. Selon les derniers renseignements des experts, les deux hommes auraient été remis en liberté sous caution mais la Cour n'aurait pas rendu d'ordonnance de non-lieu. Les experts demeurent par conséquent préoccupés par la situation de ces deux défenseurs.

67. Enfin, certaines autres pratiques traditionnelles représentant des formes de traite de personnes existeraient toujours au Niger. En particulier, celles consistant en ce que les parents incapables d'assurer l'alimentation de leurs enfants ou ainsi pensant mieux pourvoir à leur éducation, enverraient leurs jeunes fils âgés sept à douze ans à des enseignants religieux (les « marabouts »). Certains marabouts forceraient leurs élèves à mendier, fixant un quota journalier pour chacun. Certains élèves n'ayant pas réussi à remplir leur quota aurait recours à la petite délinquance pour éviter de se faire battre. D'autres marabouts obligerait leurs élèves à effectuer de durs travaux manuels. Beaucoup des parents ne seraient pas conscients de ces pratiques lorsqu'ils confieraient leurs enfants aux marabouts. D'autres n'ignorerait pas la

situation, mais ils considéraient le travail des enfants comme faisant partie de la culture nigérienne.

Observations

68. Le Rapporteur spécial regrette de n'avoir pas reçu, à ce jour, de réponse à sa communication.

69. Compte tenu de la gravité de la question, dans l'éventualité où aucune réponse ne serait fournie par le Gouvernement, le Rapporteur spécial ne considérera plus ce cas comme une simple allégation, mais comme un fait avéré.

Peru

70. Ante la falta de una respuesta del Gobierno de Perú en relación con su comunicación del 18 de noviembre de 2005 (ver E/CN.4/2005/18/Add.1, pagina 12), el Relator especial se ve en la obligación de dejar de tratar este caso como una alegación y de considerarlo como un hecho probado:

71. *Un centenar de agricultores estaban amparados por el reconocimiento de su posesión otorgado en la resolución 198-2004-MP-FEPD-TACNA de la Fiscalía de prevención del delito, en donde se exhortaba al Ejército al respeto a los derechos humanos y a los agricultores a respetar el debido proceso para poder ejercer su derecho. En este contexto y para evitar posibles problemas con el ejército, los agricultores se ubicaron a más de 5 kilómetros de donde se encontraban acantonados los militares. Sin embargo, tras dos incursiones violentas por parte de los militares, el 18 y 20 de agosto de 2004, los agricultores solicitaron al Prefecto que les otorgara garantías. El 29 de agosto de 2004 por la noche, los campesinos, mujeres, niños y ancianos, han sido atacados por los soldados con piedras, palos y disparos al aire. El ataque ha sido acompañado con insultos que hacían referencia al origen étnico de los agricultores. Seguidamente han sido obligados a caminar cerca de siete kilómetros. Durante la marcha los campesinos han sido nuevamente golpeados con palos. Finalmente, han sido abandonados en la carretera, sin ningún tipo de abrigo. A la mañana siguiente, la Policía Nacional del Perú (PNP) ubicada en la localidad de Sama se ha negado a recibir una denuncia sobre los hechos presentada por los campesinos, y les indicó que tenían que dirigirse a la Fiscalía de Tacna. Un médico forense ha hecho un reconocimiento de 12 de los campesinos heridos.*

Poland

Communication sent to the government

72. On 5 December 2005, the Special Rapporteur, jointly with the Special Rapporteur on Human Rights Defender, sent an urgent appeal to the Government concerning information received regarding the events following a public event known as the Equity March. On 15 November 2005, the mayor of the city of Pozna banned a public event known as the Equality March, which had been organized by a number of lesbian, gay, bisexual and transgender (LGBT) and women's rights organizations'. The march was planned to take place on 19 November 2005 and was intended to provide a platform for discussion about tolerance, anti-discrimination and respect for the rights of sexual minorities. The ban was issued on the grounds of security

concerns, despite the fact that security measures had already been agreed to between the municipality and the organizers of the march. Despite the ban, a few hundred protestors gathered on 20 November 2005 for a demonstration. The demonstrators were reportedly harassed and intimidated by members of a right wing group known as the All Polish Youth who shouted discriminatory slogans at them including 'Let's get the fags', and "We'll do to you what Hitler did with Jews'. The police only intervened toward the end of the march to disperse the crowd. It is reported that in so doing the police roughly handled several individuals and arrested and interrogated over 65 persons, who were later released. Moreover, in November 2004, the Equality Parade was stopped when the police failed to protect the demonstrators from members of the All Polish Youth who blocked the event. In September 2005 a Warsaw court had declared illegal the decision of the Mayor to ban the Equality Parade.

73. In light of the fact that Equality Parades had also been banned in Warsaw in June 2004 and in May 2005, concern is expressed that the banning of Equality March in Pozna was based primarily on intolerance towards the LGBT community in Poland. This is highlighted by the fact that political figures are reported to have publicly made homophobic statements. For example, when the Equality Parade of May 2005 was banned, Mr. Lech Kaczy, the current President of Poland and former Mayor of Warsaw, had stated that the parade would be 'sexually obscene' and offensive to other people's religious feelings. Less than a week after this parade was to take place, the Mayor authorized another march to take place during which members of the All Polish Youth reportedly shouted slogans inciting intolerance and homophobia. Other political figures were also reported to have made public homophobic statements, including that if 'homosexuals try to infect others with their homosexuality, then the state must intervene in this violation of freedoms'. Other public figures called for no tolerance for homosexuals and deviants and called on the public not to mistake the brutal propaganda of homosexual attitudes for calls for tolerance. Concern is further expressed in light of the recent abolition of the Office of the Government Plenipotentiary for the Equality of Men and Women which body was responsible, inter alia, for the promotion of equal treatment of sexual minorities.

Observations

74. The Special Rapporteur regrets that no reply to his communication had been received from the Government of Poland at the time this report was finalized.

75. The Special Rapporteur intends to follow up on this case. In the event that no response is received from the Government, he will no longer treat the case as a mere allegation but as a proven fact.

Romania

76. Le 10 mai 2005, le Gouvernement roumain a répondu à la communication envoyée par le Rapporteur Spécial le 27 mai 2004 (voir E/CN.4/2005/18/Add.1, page 13). Dans sa réponse, le gouvernement explique que Gheorghe Emilian, son frère Gheorghe Sorin, et son cousin Gheorghe Adrian, ont été dénoncés par des personnes pour échange illégal de devises étrangères. Après investigation, et après une tentative d'intervention par une sous-commissaire pour empêcher qu'ils soient poursuivis, ils ont été condamnés à une amende conformément à l'article 2 §2 de la Loi n° 61/1991 pour avoir commis l'infraction de « constituer un groupe de trois ou plusieurs personnes pour commettre des actions illicites contraires à l'ordre public et aux normes

de cohabitations sociales ». Les procès-verbaux ont été contestés par les trois personnes devant les instances judiciaires. Les plaintes ont été rejetées.

77. M. Gheorghe Emilian avait émis une plainte à l'encontre du chef de la Section 1 de la Police, en l'accusant d'avoir commis les infractions prévues par l'article 250 §2 (comportement abusif d'un fonctionnaire) et l'article 267 §1 (torture) du code pénal. Par l'ordonnance 141/P/2.10.2003 le Parquet a décidé d'arrêter les poursuites contre le sous-commissaire et de lui infliger néanmoins une sanction administrative. La mesure a été contestée par Gheorghe Emilian devant la Cour d'Appel de Pitesti qui, le 10 février 2004, a relaxé Diaconu Vasile pour l'accusation de torture mais l'a également condamné pour comportement abusif à une peine de un an de prison avec sursis. Cette sentence a été contestée par Diaconu Vasile devant la Cour de Cassation, et le cas est en cours de jugement. Conformément aux dispositions du statut des policiers, Diaconu Vasile a été suspendu de ses fonctions en attendant le jugement. Au cours du procès, M. Gheorghe Emilian a présenté un certificat médico-légal constatant des lésions qui nécessitaient 15 jours de soins médicaux. Suivant certaines autres investigations, il a été indiqué que M. Gheorghe Emilian souffrait d'une surdité constituant une infirmité. Cependant, à la demande du Parquet, l'Institut National des Médecines Légales a réexaminé M. Gheorghe Emilian et a indiqué que la rupture du tympan n'était pas confirmée et que les lésions subies ne nécessitaient pas plus de sept à huit jours de soins médicaux. Enfin, le Gouvernement indique que, conformément à l'ordonnance 137/2000, le Conseil National pour la lutte contre la discrimination est compétent pour examiner les plaintes concernant la discrimination et à appliquer des sanctions contraventionnelles à l'encontre des personnes juridiques et physiques et des organes de l'administration responsables. Il semble que M. Gheorghe Emilian n'a pas utilisé cette voie de recours.

Russian Federation

Communications sent to the Government

78. On 4 March 2005, the Special Rapporteur, jointly with the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on violence against women, its causes and consequences, sent an urgent appeal to the Government concerning information received regarding **Ms. Zara Murtazaliyeva**, who was convicted for terrorist activities and sentenced on 17 January 2005 by the Moscow City Court to 9 years imprisonment. According to the information received, Zara Murtazaliyeva, part-time student of the Linguistic University of Pyatigorsk and resident of the Naurskiy district of the Chechen Republic, arrived in Moscow in September 2003 in search of work. In December 2003, she was stopped by police for a routine document check and, whilst at the police department, she met an ethnic Chechen officer of the Moscow Directorate for Combating Organised Crime (UBOP) who helped her find lodging. Zara Murtazaliyeva accepted the offer and moved in with two Russian friends of hers. On 4 March 2004, Zara Murtazaliyeva was once again stopped for a document check by police close to Kitai-gorod, a metro station, and taken to the Department of Internal Affairs (OVD) in Prospekt Vernadskogo. It is reported that, while at the OVD, a briquette with plastic explosives was planted in her bag, on the basis of which, she was arrested and criminal proceedings were instituted against her for storage and transportation of explosives. The briquette and plastic explosives were allegedly not examined for fingerprints, but were later destroyed.

79. In addition, the information received indicated that no incriminating evidence was found at the place she was sharing with her two friends. Photos of the three friends at the Okhotny Kulikova shopping mall in Moscow were used as evidence to show that the three women had planned to plant a bomb at the mall. Conversations between the women in their room, recorded by the authorities, concerned general discussions about Chechnya, war and Islam. Moreover, her two friends were allegedly pressured by investigators to testify against Zara Murtazaliyeva to say that she recruited them and involved them in terrorist activities. They were reportedly told that if they refused they would be charged as her collaborators. During the first court session, they both retracted the pre-trial statements they had been pressured into making against Zara Murtazaliyeva. According to the information received, her trial, which commenced on 22 December 2004, did not meet international human rights standards of a fair trial. A lack of impartiality would have been shown by the presiding Judge, including refusal to allow audio recording of the trial, in violation of the criminal procedural code, and also refusal to allow the defense to call additional witnesses to the trial, including the police officer who had helped Zara Murtazaliyeva find accommodation. Zara Murtazaliyeva's lawyer launched an appeal against the decision of the first instance court, which was scheduled to commence on 10 March 2005. Concern was expressed that Zara Murtazaliyeva's arrest, detention and trial were based solely on the fact that she was a woman of Chechen origin and that the case against her was based on fabricated charges.

80. On 28 June 2005, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the question of torture, sent an urgent appeal to the Government concerning information received regarding **Senyo Adzokpa**, a Ghanaian national, currently at pre-trial detention centre 1 (SIZO) in the city of Ivanovo. According to the information received, on 28 April 2005, Senyo Adzokpa left his home for a meeting, but did not return. On 30 April 2005 officials from the regional branch of the Federal Security Services (FSB) searched his apartment. The officials said that Senyo Adzokpa had been arrested on 28 April 2005. When asked what evidence they had, they replied that they would find something and would also find out who he had associated with.

81. Moreover, the information received indicates that when a visitor arrived at the pre-trial detention centre on 3 June 2005, she was told that Senyo Adzokpa was in an isolation block as punishment for an unspecified offence, and was not allowed to receive anything. When she returned with a lawyer on 10 June 2005, they were able to meet with Senyo Adzokpa. He described how he had been beaten twice, on 16 May 2005, when a guard allegedly hit him in the eyes, and on 2 June 2005, when he was beaten by two guards after they searched his belongings and found a razor blade in a toilet roll. The deputy head of the facility held the razor to Senyo Adzokpa's face and asked whether he wanted to kill him with it. Together with another guard, he then began to beat Senyo Adzokpa on his face, liver and kidneys. Senyo Adzokpa was then made to walk on his knees 30 meters to the deputy head of the facility's office. At this point, Senyo Adzokpa could not walk properly and was seeing double. He was then put into an isolation block and told to write a 10-page confession. He was threatened with rape if he refused to do so. In the end he did, and in the morning of 3 June 2005 the deputy head of the facility came to the isolation cell and ordered him to sign each page. He also informed Senyo Adzokpa that if he told anyone about what had happened he would face big problems. According to the information received, the treatment Senyo Adzokpa was subjected to while in detention was allegedly racially motivated. While he was held in the isolation block, some of the guards called him names such as "black monkey". When he asked them why they spoke to him this way, they

allegedly answered, "How else should we talk to a nigger?". Concern was expressed that Senyo Adzokpa was at risk of torture or ill-treatment.

Reply from the Government

82. On 19 July 2005, the Government of the Russian Federation replied to the communication of 4 March 2005. The Government indicated that Z. K. Murtazaliyeva was convicted by the Moscow city court of a combination of offences under article 30.1 (preparation and attempt to commit a crime), article 222.1 (illegal acquisition, transfer, sale, storage, transportation or carrying of weapons, munitions, explosive substances and explosive devices) and article 205.1 (terrorism) of the Criminal Code of the Russian Federation and was sentenced to nine years' deprivation of liberty in a common regime correctional colony. The arguments put forward in the communication that the main reason for Z. K. Murtazaliyeva's detention was her Chechen origin are unfounded. The Moscow city court determined that, with the aim of preparing to commit a terrorist act, Z. K. Murtazaliyeva travelled in September 2003 to Moscow, where in October of the same year she became acquainted with D. P. Voronova and A. M. Kulikova, whom she tried to persuade of the need to carry out an act of terrorism. She went more than once with D. P. Voronova and A. M. Kulikova to the "Okhotny Ryad" shopping mall, visually studied the mall's security system, the presence, number and location of security posts, militia patrols and metal detectors. During the period between 1 and 4 March 2004, Z. K. Murtazaliyeva under undefined circumstances acquired an explosive substance, which she stored and carried with her, but on 4 March 2004 was detained by militia officers.

83. The assertion that the explosive device could have been dropped into Z. K. Murtazaliyeva's bag by the militia officers is refuted by the testimony of witness Y. V. Ignatenko, who confirmed the fact of the seizure from the detainee during individual questioning of two yellow-coloured objects wrapped in foil. An expert examination determined the seized substance, weighing 196 grams, to be the standard industrially manufactured explosive "Plastit-4", made from hexogen, and traces of hexogen were discovered in clippings from pockets of the jacket and lining of the bag of Z. K. Murtazaliyeva. The seizure of the items was conducted in the presence of official witnesses and after Z. K. Murtazaliyeva had been informed of all her procedural rights. It follows from the statements of witnesses Pyatkov, Semenov, Biktimirov and Kerimov that after she had been taken to the Prospekt Vernadskogo Department of Internal Affairs Z. K. Murtazaliyeva was brought into the duty section, kept all her things with her and did not talk to any strangers. The explosive substance was destroyed during the conduct of the expert examination. It is apparent from the criminal case materials that at the time of the questioning of witnesses D. P. Voronova and A. M. Kulikova during the investigation and in court the lawyers chosen by them were present, and before the making of inquiries all the rights provided for by law were explained to them. In court D. P. Voronova and A. M. Kulikova confirmed the fact that Z. K. Murtazaliyeva had been drawing them into a conspiracy with a view to committing an act of terrorism. A search made at Z. K. Murtazaliyeva's place of residence led to the discovery not only of photographs showing the escalator at the Okhotny Ryad shopping mall, but also a note of an extremist nature which, according to the conclusions of a graphological expert examination, was written by Z. K. Murtazaliyeva in her own hand. The course of the hearing of the case is reflected in the record of the court session at which the defence side submitted comments that were considered by the judge in accordance with the criminal procedure legislation.

84. On 15 August 2005, the Government of the Russian Federation replied to the communication of 28 June 2005. The Russian government confirmed that on 1 April 2005, following a number of reported cases of preparation and sale of false passports for citizens of foreign countries intended for illegal use, criminal proceedings were initiated against Mr. Gratsius Siril Kvali Senyo Adzokpa. On 28 April 2005 Mr. Adzokpa was arrested in the city of Balashikha in Moscow oblast and was placed in the temporary holding facility of the Ivanovo oblast department of internal affairs. On 30 April 2005, the Oktyabrsky district court in Ivanovo took the preventive measure of remanding Mr. Adzokpa in custody, and on 6 May 2005 he was charged with the offence contrary to article 327 § 2 of the Criminal Code of the Russian Federation. On 22 June 2005, an attaché of the Embassy of Ghana in Moscow, Mr. Clarence de Souza, was given the opportunity to talk with Mr. Adzokpa for an unrestricted length of time in the presence of escorts who did not speak the official language of Ghana. Mr. Adzokpa's detention in custody has been extended by the court until 28 August 2005.

85. On 20 September 2005, the Government of the Russian Federation sent additional information on the communication of 28 June 2005. The Russian government indicated that while being in the remand centre, Adzokpa Gratsius Siril Kvali Senno breached the rules laid down for institutions falling under the Federal Penal Correction Service. During an individual search an item whose possession and use is forbidden (a metallic cutter made out of hacksaw blade) was taken from him, and for this offence he was placed in a punishment cell for 10 days. However, Mr. Adzokpa Gratsius Siril Kvali Senno did not serve his entire sentence, as he was released after five days on health grounds (an acute respiratory infection). A judicial check of claims of torture failed to reveal any brutal treatment or manifestation of racial hatred in respect of this person. In accordance with the established procedure, Adzokpa Gratsius Siril Kvali Senno was examined by the doctor on duty before being placed in the punishment cell; no bodily injury was observed. For the time he was placed in the remand centre, he received qualified medical care on request. A doctor found that a medical examination carried out on 2 August 2005 revealed no sickness or traumatic or post-traumatic injury.

Observations

86. The Special Rapporteur, while taking note of the information provided by the Government, is determined to follow up on this case. He would like to get more information and meet Mr Adzokpa Senno during his visit to the Russian Federation in June.

Saudi Arabia

Communication sent to the Government

87. On 12 April 2005 the Special Rapporteur, jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, sent a letter of allegation to the Government concerning **Arab News**, an English language daily newspaper published by the state corporation, Saudi Research and Publishing Company. This company owns 18 daily, weekly and monthly newspapers and magazines in the Arab and non-Arab world. According to information received, a cartoon was published in Arab News depicting rats wearing Star of David skullcaps. The rats were shown as scurrying backwards and forwards through holes in the wall of an edifice bearing the poster "Palestine House". It is reported that this image replicates a scene taken from the Nazi film 'Jew Sues', which film depicts Jews as vermin to be

eradicated by mass extermination. This scene had also been used in the media during Hitler's regime.

Observations

88. The Special Rapporteur regrets that no reply to his communication had been received from the Government of the Saudi Arabia at the time this report was finalized.

89. The Special Rapporteur intends to follow up on this case. In the event that no response is received from the Government, he will no longer treat the case as a mere allegation but as a proven manifestation of anti-Semitism, and include it in his next report.

Sudan

90. In the absence of an answer from the Government of Sudan concerning his communications of 27 February and 9 of December 2004 (see E/CN.4/2005/18/Add.1, page 17), the Special Rapporteur is forced to consider the following case no longer as an allegation but as a proven fact:

91. *Since 14 February 2003, the civilian population in the Darfur region has been the victim of systematic killings and looting. Allegedly, these human rights violations are mainly committed by Government-allied militias such as the Janjaweed, Murahleen and Popular Defence Forces. Reportedly the victims are mostly from the **Fur ethnic communities** of the Masalit, Dajo, Tunjur and Tama whereas the members of the militia are Sudanese of Arab descent. Allegedly, the Fur are sedentary populations whom consider themselves as "Blacks" and/or "indigenous Africans", who speak their own local language. The members of the militia are Sudanese nomads who speak Arabic and are from Arab descent. However not all Arabs communities participate in the conflict in the Darfur. Allegedly there are also communities of "Black Arabs", the Dorok who refused to participate in the conflict and are therefore being attacked by the Janjaweed and other government-allied militia. Furthermore, it is alleged that they are serious attempt by Sudanese Arabs to chase all Black Sudanese from Darfur.*

92. *On 30 November 2004, as they were collecting fire wood outside the camp in a place called Momo, 2km north of Deraij IDP camp, a group of Massalit was attacked by armed militias, stripped, and beaten with guns on their chests and heads, after having been asked about their tribal origins. Upon answering that they were Massalit, the militia told them that they did not like Massalit women. Half of the group were kidnapped and raped before being abandoned. The other half escaped and returned to the camp. They were all seriously injured, including one of whom was pregnant. The attack was reported to the police forces in Nyala. The Special Rapporteurs have received information concerning another incident, involving eight women and girls from the same camp: on 2 December 2004, as they were collecting fire wood north of the camp in Torkong, they were attacked by armed militias. They were beaten and three persons were raped. They received medical treatment at the Medical Centre, Nyala. The Centre's lawyer, at their request, reported the incident to the police authorities at the Nyala Central (Wasat) police station, however, the police refused to file the case. The women and girls were then transferred to the Nyala hospital for treatment but were refused because they did not possess a "Police Form Number 8", the form for treatment for injuries caused by a criminal act required by Sudanese Law.*

Switzerland

Communication envoyée au Gouvernement

93. Le 4 mars 2005, le Rapporteur spécial a envoyé une lettre d'allégation au Gouvernement concernant le cas de **M. Nic Kissamba**, qui aurait été engagé, avec d'autres requérants d'asile, pour aider à l'organisation du Festival Open Air de Gampel. Le 22 août 2004, alors qu'il venait d'arriver sur le lieu du festival pour travailler, trois hommes en civil se seraient annoncés comme étant de la police et l'auraient arrêté et conduit à l'extérieur de la tente de repos prévue pour le personnel du festival, où il aurait subi un contrôle complet, se retrouvant complètement nu dans un lieu public. De plus, les trois policiers, lors de ce contrôle, lui auraient, sans aucune explication, pris son permis N, son téléphone portable, et la somme de CHF 1,980 qu'il avait sur lui. Ces biens n'auraient fait l'objet ni d'une quittance, ni d'une mise sous scellés, encore moins d'une restitution. Selon les informations reçues, d'autres requérants d'asile qui travaillaient avec lui sur le lieu du festival, auraient subi le même type de contrôle ce même soir.

Réponse du Gouvernement

94. Le 12 avril 2005, le Gouvernement a répondu à la communication du Rapporteur spécial du 4 mars 2005. Le Gouvernement indique que l'enquête administrative menée conclut que la Police cantonale a rempli sa mission de manière proportionnée, conformément à la législation applicable, et dans le strict respect de la dignité de la personne. Suite à la correspondance échangée entre le Centre Suisses – Immigrés et le Commandement de la Police Cantonale valaisanne en relation avec l'intervention policière lors de l'Open-Air 2004 et compte tenu de la gravité des griefs formulés, une enquête administrative a été ordonnée immédiatement pour établir les circonstances exactes dans lesquelles l'intervention à l'encontre de M. Nic Kissimba s'est déroulée. En fait, la Police Cantonale est confrontée à un développement préoccupant du trafic de cocaïne dans lequel des requérants d'asile sont impliqués. Ce trafic a touché l'Open Air de Gampel, au mois d'août 2004 (79 000 visiteurs – 32 gr de cocaïne séquestrée). Un certain nombre de requérant ont été interpellés et dénoncés. M. Nic Kissimba en faisait partie. Il a été trouvé en possession de Fr. 1'980.-. L'argent a été séquestré et transféré à l'intention du juge d'instruction compétent, pour la suite de la procédure pénale. En l'occurrence, plusieurs arrestations ont été opérées. Les contacts entre les personnes impliquées et leurs rôles respectifs ont dû être clarifiés. L'activité délictueuse et le comportement de certains requérants d'asile ont confirmé les informations dont disposait la police. En ce qui concerne M. Nic Kissimba, il a été contrôlé à l'extérieur de l'enceinte du festival, hors de la vue du public. Les renseignements très précis recueillis dans le cadre de cette enquête administrative ont permis de conclure que les collaborateurs et collaboratrices de la Police cantonale ont rempli leur mission, de manière proportionnée, conformément à la législation applicable, dans le strict respect de la dignité de la personne. S'agissant des auditions, il est à préciser qu'en règle générale elles s'effectuent dans la langue de l'endroit, pour autant que la personne concernée la maîtrise. Vérifications faites, M. Nic Kissimba a été entendu en langue française, le procès-verbal étant rédigé en allemand, avec l'accord de l'intéressé. Avant la signature du document, une traduction orale lui a été donnée. Il est à noter qu'une correction manuscrite a été apportée par M. Nic Kissimba lui-même. La réponse indique qu'étant donnés ces éléments, les griefs formulés à l'encontre de la police sont totalement infondés.

Observations

95. Le Rapporteur spécial a été informé au cours de sa visite de nombreux cas concrets de violence policière à connotation raciste et xénophobe, similaires à celui concernant Mr Nic Kissimba. Il se propose de traiter cette question en profondeur et de formuler des recommandations dans son rapport final sur la visite en Suisse, à la lumière des informations reçues des autorités suisses compétentes.

United States of America

Communication sent to the Government

96. On 13 July 2005 the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the question of torture, sent an urgent appeal to the Government concerning the case of Mohammed C., 18 years old, a Chadian national born in Saudi Arabia currently held at the US Naval Base in Guantánamo Bay, Cuba.

97. According to the allegations received, Mohammed C. was arrested in Karachi, Pakistan, on or around 21 October 2001. He was transferred to a prison, where he was hung by his wrists and stripped naked to his shorts. He was held in this position for 10 to 16 hours a day during a period of three weeks and, if he moved, he was beaten. He was blindfolded for that whole period except for three to five minutes each day, so he could eat. Mohammed was subsequently taken to Peshawar for 10 days, and then transferred to US custody in late November 2001. In US custody, he said that he was put in blue overalls, hooded, shackled, beaten, threatened with death and put in a helicopter. Mohammed said that at this point, for the first time in his life, he heard the word “nigger” which is what the US soldiers repeatedly called him. He was flown to the US airbase in Kandahar, Afghanistan, where he was physically assaulted on arrival, and kept naked for the first week, beaten and doused in freezing water. On one occasion, a guard grabbed Mohammed’s penis and threatened to cut it off with a pair of scissors he was brandishing.

98. In early January 2002, Mohammed was transferred to Guantánamo Bay. He was sedated, shackled, hooded and gagged for the flight and beaten upon arrival. During the ensuing interrogation process, he was subjected to hanging by the wrists for up to eight hours at a time, beatings, sleep deprivation, strobe lighting, extreme cold via air conditioners, and racial abuse. It is reported that dogs were used to intimidate detainees, and that he was brutally removed from his cell, pepper sprayed and physically assaulted. In 2003, during an interrogation, the interrogator allegedly burned Mohammed’s arm with a cigarette.

99. In May 2004, Mohammed was transferred to the newly-opened Camp V, where he would be currently being held for up to 24 hours a day in solitary confinement in a concrete cell measuring approximately four metres by two metres. He would be supposed to get out three times a week for an hour, for a shower and exercise. However, it is reported that he is usually allowed out just once a week. There would be large fans which make a constant noise and 24-hour lighting which Mohammed complains hurt his eyes.

100. On his first day in Camp V, the interrogator allegedly said to Mohammed: ‘We made this camp for people who would be here forever. You should never think about going home. You’ll

be here all your life. Maybe one day my son will come to see you as you get old. Don't worry, we'll keep you alive so you can suffer more. If you don't believe me, look at these walls'. And he allegedly banged on the concrete wall to show how solid it was".

Observations

101. The Special Rapporteur regrets that no reply to his communication has been received from the Government of the United States at the time this report was finalized.

102. The Special Rapporteur intends to follow up on this case. In the event that no response is received from the Government, he will no longer treat the case as an allegation but as a proved fact. He fully supports the report of the five Special Rapporteurs and mandate holders on the Guantanamo detention camp, which was just published, and their recommendations.

European Union

103. In the absence of answer from the European Union concerning his communication of 19 October 2004 (see E/CN.4/2005/18/Add.1/Corr.1), the Special Rapporteur is forced to consider the following case no longer as an allegation but as a proven fact:

104. *The Head of the European Commission delegation to Slovakia proposed on the occasion of the enlargement of the European Union on 1 May 2004 the forced separation of Romani children from their parents in order to solve the "Roma problem". He reportedly added that Romani children should be brought up in boarding schools where they would be continuously exposed to "the system of values which is dominant in our society". He also suggested offering the parents a financial incentive to overcome their resistance. He concluded that the result would be a new generation of Roma that would fit better into the dominant society and would be able to truly contribute to the growth of the economy.*

Observations

105. This case is a further proof of the continuous deterioration of the situation of the Romani communities in Europe. The solution proposed is a clear violation of their human rights and in particular of their cultural rights and identity. Concepts like "dominant society values" are, by their vagueness and general character, a non recognition and protection of cultural diversity of the European societies.
