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IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL"

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

Addendum

Communications sent to Governments and replies received

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Introduction and general comments

The Special Rapporteur on the rights of migrants, Mr. Jorge Bustamante, has a mandate to request and receive communications from a variety of sources, including from migrants themselves on violations of the human rights of migrants and their families.

This report covers communications that the Special Rapporteur has received under his mandate covering the period from 1 January 2006 to 31 December 2006. It contains summaries of communications, including urgent appeals, letters of allegations, government replies and his observations in relation to the mandate.

During the period under review, the Special Rapporteur sent a total of 24 communications on violations on the rights of migrants to 18 Member States. Of the communications that were sent, two were in the form of Urgent Appeals whilst the remaining communications sent were letters of allegations.

Communications were sent to the following countries[1]: Argentina (1); Australia (1); Canada (1); Costa Rica (1); Ecuador (2); Egypt (1); France (1), Germany (1); Indonesia (1); Israel (1); Italy (2); Malaysia (3); Philippines (1); Qatar (1); Romania (1); Singapore (2); Spain (2); and the United States of America (1):

This report contains references to 14 replies or communications received from the following Governments: Argentina (1), Costa Rica (1); Egypt (1); France (1); Germany (1); Israel (1); Italy (2); Philippines (1); Romania (1); Singapore (2) and Spain (2).

The Special Rapporteur has continued to cooperate with other mandate holders in his work. A total of 14 communications were sent jointly by the Special Rapporteur and the following special procedures mandate holders: the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the question of torture, degrading or inhumane treatment; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on violence against women, its causes and consequences; the Special Rapporteur on the sale of children, child prostitution and child pornography; the Special Rapporteur on trafficking in persons, especially women and children and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The situations in which violations of the human rights of this group are alleged to have occurred during the period under review, giving rise to the intervention of the Special Rapporteur, include allegations of: (a) arbitrary detention, also involving children; (b) inhumane conditions or detention; (c) ill-treatment in the context of border control; (d) deaths as a result of the excessive use of force by members of the police and security forces; (e) impunity for crimes

[1] General statistical information on communications sent by Special Procedures in 2006 is available on OHCHR website : www.ohchr.org

committed against immigrants; (f) gender violence and gender discrimination and (g) legislation leading to discrimination.

In his communications to Governments, the Special Rapporteur has also expressed concern at a number of situations involving violations of the human rights of migrant workers, including: (a) abusive working conditions imposed by employers, sometimes under conditions similar to slavery or forced labour; (b) withholding of passports; (c) non-payment of wages; (d) restrictions on freedom of movement, verbal and physical abuse and precarious conditions in housing that employers may be required to provide; (e) denial of the right of association; and (f) abuses by migrant worker recruitment agencies resulting from inadequate regulation of the sector.

Only 14 out of the 24 communications sent out received a response from the concerned Governments. The Special Rapporteur would like to thank all Governments that have responded to his communications and for their collaboration. He would also like to remind Governments that have not responded, to do so and to address all concerns raised in each communication.

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

SUMMARY OF COMMUNICATIONS SENT TO GOVERNMENTS

AND REPLIES RECEIVED

Argentina

Comunicaciones enviadas al Gobierno

1. Con carta de fecha 25 julio 2006, el Relator Especial juntamente con la Relatora Especial sobre la trata de personas, transmitió al Gobierno una carta de alegaciones acerca de la situación de trabajadores migrantes bolivianos objeto de trata de personas en Argentina.

2. Según las informaciones recibidas, en Octubre 2005, 17 trabajadores bolivianos habrían sido liberados de una fábrica textil en Buenos Aires, propiedad del Sr. Juan Carlos Salazar Nina. Éstos habrían presentado una demanda contra el Sr. Salazar por trata y por trabajo forzoso.

3. Se informa del hecho que el Sr. Salazar, también de nacionalidad boliviana, habría prometido pagar a los trabajadores por prenda producida. Sin embargo, una vez en las maquilas, se habrían visto forzados a trabajar hasta 17 horas al día y recibirían el equivalente a $ 6.50 como un “anticipo”.

4. Según las informaciones recibidas, los trabajadores testificaron que el Sr. Salazar les amenazaba, les privaba de sus documentos y restringía su libertad de movimiento, incluso llegando a encerrarles en la fábrica, con la intención de mantenerlos trabajando contra su voluntad. Asimismo, la comida sólo se proporcionaba a los empleados, es decir, los adultos debían compartir su comida con sus hijos. Algunos trabajadores habrían informado de que les impedían llevar a sus hijos al colegio o al médico, ya que ello causaría “interferencias con la producción”.

5. Se informa asimismo del hecho de que el 9 de noviembre de 2005, el juez Oyarbide sobreseyó el caso contra el Sr. Salazar y su esposa, la Sra. Remedios Flores, argumentando que no había pruebas suficientes para demostrar que los trabajadores habían estado bajo servidumbre. Del mismo modo, habría alegado que carecía de jurisdicción en relación con violaciones de Derecho laboral. Ello a pesar de del hecho de que 8 antiguos empleados y vecinos habrían prestado declaración contra el Sr. Salazar. Estos testigos también confirmaron que la policía acudía regularmente a la fábrica para tomar un porcentaje de los beneficios.

6. De acuerdo con la Cooperativa de Trabajo 20 de Diciembre, 4 de los 17 trabajadores migrantes habrían sido amenazados personalmente o por teléfono antes de que Salazar fuera puesto en libertad por el juez. La Cooperativa alegó también que la policía habría intimidado a los testigos y les habría ofrecido sobornos para intentar que cambiaran sus testimonios.

7. Se estima que decenas de miles de personas podrían estar trabajando en condiciones similares en maquilas en la ciudad de Buenos Aires y sus alrededores. Sólo en el distrito Parque Avellaneda de la capital, se estima que existen unas 40 pequeñas maquilas, y cada una de ellas emplearía entre 15 y 30 personas.

8. Aunque los trabajadores bolivianos son los más afectados, paraguayos, argentinos y peruanos también estarían en riesgo de este tipo de explotación, en especial en las fábricas de producción de calzado.

Comunicaciones recibidas del Gobierno

9. Con carta de fecha 17 Noviembre 2006, el Gobierno transmitió la siguiente información con relación de la situación de los trabajadores migrantes bolivianos objeto de trata de personas en Argentina.

10. En relación con el caso que involucrara a la fábrica textil del señor Juan Carlos Salazar Nina, tal como lo señalaran los señores Relatores, el mismo fue sobreseído por en la causa que lo involucraba, en fecha 9 de noviembre de 2005.

11. En este sentido, a raíz de los episodios ocurridos en Buenos Aires, que pusieron en evidencia situaciones de trata de personas y de discriminación de miembros de la colectividad boliviana, en fecha 31 de marzo de 2006, la Secretaría de Derechos Humanos del Ministerio de Justicia creó el Observatorio de Derechos Humanos destinado a la colectividad boliviana residente en la República Argentina. Esta iniciativa fue coordinada con el gobierno de la República de Bolivia.

12. Los recientes cambios políticos en la República de Bolivia han determinado un mayor dinamismo y preocupación de las autoridades del país hermano acerca de la situación de la comunidad migrante radicada en nuestro país. En ese marco se desarrollaron conversaciones preliminares con el Sr. Vice-Ministro de Relaciones Exteriores de Bolivia, en el sentido de emplazar un Observatorio de DD.HH. con el objetivo de realizar acciones coordinadas, destinadas a monitorear conjuntamente la situación de los migrantes, diseñar planes de acción y programas tendientes a garantizar el conocimiento de los derechos que los amparan y regularizar la situación migratoria de los miembros de la colectividad.

13. La colectividad boliviana tiene gran importancia en nuestro país, en especial en el área metropolitana y en el Noroeste, como también en algunas provincias de Cuyo y el Sur del país.

14. Una proporción alta de los migrantes bolivianos carece de una documentación adecuada, lo que dificulta conocer el número exacto de la población migrante radicada en nuestro país. Su procedencia principalmente de área rurales indígenas de Bolivia, verifican niveles muy altos de extrema pobreza, junto con el desconocimiento de los derechos que los amparan, hacen que esta población sea muy vulnerable al accionar de redes, integradas tanto por ciudadanos bolivianos como argentinos, coreanos o de otras nacionales, que los captan para trabajar en la industria de la indumentaria, o en el área frutohortícola en condiciones inhumanas de trabajo, configurando en algunas situaciones verdaderos casos de reducción a la servidumbre y trata.

15. En el desarrollo del Proyecto Hacia un Plan Nacional contra la Discriminación, aprobado por Decreto Nº 1086/05, como parte del diagnóstico de la discriminación en Argentina, en su capítulo sobre Migrantes, se describen los problemas que tiene la colectividad boliviana, como falta de documentación, la dificultad en el acceso a la salud, la seguridad social, la explotación laboral y la discriminación hacia miembros de esta comunidad.

16. El Observatorio se planteó la misión de erigirse como un órgano de articulación entre las instancias gubernamentales y la sociedad civil, a través de sus organizaciones. Integran dicho Observatorio funcionarios del Ministerio de Educación (Programa de Educación Intercultural bilingüe), del Ministerio de Trabajo, Empleo y Seguridad Social, del Ministerio de Justicia y Derechos Humanos, del Ministerio de Interior (Dirección Nacional de Migraciones, Registro Nacional de las Personas), del Ministerio de Relaciones Exteriores, Comercio Internacional y Culto, así como de la Secretaría de Derechos Humanos de la Provincia Buenos Aires y funcionarios de la Embajada y el Consulado de la República de Bolivia. En la reunión inaugural del Observatorio se plantearon los lineamientos y la metodología de trabajo, como así también generar un compromiso de participación en los representantes gubernamentales.

17. Con posterioridad se integraron organizaciones sociales que trabajan en apoyo a los migrantes, como el CELS (Centro de Estudios Legales y Sociales) y el CAREF (Comisión Argentina de Ayuda al Refugiado), y sindicatos vinculados a actividades con presencia de trabajadores bolivianos, como los sindicatos de Comercio, de la Construcción y del Vestido.

18. El Observatorio también está trabajado articuladamente con la Embajada de Bolivia en la recepción de denuncias de miembros de la colectividad sobre avasallamiento de derechos, actuando posteriormente para la investigación y el seguimiento de las mismas con la Secretaría de Derechos Humanos de la Pcia. de Buenos Aires.

Observaciones

19. El Relator Especial quisiera agradecer al Gobierno de Argentina la información remitida sobre la comunicación transmitida el 25 de julio 2006. El Relator Especial quisiera también expresar que aprecia positivamente las medidas y los esfuerzos realizados para proporcionar protección a la colectividad boliviana residente en Argentina, en especial la creación del Observatorio de Derechos Humanos. De igual modo, quisiera referirse a las observaciones y recomendaciones realizadas el 10 de diciembre de 2004 por el Comité para la Eliminación de la Discriminación Racial al respecto (CERD/C/65/CO/1 , párr. 14).

20. Asimismo, el Relator Especial agradecería recibir información detallada sobre las investigaciones iniciadas por el Gobierno en relación con el caso de la fábrica textil propiedad del Sr. Juan Carlos Salazar Nina.

Australia

Communications sent to the Government

21. On 18 August 2006, the Special Rapporteur sent an allegation letter concerning the recent adoption of the Migration Bill by Australia, which exposes migrants, refugees and asylum seekers to human rights violations.

22. According to the information received, Australia's newly adopted Migration Bill would threaten the fundamental rights of migrants, refugees and asylum- seekers. Reportedly, under the new legislation, all unauthorized boat passengers who arrive in any part of Australia, would be

transferred to offshore processing centres – including locations in foreign countries – where they would be detained while their refugee claims are screened.. Even those determined to be refugees would still not be allowed into Australia, but rather would have to wait for resettlement offers to other countries.

23. It is alleged that Australia has been placing asylum-seekers picked up at sea or on remote Australian islands in overseas processing centres in Nauru (Nauru would have little experience or infrastructure in the refugee determination process, few resources to accommodate asylum seekers, and wouldn't even be a party to the Refugee Convention), and Papua New Guinea since March 2001. The new law would expand that practice to include refugees who arrive on Australia's mainland.

24. The legislation was reportedly drafted after Indonesia reacted angrily to Australia's decision to grant temporary protection visas to 42 Papuan asylum- seekers in March.

Observations

25. The Special Rapporteur would like to reiterate his interest in receiving the reply from the Government of Australia regarding these allegations.

Canada

Communications sent to the Government

26. On 22 February 2006, the Special Rapporteur sent an allegation letter concerning the alleged structural flaws of the Seasonal Agricultural Workers Programme (SAWP) in Canada contributing to exploitative work and inadequate living conditions of many Mexican and Caribbean migrant farm workers employed under its auspices.

27. According to the information received, SAWP began under the initiative of the federal government in 1966. Under this programme, an average of 20,000 workers migrate to different provinces across Canada to perform agricultural work every year. The programme is authorized by the federal government through the Department of Human Resources and Skills Development (HRSDC) and administered by privately run user-fee agencies.

28. It is alleged that the lack of an appeals mechanism and monitoring and the high turnover rate of migrant workers, leads to frequent cases of abuse.

29. Workers in this program have allegedly reported numerous concerns, including:

• Working 12-15 hours without overtime or holiday pay.
• Being denied necessary breaks.
• Using dangerous chemicals without proper equipment or training.
• Cramped, substandard housing.
• Acute pay discrimination between migrant and non-migrant workforces
• Unfair paycheck deductions such as for Employment Insurance, for the Canada Pension Plan and other services, to which they have little or no access.

• Inadequate health attention and services.
• Limitations on collective bargaining and joining unions.
• Exclusion from many laws pertaining to the protection and rights of workers.
• Inadequate representation in policy making and contract disputes.
• Lack of appeals process when employers repatriate workers to home country.
• Gender discrimination: few opportunities for female workers and women are controlled and disciplined in various ways by employers.

30. Though the migrant workers are guaranteed contracts with Canadian employers that outline respective rights and responsibilities, contract stipulations are rarely enforced and fail to adequately protect them. It is alleged that because labour, health and housing fall into provincial jurisdictions, the federal government does not monitor the program and that overlapping jurisdictions and lack of national standards result in numerous inconsistencies. As a result, it is the employers and consulate liaison officers from the Caribbean and Mexico who are effectively charged with ensuring that programme requirements are met. It is further claimed that consulate officials do not provide the workers with adequate protection so that in fact they have little or no recourse in cases of abuse.

Observations

31. The Special Rapporteur would like to reiterate his interest in receiving the reply from the Government of the Canada regarding these allegations.

Costa Rica

Comunicaciones enviadas al Gobierno

32. Con carta de fecha 27 julio 2006, el Relator Especial juntamente con el Relator especial sobre el derecho de toda persona al disfrute del más alto nivel posible de salud física y mental y el Relator Especial sobre la cuestión de la tortura, transmitió al Gobierno una carta de alegaciones acerca de la entrada de una persona de unos 30 años de edad proveniente de Camerún al aeropuerto internacional Santamaría de San José, Costa Rica.

33. Según se informa, las autoridades de inmigración habrían rechazado la entrada a la persona en cuestión. La persona sería seropositiva y podría padecer asimismo de hepatitis o meningitis. Las autoridades, incluyendo los servicios de inmigración del aeropuerto, no le habrían proporcionado ningún tipo de asistencia médica o legal. La persona en cuestión estaría viviendo en una caja de cartón, en condiciones higiénicas lamentables, desde que llegó al aeropuerto hace dos meses. Los oficiales de policía del aeropuerto se habrían negado a proporcionar su nombre a las personas que quisieron asistirla.

Comunicaciones recibidas del Gobierno

34. Con carta de fecha 14 Agosto 2006, el Gobierno transmitió la siguiente información con relación al caso del 27 de julio de 2006 sobre una persona de unos 30 años de edad proveniente de Camerún al aeropuerto internacional Santamaría de San José, Costa Rica.

35. El señor Koagne Apez Yaninck falleció el jueves 27 de julio, a consecuencia de su grave estado de salud. El extranjero, de 33 años, padecía hepatitis B y estaba en fase Terminal de SIDA. Cabe agregar que las autoridades competentes habían autorizado su estadía en un hotel cercano al aeropuerto mientras de cumplían los trámites de deportación y que en todo momento recibió los cuidados médicos necesarios dada su enfermedad.

36. El Gobierno remitió en anexo una nota institucional de la Dirección General de Migración y Extranjería:
37. Con vista en el folio 256 del libro de Bitácora número nueve utilizado en esta oficina, el día 15 de junio del año en curso, la Policía de Control de Drogas detectó al extranjero Koagne Yanick con un pasaporte que no le correspondía (…). Se detalla a continuación la relación de hechos consignados en el libro de Bitácora.

38. 15/06/06 Grupo de la tarde. "Al ser las 20:35 horas el señor Gustavo Rojas Mora de la Policía de Control de Drogas entrega el siguiente caso, detectado al abordar el vuelo 3482 de Iberia un pasajero de nacionalidad Camerún de nombre Koagne Yanick; el pasajero en calidad de tránsito, venía de Guatemala con destino a Madrid, haciendo uso de un pasaporte alterado de nacionalidad costarricense n° 401650447, a nombre de Felipe López Díaz. Se consigna en dicho folio que el extranjero provenía de Guatemala, se encontraba en nuestro país en calidad de tránsito y su destino final era Madrid-España; haciendo uso de un pasaporte alterado de nacionalidad costarricense n° 401650447 nombre de Felipe López Díaz. Al consultar nuestro sistema de cómputo, el pasaporte aparece a nombre de Jorge Antonio Hernández Oviedo. Por medio de la compañía Iberia, coordine la salida con Taca-el pasajero de Camerún sale el 16/06 en el vuelo n°910 de Taca con destino a la ciudad de Guatemala. Se ubica en la sala de estar con seguridad CSS, David Álvarez, carné n° 6357 (…)"

39. Asimismo en el folio 257 del libro supracitado se indica que el 16 de junio el señor Koagne Yanick, originario de Camerún y en calidad de Tránsito, fue internado en el Hospital San Rafael de Alajuela. Se desprende también del texto que las gestiones para su traslado fueron realizadas en coordinación con el supervisor de Iberia, César Velez, asumiendo la responsabilidad de la custodia del extranjero hasta tanto se detectara su patología. El oficial asignado para dicha custodia fue la señora Yorleny Chaves Delgado, carné 38284, de la empresa de seguridad CSS.

40. Según folio 247 del libro de bitácora, el 29 de junio el funcionario Alfonso Ulloa se trasladó en la móvil 06-1106 al Hospital citado a recoger al señor Koagne Yanick, ya que al mismo se le había dado de alta y egresaría del país hacia Guatemala en el vuelo 640-A de Taca a las 13:20 horas, acción que no se ejecutó ya que Taca se rehúso a trasladar al pasajero. A raíz de lo anterior, en coordinación con Iberia nuevamente se le trasladó al hospital para permanecer por más tiempo en este sitio, mientras Iberia realizaba nuevas gestiones para egresar del país al señor Koagne Yanick.

41. Posteriormente, el día 14 de julio, el extranjero fue remitido en una ambulancia al Aeropuerto Internacional Juan Santamaría del Hospital San Rafael de Alajuela. Según consta en el oficio JM-184-2006, fechado 13 de julio del año en curso y suscrito por el Dr. Rodrigo Quesada Silva, Jefe de Servicio de Medicina de dicho Hospital, el extranjero mejoró su estado nutricional, las infecciones agudas le fueron resueltas y la hepatitis que el paciente presentó

serológicamente estaba resuelta. Asimismo, indica que el extranjero posee una condición clínica aceptable para un viaje sin escala de aproximadamente 10 horas, sin requerir de oxígeno o alimentación especial que su estado no es infectocontagioso.

42. En la fecha citada en el párrafo anterior, la señora Cinthia Moya y el señor César Velez, ambos representantes de Iberia, le manifestaron a la Licda. Sheila Flores, Jefe del Aeropuerto Int. Juan Santamaría, en presencia del funcionario Wayner Quesada, que iniciaran las gestiones para sacar del país al extranjero el día 15 de julio en un vuelo de Taca en horas de la mañana o en un vuelo de Copa en horas de la tarde, asimismo se comprometieron a trasladarlo por esa noche a un Hotel para que el extranjero pudiera mantener su estado de salud estable.

43. El día 15 de julio el extranjero no hizo abandono del país e Iberia nunca lo trasladó a un hotel, dejando la aerolínea al extranjero por tres noches en la sala de espera, aún con conocimiento que esta situación pudo haber complicado el estado de salud del extranjero. Pese a las reiteradas solicitudes, la aerolínea trasladó al extranjero hasta el 17 de julio después de las ocho de la noche al Hotel Hampton Inn, en coordinación con la Licda. Xenia Sossa Siles.

44. Asimismo, se esperaba que el extranjero egresara el día 20 de julio en vuelo directo de la empresa Iberia, lo cual no se dio.

45. El 18 de julio, la empresa Iberia presentó formal escrito por el señor Santiago Camacho, ante la Dirección General en la cual estipulaba tres petitorias como condición para ejecutar el traslado del extranjero. Así las cosas, el 21 de julio en reunión sostenida en el Despacho del Señor Ministro de Seguridad Pública Fernando Berrocal, el señor Jesús Barrios San Andrés, Agregado del Interior de la Embajada de España en Costa Rica, el señor Santiago Camacho, Gerente de Iberia en Costa Rica y mi persona, se acuerda que esta Dirección aporte documento de viaje para el señor Koagne en vista de que el mismo no posee pasaporte vigente, ya que ingresó al país con un pasaporte costarricense alterado y el original de su país no estaba vigente; certificación del Ministerio de Salud avalando la carta del señor Rodrigo Quesada Silva y oficio de esta Dirección. Se concluyó con la recopilación de los tres documentos requeridos al ser las nueve de la noche del mismo día y fueron formalmente entregados el 22 de julio a las 11:00 a.m., hora en que se presentaron personeros de Iberia a retirarlos en la oficina de Migración del aeropuerto, quedando esta Dirección a la espera de la salida del extranjero, fecha que indicaría IBERIA una vez analizados los mismos.

46. En virtud de la noticia del fallecimiento del extranjero, el documento de identidad del mismo fue decomisado el día 27 de julio por los agentes del OIJ Jenny Ortega Rivas y Charles Gamboa Chaves, lo anterior por ser requerido en causa judicial 06-002611-057- PE (El Acta de Secuestro es la N° 395452).

47. Dejó de manifiesto que la Empresa Iberia de buena fe veló en todo momento por el cuidado del pasajero proveyéndole un custodio que lo acompañó todo el tiempo.

Observaciones

48. El Relator Especial quisiera agradecer al Gobierno de Costa Rica la información remitida sobre la comunicación transmitida el 14 de Agosto 2006.

49. Sin embargo, el Relator desearía recordar al Gobierno su deber de asegurar que el derecho a la integridad física y mental de toda persona sea protegido, de conformidad, entre otros a la Declaración Universal de los Derechos Humanos, la Declaración sobre la Protección de todas las Personas contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes y la Convención contra la Tortura. También nos permitimos llamar la atención de su Excelencia sobre las Reglas Mínimas para el Tratamiento de los Reclusos aprobadas por el Consejo Económico y Social en sus resoluciones 663C (XXIV) del 31 de Julio de 1957 y 2076 (LXII) y del 13 de Mayo de 1977, en particular las reglas 22, 25 y 26.

Ecuador/Spain

Comunicaciones enviadas al Gobierno

50. Con carta de fecha 2 agosto 2006, el Relator Especial transmitió al Gobierno una carta de alegaciones acerca del uso excesivo de la fuerza y malos tratos por parte de la Policía Nacional de España durante el violento desalojo de inmigrantes de origen ecuatoriano del Consulado Ecuatoriano en Madrid.

51. Según la información recibida, la mañana del día 15 de junio de 2006, un grupo de unos 30 inmigrantes de origen ecuatoriano expresó su protesta en las oficinas consulares, al habérseles negado la posibilidad de realizar los trámites de renovación de pasaporte. Es por ello que solicitaron una entrevista con el Cónsul, D. Santiago Martínez, quien no sólo no respondió a tal petición, sino que requirió además la intervención policial para desalojar por la fuerza a dichas personas.

52. De acuerdo con la información recibida, y según se desprende de las denuncias presentadas en el Juzgado Decano de Madrid y los informes médicos emitidos por el Hospital de La Paz y el Namur, 3 mujeres sufren esguince, contusiones y dolor a causa de las graves agresiones de la Policía Nacional de España.

53. Las víctimas del maltrato policial fueron las siguientes personas: Gabriela Padilla María José Freire Carrasco y Martha Carrasco, todas ellas nacionales del Ecuador.

54. A la luz de estos hechos, quisiera expresar mi preocupación por las alegaciones de utilización de fuerza desmedida y métodos no legales por parte de la Policía Nacional de España para reducir y desalojar a migrantes de las oficinas del Consulado Ecuatoriano en Madrid.

Comunicaciones enviadas al Gobierno

55. Con carta de fecha 10 agosto 2006, el Relator Especial juntamente con la Relatora Especial sobre la trata de personas, especialmente las mujeres y los niños, la Relatora Especial sobre la violencia contra la mujer, con inclusión de sus causas y consecuencias y el Relator Especial sobre la venta de niños, la prostitución infantil y la utilización de niños en la pornografía transmitió al Gobierno una carta de alegaciones acerca de la situación de los colombianos en riesgo de ser objeto de la Trata de personas en Ecuador.

56. Según las informaciones recibidas, en el año 2004, el número de ciudadanos colombianos refugiados, solicitantes de asilo en Ecuador, ascendería aproximadamente a 44.800 personas. En años recientes, el gobierno ecuatoriano habría implementado nuevas restricciones para los colombianos que desean ingresar al país, así como para aquéllos que desean permanecer en él.

57. Los retos que enfrentarían los refugiados colombianos, los solicitantes de asilo y los migrantes, les podrían poner en riesgo de ser objeto de tráfico hacia Ecuador. Los factores que aumentarían el peligro de ser objeto de trata incluyen un aumento en las medidas de control en las fronteras recientemente implementadas por el gobierno ecuatoriano, incluyendo la exigencia del pasado judicial para cruzar la frontera. El pasado judicial es un registro oficial de no tener historia criminal, emitido por las autoridades colombianas. Este documento sería muy difícil de obtener por las personas que viven en las zonas rurales de Colombia, ya que sólo se puede obtener en las grandes zonas urbanas, a donde les es difícil y peligroso llegar. Además, sería excesivamente costoso para los campesinos colombianos sin recursos, lo cual lo volvería inaccesible para ellos.

58. En este sentido, el hecho de que los colombianos reaccionen ante este nuevo requerimiento cruzando la frontera en áreas remotas en lugar de hacerlo en los sitios oficiales de cruce, aumenta la preocupación de que se extienda la trata de personas. La presunta corrupción entre las autoridades ecuatorianas, incluyendo oficiales de frontera, también crearía un ambiente conducente a la trata de personas.

59. Se informa del hecho de que los colombianos que ingresan indocumentados a Ecuador, generalmente evitarían registrarse para solicitar asilo. De todas maneras, incluso si cruzan la frontera con los documentos requeridos, muchos escogerían permanecer no registrados por el temor de que al hacer notoria su presencia en Ecuador, ello atraería represalias por parte de la guerrilla colombiana o de ciertos elementos paramilitares.

60. Asimismo, si bien el permanecer indocumentados puede que les proteja de ser objeto de abusos por parte de los insurgentes, irónicamente ello podría volverles más vulnerables a la explotación, incluyendo la trata de personas. La falta de estatus legal les dificultaría el poder denunciar a las autoridades ecuatorianas explotaciones o abusos de los cuales hayan sido objeto. Ello también convertiría a los colombianos en un blanco para la trata de personas, ya que serían controlados más fácilmente por los traficantes. La reciente disminución del índice de concesiones de asilo podría exacerbar este problema, ya que los individuos a los que se les deniega el asilo pasan a vivir en la sombra de la sociedad ecuatoriana, con la esperanza de no ser detectados por las autoridades. Ellos también se tornarían presa fácil para los traficantes.

61. Según las informaciones recibidas, los colombianos, especialmente las mujeres, se enfrentarían a una significativa discriminación dentro de Ecuador. Ello les obligaría a ingresar en la economía informal, incluyendo el trabajo sexual. En muchas ocasiones, se verían obligadas a buscar protección de hombres ecuatorianos, quienes a su vez frecuentemente las explotarían. Pueblos fronterizos, como Lago Agrio, tienen ya de por sí un alto nivel de delincuencia y prostitución, por lo que las mujeres y niños colombianos frecuentemente terminarían como trabajadores sexuales.

62. Precisamente en Lago Agrio se constata un elevado número de niños no acompañados. Se informa de que existe un orfanato en ese lugar, pero solamente pueden ingresar los niños menores de 12 años. Los niños mayores serían entregados a familias de la zona y se volverían vulnerables a abusos.

63. Se informa del hecho que los niños colombianos tendrían dificultades para recibir educación a causa de la discriminación o por los costos prohibitivos de la educación. Como resultado, frecuentemente dejarían de estudiar y se pondrían a trabajar para ayudar a mantener a sus familias. Ello también les tornaría vulnerables a la trata de personas.

Observaciones

64. El Relator Especial quisiera reiterar su interés en recibir la respuesta del Gobierno de Ecuador al respecto de estas alegaciones.

Egypt

Communications sent to the Government

65. On 11 January 2006, the Special Rapporteur sent an allegation letter, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning the violence used by the Egyptian Security Forces which caused the death of 27 persons amongst Sudanese migrants and refugees gathered in front of the United Nations High Commissioner for Refugees (UNHCR) Office in the Mohandessin area of Cairo.

66. According to the information received, on 30 December 2005, the Egyptian Security Forces evacuated by force about 1500 Sudanese migrants and refugees who were settled in Moustafa Mahmoud Square in front of UNHCR Headquarters in Cairo. They had requested to be relocated to third countries since 29 September 2005. Early in the morning, reportedly some 2000 police officers surrounded the improvised encampment, fired water cannons into the crowd and beat individuals with clubs in order to end the sit-in. At least 27 individuals are said to have died and many others were injured following the Egyptian Security Forces' attack. Numerous persons were also arrested by police forces and detained in an unknown location. Reports indicate that the Ministry of Interior laid blame for the violence exclusively on the migrants. It claims that twenty-three police officers were wounded in an attack incited by migrant leaders against the police. No clear information is available neither on the number and the situation of wounded persons, nor on the location of numerous persons arrested by the police forces.

67. Information received also indicate that on 3 January 2006, the Government announced that it intended to forcibly return up to 650 Sudanese nationals who have been involved in the same peaceful protest since September 2005 in front of UNHCR Headquarters in Cairo. Some would be at risk of torture if returned to Sudan. The Special Rapporteur understands that this deadline was subsequently extended.

68. The Special Rapporteurs appealed to the Government to ensure that all deaths that occurred in connection with the operation of 30 December 2005 are promptly, independently and

thoroughly investigated in accordance with the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

Communications received from the Government

69. By letter dated 10 February 2006 the Government transmitted the following information relative to the case of the death of 27 persons amongst Sudanese migrants and refugees gathered in front of the United Nations High Commissioner for Refugees (UNHCR) Office in the Mohandessin area of Cairo sent on 11 January 2006.

70. The sit-in demonstration of the Sudanese nationals began on 29 September 2005 in a park close to the Regional Office of UNHCHR in Cairo, which is located in a highly populated neighbourhood. The demonstrators demanded UNHCR to resettle them in third countries of their choice, despite the fact that their continued presence in Egypt was never jeopardized.

71. The number of Sudanese nationals participating in the sit-in demonstration amounted to over 2500, including refugees, asylum-seekers and illegal immigrants.

72. The Egyptian Government exerted all possible efforts in cooperation with the Regional office of UNHCR and the Sudanese authorities for a period of more than three months to bring the sit-in protest to a peaceful end. Extensive efforts were undertaken to verify the status of those individuals and to address their claims and demands. Representatives of UNHCR, the Egyptian and Sudanese Governments, civil society and the Sudanese nationals took part in these efforts.

73. On 15 December 2005, the Regional Office of UNHCR in Cairo informed the Egyptian Foreign Ministry that no progress had been made in ending the situation as that the Sudanese nationals have shown very little willingness to work constructively with UNHCR towards a realistic solution. The Office expressed its extreme concern about the increasingly deteriorating situation of those nationals, in particular women and children as a result of their living conditions, especially with regards to health and sanitation ..

74. On 22 December 2005, the Regional Office of UNCHR in Cairo called on the Government of Egypt to take as a matter of urgency all appropriate measures to resolve this situation through peaceful means.

75. The exercise of patience and restraint by the Egyptian authorities for a period of more than three months is all the more witness of Egypt's full commitment to its legal obligations with respect to the rights of refugees within its jurisdiction, and the great importance it attaches to settling such situations by peaceful means. However, the continuation of the sit-in protest is in direct violation of the 1951 Convention relating to the Status of Refugees which requires the refugees to respect the laws and regulations of the host country The lack of willingness of the demonstrators to engage constructively in achieving realistic solutions (as repeatedly attested by UNHCR itself) led the Egyptian authorities to make , on 30 December 2005, a last attempt to persuade the participants in the sit-in to vacate the area.

76. These peaceful efforts to convince the demonstrators to vacate the area were met with aggression, several demonstrators attacked the police while some prevented other demonstrators

from leaving. This situation led to the intervention of the Egyptian police in order to establish order and assist those demonstrators trying to leave the area.

77. While it is sad and unfortunate that casualties resulted on both sides during the intervention to resolve the situation, it is noteworthy that the loss of life resulted from the chaos and stampede invoked by the extremist leaders of those demonstrators, and not by any means by the use of any excessive force or firearms on the part of the police.

78. The Egyptian authorities allowed UNHCR access to Sudanese detainees in order to identify their legal status. The Egyptian authorities have also released all those proven to be refugees or asylum-seekers (holders of blue and yellow cards), those originating from the Darfur region, and those having valid entry visas or residential permits in Egypt. Moreover, the Egyptian authorities have provided suitable accommodations for those Sudanese detainees whose status was under review. It is also worth noting the reports in the press indicating that no Sudanese detainees would be deported.

79. Egypt's response to the needs of refugees in general and Sudanese refugees in particular has always been generous. Moreover, the two million Sudanese living legally in Egypt have always fully enjoyed their rights.

Observations

80. The Special Rapporteur would like to thank the Government of Egypt for its prompt reply to the communication sent on 11 January 2006.

81. However, the Special Rapporteur would like to note the relevance in such situations of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. These Principles note, inter alia, that law enforcement officials should "as far as possible apply non-violent means before resorting to the use of force and firearms" and that "in any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life". Regarding this particular case, "whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved".

82. The Special Rapporteur would also like to draw the Government's attention to the Code of Conduct for Law Enforcement Officials adopted by the General Assembly in its resolution 34/169 of 17 December 1979, which more succinctly stresses the limited role for in all enforcement operations.

83. Finally, the Special Rapporteur would appreciate receiving further information regarding the investigations carried out into this incident as well as of their results.

France

Communications adressées au gouvernement

84. Le 3 mars 2006, le Rapporteur spéciale a envoyé une lettre, conjointement avec la Rapporteuse Spéciale chargée de la question de la violence contre les femmes, y compris ses causes et conséquences, concernant des modifications à la législation française sur l'immigration.

85. Selon les informations reçues, certaines des modifications proposées à la législation française sur l'immigration (Code de l'entrée et du séjour des étrangers et du droit d'asile) auraient pour conséquence de restreindre le droit à la vie de famille en introduisant des délais et des conditions supplémentaires au regroupement familial, ainsi que des limitations au droit de mariage. Les délais et restrictions supplémentaires créeraient une situation de précarité du statut d'étranger et de ce fait une dépendance entre les membres de la famille qui pourraient contribuer au maintien des situations de violence familiale et à la violence conjugale.

86. Les modifications annoncées devraient dans les faits toucher davantage les femmes, qui représenteraient environ 80 % des conjoints rejoignants, en ce qu'elles renforceraient les situations de dépendance conjugale et pourraient favoriser des situations de violence.

87. Selon les rapports reçus, le projet prévoirait que le titre de séjour des conjoints de Français pourrait être retiré si les époux se séparent pendant les quatre années qui suivent le mariage. Il ne contiendrait aucune référence sur la procédure à suivre en cas des violences conjugales.

88. Dans le cas des personnes entrées en France par regroupement familial avec leurs époux étrangers, le délai pendant lequel le titre de séjour pourrait être retiré si le couple se sépare, serait prolongé de deux à trois ans après le mariage. Le projet d'article maintiendrait la possibilité, déjà prévue dans la loi actuelle, que l'autorité puisse accorder un renouvellement du titre si la communauté de vie est rompue en raison de violences conjugales. Cependant, selon les rapports reçus, en raison du manque d'information des personnes concernées et du grand pouvoir discrétionnaire octroyé aux préfets, cette loi a donné lieu à une grande hétérogénéité des pratiques et ne peut pas être considérée comme une protection adéquate. Les dispositions légales proposées sembleraient dans tous les cas laisser entièrement à la discrétion des autorités administratives le pouvoir de renouveler les permis des personnes étrangères ayant quitté le domicile conjugal en raison de violences conjugales.

89. En outre, certaines des modifications proposées rendraient les personnes concernées dépendantes de leurs employeurs pour obtenir et maintenir le droit de séjourner légalement en France, sans la possibilité de changer de travail même en cas d'abus de la part de l'employeur. De même, en cas de licenciement, l'étranger serait expulsé sans recours.

90. Le projet restreindrait aussi les possibilités de contester les décisions de l'administration devant les tribunaux autorisant les préfectures à appliquer leur pouvoir discrétionnaire dans un grand nombre de situations.

Communications reçues du gouvernement

91. Par lettre datant du 24 mai 2006, le gouvernement de la France a envoyé les informations suivantes suite à la lettre envoyée le 3 mars 2006 par le Rapporteur Spécial, conjointement avec la Rapporteuse Spéciale chargée de la question de la violence contre les femmes, y compris ses causes et conséquences.

92. Le projet de loi relatif à l'immigration et à l'intégration qui est discuté actuellement au Parlement par le gouvernement a pour objet de mieux encadrer l'immigration afin de favoriser une intégration durable et réussie des étrangers en France.

93. Simultanément, il entend maintenir la tradition d'ouverture de la France aux étrangers et garantir le respect des droits et libertés individuels qui leur sont reconnus.

94. Dans le domaine particulier des procédures de regroupements familial, le projet de loi maintient le droit constitutionnellement protégé en France de tout étranger résidant régulièrement, à se faire rejoindre par sa famille.

95. Il aménage cependant les modalités d'exercice de ce droit en portant de douze à dix-huit mois le délai de résidence requis pour solliciter le regroupement familial, en prévoyant que l'étranger devra justifier par les ressources de son travail des moyens de subvenir aux besoins de sa famille et en prévoyant que l'étranger devra se conformer aux principes qui régissent la République française.

96. Le titre de séjour délivré au conjoint, admis dans le cadre d'un regroupement familial, pourra être retiré pendant un délai de trois ans –et non plus deux ans- en cas de rupture de vie commune.

97. Cette disposition est rendue nécessaire pour dissuader certains abus de procédure actuellement constatés.

98. Comme le prévoit déjà la législation actuelle, le principe du retrait de la carte de séjour en cas de rupture de vie commune ne sera pas applicable lorsque la communauté de vie cessera en raison de violences conjugales.

99. Par ailleurs, ce projet ne comporte pas de disposition qui puisse porter atteinte aux droits des étrangers de former un recours devant la juridiction administrative ou judiciaire selon les cas, en cas de violation alléguée de leurs droits.

100. Le projet de loi du gouvernement a été examiné par le Conseil d'État, qui a notamment vérifié sa conformité aux engagements internationaux que la France a souscrit dans le domaine des droits de l'homme.

101. Il est actuellement soumis à la représentation nationale qui pourra le discuter, l'amender et le compléter.

102. Il pourra également, selon les dispositions constitutionnelles applicables, être soumis au Conseil constitutionnel avant sa promulgation, qui pourra contrôler sa conformité aux obligations découlant de la Constitution et vérifier en particulier qu'il n'existe pas d'atteinte aux droits et libertés individuels.

Observations

103. Le Rapporteur spécial remercie au Gouvernement Français la réponse reçue par rapport à la communication envoyée le 3 mars 2006.

Germany

Communications sent to the Government

104. On 21 February 2006, the Special Rapporteur sent an allegation letter, jointly with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and the Special Rapporteur on freedom of religion or belief concerning a questionnaire introduced in the state of Baden-Württemberg. The questionnaire is to be answered by citizens of the 57 States members of the Organization of the Islamic Conference who apply for German citizenship.

105. According to the information received, on 1 January 2006, the Ministry of the Interior of Baden-Württemberg introduced a questionnaire directed principally at Muslims who want to obtain German citizenship. They are required to fill out a questionnaire with 30 questions, concerning a number of issues including attitudes to equality between men and women, homosexuality and freedom of religion.

106. The questionnaire is said to include questions such as:
• "Where do you stand on the statement that a wife should obey her husband and that he can hit her if she fails to do so?".
• "Imagine that your adult son comes to you and says he is homosexual and plans to live with another man. How do you react?".
• "What do you think if a man in Germany is married to two women at the same time?".
• "Were the perpetrators of the attacks of September 11 freedom fighters or terrorists?".

107. The Special Rapporteurs are concerned by the fact that an obligation imposed only on the citizens of the 57 States members of the Organization of the Islamic Conference could be discriminatory, and are concerned about the potential discriminatory impact of such legislation especially considering the large Turkish community living in Germany. Moreover, it seems that some of the questions included in the questionnaire address issues that can be challenging for a number of different groups, including German citizens. This constitutes another potential discriminatory concern if the questionnaire is addressed only to persons from predominantly Muslim countries and is a condition sine qua non to obtaining German citizenship.

108. It is further reported that under the new legislation, those who pass the test can have their citizenship revoked if they are found guilty of acting in conflict with their responses to the questions.

Communications received from the Government

109. By letter dated 28 March 2006, the Government transmitted information relative to the case of the questionnaire introduced in the state of Baden-Württemberg sent on 21 February 2006:

110. According to the division of competences as defined in Germany's Basic Law, the Nationality Act, which governs the naturalization of foreigners in Germany, is carried out by the Länder as their own affair. The Länder use administrative regulations and individual decrees to make sure that the authorities responsible for naturalization apply the relevant regulations consistently. One requirement is that persons who wish to become naturalized citizens must declare their allegiance to the principles of freedom and democracy enshrined in the Basic Law and that they are not and have not ever engaged in activities opposed to these principles or to the existence or security of the state (Section 10 (1), first sentence of the Nationality Act). Within its authority to carry out the Nationality Act, effective 1 January 2006 the Ministry of the Interior of Baden- Württemberg adopted something it calls a guide for conducting interviews (*Gesprächsleitfaden*) to examine applicant's compliance with this requirement. This guide contains 30 questions dealing with civics and society in Germany. If the naturalization authorities doubt an individual applicant's allegiance to the constitutional principles of freedom and democracy, the authorities are supposed to use the guide in asking the applicant questions to clarify the matter. The authorities are free to choose the questions; the Baden- Württemberg Interior Ministry's guide is intended only as an aid in conducting interviews with applicants for naturalization. There is no intent to make applicants answer all 30 questions.

111. In an explanatory decree of 17 January 2006 issued to the naturalization authorities, the Ministry of Interior clarifies that the questions from the interview guide were not intended only for use with Muslim applicants, but were to be used with all applicants for naturalization in case of doubts regarding their allegiance to the constitutional principles of freedom and democracy. According to the Ministry of the Interior of Baden- Württemberg, it is therefore incorrect to say that only applicants from the 57 States of the Organization of the Islamic Conference or only Muslim applicants have been asked questions from the interview guide. The Ministry also stated that the naturalization authorities as a rule were not aware of the religious affiliation of applicants, because the application form did not ask for this information, as a result of which, it would be impossible in any case to target Muslim applicants for questioning. The Ministry stated that although 60 per cent of naturalized immigrants in Baden- Württemberg came from states of the Organization of the Islamic Conference, in the majority of cases the authorities had no doubts about their allegiance to the Basic Law and did not ask them questions using the interview guide.

112. The Ministry of the Interior of Baden- Württemberg has announced that it will evaluate the use of the interview guide after six months and assess its practical effectiveness.

113. Against this background, the Federal Government would like to respond to the questions raised by the Special Rapporteurs as follows:

114. In view of what has been stated in the introduction, the Special Rapporteurs' description needs correcting in that the interview guide is applied in Baden- Württemberg, not only with regard to Muslim applicants for naturalization, but with regard to all applicants for naturalization

in case of doubts about their allegiance to the constitutional principles of freedom and democracy. According to the Ministry of the Interior of Baden- Württemberg, in a random sample of 11 naturalization authorities, 189 applicants for naturalization were asked questions from the guide of whom , 24 were from non-Islamic countries (e.g. Italy, Poland, China).

115. According to information provided by the Ministry of the Interior of Baden-Württemberg, 11 naturalization authorities out of a total 44 (25 per cent) were surveyed following a random sample. So far there has been only one complaint by one applicant for naturalization regarding the interview guide. This applicant refused to answer the questions posed by the naturalization authorities. According to the Interior Ministry of Baden-Württemberg, this person's application for naturalization had to be rejected. The Ministry is not aware of any other complaints or rejected applications for naturalization.

116. Once a person has become a naturalized citizen, his or her citizenship may be revoked only if he or she wilfully deceived the authorities with regard to matters relevant to naturalization. The possibility of committing this type of fraud when answering questions taken from the interview guide is limited, as most of the questions are intended to elicit applicants' attitudes and opinions. In any case, under Article 16 (1) of the Basic Law, no German may be deprived of his or her citizenship. So far, there are no instances in which the citizenship of naturalized citizens has been revoked due to false information given in response to the interview guide.

117. The Federal Government was not involved in developing the interview guide, nor did Baden- Württemberg inform it in advance. After learning of the guide, the Federal Government asked the Ministry of the Interior of Baden- Württemberg for a statement, which it provided on 17 January 2006. In its statement, the Interior Ministry of Baden- Württemberg clarified that the guide is used for every applicant for naturalization in case of doubts about the applicant's allegiance to the constitutional principles of freedom and democracy. Thus Muslim applicants for naturalization are not treated any differently from other applicants.

118. The Federal Government sees a need for further discussion with regard to the uniform nation-wide application of naturalization regulations, as the other Länder do not use the same procedure as Baden- Württemberg. A discussion of this issue is therefore planned for the meeting of the Standing Conference of the Federal and Land Interior Ministers in early May 2006.

Observations

119. The Special Rapporteur would like to thank the Government of Germany for its prompt and detailed reply. He would appreciate being kept informed of new developments on this legislation.

Indonesia

Communications sent to the Government

120. On 18 May 2006, the Special Rapporteur sent an allegation letter concerning negotiations on a Memorandum of Understanding (MOU) concerning Indonesian domestic workers in Malaysia.

121. According to the information received, on 17 April 2006 representatives from Indonesia and Malaysia met to discuss a Memorandum of Understanding (MOU) concerning Indonesian domestic workers in Malaysia. It is reported that, at present Indonesian domestic workers are excluded from key provisions in Malaysia's Employment Act of 1955, denying them protections enjoyed by all other migrant workers. These include a weekly day off, a limit on working hours per week, and annual leave. In addition, many domestic workers experience flagrant abuses such as unpaid wages, restrictions on freedom of movement, physical abuse, and abuses committed by recruitment and employment agencies.

122. Information received indicated that the negotiation of the MOU has remained a closed process, with no opportunity for civil society groups or international organizations with expertise on labor migration to comment on the final document.

123. Though provisions in the draft MOU, allegedly contain some positive measures, including protections to prevent employers from withholding domestic workers' salaries, the agreement would fail to ensure significant changes and sufficient guarantees for their rights, notably equal protection under Malaysia's labour laws, the obligation to adopt standard contracts containing minimum guarantees and mechanisms to ensure that domestic workers' passports and other identity documents are not confiscated by their employers.

Observations

124. The Special Rapporteur would like to reiterate his interest in receiving the reply from the Government of the Indonesia regarding these allegations.

Israel

Communications received from the Government

125. By letter dated 20 June 2006, the Government transmitted information relative to the case of Mr. Lin Shan Xi and Mr. Wang Jin Mo, migrant workers in Israel, sent on 21 September 2005.

126. The Israeli government was informed by the relevant authorities that Mr. Xi filed a complaint on August 29, 2005, regarding a sum of money owed to him by "Lior", his foreman.

127. Mr. Xi claimed that on the day of the alleged event, he was on his way to the foreman when one of the Turkish workers, in an attempt to prevent him from doing so, assaulted him by grabbing his neck and scraping his ear.

128. Mr. Mo, a fellow worker, filed a complaint corroborating Mr. Xi's testimony, and also claiming that the same Turkish worker assaulted him by pulling him out of the bus and twisting his finger.

129. Both Mr. Xi and Mr. Mo claimed in their testimonies that the Turkish worker was "sent" by their foreman to prevent them from reaching Tel Aviv and "Kav LaOved", a non-governmental organization specializing in workers rights.

130. The complaint was forwarded to the Modiin Police Station on 20 April, 2006. The foreman was questioned in the station and testified that on the date of the alleged event he was not present at the scene of the alleged incident after 11.15 a.m.; he presented a human resources certificate accordingly.

131. At this point, the identity of the suspected Turkish worker was unknown.

132. On 23 April 2006, the head of the Station's investigation office, Superintendent Gronin, wrote to Dr. Livnat, from "Kav LaOved", requesting that the complainant, Mr. Xi, be referred to the station to advance the investigation, however the latter has yet to respond to the summons.

Communications sent to the Government

133. On 22 March 2006, the Special Rapporteur sent an allegation letter concerning the situation of Ms. Mary Palanimuthu and Ms. Sinhala Pedige Pushpalatha, two Sri Lankan migrant workers in Israel.

134. According to the information received, the two workers were reportedly detained after leaving their jobs where they had been submitted to abusive labour conditions, including being confined to the house, non-payment of wages and not being allowed any rest or leave. Though both were later released and have applied for temporary visas, they have not received the wages due, and no action was taken against their employers.

135. It is reported that both workers were legally employed as caregivers and though their salaries were either completely or partially withheld; officially they were paid a monthly salary of $US 150, despite the minimum wage for the position of caregiver in Israel being $US 940/month. Their passports were confiscated by their employers after they obtained their visas to enter Israel. Ms. Palanimuthu managed to obtain a photocopy of her passport and visa, however Ms. Pushpalatha did not.

136. Ms. Palanimuthu arrived in Israel on 26 September 2005, with a work permit as caregiver. She worked as a caregiver in the Northern town of Shfaram until 4 November 2005. In reality, however, she worked not only as a caregiver but also as a servant for all the eight members of her employer's family who lived in the same house. She was not allowed to leave the house, was on-call 24 hours a day, worked seven days a week, and was harassed during meals and showers to prevent her from resting. Moreover, Ms. Palanimuthu's salary was withheld from her since the beginning of her employment. Out of desperation, Ms. Palanimuthu ran away on 4 November 2005, leaving her belongings behind.

137. Ms. Pushpalatha arrived in Israel on 14 December 2004, having been granted a work permit as a caregiver, for which she had been charged a $US3000 illegal mediation fee by an employment agency in Sri Lanka. She was hired to work as a caregiver and worked for her until 4 November 2005. Ms. Pushpalatha did not live in the same apartment as her employer, who was is in fact in good health and did not require care. Instead, Ms. Pushpalatha was sent to work as a servant in the home of her employer's son. She was on-call 24 hours a day and worked seven days a week with no rest except during meals and sleeping hours. Ms. Pushpalatha was also not allowed out of the house, her salary was withheld for the last five months of work, and she never received any of her employment benefits (recuperation or vacation pay). Ms. Pushpalatha ran away with Ms. Palanimuthu on 4 November 2005, leaving her belongings behind.

138. On 7 November 2005, the workers contacted a local NGO, which then approached the employers, demanding that the passports be returned and the salaries paid. In response, the employers filed complaints with the Shfar'am Police, accusing the workers of stealing money. The passports were given to the police who only returned them to the workers on 22 November 2005, after interrogating them regarding the theft allegations.

139. Nevertheless, because of bureaucratic complications the two women were unable to apply for a new visa to the Ministry of Interior until the following Sunday, 27 November 2005. However, they were arrested by the Immigration Police on Saturday, 26 November 2005 (less than 30 days from day they left their jobs, and hence contrary to the Ministry of Interior's regulation) before they could do so. They were then detained in separate locations.

140. Ms. Palanimuthu and Ms. Pushpalatha spent two days in detention and were released only upon intervention of an attorney from the NGO. The Ministry of Interior then agreed to revoke the deportation order and to unconditionally release the two women, while allowing them two weeks to apply for a new visa.

141. A letter was sent on 7 November 2005 to Attorney Iris Maayan, supervisor of migrant worker rights at the Ministry of Industry, Trade and Labor regarding the unlawful working conditions. However, no action was taken against the employers. Moreover, the workers have filed a lawsuit against their employers with the Labor Court for the legal amount of wages that are owed to them.

Observations

142. The Special Rapporteur would like to thank the Government of Israel for its reply.

143. The Special Rapporteur would like to reiterate his interest in receiving the reply from the Government of the Israel regarding the communication sent on 2006. He would also like to reiterate his interest in receiving a reply to cases sent in previous years to which he has not yet received a response. The Special Rapporteur would like to note that since 2002, nine communications have been transmitted to the Government of Israel and that, to date, no substantive replies have been received.

Italy

Communications adressées au gouvernement

144. Le 17 mars 2006, le Rapporteur spéciale a envoyé une lettre, conjointement avec le Rapporteur spécial sur la vente d'enfants, la prostitution d'enfants et la pornographie impliquant des enfants, concernant la situation des enfants migrants en Italie.

145. D'après les informations reçues parmi les principales préoccupations exprimées quant à la situation de ces enfants figurent: l'absence de statistiques sur le nombre d'enfants en détention, le manque d'accès par les organisations non gouvernementales aux lieux où ces enfants sont détenus, la détention de mineurs dans des conditions inappropriées, notamment quand ils ne sont pas séparés des adultes autres que les membres de leur famille et quand les conditions de leurs détention elles-mêmes ne sont pas satisfaisantes, la détention de mineurs non accompagnés en contravention avec la législation nationale et les standards internationaux, notamment ceux concernant la prise en compte de l'intérêt supérieur de l'enfant, la non-observation de l'obligation de ne considérer la détention des mineurs non accompagnés qu'en dernier recours et de prévoir des alternatives à la détention, l'insuffisance des mesures de protection, les traitements auxquels ces enfants peuvent être soumis durant leur transfert (ignorance quant à la destination, manque d'eau et de nourriture pendant des trajets pouvant durer jusqu'à 12 heures), la détention généralisée des familles, et les risques encourus par les mineurs dont l'âge n'a pas été correctement évalué et qui, de ce fait se retrouvent en détention avec des adultes.

146. Cinq cent quatre-vingt-huit enfants seraient entrés sur le territoire italien avec des membres de leur famille entre janvier 2002 et août 2005 et auraient été placés en détention. La décision du placement en détention n'aurait pas été prise suite à un examen au cas par cas des situations, et les familles n'auraient pas été informées des raisons de leur détention et de la possibilité d'en contester la légalité devant une cour.

147. Vingt-huit mineurs non accompagnés, parmi lesquels de nombreux requérants d'asile venant de pays d'Afrique sub-saharienne dans lesquels la situation des droits de l'homme est souvent précaire, auraient également été détenus entre janvier 2002 et août 2005.

148. D'après les mineurs eux-mêmes et les professionnels notamment les travailleurs sociaux ayant été en contact avec eux, ces enfants auraient été confrontés à:
• des fouilles corporelles et confiscations de leurs biens.
• des obstacles quant à l'accès aux procédures d'asile .
• l'insuffisance de l'aide juridictionnelle résultant en une méconnaissance de leurs droits en Italie.
• l'absence de nomination d'un représentant légal.
• la détention dans des locaux où ils n'auraient pas été séparés d'adultes autres que les membres de leur famille et.
• des conditions de détention inhumaines, et notamment la détention dans des mobile homes où les enfants, âgés de cinq ans pour les plus jeunes ainsi que des mères et leur nouveaux nés auraient eu à souffrir intensément du froid et de la chaleur et auraient été contraints de demeurer en plein soleil.

Communications received from the Government

149. By letter dated 16 May 2006, the Government transmitted information relative to the case of migrant children sent on 17 mars 2006.

150. By the entry into force of the United Nations Convention on the Rights of the Child, all States parties commit themselves and are obliged to live up to human rights of children as stipulated in the Convention itself. In particular, they are obliged to guarantee that each child may enjoy fundamental rights, regardless of race, sex, language, religion, national, ethnic and social origin.

151. The States must adopt all the appropriate measures so that children can be protected against any form of discrimination due to either their social status or the belief and opinion of their parents, as well as those of legal tutors or relatives.

152. Act N° 39/90 launched a comprehensive policy on immigration. By this Act it was laid down, inter alia, the principle of "the programming of migratory flows", and the administrative procedures for the entry and stay of foreigners in Italy.

153. By additional Acts, including the so-called "Bossi-Fini Law (Act N° 189/02), the two-fold aim was to propose a pattern of social integration for the foreigner, and to ensure the implementation of ad hoc measures for the protection and the support for children, while respecting the dignity and rights in both cases of children of foreign parents and children awarded to foreign adults. In this context, it is also worth recalling the following measures: Act N° 40/98; Legislative Decree N° 286/98; Presidential Decree DPR 5 August 1998; Legislative Decree N° 113/99; Presidential Decree N° 394/99; DPCM N° 535/99; Act N° 189/02 and its following amendments."

154. With a view to ensuring a protection-based approach, specific attention is paid to the unaccompanied immigrant children.

155. With a view to effectively implementing the Convention under reference, the Italian Authorities established the Committee on Foreign Children as envisaged in Article 33 of the "Unified Text of Provisions Concerning the Discipline on Immigration and on the situation of the foreigners (Legislative Decree N° 286/98)".

156. This Committee is composed of nine representatives from various relevant Ministries, particularly the Ministry of Justice, Institutions and non-governmental organizations. In order to ensure the protection of foreign children, by DPCM N° 535/99, the tasks of this Committee have been set and outlined in line with the United Nations Convention on the Rights of the Child.

157. Its tasks focus on two specific categories of children, namely those who are involved in assistance programs when temporarily authorized to stay in the Italian territory, and those who are unaccompanied non-EU children. The latter are those children who have not applied for asylum, and are within the Italian borders for any reason without a parent or a legal representative: this is the case of illegal immigrants' children who, given their age, enjoy the right to an ad hoc treatment.

158. By DPCM N° 535/99, the Committee has been entrusted with several tasks, for the performance of which ad hoc "Guidelines" have been adopted in order to tackle the situation either of the "children hosted" or "of the unaccompanied children" and, thus, to effectively intervene when such situations occur.

159. The Juvenile Justice Department issued Memo N° 1/2001, in accordance with DPCM N° 535/99, with the aim to drawing the attention of the Juvenile Justice Centres' Directorates to the following provisions: (a) obligation to swiftly inform the Committee on the entry and the stay of an unaccompanied foreign child in the Italian territory; (b) the faculty for the juvenile assistance services to request the Committee to adopt urgent measures when facing cases of foreign children without parents; (c) the necessity to inform the juvenile courts on cases of foreign children leaving the Juvenile Prisons and are under economic or moral abandonment, so that the juvenile courts may release a care order while an assisted repatriation measure is expected to be enforced.

160. In general terms, the provisions of the juvenile criminal proceeding code (DPR N° 448/88) are enforced also vis-à-vis foreign children. The Italian Authorities back the release, if feasible, of the so-called "alternative measure to the detention" for foreign children, as is the case with Italian children. The competent Authorities, if possible, resort to measures such as the so-called "stay in community (soggiorno in comunità)" in lieu of the "stay at home", given the lack in these specific cases of a stable house within the Italian borders.

161. As to the statistics of foreign children hosted in the Italian Centres for Immigrants, the domestic legislation sets froth the general prohibition of the expulsion measures vis-à-vis foreign children, unless they have to follow their expelled parents or legal representative, pursuant to Article 19, para. 2, of the Unified Text N° 286/98. Therefore, it must be stressed that the stay of the foreign children in any of the existing Centres for illegal immigrants is not allowed. However, when massive disembarkations of illegal immigrants occur, particularly at Lampedusa Island, it may occur that some children stay for a few hours at the local reception centers. In this specific context, medical care services and food are promptly supplied.

162. On a more general note, any illegal immigrant, including a child, has the chance, during the identification procedures, to report on his/her situation, including the case to be a victim of persecutions in the country of origin. In the latter case, the illegal immigrants enjoy the right to apply for asylum in Italy and thus to undergo the related procedures.

163. Therefore, an immigrant who expresses even the mere intention to apply for asylum or social protection in Italy is swiftly placed in ad-hoc domestic Centres. Once the immigrants undergo such procedures, teams of well-trained psychologists, sociologists and cultural mediators take care of them. Inter alia, the foreign children who are hosted at the cited Centres, may attend school and vocational courses, and carry out leisure activities (It is also worth mentioning that the facilities under reference have been built with care to reproduce homely settings).

164. Given the above indications, there are no statistics on foreign children at the Temporary Stay and Assistance Centres (the so-called CPTA).

165. As to the access to CPTA for the humanitarian organizations, it is worth emphasizing that the current legal framework, namely the Ministerial Directive of 30 August, 2000, the so-called Bianco Directive (as broadly considered in the Italian Reply to the last List of Issues submitted by the Committee on Civil and Political Rights), allows, at any time, the access to CPTA for the representative of the Office of the United Nations High Commissioner for Refugees (UNHCR) in Italy, by authority received, unless exceptional circumstances of security due to a serious overcrowding of the Centers occur. When such a restraint measure was decided, it lasted for a few hours. Afterwards the access was promptly resumed and allowed to the Organizations concerned.

166. Within this framework, in March 2006 the Ministry of Interior signed with three of the concerned international Organizations, namely the International Organization for Migration, the Red Cross, UNHCR, a Memorandum of Understanding, the terms of reference of which include the activities to be carried out by each organization and to be supplied to non-EU citizens landing to Lampedusa Island. However, this initiative –the short-term result of which is positive- must be considered as a pilot-project for eventually similar initiatives: thanks to this initiative, a meaningful cooperation with the migrants landed in Lampedusa Island has emerged, to date.

Observations

167. The Special Rapporteur would like to thank the Government of Italy for its prompt and detailed reply, as well as for the statistics provided. The Special Rapporteur would like to express his appreciation for the measures and efforts reported in the response to provide protection to migrant children in Italy.

Italy/Romania (see also Romania)

Communications adressées au gouvernement

168. Le 13 avril 2006, le Rapporteur spéciale a envoyé une lettre, conjointement avec le Rapporteur spécial sur la vente d'enfants, la prostitution d'enfants et la pornographie impliquant des enfants et la Rapporteuse spéciale sur la traite des personnes, en particulier les femmes et les enfants concernant le nombre croissant d'enfants roumains victimes d'exploitation sexuelle en Italie, et notamment dans la ville de Rome.

169. D'après les informations reçues, au cours des six premiers mois de l'année 2005, les services de la ville de Rome auraient enregistrés 497 mineurs non accompagnés, soit autant que pour l'année 2004.

170. La plupart d'entre ceux seraient des adolescents victimes de trafic ou qui auraient migré de leur propre chef en Italie depuis Bucarest, Calarasi, Craiova, Galati et Iasi, Craiova étant le principal lieu de provenance de ces mineurs. S'ils certains d'entre eux sont impliqués dans des vols, des trafics de drogue ou sont contraints de mendier, la majorité se prostituent sur les principales avenues de la périphérie de Rome et notamment dans le quartier Cristoforo et Salaria aux côtés de mineurs non accompagnés issus d'autres pays.

171. Dans ce contexte, de vives préoccupations ont été exprimées s'agissant des moyens limités mis en œuvre jusqu'ici pour combattre l'exploitation sexuelle de ces mineurs. Il n'y aurait pas de contacts entre les deux pays en vue de résoudre ce problème. A ce jour, ni la Roumanie ni l'Italie n'aurait mis en place un système permettant d'évaluer le nombre d'enfants victimes de trafic, et une base de données au niveau national concernant les enfants victimes ayant été rapatriés vers leur pays d'origine. En outre, bien que la législation italienne comporte de nombreuses dispositions sur les droits et protections accordées aux enfants étrangers, faute de ressources financières suffisantes et de personnel spécialisé, les services sociaux n'auraient pas la capacité de fournir à ces adolescents le soutien et la protection auxquels ils ont pourtant droit.

Communications reçues du gouvernement

172. By letter dated 16 May 2006, the Government transmitted information relative to the case of Romanian children victims of sexual exploitation in Italy, sent on 13 April 2006.

Relevant legislative framework

173. By the entry into force of the United Nations Convention on the Rights of the Child, all States parties commit themselves and are obliged to live up to human rights as stipulated in the Convention itself. In particular, they are obliged to guarantee that each child may enjoy fundamental rights, regardless of race, sex, language, religion, national, ethnic and social origins.

174. The States must adopt all the appropriate measures so that children can be protected against any form of discrimination due to either their social status or the belief and opinion of their parents, as well as those of legal tutors or relatives.

175. By Act N° 39/90, the Italian Authorities launched a comprehensive policy on immigration. By this Act it was laid down, inter alia, the principle of the programming of migratory flows, and the administrative procedures for the entry and stay of foreigners in Italy were envisaged as well.

176. By additional Acts, up to the so-called "Bossi-Fini Law (Act N° 189/02), the two-fold aim was to propose a pattern of social integration for the foreigner, and to ensure the implementation of ad hoc measures for the protection and the support for children, while respecting the dignity and rights in both cases of children of foreign parents and children awarded to foreign adults. In this regard, it is worth recalling the following measures: Act N° 40/98; Legislative Decree N° 286/98; Presidential Decree DPR 5 August 1998; Legislative Decree N° 113/99; Presidential Decree N° 394/99; DPCM N° 535/99; Act N° 189/02 and its following amendments."

Illegal foreign minors, victims of exploitation

177. In 2004, about 1200 minors arrived to Italy, 900 of which were received in Reception Centres, which could be taken as a model in other European countries, due to the inter-sectional approach of our national policies vis-à-vis the reception and assistance services granted to minors.

178. In 2005, the number of minors received was about 1000 from different nationalities (Romanians, Moldavians, Africans and –although less than in the past- Albanians). Two important data were recorded: an increase in unauthorized removals of these minors from the first assistance centres and an increase in episodes of abuse (of both males and females) on the territory of the Municipality of Rome.

179. Within this framework, worthy of mention is the issue of children involved in unlawful activities such as begging. The vast majority of children involved in begging are from communities of Slav origin, to which to add the flow of illegal minor immigrants from Morocco, from Romania, from Albania, who are generally based in Northern Italy. The majority of children are exposed to illegal activities, including sexual exploitation, under the threat of battery and the reduction into slavery. In this context, the action to prevent the exploiters is not always effective; additional difficulties are represented by the hostility of the families of the children, their lack of stability or even the very lack of a house for the children in case of measure of "stay at home". Last but not least, very often the minors manage to escape from these Centres.

180. As to the eradication of begging related activities, some specific preventive and repressive measures have been issued: (1). The Memo N° 123/A3_3/130/3/52/2003 on cooperation among police and social service providers. (2). A specific Memo has been also adopted in order to effectively enforce Act N° 228/03. On 19 June 2003, an ad hoc Protocol between the Romania Government, the Local Council of Bucarest and the Prefecture of Turin has been adopted in order to facilitate the repatriation of Romanian children victims of exploitation.

181. At the practical level, worthy of mention is also the intervention carried out by the Rome crime squad. Upon call from the relevant Local Authorities that had been contacted directly by citizens, the Rome crime squad launched the operation called "*Flowers in the mud*". The outcome of their investigations led to the adoption of several detention measures, especially against paedophiles caught in the act. In particular, there was evidence of approx. 200 Roma children who had been directed in the channel first of begging and then of prostitution.

182. As a result of its investigations, on 31 January 2006 the responsible judicial authorities released 20 decrees for pre-trial detention, 18 measures for the search of persons and of premises. In May 2006, the pre-trial was in due course. In particular, the children victims of abuse, are currently hosted in "the Rome Centre against begging", representing a unique experience in the Italian scenario because this is the only centre providing ad hoc psychological care services.

183. Initiatives devoted to foreign children, particularly Roma and Romanian children, victims of exploitation.

184. More in detail, as to the number of Romanian minors victims of sexual exploitation in Italy and with specific regard to the municipality of Rome, the Italian Government is in a position to provide the following specific information: First semester 2005: registering of 497 non-accompanied minors; Place of origin: Bucarest, Calarasi, Craiova, Galasi, Iasi; Crimes: theft, drug trafficking, begging, prostitution.

185. The Council Office for Social Policies, 5th Department and the Juvenile Department at the Municipality of Rome have undertaken many initiatives in this respect, such as the establishment of a Working Group on the Issue of Foreign non-accompanied minors, the Palms project –led by the Municipality of Rome together with the cities of Turin, Milan, Bologna and Ancona –focused on the implementation of pre-reception and reception services; an educational project aimed at the integration into second-reception structures, and an initiative, started in 2005, targeted to young girls victims of sexual exploitation and which, to date, has provided assistance to 1212 victims (of both Romanian and Moldovan nationality).

186. As to the First Aid Centres for Minors, in particular those in Rome, the main steps of the reception and assistance procedures for non-accompanied minors who have been in Italy for two months on average, are as follows: interview, check-up, report to be sent to the Committee for Foreign Minors within the next 30 days, notice to the tutelary judge for the opening of an ad hoc file, followed by a formal request to the *Questura* by the party concerned.

187. Within this framework, it is worth mentioning that the uninterrupted flow of nomads to Rome triggers a specific commitment from the local authorities. At present, local authorities have been engaged in several initiatives devoted to the integration of minors; the regularization of Roma communities; and the facilitation of the access to the labour market. Along these lines, the following proposals or initiatives are on the table: Proposal of summer leisure activities for Roma minors; project of access to education for nomad minors, from 1999-2000 through 2003-2004, the number of Roma students is progressively increased, going from 1161 through 2157; projects for vocational courses for the Roma community and for cultural mediators to be included in the penitentiary personnel; "Gipsy 2000/2002", an initiative devoted to the Roma people who suffer of drug addiction.

188. In this context, worthy of mention are also the following relevant NGOs operating in Rome: (a) Opera Nomadi; (b) Comunità di S. Egidio; (c) Caritas; (d) “Medici senza Frontiere”; (e) Study Centre on Gypsies; (f) Committee “Tratan Sulic”; (g) Casa dei Diritti Sociali; (h) UIL-Stranieri; (i) at the institutional level, worthy of mention is USIN (the ad hoc Office on Immigration and Nomads) within the municipality of Rome; I(j)As to the Roma people political participation related issues, worthy of mention is the Roma NGO called “Rasim Sejdic”, founded in the year 1988.

The Roma community, particularly Roma children in Italy.

189. On a more general note, as to the Roma community living on the Italian territory, Italy has promptly taken action by adopting legislative measures, pursuant to the provisions enshrined in Articles. 2 and 3 of the Constitution. These Articles assert the equality of all citizens before the law, without any discrimination based on gender, race, language, religion, political opinions, personal or social status, and further guarantee personal freedoms, the right to freely profess any religion, in any form, be it individual or collective, and to disseminate and practice it, privately or publicly. Along these lines, many projects have been promoted, and a large amount of financial resources allocated, at the regional and local levels, to foster mutual understanding, tolerate and respect for diversities, but also to increase the quality of life of migrants and minority groups, especially Roma people;

190. The integration and the contrast of discrimination are among the main goals of the last National three years Programme for the Immigration Politics (2004-2006) approved by the Council of Ministers where an entire chapter (IV) is devoted to integration policies (DPR, no. 128, 13 May 2005).

191. A growing interest for multicultural programs at school has been recorded, where the number of foreign students has increased almost by 10 times in 10 years (280.000 in the period 2003-2004, i.e. 3,5 per cent of the total students). The Ministry of Education monitors each year (now for the seventh year) the enrolment and the performance of foreign students in order to ensure full integration and success for all;

192. An awareness raising campaign was launched, in collaboration with associations, to increase the political awareness of the importance of granting fundamental rights to all people in some crucial sectors, such as health and education for children, whatever their legal status, since this is a fundamental key for economic and social development of the whole society.

193. In a wider framework, as regards the condition of nomadic peoples on the Italian territory, it does not seem appropriate to define them as a community detached from the rest of the population. The Italian legislation envisages specific measures aimed at strengthening their protection (for e.g., the registering procedure at the General Registry Office or the involvement of these people in school or training and vocational courses).

194. In this regard, Italian Authorities have recently taken some initiatives in order to regularize the situation of about 130.000 individuals, 50 per cent of which have Italian citizenship, while the remaining 50 per cent are illegal foreigners.

195. Since 1984, the local authorities in many regions, have been issuing ad-hoc provisions for the protection of Roma and Sinti populations and their culture, in compliance with the requirements of international recommendations and resolutions, particularly those of the Council of Europe. These regions are, in chronological order, as follows: the Veneto, Lazio, the autonomous province of Trento, Sardinia, Friuli-Venezia Giulia, Emilia Romagna, Tuscany, Lombardia, Liguria, Piedmont, whereas the Region of Marche included these populations in a wider Act on migrants and refugees related issues.

196. In this context, it is worth emphasizing that, in order to allow the Italian Roma people to enjoy some fundamental rights, specific interventions have been carried out, amongst them: the registration of births, free movement, working licenses and education. In particular, the Mayors have been sensitized to the need to facilitate the registration of nomadic families in the public registers as well as to the need to favour their stay through the creation of ad hoc camps, equipped with basic utilities.

197. In this regard, it is due to recall that, on 30 May 2001 and 19 June 2001, two bills were presented to the Chamber of Deputies (AC 225 and AC 895) regarding “The protection of the right to nomadism and the acknowledgment of the nomadic population as linguistic minorities” and “The acknowledgment of the Roma, Sinti and Travellers communities” respectively. Another bill, presented to the Senate (AS 447) on July 2001, concerning the “Framework Act to favour education, vocational training, access to work and housing for the members of the

nomadic community and to regulate their presence on the national territory". The cited measures envisage, inter alia, the creation of equipped areas where these people can stay; and a specific attention to be paid to access to school for those minors, who "regardless of the lawfulness of their position on the Italian territory, are entitled to education under the same conditions envisaged for Italian citizens…"; pursuant to Article 47 of the Consolidated Text on Immigration.

198. To support this consideration, a Bill concerning "Dispositions to recognize and protect Roma and Sinti populations and to safeguard their cultural identity" was presented on 28 April, 2006 and is currently under examination. This Bill aims at promoting political interventions to face major issues like education, housing, work and languages protection, and to create a Permanent National Observatory for Roma and Sinti populations. In particular, with regards to minors, the Bill envisages the integration of Roma children in schools, providing for the teaching of *romanesh* language, cultural traditions and history of Roma population in classes composed of at least 20 Roma pupils (art. 4). Furthermore, it proposes the institution of a National Fund for Roma and Sinti children within the Ministry of Labour and Social Policies, according to Act No.. 285/97, in order to support interventions to promote their rights, the quality of their life, their process of integration within the community and at school (art. 10).

199. To facilitate access to school for Roma children, the Ministry of Education allocates financial resources to schools so as to fund educational supplementary activities to promote a better integration. Furthermore, in cooperation with authorities and representative associations, NGOs and other local bodies, the cited schools organize activities promoting an increase in the attendance of Roma children: worthy of mention is the project of compulsory education for Roma children, as promoted by the Municipality of Rome, from 2005 to 2008. On the occasion of the January 2005 hearing before the anti-discrimination and anti-Semitism Committee, concerning the problems giving rise to feelings of discrimination among Roma people, the President of "Opera Nomadi" agreed with the representative of the Ministry of Education, University and Research on the resumption of the relevant talks for the definition of a specific "Memorandum of Understanding" on the access to school for Roma children (the relevant document has been undersigned just recently, after having been discussed and adjourned in the previous legislature).

Specific attention to foreign children within the Juvenile justice system

200. Another element to be highlighted is what was sanctioned by the Law Decree N°. 286/98 and subsequent modifications, according to which, irregular minors are entitled to enjoy fundamental rights as much as regular minors, such as the right to education and the access to health- care services. Consequently, in the juvenile justice system there is no discrimination to the detriment of foreign and Roma minors, who are under the same provisions enforced vis-à-vis Italian minors. Foreign minors under the supervision of the Department for Juvenile Justice take part in educational, training, sport and leisure activities under the same conditions as Italians.

201. Within this framework, , the Department for Juvenile Justice issued on 23 March 2002, a Memorandum containing the guidelines on the activity of cultural mediation within juvenile justice facilities. This memorandum, apart from envisaging a direct mediation activity to facilitate psycho-educational services vis-à-vis foreign minors, provides that the cultural

mediator cooperates with juvenile justice services to carry out interventions to be aimed at: raising awareness, and promoting respect for different cultures; improving the dialogue between operators and foreign minors; supporting school and training teachers in the elaboration of educational proposals targeted to the specific requirements of foreign minors; facilitating religious assistance and favouring the integration of these minors. Furthermore, the Department for Juvenile Justice gave detailed instructions to the juvenile justice centres regarding the protection of the right to worship for children and envisaged, as to the food schedule, specific menu adjustments to respond to different religious or cultural precepts of the detainees.

Observations

202. The Special Rapporteur would like to thank the Government of Italy for its prompt and detailed reply as well as for the statistics provided. The Special Rapporteur would like to express his appreciation for the measures and efforts reported in the response to provide protection to migrant children in Italy.

Malaysia

Communications sent to the Government

203. On 6 March 2006, the Special Rapporteur jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions sent an allegation letter concerning the killing of five migrant workers by agents from the Department of Immigration belonging to a volunteer service known as “RELA”.

204. According to the information received, the bodies of five migrant workers were recovered from a lake in Selayang area of Malaysia's capital city of Kuala Lumpur from 11 to 13 February 2006 following a raid by the RELA immigration officials. Two of the five bodies were recovered from the lake - a flooded open cast-mining pit - late on 11 February 2006 and the remaining three on 12 and 13 February 2006.

205. According to eyewitnesses, in the early hours of 11 February 2006, the Immigration Department conducted a raid on Selayang’s open market where many migrants work. Migrant workers were heard screaming for help while RELA officers shouted that they would kill the migrants if they ran away.

206. The Special Rapporteurs expressed their awareness of the fact that the Malaysian government has issued a statement in which it refuted these allegations and explained that the operation carried out by RELA officers went smoothly and involved only the checking of the documents of foreign workers, some of whom managed to run away.

207. The understanding of the Special Rapporteurs is that autopsies were conducted on four of the bodies on 13 February 2006 while the fifth one, identified as being Mr. Zaw Oo, a Burmese migrant, was not taken to hospital and was buried immediately. Reports indicate that the bodies showed no signs of stab or slash wounds and that they were too badly decomposed to be able to tell whether they had been beaten with batons, such as those carried by RELA volunteers.

208. The overall circumstances of these deaths and the way in which they have been presented by some observers serve to emphasize the importance of ensuring that a thorough investigation be undertaken and that it not be left to the officials involved or those working closely with them. Ideally an independent investigation, based on thorough police and forensic work would be undertaken, and the results made public.

Communications sent to the Government

209. On 29 March 2006, the Special Rapporteur sent an allegation letter concerning the ill-treatment and detention by RELA agents of some 61 Indian workers who had been camping outside the Indian High Commission on 28 February 2006.

210. According to the information received, approximately 400 Indian nationals had been camping outside the Indian High Commission seeking help to settle employment claims including unpaid wages and confiscated passports. The group claimed they were brought to Malaysia last year by a company contracted to provide workers to an electronics factory in Pasir Gudang, Johor state. Although the workers had been requesting aid for several days, the High Commission. Nevertheless, failed to give them adequate support.

211. On Tuesday, February 28, 2006, by members of RELA, a volunteer neighborhood security association, attacked the workers beating them with clubs before taking some 61 of them away to a detention camp at Lenggeng in Negri Sembilan state, about 60 km south of the capital where they remained incarcerated. About 20 others escaped, while some took refuge inside the compound of the Indian High Commission. Four of the workers are said to have suffered injuries and two were taken to hospital.

212. Chandiran Adaikalam from Tamilnadu, is said to have been badly injured and in need of medical treatment that he cannot afford.

213. It is further reported that the Malaysian Human Rights Commission SUHAKAM, is investigating the incident and is planning to visit the detained migrants.

Communications sent to the Government

214. On 18 May 2006, the Special Rapporteur sent an allegation letter concerning negotiations on a Memorandum of Understanding (MOU) concerning Indonesian domestic workers in Malaysia.

215. According to the information received, representatives from Indonesia and Malaysia met on 17 April 2006 to discuss a Memorandum of Understanding (MOU) concerning Indonesian domestic workers in Malaysia. It is reported that, at present, Indonesian domestic workers are excluded from key provisions in Malaysia's Employment Act of 1955, denying them protections enjoyed by all other workers. These include a weekly day off, a limit on working hours per week, and annual leave. In addition, many domestic workers experience flagrant abuses such as unpaid wages, restrictions on freedom of movement, physical abuse, and abuses committed by recruitment and employment agencies.

216. Information received indicated that the negotiation of the MOU has remained a closed process, with no opportunity for civil society groups or international organizations with expertise on labor migration to comment on the draft.

217. Though provisions in the draft MOU, allegedly contain some positive measures, including protections to prevent employers from withholding domestic workers' salaries, the agreement would fail to ensure significant changes and sufficient guarantees for their rights, notably equal protection under Malaysia's labour laws, the obligation to adopt standard contracts containing minimum guarantees and mechanisms to ensure that domestic workers' passports and other identity documents are not confiscated by their employers.

Observations

218. The Special Rapporteur would like to reiterate his interest in receiving the reply from the Government of Malaysia regarding the communications sent in 2006. He would also like to thank the Government for keeping him informed as to the status of its reply to the follow up of the letter of allegation sent on 8 July 2005.

Philippines/ Qatar (See also Qatar)

Communications sent to the Government

219. On 17 May 2006, the Special Rapporteur jointly with Special Rapporteur on violence against women, its causes and consequences sent an allegation letter concerning the alleged abusive work conditions and ill-treatment of Ms. Lea Orante, a Philippine domestic helper working in Qatar.

220. According to the information received, Ms. Lea D. Orante, a 25 year old Philippine national, went to work as a domestic helper in Qatar in October of 2005. In December of the same year, she telephoned her mother to complain that her employer, Mr. Abdullah Mohammed Al-Kuary, had beaten her and that, contrary to the contract she had signed; she was being forced to work from 7.00 a.m. to 10.00 p.m..

221. On April 22, 2006, Ms. Orante called her mother again to complain that three members of her employer's family, Ms. Aisah Al Kuary, Ms. Mariam Al-Kuary and Mr. Rashid Al-Kuary, had seriously beaten her, resulting in multiple abrasions on her upper body, and upper extremities, her upper lip and pain at the back of her body. She was then taken to the airport and forced to board an airplane back to the Philippines. Various items of her property were taken and wages owed for the last two months of her employment remained unpaid.

222. Once in the Philippines, she was admitted to hospital as she complained of headaches and pain all over her body.

223. Complaints have allegedly been lodged with: the Department of Foreign Affairs in Manila, the Philippine National Police in Manila, the Office of the Undersecretary for Migrant Workers Administration in Manila, and the Philippine Overseas Employment Administration

(POEA) in Manila; as well as with the Office of the Ambassador of the Philippines in Qatar and the Ambassador of Qatar in the Philippines. It is unclear if any action has been taken.

Communications received from the Government

224. By letter dated 15 June 2006, the Government transmitted information relative to the case of Ms. Lea Orante, sent on 17 May 2006.

225. The Embassy of the Philippine in Doha cannot make a definite determination on the accuracy of the facts alleged. Its knowledge of the case is based solely on the documents submitted by the victim, which include the police and medical reports.

226. The Embassy came to know about the case only after it received the complaint filed by the victim when she was already in Manila. There was no chance for Embassy officials to interview her.

227. Nevertheless, after receiving the complaint and the pertinent documents, the Embassy requested the assistance of a local lawyer to handle the filing of a case with the Qatari police. The lawyer has requested for a Special Power of Attorney authorizing her to file both criminal and civil cases; said authorization is yet to be received from the victim.

228. The claim for wages and compensation will be included in the civil suit to be filed by the lawyer who was engaged by the Embassy.

229. Aside from the cases to be filed, the Embassy will discuss the case with Qatari authorities, including the office responsible for human rights, in order to avoid similar cases in the future.

230. The Embassy also recommends that the Special Rapporteurs refer the case to the local office in Doha of the Office of the High Commissioner for Human Rights.

231. The Office of the Undersecretary for Migrant Workers Affairs of the Department of Foreign Affairs is closely monitoring the case and is in constant communication with the sister of Ms. Orante concerning the status of developments in the case.

232. The Embassy plans to negotiate a Philippines-Qatar labour agreement that would include provisions on, among others, the safety and welfare of overseas Filipino workers in Qatar.

Observations

233. The Special Rapporteur would like to thank the Government of the Philippines for its prompt and detailed reply. He would like to express his appreciation for the measures and efforts reported in the response to provide protection to the migrant population living abroad. He would also like to refer to the concerns expressed and recommendations made by the Committee on the Elimination of Discrimination against Women on this issue on 25 August 2006 (CEDAW/C/PHI/CO/6, paras. 21 and 22).

Qatar/ Philippines (See also Philippines)

Communications sent to the Government

234. On 17 May 2006, the Special Rapporteur jointly with the Special Rapporteur on violence against women, its causes and consequences sent an allegation letter concerning the alleged abusive work conditions and ill treatment of Ms. Lea Orante, a Philippine domestic helper working in Qatar.

235. According to the information received, Ms. Lea D. Orante, a 25 year old Philippine national, went to work as a domestic helper in Qatar in October of 2005. In December of 2005, she telephoned her mother to complain that her employer, Mr. Abdullah Mohammed Al-Kuary, had beaten her and that, contrary to the contract she had signed; she was being forced to work from 7.00 am to 10:00 pm.

236. On April 22, 2006, Ms. Orante called her mother again to complain that three members of her employer's family, Ms. Aisah Al Kuary, Ms. Mariam Al-Kuary and Mr. Rashid Al-Kuary, had seriously beaten her, resulting in multiple abrasions on her upper body and upper extremities, her upper lip and pain at the back of her body. She was then taken to the airport and forced to board an airplane back to the Philippines. Various items of her property were taken and wages owed for the last two months of her employment remained unpaid.

237. Once in the Philippines, she was admitted to hospital as she complained of headaches and pain all over her body.

238. Complaints have allegedly been lodged with: the Department of Foreign Affairs in Manila, the Philippine National Police in Manila, the Office of the Undersecretary for Migrant Workers Administration in Manila, and the Philippine Overseas Employment Administration (POEA) in Manila; as well as with the Office of the Ambassador of the Philippines in Qatar and the Ambassador of Qatar in the Philippines. It is unclear if any action has been taken.

Observations

239. The Special Rapporteur would like to reiterate his interest in receiving the reply from the Government of Qatar regarding these allegations. He would also like to refer to the concerns expressed and recommendations made by the Committee against Torture on this issue on 25 July 2006 (CAT/C/QAT/CO/1 paras. 20 and 21).

Romania/Italy (See also Italy)

Communications adressées au gouvernement

240. Le 13 avril 2006, le Rapporteur spéciale a envoyé une lettre, conjointement avec le Rapporteur spécial sur la vente d'enfants, la prostitution d'enfants et la pornographie impliquant des enfants et la Rapporteuse spéciale sur la traite des personnes, en particulier les femmes et les enfants, concernant le nombre croissant d'enfants roumains victimes d'exploitation sexuelle en Italie, et notamment dans la ville de Rome.

241. D'après les informations reçues, au cours des six premiers mois de l'année 2005, les services de la ville de Rome auraient enregistrés 497 mineurs non accompagnés, soit autant que le nombre total enregistré pour l'année 2004.

242. La plupart d'entre ceux seraient des adolescents victimes de trafic ou ayant migré de leur propre chef en Italie depuis Bucarest, Calarasi, Craiova, Galati et Iasi, Craiova étant le principal lieu de provenance de ces mineurs. S'ils certains d'entre eux sont impliqués dans des vols, des trafics de drogue ou sont contraints de mendier, la majorité se prostituent aux côtés de mineurs non accompagnés issus d'autres pays sur les principales avenues de la périphérie de Rome et notamment dans le quartier Cristoforo et Salaria.

243. Dans ce contexte, de vives préoccupations ont été exprimées s'agissant des moyens limités mis en œuvre jusqu'ici pour combattre l'exploitation sexuelle de ces mineurs. Il n'y aurait pas de contacts entre les deux pays en vue de résoudre ce problème. A ce jour, ni la Roumanie ni l'Italie n'aurait mis en place un système permettant d'évaluer le nombre d'enfants victimes de trafic et une base de données au niveau national concernant les enfants victimes ayant été rapatriés vers leur pays d'origine. En outre, bien que la législation italienne comporte de nombreuses dispositions sur les droits protections accordées aux enfants étrangers, faute de ressources financières suffisantes et de personnel spécialisé, les services sociaux n'auraient pas la capacité de fournir à ces adolescents le soutien et la protection auxquels ils ont pourtant droit.

Communications received from the Government

244. By letter dated 20 July 2006, the Government transmitted information relative to the case of Romanian children victims of sexual exploitation, sent on 13 April 2006.

245. The situation presented by Mr. Juan Miguel Petit, Special Rapporteur on the sale of children, children prostitution and child pornography, Mr. Jorge A. Bustamante, Special Rapporteur on the human rights of migrants, and Mrs. Sigma Huda, Special Rapporteur on trafficking in persons, especially women and children, represents a major concern of the Romanian Government.

246. The Romanian Government has adopted a "Program of prevention and countering the sexual abuse against minors" and a "National Action Plan for preventing and countering the children trafficking". On the basis of these documents, joint actions are performed with foreign partners in order to prevent and combat the cases of minors' exploitation.

247. On 29 January 2006, the Law n° 248/2005 concerning the freedom of movement of Romanian citizens abroad entered into force; according to its provisions the minors under 18 years of age are not allowed to travel abroad unaccompanied.

248. Information on the situation presented by the Special Rapporteurs:

249. The case brought to the attention of the Romanian authorities by the Special Rapporteurs is similar to the information presented within the study "Extension of the prostitution phenomenon among the Romanian minors from Rome", drawn up by the Casa del Diritti Sociali

Focus –Rome and the Romanian Foundation for Children, Community and Family-. According to the statistics drawn up by the above-mentioned foundations, “during the first six months of 2005, the public services have registered 487 Romanian unaccompanied minors, almost the total number registered in 2004”.

250. The Romanian National Authority for the Protection of the Rights of the Child asked the Italian organization detailed information on the sources used in drafting the study. According to the information received, the study was drawn up based on the data presented by the Department GIATMS Gruppo Acoglienza e Tutela Minori Stranieri within the City Hall of Rome. The organization mentioned that they did not contact the Committee for Foreign Children in Rome in order to confirm these data. The Romanian Foundation for Children and Families affirmed that the Italian organization Cassa del Dititti Sociale got in contact only with three Romanian children.

251. According to the above-mentioned study, the information was gathered and analysed from the following sources: publications and reports; consultations with institutions, non-governmental organizations (NGOs), local and public authorities and social workers.

252. An Italian and Romanian social workers' team was organized and, when possible, the children were interviewed. Nevertheless, the respective study mentions that “it wasn’t possible to compare the information provided by these children with information given by other sources”.

253. As a consequence, the Romanian authorities supported by the Office of the Romanian internal affairs attachés in Italy, and the Romanian Consulate in Rome to initiate investigations on the situation of the Romanian minors. Furthermore, they have cooperated with the Italian authorities in order to identify the persons which have exploited those children.

254. Specific activities were carried out through structures countering organized crime with a view to identifying the minor victims and the traffickers’ networks in order to punish them.

255. After receiving the letter, the Ministry of Administration of Interior requested the Romanian liaison officer in Italy, as well as Italian liaison officer in Bucharest, to carefully analyze the facts presented by the Special Rapporteurs, in order to identify the solutions that would safeguard the fundamental rights of the affected children.

256. Following the briefing with the Italian and Romanian liaison officers, the following conclusions were made: the judicial authorities of Rome have not registered the 497 Romanian minors as victims of trafficking in persons, and have not made any report in this respect to the Romanian authorities; not all the minors discovered by the Italian authorities were unaccompanied; some of them hid the fact that they were in Italy with their families.

257. The identification and punishment of traffickers and panders falls under the responsibility of the Italian authorities. The Embassy of Romania to Italy, having two attachés for internal affairs, always expressed its full availability to collaborate with the local authorities in order to identify and annihilate the networks of traffickers.

258. In the case of arrested minors, the Italian legislation does not allow the local authorities to inform the diplomatic mission of the country concerned; if the minor does not give his/her

consent in this respect; in most cases the minors do not wish to notify the Romanian authorities that they are detained.

259. Cooperation with Italian authorities aiming at preventing and combating trafficking in children:

260. The Romanian authorities have developed a close cooperation and mutual exchange of operational data with their Italian counterparts, to combat trafficking in persons, especially minors.

261. The existing collaboration with the Italian authorities is satisfactory as regards the identification of un-documented children that accept the protection and social integration programs and contacts with the family of origin.

262. The project "illegal migration and exploitation of unaccompanied minors – Urgent measures in favor of extremely vulnerable minors", financed by the Italian Ministry of Foreign Affairs (Ministero degli Affari Esteri), is unfolding at present.

263. The project, covering the period between January 2006 – January 2007,addresses social issues determined by the psycho-social impact of migration on local communities and families, such as abandon and abuse on minors in Romania and the Republic of Moldova and aims at reducing the risk of trafficking in persons or of becoming illegal immigrants.

264. The project aims at strengthening the cooperation between the central and local administrations and also to involve the civil society in the protection and supporting activities for unaccompanied minors in Italy, Romania, and the Republic of Moldova. Cooperation with representatives of civil society will be achieved by common training activities, exchange of experience and expertise in the field of child protection, the target group being represented by socially disadvantaged families, one parent families, minors with high risk to become victims of abuses, unaccompanied minors from Italy, Romania and the Republic of Moldova.

265. The agreement between the Government of Romania and the Government of Italy concerning the cooperation for protection of Romanian minors encountering difficulties on the territory of Italy and their return in the country of origin, as well as the field of combating the exploitation of minors is under negotiation. This agreement will set up the legal framework and the adequate procedures in order to identify and ensure assisted repatriation for the Romanian minors identified on the territory of Italy.

266. In 2005, the General Directorate for Countering Organized Crime in the Ministry of Administration and Interior in Romania registered the following data on trafficking in Romanian children in Italy: sixty-five files sent to the Prosecutor's office, referring to cases involving 128 minor victims; In 80 per cent of these cases, requests for assistance were addressed to Italian authorities; The cooperation with the Italian authorities aimed at investigating cases of trafficking in persons and at identifying and arresting the perpetrators.

267. In April 2006, following an action of the Italian police (prepared for a year), 13 Italian citizens and six Romanian citizens were arrested being accused of prostitution with minors,

pornography with minors and blackmail. Twenty-two victims were identified, out of which 16 are Romanian minors (in majority of Roma origin), the others being Italian, Albanian, Macedonian and Moroccan minors.

268. During 2005, the Romanian National Authority for the Protection of the Rights of the Child (NAPRC) has received 398 requests regarding Romanian unaccompanied children on Italian territory; the repatriation procedure was initiated for all the children and in eight cases the procedure was completed.

269. During the first semester of 2006, NAPRC has received 60 requests regarding Romanian unaccompanied children on Italian territory; the repatriation procedure was initiated and was completed in 11 cases.

Observations

270. The Special Rapporteur would like to thank the Government of Romania for its prompt and detailed reply. He would appreciate being kept informed of new developments in these cases.

Singapore

Communications sent to the Government

271. On 16 February 2006, the Special Rapporteur jointly with Special Rapporteur on violence against women, its causes and consequences and the Special Rapporteur on trafficking in persons, especially in women and children sent an allegation letter concerning allegations about norms and procedures that discriminate women domestic migrant workers and make them more vulnerable to exploitation, abuse and restrictions of their physical freedom.

272. According to information received, there are 150,000 women domestic migrant workers in Singapore who are in the majority from Indonesia, the Philippines and Sri Lanka. Private employment agencies typically recruit the women in their countries of origin and place them with Singaporean employers. These agencies usually charge significant recruitment, transfer and placement fees (S$1,400-2,100), which the women often have to repay by working the initial 4 to 10 months of their contract without pay. Additional fees are often charged and have to be worked off, if a domestic worker decides to change employers during her stay. Some employment agents, especially unlicensed ones, have threatened workers with severe reprisals, including trafficking into prostitution, if they try to leave their job and return home before they have worked off their debt. Other agents have also intimidated workers by way of physical abuse.

273. Once in Singapore, many domestic migrant workers are required to work between 13 and 19 hours a day, seven days a week. In a large number of cases, the women also experience verbal abuse and food deprivation at the hands of their employers.

274. Employers often prohibit their domestic migrant workers from leaving the house unaccompanied, and also confiscate their passports and other identity documents. These

restrictions isolate the workers and make them more vulnerable to physical and sexual abuse in the employer's home.

275. The Special Rapporteurs commended the Government on a number of important measures implemented in recent years to prevent abuse and exploitation of domestic migrant workers. However, they also noted that certain discriminatory norms and policies continue to exist, which inadvertently render them more vulnerable to abuse, trafficking, exploitation and restrictions of physical freedom:

276. Domestic workers are explicitly excluded from the protection of the Employment Act, which guarantees the right to one day of rest per week and a maximum of 44 work hours per week. The Employment Act also limits salary deductions to 25 per cent of the monthly salary for a maximum period of 12 months. The Employment of Foreign Workers Act, which applies also to domestic migrant workers, does not provide for equivalent rights.

277. The Employment Agencies Act stipulates that employment agencies must not charge job seekers more than 10 per cent of their first month's earnings. However, the Ministry of Manpower considers the recruitment, transfer and placement fees, which domestic migrant workers are charged by their agents, to be private loans that are not subject to the limit imposed by the Act.

278. Employers hiring domestic migrant workers have to take out a S$5,000 bond, which they forfeit if they fail to pay for the domestic worker's repatriation costs or if the domestic worker runs away from the employer's home. The latter gives employers an incentive to prohibit their domestic workers to leave their workplace in the employer's home unaccompanied.

279. Domestic migrant workers also face limitations of their reproductive and marriage rights: (a) Singaporean labour regulations prohibit domestic migrant workers from becoming pregnant or giving birth during the course of their stay in Singapore. Unless pregnant workers agree to an abortion, they will be deported. For employers, who have economic and personal interests not to see their domestic workers deported, this limitation of reproductive rights provides further incentive to limit their workers' outside contacts and prohibit them from leaving the house on their own; (b) the same set of labour regulations prohibits domestic workers from marrying Singaporean citizens or permanent residents during their stay, unless they receive a special permission from the Controller of Work Permits.

Communications received from the Government

280. By letter dated 5 April 2006, the Government transmitted information relative to norms and procedures that discriminate women domestic migrant workers, sent on 16 February 2006.

281. Singapore is committed to protecting the well-being of the 160,000 foreign domestic workers (FDWs) working in our country. The vast majority of FDWs have indicated that they are happy to work in Singapore, according to an independent poll conducted by the Singapore Press Holdings in December 2003. One out of three FDWs who choose to work in Singapore do so because of better pay and working conditions compared to their home and other countries.

282. FDWs in Singapore receive full protection under Singapore laws including the Employment of Foreign Workers Act (EFWA), Employment Agencies Act and the Penal Code. The Singapore Government has been taking firm enforcement actions against errant local employers and employment agents. In addition, the Government has extensive outreach programmes to educate the FDWs in Singapore on their rights under the law and the channels of assistance available to them.

283. Annex: Clarification on the actual foreign domestic worker situation in Singapore.

Protection of the Rights of FDWs:

284. The Employment of Foreign Workers Act (EFWA) imposes work permit conditions on employers to provide adequate rest and meals, and ensure work safety, proper housing and prompt salary payment. Errant employers who breach these conditions can be punished with a fine of up to $5,000 and a jail term of up to 6 months.

285. FDWs also receive special protection under the Penal Code. In 1998, the Penal Code was amended to increase by one-a-half times the penalties for acts of abuse against FDW by their employers or household members, compared to the same acts against any other persons including Singaporeans. This has led to a marked decrease in abuses against FDWs, from 157 in 1997 to 59 cases last year.

286. In 2005, five employers were fined for failing to pay their FDWs and ordered to make full restitution of the outstanding salary. Three of these employers were subsequently jailed when they defaulted on the court order. From 2001 to 2005, a total of 26 FDW employers or their household members were also jailed for abusing their FDWs. All convicted employers and their spouses are permanently barred from employing FDWs.

287. To ensure that FDWs are equipped to protect themselves and are fully aware of their rights, Singapore has in place extensive measures to educate FDWs on these aspects, and various channels of assistance that FDWs can turn to for help. Upon their arrival in Singapore, each FDW is given a pocket-sized handy guide published in their native languages, containing the Ministry of Manpower's dedicated hotline number for FDWs to seek help or report grievances. It also contains the contact numbers of the Police, the relevant embassies and volunteer organizations.

288. All first-time FDWs are also required to attend a Safety Awareness Course to acclimatize them to working in a high-rise urban environment. The channels of assistance they can turn to are again highlighted during the course. As the FDWs attend these courses on their own, without their employers or agents presence, it also accords them ample opportunity to express any problems on their employment freely or seek help if they so wish.

289. To ensure that FDWs are better able to understand and exercise their rights under Singapore law, with effect from 1 January, 2005 , all new FDWs entering Singapore must be at least 23 years of age (the previous minimum age being 18 years) and have undergone eight years of formal education.

290. In addition, to remind employers of their responsibilities and empower FDWs to exercise self-help in safeguarding their rights and safety, the Ministry of Manpower (MOM) has been stepping up its public outreach efforts to emphasize key messages such as safety in high-rise buildings, the rights and obligations of employers, as well as avenues through which FDWs can seek help. These outreach efforts include posters displayed in residential neighbourhoods and bus stops, as well as the distribution of goody bags containing collateral imprinted with MOM's helpline at community events.

Regulation of the Employment Agency Industry

291. MOM closely regulates the employment agency (EA) industry to prevent any exploitation of FDWs. All EAs are licensed, and can be punished with a fine up to $S5.000 and/or two years in jail if convicted for any offence under the EA Act. EAs also risk losing their licence permanently for any infringements under the Act. Since January 2004, the Ministry has revoked the licences of three EAs and not renewed the licenses of another ten EAs.

292. MOM also requires all EAs involved in placing FDWs to be accredited by independent bodies. One key accreditation criterion is that EAs must ensure the employers and FDWs enter into employment contracts, which specify the terms of employment. As such, FDWs have the same right as all employees to accept or reject work conditions imposed, including the number of rest days.

293. To further shape the behaviour of the EA industry, the Ministry has introduced a demerit point system (DPS) for EAs since 6 February 2006. This awards demerit points to EAs for regulatory infringements. The points that each EA has accumulated are also made public. EAs that accumulate excessive demerit points will also have their licenses removed by the Ministry.

294. Nonetheless, while MOM regulates the commission charged by Singapore-based EAs, the loans that FDWs take in their home countries fall outside Singapore's jurisdiction. They have to be handled within the jurisdiction of the labour exporting countries.

Freedom of Movement of FDWs

295. It is a serious offence under the Penal Code to wrongfully confine any person. Anyone found wrongfully confining a person faces a jail term up to one year, and/or a fine of up to $S 1.000 under the Penal Code. It is also an offence under the EA Rules for the EA to withhold either the passport or work permit of an FDW. The Police and MOM take such offences seriously and will prosecute any EA seeking to restrict the FDWs movements.

Marriage Restrictions for FDWs

296. A small city-state of four million people with limited land resources, it is necessary for Singapore to maintain a strict immigration policy. Singapore therefore requires work permit holders to obtain prior approval from the Controller of Work Permits to go through any form of marriage or apply to marry a Singapore Citizen or Permanent Resident (SC/PR). A key consideration in determining the grant of approval is whether the couple would be financially self-reliant.

297. The Government noted that other countries also impose certain restrictions of marriage on foreign workers. For example, since 1 February 2005, the United kingdom has stipulated that any foreign worker (including higher-skilled foreign workers) must obtain permission before getting married in the United Kingdom.

Communications sent to the Government

298. On 8 August 2006, the Special Rapporteur sent an allegation letter concerning the new standard contract for domestic migrant workers in Singapore.

299. According to the information received, Singapore's new standard contract for migrant domestic workers perpetuates discriminatory treatment and their exclusion from basic protections. It is alleged that the contract clarifies service charges and refund policies for employers, but does not guarantee a weekly day off for workers or cap excessive recruitment fees.

300. It is alleged that intense competition among the more than 600 employment agencies has led them to shift the cost of recruitment, transportation, training and placement from employers to domestic workers. It is further reported that employers and labor agents often deduct the first four to ten months of a domestic worker's salary, out of a two-year contract, to pay these fees. However, the new contract does nothing to cap recruitment fees.

301. In addition, the new contract recommends, but does not require, that employers provide workers at least eight hours of continuous rest. Further, it gives employers the option of either providing the domestic worker one to four days off per month, or paying them extra if they do not take a rest day. Given the imbalance of power between employers and domestic workers, the waiver is reportedly open to high risk of abuse by employers who do not provide the additional payment or who coerce the worker to sign away her right to a day of rest.

Communications received from the Government

302. By letter dated 19 September 2006, the Government transmitted information relative to the new standard contract for domestic migrant workers in Singapore, sent on 8 August 2006.

303. Singapore's position had been outlined in the Government's previous response of 5 April 2006 to the United Nations Special Rapporteurs' letter on the situation of foreign domestic workers (FDWs) in Singapore. The Government remains committed to protecting the well-being of the 160,000 FDWs working in Singapore. Over 90 per cent of FDWs indicated that they are happy working in Singapore, according to a latest survey in April 2006 commissioned by the Feedback Unit of Singapore's Ministry of Community of Community Development and Sports. This is consistent with findings from the previous survey in 2003 cited in the earlier response of the Government. FDWs choose to work in Singapore because of better pay as well as safer and better working environment compared to their home and other countries.

304. As stated in the earlier reply of the Government, FDWs in Singapore receive full protection under Singapore laws, which include the Employment of Foreign Workers Act (EFWA), Employment Agencies Act and the Penal Code. The protection under the EFWA

accords the same rights to foreign workers of both genders, so there is no question of unequal treatment of female workers.

305. The Government wishes to point out that the introduction of the Standard Employment Contract between the employer and the foreign domestic worker (FDW), as well as the Standard Service Agreement between the employer and the employment agency are initiatives of the employment agency industry and they are undertaken by the two industry accreditation bodies (ABs) of the FDW placing employment agencies in Singapore, namely the Association of Employment Agencies (Singapore) and CaseTrust.

306. Nevertheless, FDW employers are required under the EFWA to provide adequate rest and meals for their employees. They are also required to ensure work safety, proper housing and make prompt salary payments to their FDWs. Those who breach these conditions can be punished with a fine of up to $S5.000 or a jail term of up to six months or both.

307. While the Singapore Ministry of Manpower regulates the commission charged by Singapore-based employment agencies under the Employment Agencies Act, the Government wish to highlight that the loans which FDWs take in their home countries and the commission they pay to their local agents fall outside Singapore's jurisdiction and have to be handled within the jurisdictions of the labour exporting countries.

Observations

308. The Special Rapporteur would like to thank the Government of Singapore for its prompt response.

309. Concerning the communication sent on 16 February, the Special Rapporteur would like to make reference to the Universal Declaration of Human Rights, which states that everyone has the right to freedom of movement (article 13) and that men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and found a family (article 16). In this context, the Special Rapporteur would also like to draw the attention of the Government to the Platform for Action of the Beijing World Conference on Women and the Programme of Action of the Cairo International Conference on Population and Development, which reaffirm the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so.

310. Concerning the communication sent on 8 August 2006, the Special Rapporteur would like to receive a substantive response to the allegations contained in it.

Spain

Comunicaciones recibidas del Gobierno

311. Con carta de fecha 10 Noviembre 2006, el Gobierno transmitió la siguiente información con relación a la comunicación del 7 de octubre de 2005:

312. Información sobre la situación actual de las investigaciones abiertas el año pasado:

313. El intento por parte de un grupo de unas cincuenta personas de cruzar la valla que separa Marruecos de Melilla el 29 de agosto de 2005, y la muerte del nacional camerunés Joseph Abunaw Ayukabang.

314. La Gendarmería Real marroquí se hizo cargo del cadáver, hallado en el territorio de aquel país y de las correspondientes diligencias.

315. Sin perjuicio del resultado de las investigaciones finales que las autoridades marroquíes hayan abierto y de las conclusiones que al respecto nos puedan hacer llegar, según las informaciones de que dispone el Ministerio del Interior, no hay ningún indicio objetivo ni de otro tipo con carácter determinante que vincule el desgraciado fallecimiento de este ciudadano subsahariano con la actuación llevada a cabo por la Guardia Civil con ocasión del asalto a la frontera realizado en la noche del 28 de agosto de 2005.

316. El traslado al Hospital Comarcal de Melilla en septiembre 2005 del cuerpo de una persona de origen subsahariano que presentaba heridas supuestamente imputables a las fuerzas de seguridad marroquíes.

317. Se trataba de un inmigrante herido que fue asistido –junto con otros inmigrantes– por la Guardia Civil y trasladado al Hospital Comarcal de Melilla donde, posteriormente, fallecería. Las heridas, según manifestaron las personas que le acompañaban, se habrían producido en territorio marroquí cuando cayó por un desnivel huyendo de las fuerzas de aquel país.

318. En España se instruyeron, por el Juzgado de Instrucción número Uno de Melilla, las diligencias previas núm. 1219/05.

319. Con fecha 30 de junio de 2006, el Juzgado de Instrucción dictó auto de archivo de las actuaciones por ausencia de infracción penal.

320. La fiscalía española presentó recurso que está pendiente de resolución.

321. La muerte el 15 de septiembre de 2005 de otra persona cuyo cuerpo fue también trasladado al Hospital Comarcal de Melilla.

322. En la fecha indicada se aproximaron a la valla fronteriza de Melilla dos personas solicitando auxilio, al encontrarse herida una de ellas y tener graves dificultades respiratorias. Falleció al poco tiempo de ser ingresado en el Hospital Comarcal.

323. En relación con este asunto se instruyen diligencias previas número 1344/05 por el Juzgado de Instrucción Número Dos de Melilla.

324. Con fecha 19 de abril de 2006, se acordó su sobreseimiento provisional y archivo. Posteriormente fue presentado un recurso por la Fiscalía.

325. La Audiencia Provincial, con fecha 12 de Junio de 2006 estimó el recurso de apelación e instó la práctica de pruebas complementarias solicitadas por el Ministerio Fiscal. Se revocó el auto de sobreseimiento.

326. En este momento se están practicando diligencias complementarias sin que todavía se conozca el resultado.

327. En conclusión: No han concluido las iniciadas en territorio español sobre los hechos citados; Los hechos están siendo investigados por órganos judiciales independientes; No puede exigirse responsabilidad penal o disciplinaria alguna antes de que el Juzgado competente haya determinado su existencia.

Comunicaciones enviadas al Gobierno

328. Con carta de fecha 17 julio 2006, el Relator Especial juntamente con el Relator Especial sobre ejecuciones extrajudiciales, sumarias o arbitrarias, transmitió al Gobierno una carta de alegaciones acerca de presuntas violaciones de derechos humanos en la frontera de España con Marruecos.

329. El 3 de julio de 2006, tres hombres murieron en la frontera del enclave español de Melilla, en el norte de Marruecos, cuando trataban de entrar en España. Uno de los hombres, identificado como de origen sub-sahariano, murió en el lado español de la frontera aparentemente debido a una herida de bala. Las otras dos muertes ocurrieron en el lado marroquí de la frontera. Las víctimas habrían sufrido heridas mortales al caerse de lo alto de la valla que delimita la frontera, aunque se desconoce la razón por la que se cayeron. Según la información recibida, los 3 hombres que murieron formaban parte de un grupo de 32 personas que intentaban cruzar la frontera. Cinco integrantes del grupo habrían logrado saltar la valla y entrar en España, 7 habrían sido detenidos, y por lo menos 7 más habrían resultado heridos, entre ellos una persona a la que se habría dejado sangrando entre las dos vallas durante aproximadamente una hora.

330. A través de una carta enviada al Gobierno el 7 de octubre del 2005 los Relatores Especiales ya habían expresado su preocupación en relación a una serie de incidentes en los cuales varios migrantes de origen sub-sahariano habrían muerto en similares circunstancias.

Comunicaciones recibidas del Gobierno

331. Con carta de fecha 10 Noviembre 2006, el Gobierno transmitió la siguiente información con relación a la comunicación del 17 Julio 2006:

332. Los hechos referidos son totalmente inexactos. Según la información de que dispone esta Secretaría de Estado de Seguridad, en base a los informes emitidos por la Comandancia de la Guardia Civil de Melilla y la Delegación del Gobierno en dicha ciudad, los hechos sucedieron en la forma siguiente:

Descripción general de los incidentes.

333. El pasado 3 de julio de 2006, sobre las 5.13 horas, un grupo de entre 50 y 70 inmigrantes subsaharianos protagonizaron una tentativa de vulneración fronteriza “en grupo” del perímetro fronterizo de Melilla por la zona comprendida entre el paso fronterizo de Farhana y el Zoco Had.

334. Los inmigrantes, que portaban para ello un gran número de escaleras artesanales y cuerdas provistas de ganchos metálicos, se habían reunido previamente en territorio marroquí y, en concreto, a las afueras de la localidad de Farhana.

335. Con objeto de no ser avistados por las Fuerzas de Seguridad y militares marroquíes, se aproximaron al perímetro fronterizo a través del lecho del arroyo de Farhana que desemboca perpendicularmente en la valla que rodea la ciudad de Melilla.

336. Al llegar al vallado perimetral y antes de escalar la valla exterior con intención de saltar hacia el interior de nuestro país fueron avistados, desde territorio español, por la Guardia Civil, lo que les obligó a desviarse en paralelo a la valla dirección a la loma del Zoco Had, buscando otro lugar más apropiado para intentar el salto.

337. A unos 80 metros, colocaron las escalas sobre la valla exterior e intentaron superar el obstáculo. En el momento de iniciar el salto intervinieron las Fuerzas de Seguridad marroquíes (Ejército y Fuerzas Auxiliares), que les conminaron a detenerse.

338. En ese momento se formó un gran revuelo entre el grupo de inmigrantes, algunos de ellos fueron detenidos, en el lado marroquí, por los militares de aquel país y la mayoría huyó adentrándose de nuevo en el territorio de Marruecos

339. Hechos sucedidos en territorio español:

340. Cinco de estos inmigrantes, lograron escalar la valla exterior y acceder al espacio entre-vallas del sistema anti-intrusión.

341. De ellos: uno falleció en el transcurso de los incidentes: los miembros de la Guardia Civil que participaron en el dispositivo observaron su caída desde lo alto del vallado, cuando se disponía a saltar hacia el exterior; otro fue evacuado al Hospital Comarcal de Melilla por presentar heridas graves; y los otros tres fueron conducidos a la Comandancia de la Guardia Civil, a fin de llevar a cabo su identificación, toma de declaración como testigos, puesta a disposición judicial y posterior entrega en Comisaría del cuerpo Nacional de Policía, a efectos previstos por la legislación de extranjería.

342. Un equipo médico trasladado a la zona reconoció el cuerpo del inmigrante fallecido, decretando su muerte y detectando, como resultado de este primer reconocimiento una herida de unos 4 cms de diámetro sin aparente orificio de salida, presumiblemente causado por el impacto de un proyectil. Tras personarse la Autoridad Judicial y autorizar el levantamiento del cadáver, fue trasladado al depósito municipal al objeto de practicar la correspondiente autopsia.

343. El inmigrante herido, que según estas primeras apreciaciones padecía traumatismo abdominal abierto, fue evacuado al Hospital Comarcal de Melilla, donde fue intervenido quirúrgicamente, quedando ingresado en la U.C.I. del Hospital Comarcal, donde posteriormente se determinaría que la lesión podría tener su origen en una "herida por arma de fuego".

344. Los otros tres inmigrantes sufrieron apenas algunos rasguños y levísimas contusiones.

345. Por tanto: El fallecimiento del inmigrante muerto en territorio español no se debió a una caída mortal desde la valla; No es cierto que las heridas del inmigrante atendido en territorio español fueran debidas a su caída desde la valla; No es cierto que ningún herido haya permanecido por espacio de una hora desangrándose entre las dos vallas.

346. Hechos sucedidos en territorio marroquí:

347. Los relatores dan cuenta, en su escrito, del fallecimiento de otros dos inmigrantes en territorio marroquí. Corresponde a las Autoridades de aquél país pronunciarse sobre estos hechos en base a las comprobaciones o investigaciones que sobre los mismos hayan efectuado.

348. Respecto a la existencia de denuncias, el Ministerio del Interior no tiene constancia de que haya sido presentada en España denuncia ni queja alguna ni por los inmigrantes que participaron en los hechos ni por terceras personas u organizaciones en su nombre.

349. En aplicación de las leyes españolas se han abierto diligencias judiciales para la investigación de los hechos. En este momento, se están incoando las diligencias previas número 720/06, por el Juzgado de Instrucción número 2 de Melilla, que aún no han concluido.

350. Respecto a las diligencias, según se desprende de las actuaciones practicadas hasta el momento, de las que tiene conocimiento el Ministerio del Interior, pueden establecerse las siguientes conclusiones:

351. El inmigrante fallecido y el inmigrante herido en territorio español lo fueron, no como consecuencia de heridas producidas al caer desde el vallado, sino como consecuencia del impacto de proyectiles. Del cuerpo del inmigrante fallecido y de su vestimenta se extrajeron diversos fragmentos metálicos. Sus características, según los informes del Departamento de Balística, se corresponderían con las de un proyectil de los que monta la munición metálica de percusión central del calibre 7,62 mm.

352. Según el informe médico oficial sobre las lesiones que presentaba el herido y una vez realizado un TAC de control, se observa en el cuerpo "un trayecto compatible con herida de arma de fuego, con orificio de entrada en el glúteo izquierdo, que perfora la pala iliaca izquierda, siendo el orificio de salida la herida incisa referida anteriormente" (herida incisa en la fosa iliaca derecha).

353. La Guardia Civil no efectuó los disparos que causaron la muerte al inmigrante fallecido en territorio español y heridas graves a otro. Según se desprende de los informes del Departamento de Balística y de los cumplimentados por la Comandancia de la Guardia Civil en Melilla: "la persona fallecida recibió un único impacto de proyectil por arma de fuego, del calibre 7,62 mm, con trayectoria ligeramente ascendente, y de atrás y a la derecha hacia delante e

izquierda (…). Por tanto (…) la hipótesis más que probable es que el origen del disparo se establece en territorio marroquí, no pudiendo concretarse más la trayectoria descrita por el proyectil". Las características de los fragmentos encontrados no se corresponden con el tipo de munición utilizado por la Guardia Civil.

354. En un informe del Hospital de Melilla se recogen algunas de las manifestaciones realizadas por el herido al equipo médico: "cuando el paciente se encuentra en condiciones de explicar las circunstancias de su lesión, refiere que ha sufrido el impacto de un disparo procedente de Marruecos cuando intentaba subir la valla del lado marroquí". En las declaraciones que el herido prestó ante la Unidad Orgánica de Policía Judicial, manifestó que "recibió el disparo mientras trepaba con una escala la valla exterior del lado marroquí".

355. De hecho, durante los incidentes, ninguno de los 35 guardias civiles que participaron en su control, desenfundó ni utilizó sus armas cortas reglamentarias de dotación individual. Sólo se empleó por algunos de estos guardias civiles –los autorizados- material antidisturbios de modo disuasorio, en concreto lanzaron al aire pelotes de goma. No es posible, por tanto, que los impactos recibidos por los inmigrantes se debieran a la actuación de la Guardia Civil.

356. Las anteriores son las conclusiones que pueden extraerse con la información disponible hasta el momento. Aún no se dispone del resultado de la autopsia ni se han concluido las diligencias judiciales.

357. Asimismo, se han abierto diligencias judiciales, en concreto, las diligencias previas número 720/06, por el Juzgado de Instrucción número 2 de Melilla, a las que se ha hecho referencia.

358. Respecto a las compensaciones, no se tiene constancia de que haya sido solicitada ni haya sido otorgada ningún tipo de compensación a las familias de las víctimas. En cualquier caso, el inmigrante fallecido no ha podido ser identificado.

359. Respecto a las acciones tomadas para prevenir la repetición de tales incidentes en el futuro, el cerramiento perimetral de la Ciudad y el sistema antiintrusión instalado entre las dos vallas que lo configuran ha demostrado no resultar lesivo ni ser el agente causante de los incidentes del pasado 3 de julio. Tampoco lo ha sido la actuación de la Guardia Civil.

360. Aún así se han adoptado las dos siguientes decisiones:

361. Para minimizar el riesgo que conlleva cualquier caída accidental de un inmigrante al intentar saltar la valla fronteriza desde una altura de seis metros (que es la que tiene en su parte más alta): El Ministerio del Interior ha dado instrucciones a la empresa constructora del sistema antiintrusión instalado entre las dos vallas para que compruebe la instalación y se lime o rebaje cualquier saliente o arista del sistema que sea detectada y se revistan (con capuchones de goma) aquellos elementos con los que puedan dañarse accidentalmente en el momento de dar el salto.

362. Para minimizar el riesgo de que puedan producirse incidentes durante los asaltos de inmigrantes a la doble valla, garantizando el más escrupuloso respeto a la indemnidad y a los derechos humanos de los asaltantes: El Ministerio del Interior ha pedido a la Dirección

Subdirección General e Operaciones de la Guardia Civil que tanga previstas unas nuevas instrucciones de servicio para que los agentes que vigilan el perímetro fronterizo que, a la vez que recuerde, expresamente, los principios básicos de actuación y de proporción en el empleo de medios –que ya conocen perfectamente- sirvan para adaptar los procedimientos de intervención a las características físicas del nuevo cerramiento.

Observaciones

363. El Relator Especial quisiera agradecer al Gobierno de España la pronta y detallada información remitida con relación a las comunicaciones enviadas.

364. En relación a la comunicación enviada el 7 de octubre, el Relator Especial agradece al Gobierno la información remitida sobre la situación actual de las investigaciones abiertas el año pasado, así como le agradecería que siga transmitiendo información sobre el desarrollo de las investigaciones de estos casos.

365. En relación a la comunicación enviada el 17 Julio 2006, el Relator Especial agradecería ser mantenido informado de los resultados de las investigaciones y de los procedimientos en curso.

Spain/ Ecuador (see also Ecuador)

Comunicaciones enviadas al Gobierno

366. Con carta de fecha 2 agosto 2006, el Relator Especial transmitió al Gobierno una carta de alegaciones acerca de las denuncias recientemente recibidas relativas al uso excesivo de la fuerza y malos tratos por parte de la Policía Nacional de España durante el violento desalojo de inmigrantes de origen ecuatoriano del Consulado Ecuatoriano en Madrid.

367. Según la información recibida, la mañana del día 15 de junio de 2006, un grupo de unos 30 inmigrantes de origen ecuatoriano expresó su protesta en las oficinas consulares, al habérseles negado la posibilidad de realizar los trámites de renovación de pasaporte. Es por ello que solicitaron una entrevista con el Cónsul, D. Santiago Martínez, quien no sólo no respondió a tal petición, sino que requirió además la intervención policial para desalojar por la fuerza a dichas personas.

368. De acuerdo con la información recibida, y según se desprende de las denuncias presentadas en el Juzgado Decano de Madrid y los informes médicos emitidos por el Hospital de La Paz y el Namur, 3 mujeres sufren esguince, contusiones y dolor a causa de las graves agresiones de la Policía Nacional de España.

369. Las víctimas del maltrato policial fueron las siguientes personas: Gabriela Padilla María José Freire Carrasco y Martha Carrasco, todas ellas nacionales del Ecuador.

370. A la luz de estos hechos, quisiera expresar mi preocupación por las alegaciones de utilización de fuerza desmedida y métodos no legales por parte de la Policía Nacional de España para reducir y desalojar a migrantes de las oficinas del Consulado Ecuatoriano en Madrid.

Observaciones

371. El Relator Especial quisiera reiterar su interés en recibir la respuesta del Gobierno de España al respecto de estas alegaciones.

United Arab Emirates

Communications sent to the Government

372. On 5 April 2006, the Special Rapporteur sent an allegation letter concerning the situation of migrant workers in the United Arab Emirates.

373. According to the information received, migrant workers in the United Arab Emirates (UAE) are often victims of abusive work and living conditions, including extended non-payment of wages, denial of proper medical care and squalid living conditions. These abusive conditions are frequently the result of, among others: inadequate protection provided by the law; insufficient monitoring of migrants' living and work conditions; the ineffectiveness of existing complaints mechanisms.

374. Common complaints have included: non-payment and arbitrary deductions in wages; non-payment of overtime; extremely low wages; inadequate work and living conditions, including lack of medical assistance; physical abuse by overseers.

375. According to the information received, migrant workers are only allowed into the country under the so-called "sponsorship" system, which allegedly renders workers vulnerable to abuse as their permits are linked to one employer and they cannot, generally, change jobs. Moreover, this system largely relies on the activities of recruitment agencies that often charge high placement fees leading workers to frequently incur loans that take, on average, at least a year to repay. The result is described as equivalent to debt bondage.

376. In many cases, employers confiscate work permits and passports, restricting the workers' freedom of movement and their capacity to report abuse. It is further reported that migrant workers are not guaranteed a minimum wage and have no right to join and participate in unions. In practice, employees are reportedly expected to work up to eighty hours a week. Employers allegedly routinely deny construction workers their wages.

377. Death and injury at the workplace are also reported to have risen sharply.

378. Reporting abuse to the authorities is often rendered difficult by inadequate staffing at the Ministry of Labour. According to reports, the Ministry employs only 80 inspectors to oversee the activities of nearly 200,000 businesses that sponsor and employ migrant workers.

379. Migrant workers reportedly comprise nearly 90 per cent of the workforce in the private sector in the United Arab Emirates. The majority of migrant workers in the country are reported to be South Asian notably from India, Pakistan, Bangladesh, Philippines, Sri Lanka and Nepal. Dissatisfaction with their work conditions has allegedly led the migrants to stage a number of

public protests and demonstrations during the past year. Between May and December 2005, at least eight major strikes are reported to have taken place.

380. On 19 September 2005, a demonstration carried out by some 1, 000 workers allegedly blocked one of the main roads in Dubai. The protesters were Pakistani, Indian, Nepalese, Bangladeshi, Filipino and Egyptian construction workers who were demanding payment of four months unpaid wages by the UAE construction company. The demonstrators allegedly dispersed peacefully after negotiations with the Ministry of Labour.

381. On 22 March, a protest initiated by construction workers of the Al Naboodah Laing O'Rourke was joined by workers of a new airport terminal leading to a demonstration of some 5,000 persons. The demonstration led to rioting in which a number of vehicles as well as property owed by the company was destroyed. The protest allegedly began in reaction to large queues at the moment when the workers were expected to start work, leading to delays in beginning their shifts and arbitrary deductions in their wages. The workers also complained of inadequate medical assistance and the denial of a weekly day of rest. The protestors reportedly agreed to return to work after negotiating with representatives of the Ministry of Labour.

Observations

382. The Special Rapporteur would like to reiterate his interest in receiving the reply from the Government of the United Arab Emirates regarding these allegations.

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